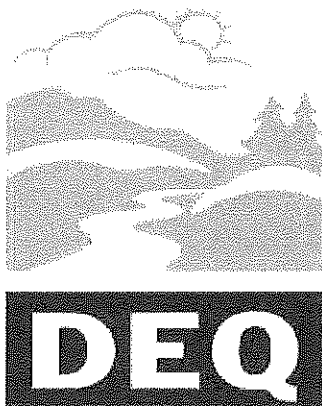


**OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 07/15/2004**



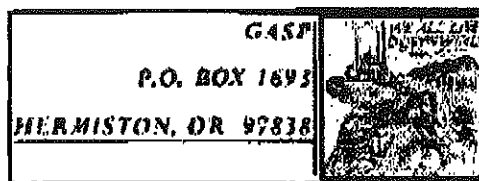
**State of Oregon
Department of
Environmental
Quality**

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June 21, 2004

VIA FACSIMILE



Mark Reeves, Environmental Quality Commission Chair
 Stephanie Hallock, Department of Environmental Quality Director
 Dennis Murphy, Chemical Demilitarization Program Administrator
 Oregon Department of Environmental Quality (DEQ)
 811 SW Sixth Avenue
 Portland, OR 97204-1390

Fax: (503) 225-0276
 Fax: (503) 229-6124
 Fax: (541) 567-4741

RE: Request for a Contested Case Hearing, G.A.S.P. *et al.* Comments
 Change in Incinerator Emissions Compliance Point Modification
 UMCDF-03-041-PFS (3)
 Umatilla Chemical Agent Disposal Facility (UMCDF)
 No. ORQ 000 009 431

Dear Commission Members, Director Hallock, and Administrator Murphy:

I write on behalf of G.A.S.P., Oregon Wildlife Federation, Sierra Club, Karyn Jones, Mark Jones, Susan Jones, Judy Brown, Marilyn Post, Heather Billy, Deborah Burns, Janice H. Lohman, Leandra Phillips, Cindy Beatty, Andrea E. Stine, Dorothy Irish, Mary Bloom, Robert J. Palzer, Janet Nagy, Ladonna King, John Spomer, Christine Clark, Gail Horning, David Burns, Pius A. Horning, Karla Stuck, and Melanie Beltane regarding the Environmental Quality Commission's recent decision on the above referenced modification to the Umatilla Chemical Agent Disposal Facility permit.

As you recall, we submitted written comments on the proposed modification during the November 2003 "first round" and the March 2004 "second round" review periods. For many reasons, including those in writing and those orally provided at the Commission public hearing held in Hermiston on May 20, 2004, we must request a contested case hearing on the approved permit modification. We seek relief under Oregon Revised Statutes and under other applicable State laws and regulations, and under those laws and regulations provided and protected by the federal government.

The EQC approval to change the monitoring point of compliance supports our December 18, 1998, Request for Contested Case Hearing and Other Relief (#98-1247). In addition, the Department of Environmental Quality offered what we see as new evidence to the Commission that clearly demonstrates the trueness of our earlier statements. We believe the change in the point of emissions monitoring paves the way for the start of incinerator operations; therefore, it represents imminent harm to our lives, our communities, and our livelihoods.

We request a contested case hearing in order to test the validity of Army and Department statements and data given the extensive information now in the Administrative Record. Furthermore, we expect a timely hearing with all accoutrements afforded to our concerns and to due process.

Sincerely,



Karyn J. Jones, Executive Director G.A.S.P.
James R. (JR) Wilkinson, Legal Coordinator and Researcher
Richard Condit, Esquire
Stuart Sugarman, Esquire

Item A: Contested Case
against the City of Portland

PLEASE PLACE IN ORIGINAL

CASE NAME: City of Portland

CASE NUMBER: 1024

(WA violation)

ALJ: Andrea Si

~ 5 extras

RE: PHE WA

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <u>Denise Charbonnet</u></p> <p>C. Date of Delivery</p>
<p>1. Article Addressed to:</p> <p>JAN V BETZ OFFICE OF THE CITY ATTORNEY 1221 SW FOURTH SUITE 430 PORTLAND OR 97204</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p> <p>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.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (transfer from service label)</p>	<p>7001 1940 0000 5113 5427</p>

PS Form 3811, August 2001

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OFFICIAL USE

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

Sent To: JAN V BETZ
Office of the City Attorney
1221 SW Fourth Suite 430
Portland OR 97204

PS Form 3800, January 2001 See Reverse for Instructions

CERTIFICATE OF MAILING

I hereby certify that I served _____

Notice of Assessment of Civil Penalty Case No. WQIM-NWR-01-100

CITY OF PORTLAND

c/o DEAN MARRIOTT, DIRECTOR
BUREAU OF ENVIRONMENTAL SERVICES
1211 SW FIFTH AVENUE ROOM 1000
PORTLAND OR 97204

Place a true copy of the above by placing it in a sealed envelope, with postage

and, Oregon, on 5-22-01

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

Article Sent To: _____

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

Postmark Here

Deborah Nashit
Department of Environmental Quality

CITY OF PORTLAND
c/o DEAN MARRIOTT, DIRECTOR
BUREAU OF ENVIRONMENTAL SERVICES
1211 SW FIFTH AVENUE ROOM 1000
PORTLAND OR 97204

0044 320 0004 8966 7271

Pg 191

PLEASE PLACE IN ORIGINAL FILE

CASE NAME: City of Portland

CASE NUMBER: 102453

ALJ: Andrea Sloan

RE: 11/21 Hrg Ntc

Thanks, Ann ☺

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> <u>[Signature]</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery <u>DOUG ROBIN</u> <u>15 OCT 2002</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p style="text-align: center;">JAN V BETZ OFFICE OF THE CITY ATTORNEY 1221 SW FOURTH SUITE 430 PORTLAND OR 97204</p>	<p>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.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p><u>7099 3400 0015 7214 2649</u></p>

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

6499 3400 0015 7214 2649

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

Recipient's Name: JAN V BETZ
Street, Apt. #: OFFICE OF THE CITY ATTORNEY
1221 SW FOURTH SUITE 430
City, State, Zi: PORTLAND OR 97204

(A9/97)

PLEASE PLACE IN ORIGINAL FILE

CASE NAME: City of Portland

CASE NUMBER: 102453

ALJ: Andrea Sloan

RE: 10/24 Hrg Ntc

Thanks, Ann ☺

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><u>X/Andrea Sloan</u></p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p><u>12 SEP 2002</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p>JAN V BETZ OFFICE OF THE CITY ATTORNEY 1221 SW FOURTH SUITE 430 PORTLAND OR 97204</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>7099 3400 0015 7214 3331</p>

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

Recipient's Name (Please Print Clearly) (to be completed by mailer)

JAN V BETZ

Street, Apt. 1 OFFICE OF THE CITY ATTORNEY

1221 SW FOURTH SUITE 430

City, State, Z PORTLAND OR 97204

State of Oregon
Department of Environmental Quality

Memorandum

To: Environmental Quality Commission **Date:** June 23, 2004
From: Mikell O'Mealy, Assistant to the Commission and Director
Subject: July 15-16, 2004 meeting materials

Enclosed are your materials for the June 15-16 EQC meeting, which will be held here in Portland at DEQ Headquarters. Andrea Bonard will be contacting you soon to confirm your travel plans and offer assistance with any lodging or transportation needs you may have.

We will begin on Thursday morning with a tour of the City of Portland's combined sewer overflow control program, including stops at a number of "big pipe" construction sites. This packet includes background information on the big-pipe project. Please plan on meeting in the ground-floor lobby of DEQ Headquarters by 8:30 a.m. for the tour. We'll start the regular meeting Thursday afternoon after lunch and conclude on Friday by mid-afternoon. I've enclosed a "master agenda" for the meeting showing approximate timelines for all items.

In addition to these materials, I will soon send you a staff report for *Item L: Informational Item on the Board of Forestry's Water Protection and Riparian Function Rules*. We are making final changes to this report now.

If you have any questions about the meeting or these materials, please contact me at 503-229-5301, or toll-free at 1-800-452-4011 ext. 5301 in the state of Oregon. Unfortunately, I will not be able to join you for the July meeting, but will be thinking of you and how much fun you'll be having in room 3A. I'll give you a call shortly before the meeting to check in on whether there's anything I can help you with. Thanks.



July 15-16, 2004 EQC Meeting
DEQ Headquarters, Room 3A
811 SW Sixth Ave., Portland OR 97204

Thursday, July 15

- 8:30 a.m. Meet in the ground-floor lobby of the DEQ Headquarters building (811 SW Sixth Ave., Portland) and join rented school bus for tour.
Attending: Commissioners; Dick Pederson, DEQ Northwest Region Administrator; Neil Mullane, DEQ Northwest Region Water Quality Manager; Richard Santner, DEQ Northwest Region Water Quality Specialist; Anne Price, DEQ Office of Compliance and Enforcement Administrator; Mary Abrams, DEQ Laboratory Administrator; Helen Lottridge, DEQ Management Services Division Administrator Virgil Adderley and Paul Gribbon, Portland Bureau of Environmental Services (BES); other BES staff will meet us at the tour sites:
- Nicolai shaft site at NW Front Street
 - Swan Island Pump Station site
 - Columbia Blvd. plant site
 - Ramsey Lake at Kelly Point
 - Possibly City of Portland BES lab if have time
- noon Return to DEQ headquarters for a working lunch in room 3B
- Regular EQC Meeting, DEQ headquarters, room 3A
- 1:00 – 2:00 A. Contested Case Number WQ/M-NWR-01-100, regarding the City of Portland, Ankeny Pump Station; Attorneys Lynn Perry, Oregon DOJ; Jeff Bachman, DEQ; Jan Betz, City of Portland
- 2:00 – 3:00 B. Contested Case Number AQ/AB-NWR-02-181, regarding Vickers/Nelson & Associates, Construction Program Management, Inc.; Attorneys Shelley McIntyre, Oregon DOJ; Bryan Smith, DEQ; and David Meyers
- 3:00 – 3:15 Break
- 3:15 – 3:45 C. Director's Dialogue
- 3:45 – 4:30 D. Informational Item: Update on DEQ's 2005-2007 Budget Request, Lauri Aunan
- 4:30 – 5:00 E. Rule Adoption: Oregon Title V Operating Permit Program Fee Increase, Annette Liebe, Pat Vernon, Kathleen Craig

Friday, July 16

- 8:00 – 9:00 Executive Session, DEQ headquarters, Room 3B
Regular EQC Meeting, DEQ headquarters, Room 3A
- 9:00 – 9:05 F. Approval of minutes
- 9:05 – 9:15 G. Action Item: Consideration of a Pollution Control Facilities Tax Credit Request for Far West Fibers, Inc., Helen Lottridge and Maggie Vandehey
- 9:15 – 9:30 H. Informational Item: Status of the Chemical Stockpile Emergency Preparedness Program, Beverlee Venell, Director of the Office of Homeland Security, or Ken Murphy, OEM Director
- 9:30 – 10:15 I. Informational Item: Briefing from the U.S. Army and Washington Demilitarization Company on Preparations for the Start of Agent Operations at the UMCDF; UMCDF Permittees
- 10:15 – 11:15 J. Informational Item: Status of the DEQ Review for the Start of Agent Operations at the UMCDF, Dennis Murphey and Sue Oliver
- 11:15 – 11:30 Break
- 11:30 – 11:45 Public Forum
- 11:45 – 12:15 K. Rule Adoption: Permit Fees for Small Municipal Separate Storm Sewer Systems and General Permit Fees, Holly Schroeder, Mark Charles
- 12:15 working lunch in Room 3B
- 1:00 – 1:45 L. Informational Item: Board of Forestry's Water Protection and Riparian Function Rule Development Status Report, Holly Schroeder and Ted Lorensen, ODF
- 1:45 – 2:00 M. Begin performance appraisal process for Director
- 2:00 – 2:05 N. Commissioners' Reports

Oregon Environmental Quality Commission Meeting July 15-16, 2004¹

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

On the morning of July 15, prior to the regular meeting, the Environmental Quality Commission will join DEQ staff and representatives from the City of Portland for an on-site inspection of the City's Combined Sewer Overflow control program. The Commission will visit a number of construction sites for the control program on the West side of the Willamette River before returning to DEQ Headquarters for a working lunch and the regular meeting.

Thursday, July 15, beginning at 1:00 p.m.

A. Contested Case Number WQ/M-NWR-01-100, regarding the City of Portland, Ankeny Pump Station

The Commission will consider a contested case between the DEQ and the City of Portland in which the City appealed a proposed order and \$9,000 civil penalty for discharging waste into waters of the state. Jan Betz, Deputy City Attorney, will represent the City of Portland and Lynn Perry, General Counsel for the Oregon Department of Justice, and Jeff Bachman, Environmental Law Specialist with the DEQ, will represent the Department.

B. Contested Case Number AQ/AB-NWR-02-181, regarding Vickers/Nelson & Associates, Construction Program Management, Inc.

The Commission will consider a contested case between the DEQ and Vickers/Nelson & Associates, Construction Program Management, Inc., in which the company appealed a proposed order and \$7,200 civil penalty for failing to require an asbestos abatement contractor licensed by the DEQ to conduct an asbestos abatement project at a North Portland facility. David Meyer, Attorney at Law, will represent the company and Shelley McIntyre, General Counsel for the Oregon Department of Justice, and Bryan Smith, Environmental Law Specialist with the DEQ, will represent the Department.

C. Director's Dialogue

Stephanie Hallock, DEQ Director, will discuss current events and issues involving the Department and the state with Commissioners.

D. Informational Item: Update on DEQ's 2005-2007 Budget Request

Lauri Aunan, DEQ Budget and Legislative Manager, will give the Commission an update on DEQ's development of the agency's 2005-2007 budget request and solicit guidance on key issues from Commissioners. In August, DEQ will ask Commission Chair Mark Reeve to certify the 2005-2007 budget request before it is submitted to the Department of Administrative Services and the Governor's Office.

¹ This agenda and the staff reports for this meeting can be viewed and printed from DEQ's web site at <http://www.deq.state.or.us/about/eqc/eqc.htm>.

E. *Rule Adoption: Oregon Title V Operating Permit Program Fee Increase

Annette Liebe, Acting DEQ Air Quality Division Administrator, and Kathleen Craig, DEQ Air Quality Specialist, will propose rules to increase Title V permit program fees by two percent to adequately fund the Title V program staff for Fiscal Year 2005. Under the federal Clean Air Act, Title V is a comprehensive operating permit program that DEQ administers for major industrial sources of air pollution - the highest emitters of regulated air pollutants in Oregon. To receive ongoing approval from EPA, the Clean Air Act requires states to fully fund their Title V programs with fees paid by Title V sources. The proposed increase, which corresponds to the Consumer Price Index, would meet this requirement and maintain current DEQ staff levels for the program in the coming year.

Friday, July 16, beginning at 9:00 a.m., including a working lunch

At 8:00 a.m., prior to the regular meeting, the Commission will hold an executive session to consult with counsel concerning legal rights and duties regarding current and potential litigation against the DEQ. 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 May 20-21, 2004, Environmental Quality Commission meeting.

G. Action Item: Consideration of a Pollution Control Facilities Tax Credit Request for Far West Fibers, Inc.

Helen Lottridge, DEQ Management Division Services Administrator, and Maggie Vandehey, DEQ Tax Credit Program Coordinator, will present a request from Far West Fibers, Inc., for an extension of time to file a for Commission action Pollution Control Facilities Tax Credit application. The Pollution Control Facility Tax Credit Program was established in 1967 to encourage investment in technologies and processes that prevent, control or reduce significant amounts of pollution. The Commission will decide whether to approve or deny the request at this meeting.

H. Informational Item: Status of the Chemical Stockpile Emergency Preparedness Program

The Chemical Stockpile Emergency Preparedness Program (CSEPP) is the emergency preparedness program for communities surrounding chemical agent stockpile sites. Beverlee Venell, Director of the Oregon Office of Homeland Security, will give an update on the current status of CSEPP for communities surrounding the Umatilla Chemical Depot, and discuss the results of the recent Executive Review Panel meeting. The Executive Review Panel is appointed by the Governor to annually review the readiness of the local communities to respond to an accidental release of chemical warfare agent from the Umatilla Chemical Depot.

- I. Informational Item: Briefing from the U.S. Army and Washington Demilitarization Company on Preparations for the Start of Agent Operations at the Umatilla Chemical Agent Disposal Facility**
The Commission will hear a briefing from the Umatilla Chemical Agent Disposal Facility (UMCDF) Permittees regarding site activities in preparation for beginning chemical agent operations at the UMCDF.
- J. Informational Item: Status of the DEQ Review for the Start of Agent Operations at the Umatilla Chemical Agent Disposal Facility**
Dennis Murphey, DEQ Chemical Demilitarization Program Administrator, and Sue Oliver, DEQ Senior Chemical Demilitarization Specialist, will present the status of the Department's review of UMCDF's compliance with requirements that must be met prior to the commencement of chemical agent operations. The Commission is currently planning to make a decision on the start of agent operations at their August 13, 2004 meeting in Hermiston, Oregon. Mr. Murphey and Ms. Oliver will also give an overview of the information that will be presented at the August meeting and the proposed process for the Commission's decision.
- K. *Rule Adoption: Permit Fees for Small Municipal Separate Storm Sewer Systems and General Permit Fees**
Holly Schroeder, DEQ Water Quality Division Administrator, and Mark Charles, DEQ Surface Water Quality Manager, will propose new rules for stormwater management activities in Oregon's smaller cities and counties. The rules are part of federal storm water regulations that require cities with populations under 100,000 and other small municipalities identified by the state to apply for storm sewer system permits. The proposed rules would create permit fees for the smaller cities and counties similar to those for "general" permits and less than typical storm water permit fees for larger municipalities. The rules would also streamline permitting by encouraging municipalities to serve as one-stop shopping offices for developers and builders seeking construction permits to control stormwater runoff.
- L. Informational Item: Board of Forestry's Water Protection and Riparian Function Rule Development Status Report**
The Commission will hear a briefing from Holly Schroeder, DEQ Water Quality Division Administrator, and Ted Lorensen, Oregon Department of Forestry (DOF) Stewardship Division Assistant State Forester, on the status of ODF rulemakings and other activities under the Oregon Forest Practices Act in conjunction with the Forest Practices Sufficiency Analysis completed in October 2002. This builds on the Commission's discussion of forest practices and water quality at the February 2004 EQC meeting, and is in preparation for a joint meeting between the Board of Forestry and the EQC in October 2004.
- M. Discussion Item: Preparing for the Director's Performance Evaluation**
In January 2002, the Commission adopted a process for evaluating the DEQ Director's performance each biennium, and in December 2002, the Commission completed their first appraisal. This fall, the Commission will conduct a second performance evaluation

in accordance with their biennial appraisal schedule. At this meeting, Commissioners will take steps to prepare for the evaluation, including adopting criteria for the appraisal, appointing a subcommittee to guide the evaluation, and asking the Director to prepare a written self-evaluation of her performance. The EQC will also discuss the schedule for conducting the evaluation over the next five months.

N. Commissioners' Reports

Adjourn

Future Environmental Quality Commission meeting dates in 2004 include:
August 13, Hermiston; September 9-10, Bandon; October 28-29, Tillamook; December 9-10, Portland

Agenda Notes

***Rule Adoptions:** Hearings have been held on Rule Adoption items and public comment periods have closed. In accordance with ORS 183.335(14), no comments may be presented by any party to either the Commission or Department on these items at any time during this meeting.

Staff Reports: Staff reports for each item on this agenda can be viewed and printed from DEQ's web site at <http://www.deq.state.or.us/about/eqc/eqc.htm>. To request a particular staff report be sent to you in the mail, contact Andrea Bonard 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 Bonard 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, July 16 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.

Lynn Hampton, Vice Chair

Lynn Hampton serves as Tribal Prosecutor for the Confederated Tribes of the Umatilla Indian Reservation and previously was Deputy District Attorney for Umatilla County. She received her B.A. at University of Oregon and her J.D. at University of Oregon School of Law. Commissioner Hampton was appointed to the EQC in July 2003 and lives in Pendleton.

Deirdre Malarkey, Commissioner

Deirdre Malarkey graduated from Reed College and received her M.A. and Ph.D. 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.

Ken Williamson, Commissioner

Ken Williamson is head of the Department of Civil, Construction and Environmental Engineering at Oregon State University and serves as Co-Director of the Center for Water and Environmental Sustainability. He received his B.S. and M.S. at Oregon State University and his Ph.D. at Stanford University. Commissioner Williamson was appointed to the EQC in February 2004 and he lives in Corvallis.

The fifth Commission seat is currently vacant.

Stephanie Hallock, Director

Department of Environmental Quality

811 SW Sixth Avenue, Portland, OR 97204-1390

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

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

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

Mikell O'Mealy, Assistant to the Commission

Telephone: (503) 229-5301

State of Oregon
Department of Environmental Quality

Memorandum

Date: June 24, 2004

To: Environmental Quality Commission

From: Stephanie Hallock, Director *S. Hallock*

Subject: Informational Item: City of Portland Combined Sewer Overflow (CSO) Control Program: Tour of "Westside Big Pipe" Construction Sites and Other CSO Control Facilities
Prior to July 15, 2004 EQC Meeting

Purpose of Item To provide the Environmental Quality Commission (Commission) with an up-to-date understanding of the scope and status of the City of Portland's Combined Sewer Overflow (CSO) control program through visits to active construction sites and completed facilities.

Background Summary A large part of the City of Portland is served by a combined sewer system that historically discharged large quantities of untreated sanitary sewage and storm water to the Columbia Slough and the Willamette River during most rain events. Such overflows are a significant public health and water quality concern.

In 1991, the Commission and the City entered into a legal agreement (a Stipulation and Final Order, or SFO) which established the framework for a twenty-year CSO control program that would drastically reduce overflow frequency and volume. The agreement was amended in 1994 (the amended SFO, or ASFO).

Now past the halfway point of the program, the City has made significant progress in controlling CSOs. All milestones and requirements of the SFO and ASFO have been met thus far.

At present, the massive "Big Pipe" facilities that will control overflows from the west side of the Willamette River are under construction. When completed, these facilities will capture overflows and convey the combined sewage to the Columbia Boulevard Wet Weather Treatment Facility. The Commission's tour will include stops at these locations. A constructed wetland for the treatment of separate stormwater and the City's Water Pollution Control Lab will also be visited.

Over the course of implementing the CSO control program, the Department has maintained close coordination with the City on a host of policy, regulatory and technical matters. The Department also provides engineering review of the sewerage facilities constructed as part of the City's program.

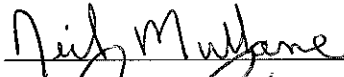
- Attachments**
- A. DEQ Fact Sheet on Portland CSOs giving additional background information
 - B. Cover Letter and descriptive material from the City
 - C. 1994 Amended Stipulation and Final Order for Commissioners who do not already have a copy

- Available Upon Request**
- Original 1991 Stipulation and Final Order
 - CSO Management Plan (City of Portland, 1994), or Executive Summary
 - CSO Management Plan Update (City of Portland, 2001)
 - Numerous engineering and other technical analyses developed as part of the program

Additional Resource The City's Bureau of Environmental Services maintains a very informative Website about the CSO Control Program at www.cleanriverworks.com.

Approved:

Section:



Division:



Report Prepared By: Richard J. Santner

Phone: 503-229-5219

Fact Sheet



State of Oregon
Department of
Environmental
Quality

Portland Combined Sewer Overflow (CSO) Management

Background

For many years, a large part of the City of Portland, about 30,000 acres, has been served by a combined sewer system in which sanitary sewage from homes and businesses, and stormwater from streets, roofs and driveways flow into a single set of sewer pipes. During periods of dry weather, all of the sanitary sewage is delivered by the sewer system to the Columbia Boulevard Wastewater Treatment Plant (CBWTP) for proper treatment and discharge to the Columbia River.

However, almost any time it rains, the inflow of stormwater into the combined sewers causes the capacity of the large interceptor sewers that run along the Willamette River to be exceeded, and a combination of stormwater and untreated sanitary sewage is discharged to the river. (In the past, there were similar frequent CSO discharges to Columbia Slough but these have been virtually eliminated as of December 2000.)

While CSO discharges raise several environmental concerns, the most important is the risk of contracting disease from pathogenic organisms that may be found in raw sanitary sewage. Such risk impairs the beneficial use of waters subject to CSOs for safe contact recreation.

In regulatory terms, the CSO discharges result in violation of the Water Quality Standards established by the Environmental Quality Commission (EQC) for bacteria, floatables and solids, and other pollutants. The Wastewater Discharge Permit issued to Portland by DEQ for the CBWTP expressly prohibits violation of Water Quality Standards by the CSO discharges.

To address these violations, the EQC and Portland entered into a mutually agreed upon enforcement order called a Stipulation

and Final Order (SFO) in August of 1991. The SFO was amended in August 1994.

The Amended Stipulation and Final Order (ASFO) requires that the frequency of CSOs to the Willamette River be drastically reduced by the year 2011. A detailed compliance schedule of implementation milestones is set forth, with stipulated penalties identified for failure to meet the schedule or to attain the level of CSO control required.

Portland complies with CSO Order

The City of Portland has thus far met all CSO compliance schedule milestones set forth in the original and amended versions of the Order.

The City has made substantial progress constructing the stormwater inflow reduction facilities that are intended to reduce combined sewage volume. These "Cornerstone Projects" include stormwater infiltration sumps, down spout disconnections, sewer separations and stream diversions.

Construction of the major CSO control facilities for the Columbia Slough sewer basins--the "Columbia Slough Big Pipe" and appurtenances-- was completed at the end of 2000. Overflows to the Slough will now occur only with the largest storms, averaging about three overflow events per decade.

Construction of the massive CSO control facilities for the west side Willamette River sewer basins--the "West Side Big Pipe"-- is now under way, with completion scheduled for December 2006.

Detailed planning and pre-design for the even larger CSO control facilities for the east side Willamette River sewer basins is well advanced. Construction will begin no later than May 2008, with completion by late 2011.

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See also City's Bureau of
Environmental Services
CSO Website at:
www.cleanriverworks.com

Last Updated 06-01-04
By: Richard J. Santner

EQC--Portland CSO chronology

August 1991

The EQC and the City execute original SFO to address permit violations caused by CSOs. SFO requires that CSO discharges to Columbia Slough and Willamette River be controlled except when 10 year return summer storm/5 year return winter storm or larger occur. Development of CSO Management Plan is required.

June 1993

Draft Management Plan is completed. It analyzes facilities and costs needed to meet level of CSO control specified in SFO, and other more and less stringent levels of control for the Willamette River discharges.

November 1993-March 1994

The non-decision making "Collaborative Process" Committee (2 EQC members, 2 City Council members, DEQ Director, a Portland Bureau of Environmental Services senior manager) hold a series of well-attended public meetings to evaluate options identified in the Draft Management Plan. Committee recommends to EQC and City Council that a less stringent level of CSO control than specified in the SFO be adopted for Willamette discharges, but that Columbia Slough control requirement remain as in SFO.

June-August 1994

EQC and Council concur in Collaborative Process Committee recommendation and execute ASFO. CSO control requirement for Willamette is set at 3 year return summer storm and 4-in-year winter storm because it is the most "cost effective" level of control. This reduces estimated overall CSO control program cost from about \$1billion to about \$700million (in 1993 dollars).

December 1994

City completes Final CSO Management Plan, which elaborates on facilities needed to meet ASFO. EQC approves "Schedule and Control Strategy" set forth in Final Plan in April 1995.

January 1996

EQC adopts new "Bacteria Rule" Water Quality Standard which establishes 10 year summer/5 year winter storm prohibition of raw sewage discharges as regulatory standard, but allows EQC to approve less stringent standard for individual CSO systems. DEQ considers prior EQC concurrence in ASFO and Final Management Plan to constitute such approval for Portland's CSOs to Willamette.

1995-2004

Ongoing "Cornerstone Projects" (sewer separations, storm water sumps, down spout disconnections, stream diversions, sewer system inline storage optimization) make significant progress to remove storm water from combined sewer system and reduce volume of CSO discharges.

March 1998

NWEA and City settle 1991 citizen lawsuit on CSOs. Terms of settlement include commitment by City to implement ASFO and plaintiffs standing to seek relief from court for City's failure to comply with ASFO schedule.

2000-2001

Columbia Slough CSO control facilities completed December 2000. Seven CSO discharge points on the Willamette eliminated by December 2001

December 2001

City prepares CSO Management Plan Update pertaining to configuration of Willamette sewer basins control facilities.

2001-2004

Construction of major west side Willamette control facilities begun in 2001 with completion in 2006. Construction of major east side control facilities to follow with completion by 2011.

Alternative Formats

Alternative formats of this document can be made available. Contact DEQ Public Affairs for more information (503) 229-5696.





CITY OF PORTLAND
ENVIRONMENTAL SERVICES

Attachment B



1120 SW Fifth Avenue., Room 1000, Portland, Oregon 97204-1912 Dean Marriott, Director Dan Saltzman, Commissioner

Friday, June 04, 2004

Mr. Richard Santner
Oregon Department of Environmental Quality
Water Quality Division
2020 SW Fourth Avenue, Suite 400
Portland, OR 97201-4987

Subject: EQC Tour of Portland CSO Facilities on July 15, 2004

Dear Richard:

The City of Portland is pleased to host a tour of our combined sewer overflow (CSO) facilities for the Environmental Quality Commission (EQC) on the morning of July 15, 2004. This tour will provide the Commissioners with an on-the-ground view regarding the status of the CSO Program, the construction of the Willamette CSO Facilities, and the operation of the Columbia Slough CSO Facilities. The tour will begin at the Westside CSO construction office near NW 21st and Nicolai, and will conclude at the Water Pollution Control Lab in North Portland. The primary elements of the tour will include:

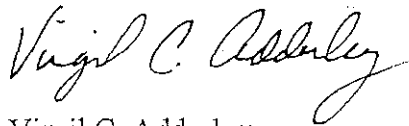
- Visit to the Nicolai Mining Shaft Site and the Tunnel Segment Fabrication Site. (This visit will be preceded by a 10-minute status report on the Westside CSO Project and a 20-minute safety training required to visit the sites.)
- Visit to the Swan Island Pump Station and Confluence Structure construction sites.
- Visit to the Columbia Boulevard Wastewater Treatment Plant to view the Wet Weather Treatment Facilities.
- Visit the Ramsey Lake Wetland, which was designed and constructed to treat stormwater separated from the North Portland combined sewer area.
- Visit the Water Pollution Control Lab, an award-winning building displaying stormwater management techniques used in reducing flows to the combined system.

Please find enclosed our recent Combined Sewer Overflow Progress Report that describes the status of the CSO program and in particular the Westside CSO construction. Also enclosed is the "West Side Big Pipe Update" mailer that provides additional information on the project including expected impacts for the citizens of Portland.

B-1

We look forward to spending this time with you and the EQC members in July. If you should have any questions regarding this information or require additional materials, please feel free to contact me.

Sincerely,



Virgil C. Adderley,
CSO Program Manager

Enclosures

cc: Dean Marriott, BES Director
Paul Gribbon, Chief Engineer for Willamette CSO Construction

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

1			
2	DEPARTMENT OF ENVIRONMENTAL QUALITY,	)	AMENDED STIPULATION
3	OF THE STATE OF OREGON,	)	AND FINAL ORDER
4	Department,	)	No. WQ-NWR-91-75
5	v.	)	MULTNOMAH COUNTY
6	CITY OF PORTLAND,)	
7	Respondent.)	
8)	

WHEREAS:

10 1. On August 5, 1991, the Department of Environmental
11 Quality (Department or DEQ) issued National Pollutant Discharge
12 Elimination System (NPDES) Waste Discharge Permit Number 100807
13 (Permit) to the City of Portland (Respondent), pursuant to
14 Oregon Revised Statutes (ORS) 468B.050 and the Federal Water
15 Pollution Control Act Amendments of 1972, P.L. 92-500, as
16 amended. The Permit authorizes the Respondent to construct,
17 install, modify or operate waste water treatment control and
18 disposal facilities (facilities) and discharge adequately
19 treated waste waters into the Columbia River, Columbia Slough
20 and Willamette River, waters of the state, in conformance with
21 the requirements, limitations and conditions set forth in the
22 Permit. The Permit expires on March 31, 1996.

23 2. Respondent's sewage collection system is comprised in
24 part of combined sewers designed to collect both sanitary sewage
25 and storm runoff water. The combined sewer system is designed
26 and intended to collect and transport all sanitary sewage to

1 Respondent's sewage treatment plant during periods of dry
2 weather; however, during some periods of wet weather, the
3 combined sanitary sewage and storm runoff entering the system
4 exceeds the system's capacity to collect and transport sewage to
5 the sewage treatment plant. At such times, the excess combined
6 sanitary sewage and storm runoff are discharged through bypass
7 pipes, commonly referred to as Combined Sewer Overflows or
8 CSO's, directly to the Willamette River and Columbia Slough,
9 waters of the state, without treatment. Respondent's system
10 includes 54 Combined Sewer Overflows. In addition, Respondent
11 owns and operates sewage pump stations, one of which, the Ankeny
12 Pump Station, may not be capable of pumping all incoming
13 combined sanitary sewage and storm runoff during periods of wet
14 weather. At such times, combined sanitary sewage and storm
15 runoff are discharged from the Ankeny Pump Station directly to
16 the Willamette River without treatment. The discharges of
17 combined sanitary sewage and storm runoff from the Combined
18 Sewer Overflows and the Ankeny Pump Station (Discharges) may
19 cause violations of Oregon's water quality standards for Fecal
20 Coliform bacteria and possibly other parameters in the Columbia
21 Slough and the Willamette River.

22 3. Respondent's prior NPDES permit, issued on September
23 18, 1984, did not expressly identify the combined sewer overflow
24 discharge points that are part of the sewer system. Prior to
25 the development of the Department's final draft 'Oregon Strategy
26 for Regulating Combined Sewer Overflows (CSOs)' on February 21,

1 1991, as a matter of policy the Department did not always list
2 CSO discharge points in an NPDES permit but, in many instances,
3 issued permits for an entire sewer system. EPA's Region 10
4 office approved the issuance of such permits. Respondent's 1984
5 NPDES permit is a permit for the sewer system, which includes
6 CSO outfalls, but did not contain specific effluent limitations
7 for CSOs.

8 4. Since the adoption of water quality standards for the
9 Willamette Basin (included in Oregon Administrative Rules 340-
10 41-445) by the Environmental Quality Commission in 1976,
11 Respondent has discharged combined sanitary sewage and storm
12 runoff and may have caused violations of water quality
13 standards. These water quality standards include narrative
14 limitations on visible solids and floatable material and numeric
15 limitations for bacteria and other parameters.

16 5. DEQ and the Respondent recognize that until new or
17 modified facilities are constructed and put into full operation,
18 Respondent may cause violations of the water quality standards
19 at times.

20 6. On August 5, 1991, Stipulation and Final Order No. WQ-
21 NWR-91-75 (Order) came into effect. Under terms of the Order,
22 Respondent is required to carry out necessary studies and
23 corrective actions to eliminate the discharge of untreated
24 overflows from Respondent's combined sewer system, up to a one
25 in ten year summer storm event and up to a one in five year
26 winter storm event (allowable overflow frequency).

1 7. The August 5, 1991, Stipulation and Final Order, No.
2 WQ-NWR-91-75, called for the following activities to be
3 implemented by Respondent, each of which was accomplished in a
4 timely manner:

5 a. By no later than September 1, 1991, the
6 Respondent shall submit to the Department a draft scope of
7 study for the facilities plan. The scope of study shall
8 include an outline of the final facilities plan content,
9 and sufficient detail on how the necessary information is
10 to be obtained to complete the facilities plan. The
11 facilities plan shall, at a minimum, include a
12 characterization of the Discharges including volume, times
13 of discharge, and bacterial and chemical content;
14 alternatives for eliminating water quality violations
15 attributable to CSO's; the environmental and other impacts
16 of the alternatives evaluated; the estimated cost of the
17 alternatives; an evaluation of the impact of the CSO
18 control alternatives on the Columbia Blvd. wastewater
19 treatment plant; if the CSO alternatives will cause permit
20 violations at the treatment plant, an evaluation of
21 alternatives to expand or upgrade the treatment plant so as
22 to maintain compliance with existing discharge standards;
23 recommended control alternatives including any required
24 plant upgrades that will result in compliance with water
25 quality standards for the CSO discharges and compliance
26 with the existing treatment plant discharge standards; a

1 detailed implementation schedule for completing the
2 recommended actions; a detailed demonstration that the
3 recommended actions are the least cost/environmentally
4 sound alternatives that will achieve the discharge
5 limitations specified in this order; and a mechanism for
6 financing the recommended improvements. The facilities
7 plan shall include detailed implementation plans and
8 financing plans for attaining compliance with applicable
9 water quality standards at all CSO's alternatively: (1) for
10 attaining compliance at all CSO's by December 1, 2006; and
11 (2) for attaining compliance at all CSO's by December 1,
12 2011;

13 b. By no later than October 1, 1991, the Respondent
14 shall submit to the Department a draft scope of study for
15 an interim control measures study. The interim control
16 measures study shall include a brief narrative description
17 of each control measure; which CSO's would be affected by
18 each control measure; the estimated impact of each control
19 measure on quantity, quality, and timing of discharge; the
20 estimated impact of each control measure on beneficial
21 uses; the estimated capital cost and annual operation and
22 maintenance cost for each control measure; and the
23 estimated time needed to install or initiate each control
24 measure. The interim control measures to be evaluated and
25 included in the interim control measures study shall
26 include but are not limited to the following: screens and

1 other technologies for removing large solids and
2 floatables; maximization of in-line storage including
3 passive and automatic regulators; removal of new and/or
4 existing roof drain connections from the sewer system;
5 increased line flushing including an evaluation of timing
6 and location of flushing activities; increased street
7 sweeping; the review and modification of pretreatment
8 program; and increased cleaning of catch basins;

9 c. Within thirty (30) days of receiving written
10 comments from the Department, the Respondent shall submit
11 to the Department final approvable scopes of study for
12 interim control measures study and the facilities plan;

13 d. By no later than December 31, 1992, the
14 Respondent shall submit the portion of the facilities plan
15 that characterizes Combined Sewer Overflows;

16 e. By no later than December 31, 1992, the
17 Respondent shall submit the draft interim control measures
18 study to be used by the Department and the Commission to
19 determine appropriate and reasonably practicable interim
20 control measures to reduce water quality impacts until such
21 time as final compliance is attained.

22 f. Within thirty (30) days of receiving written
23 comments from the Department, the Respondent shall submit
24 to the Department and the Commission the final interim
25 control measures study that is approvable by the Department
26 as to content and completeness;

1 g. Upon submission of the final interim control
2 measures study, the Commission, upon recommendation of the
3 Department, shall establish the required interim control
4 measures and the schedule for their implementation;

5 h. By no later than July 1, 1993, the Respondent
6 shall submit a draft facilities plan to the Department;

7 i. Requiring Respondent to implement the interim
8 control measures as specified in Attachment 1 to this
9 Order;

10 8. On July 1, 1993, as required by paragraph 7. h. above,
11 Respondent submitted a facilities plan that included information
12 on how Respondent intended to meet the terms of the Order.
13 Included in the facilities plan was an evaluation of other
14 possible allowable overflow frequencies, including environmental
15 impacts, control technologies, costs, and other impacts of the
16 control measures required to meet the alternative allowable
17 overflow frequencies.

18 9. At the time the parties agreed to the terms of the
19 SFO, it was understood that the Respondent did not have
20 sufficient information necessary to adequately characterize the
21 City's combined sewer system. Several of the activities in the
22 schedule set out in the SFO were designed to develop that data
23 so that an appropriate facilities plan could be implemented.
24 Paragraph 13 of the SFO provided for amendment of the
25 requirements of the Order, in recognition that information
26

1 acquired during the facilities planning process could lead to
2 beneficial strategies that differed from the terms of the SFO.

3 a. In the course of gathering data and conducting
4 the activities set out in the SFO, the Respondent has
5 developed a substantial body of information about the
6 combined sewer system: the number and duration of
7 overflows, the character [composition] of overflows, the
8 impact of overflows on water quality, technology for CSO
9 control, project costs and potential economic impacts.
10 Also during this time the federal government developed a
11 draft policy providing guidance to the States about CSO
12 control.

13 b. In light of relevant information developed during
14 the facilities planning process, the Department, the
15 Commission and the Respondent agreed to conduct a
16 collaborative process to evaluate the requirements of the
17 SFO in an effort to achieve an appropriate level of CSO
18 control, pursuant to paragraph 13 of the SFO. In the fall
19 of 1993 a Collaborative Committee (Committee) was formed,
20 consisting of two Environmental Quality Commission
21 Commissioners, two City of Portland Commissioners, the
22 Director of DEQ and the intergovernmental affairs
23 coordinator for the City's Bureau of Environmental
24 Services.

25 c. The Committee held four public informational
26 meetings between October 18, 1993, and December 14, 1993,

1 in which they heard presentations and public testimony
2 about the history of the Willamette River; the value of the
3 environment and the importance of the river to the City of
4 Portland, the State and its residents; water quality and
5 pollution; health risks related to CSOs; economic issue and
6 alternative strategies for CSO control. The committee held
7 two additional public meetings in January 1994 to discuss
8 issues and recommendations. The Committee members held
9 open discussions of the issues during each meeting during
10 which there was also an opportunity for public testimony.

11 d. As a result of information offered during the
12 presentations, public comment and Committee discussions in
13 the course of the collaborative process, the following
14 issues were identified as fundamental to achieving
15 consensus regarding CSO control:

- 16 • The people of the Portland Region place a high
17 value on the Willamette River and good water
18 quality. The River's importance to the people of
19 Portland and the value of water quality both
20 continue to increase over time.
- 21 • Recreational use of the river is an important use
22 which demands high quality water.
- 23 • It is prudent public policy to establish the goal
24 of eliminating untreated sewage discharges to
25 public waters.

- 1 • Discharge of untreated sewage to public waters in
2 Oregon constitutes a potential threat to public
3 health and safety -- even when bacteria standards
4 are met. Bacteria standards are an imperfect
5 measure of public health protection.
- 6 • Untreated sewage discharges will occasionally
7 occur, whether due to unavoidable equipment
8 breakdowns, natural disasters, or other causes.
9 Even under the most stringent regulatory approach
10 imaginable, complete elimination is not
11 realistically achievable.
- 12 • It is therefore good public policy to require
13 that, whenever decisions are made regarding
14 sewerage facilities, cost effective options to
15 reduce the frequency and quantity of untreated
16 sewage discharges be evaluated and implemented.
- 17 • CSOs are a significant contributor of untreated
18 sewage discharges to the Willamette River in the
19 Portland area and to the Columbia Slough.
20 Prudent public policy dictates the need to reduce
21 combined sewer overflows significantly.
- 22 • Responsible public policy calls for a cost
23 effective approach to CSO reduction.
- 24 • Based on analysis of alternatives presented in
25 the facility plan, CSO control beyond the level
26 achieved with the Enhanced Draft Federal Policy

1 alternative (96% reduction of overflow volume)
2 appears to be very costly for a relatively small
3 increment of water quality improvement.

- 4 • New technology may emerge that will provide more
5 cost effective methods of reducing CSOs than are
6 available today.
- 7 • The Cornerstone Projects, outlined in the draft
8 facilities plan, and a phased implementation for
9 CSO control provide an opportunity to
10 periodically review progress and provide cost
11 effective results.

12 e. The Respondent is committed to an overall policy
13 of water quality improvement and is implementing a
14 comprehensive clean river strategy. Elements of this
15 program include:

- 16 • In-process projects to increase secondary
17 treatment capacity to serve the growing sewerred
18 population of Portland:

- 19 - Modifications to the Columbia Boulevard
20 secondary treatment plant to increase the
21 effective hydraulic capacity of the
22 secondary portion of the plant from the
23 initial design capacity of 100 mgd to 160
24 mgd.

- 25 - Construct a second force main from the
26 Inverness Site to the Columbia Boulevard

1 Secondary Treatment Plant to serve the
2 expanding sewerred population in Mid-
3 Multnomah County. Design is scheduled for
4 completion in June 1996. Construction
5 completion and startup is scheduled for July
6 1998.

7 • Other in-process enhancement programs:

8 - Clean Rivers Program -- This program is a
9 comprehensive approach to surface water
10 quality management within the city and
11 includes stormwater management (development
12 controls, industrial controls, erosion and
13 sediment controls, etc.); flood control and
14 drainage; and watershed management projects
15 including but not limited to those in
16 Columbia Slough, Johnson Creek, Balch Creek,
17 and Fanno Creek in the Tualatin Basin.

18 - Collection System Structural Assessment and
19 Enhancements -- These projects are intended
20 to identify and correct problems in the
21 existing system to increase the storage and
22 transport capacity and eliminate any
23 untreated overflows during times when no
24 rain is falling (ie. dry weather).

25 • Cornerstone Projects: Cost effective projects
26 to reduce the magnitude of the problem by getting

1 storm water out of the combined sewer system:
2 (estimated capital cost = \$240 million in 1993
3 dollars)

- 4 - Roof Drain Disconnects;
- 5 - Storm Water Sumps;
- 6 - Stream Diversions;
- 7 - Selective Localized Sewer Separation.

- 8 • Columbia Slough: Implementation of a high level
9 of control of combined sewer overflows to the
10 Columbia Slough. Columbia Slough is considered a
11 sensitive water body because of low natural
12 stream flow and the very limited ability to
13 assimilate wastes and cleanse itself. Because the
14 Slough is a sensitive water body, Portland agrees
15 that it requires a high level of control
16 equivalent to the level specified in the 1991
17 SFO. The estimated capital cost to achieve that
18 level of control is \$150 million in 1993 dollars
19 for facilities for capture, storage, and
20 treatment of combined sewer overflows, and
21 discharge of the treated effluent to the Columbia
22 River.

23 f. Willamette River CSO Control Options: The
24 Portland Facility Plan evaluated 4 alternatives for
25 Willamette River Control. The Cornerstone Program Projects
26 and Columbia Slough Cleanup mentioned above are included

1 within the capital cost estimates for each of these
2 options. Attention was given to developing alternatives so
3 that other community benefits would result, including
4 relocating any remaining overflows to minimize impact on
5 high priority beneficial use areas. The "Enhanced Draft
6 Federal Policy Level" alternative reflects a policy
7 decision which seeks to responsibly balance competing
8 demands and priorities, costs and benefits. This option
9 consists of the following basic components:

- 10 • 96% reduction of overflow volume
- 11 • An estimated \$700 million capital investment (in
12 1993 dollars, including Cornerstone Projects and
13 Columbia Slough Cleanup).
- 14 • Winter design storm equivalent: 3-4 overflows
15 per year. 250 mg overflow in typical year;
- 16 • Summer design storm equivalent: storm that would
17 have a 1 in three year occurrence frequency.
18 Based on last 15 years of data, rainfall would
19 have produced 2 overflow events of 2 days
20 duration each in the last 15 years.
- 21 • Overflows would cause bacteria standards to be
22 exceeded 65 hrs in winter.
- 23 • 5 mile tunnel, primary treatment and
24 disinfection, discharge to Willamette. (Larger
25 facilities than in the Draft Federal Policy Level
26 alternative.)

- Average monthly sewer rate projected to be \$38-41 by 2010 (in 1993 dollars).

g. The Respondent is committed to a public outreach and notification program to encourage community action and involvement and increase public awareness about CSO control and water quality issues.

h. The Respondent is committed to incorporating CSO reduction activities into its ongoing sewer system planning and water quality management efforts beyond the termination of the requirements of this Order.

i. The Department, with the assistance of an advisory committee, is presently reviewing several water quality standards, including the bacteria standard, as part of the federally required triennial review process. Following receipt of the committee report, the Department expects to propose revisions to the bacteria standard to make it a more meaningful indicator of beneficial use protection.

j. The Department, within the limits of budgetary authority and federal constraints, is attempting to increase the effectiveness of controls on nonpoint sources of water pollution in all areas of the state. In these efforts, the Department's fundamental commitment is to approach all sources of pollution on a comprehensive, watershed management basis.

1 10. The Department and Respondent recognized that the
2 Environmental Quality Commission (Commission) had the power to
3 impose a civil penalty and to issue an abatement order for
4 violations of water quality standards. Therefore, pursuant to
5 ORS 183.415(5), the Department and Respondent have settled
6 those possible past violations referred to in Paragraph 4 and
7 wish to limit and resolve the future violations referred to in
8 Paragraph 5 in advance by this Amended Stipulation and Final
9 Order. In light of the recent development of EPA and
10 Departmental strategies and policies governing permitting and
11 evaluation of CSO impacts on water quality, imposition of a
12 civil penalty at this time is not deemed appropriate by the
13 Department.

14 11. This Amended Stipulation and Final Order is not
15 intended to limit, in any way, the Department's right to proceed
16 against Respondent in any forum for any past or future
17 violations not expressly settled herein.

18

19 NOW THEREFORE, it is stipulated and agreed that:

20

21 12. The Commission hereby issues a final order:

22 a. Requiring the Respondent to eliminate all
23 untreated CSO discharges to the Columbia Slough from
24 November 1 through April 30 except during storms
25 greater than or equal to a storm with a five year
26 return frequency and to eliminate all untreated CS

1 discharges from May 1 through October 31 except during
2 storms greater than or equal to a storm with a ten
3 year return frequency; and requiring Respondent to
4 eliminate all untreated CSO discharges to the
5 Willamette River from November 1 through April 30
6 except during storms greater than or equal to a storm
7 with a four in one year return frequency and to
8 eliminate all untreated CSO discharges from May 1 to
9 October 31 except during storms greater than or equal
10 to a storm with a three year return frequency, as soon
11 as reasonably practicable, but no later than the
12 following schedule:

13 (1) Within six months of receiving written
14 comments from the Department on the draft
15 facilities plan submitted to the Department on
16 July 1, 1993, the Respondent shall submit to the
17 Department a final facilities plan that is
18 approvable by the Department as to content and
19 completeness. The Department will review the
20 facilities plan and prepare recommendations to
21 the Commission for CSO control strategies and
22 schedules for implementing them. Final approval
23 of the control strategies and schedules to
24 eliminate untreated CSO discharges will be by the
25 Commission;

1 (2) By no later than December 1, 1997, the
2 Respondent shall submit final engineering plans
3 and specifications for construction work required
4 to comply with Section 12.a.(4);

5 (3) By no later than May 1, 1998, the
6 Respondent shall begin construction required to
7 comply with Section 12.a.(4);

8 (4) By no later than December 1, 2001, the
9 Respondent shall eliminate untreated CSO
10 discharges, subject to the storm return
11 frequencies specified in Paragraph 12.a. of this
12 Amended Order, at 20 of the CSO discharge points,
13 including discharges to Columbia Slough,
14 consistent with the facilities plan approved by
15 the Commission; however, the Respondent shall
16 eliminate all untreated CSO discharges to the
17 Columbia Slough, subject to the storm return
18 frequencies specified in Paragraph 12.a. of this
19 Amended Order, by no later than December 1, 2000;

20 (5) By no later than December 1, 2001, the
21 Respondent shall submit final engineering plans
22 and specifications for construction work required
23 to comply with Section 12.a.(7);

24 (6) By no later than May 1, 2003, the
25 Respondent shall begin construction required to
26 comply with Section 12.a.(7);

1 (7) By no later than December 1, 2006, the
2 respondent shall eliminate untreated CSO
3 discharges, subject to the storm return
4 frequencies specified in Paragraph 12.a. of this
5 Amended Order, at 16 of the remaining CSO
6 discharge points, consistent with the facilities
7 plan approved by the Commission;

8 (8) By no later than December 1, 2006, the
9 Respondent shall submit engineering plans and
10 specifications for construction work required to
11 comply with Section 12.a.(10);

12 (9) By no later than May 1, 2008, the
13 Respondent shall begin construction required to
14 comply with Section 12.a.(10);

15 (10) By no later than December 1, 2011, the
16 Respondent shall eliminate untreated CSO
17 discharges, subject to the storm return
18 frequencies specified in Paragraph 12.a. of this
19 Amended Order, at all remaining CSO discharge
20 points, consistent with the facilities plan
21 approved by the Commission;

22 (11) By no later than September 1 of each
23 year that this Amended Order is in effect, the
24 Respondent shall submit to the Department and to
25 the Commission for review an annual progress
26 report on efforts to eliminate untreated CSO

1 discharges, subject to the storm return
2 frequencies specified in Paragraph 12.a. of this
3 Amended Order. These annual reports shall
4 include at a minimum work completed in the
5 previous fiscal year and work scheduled to be
6 completed in the current fiscal year.

7 b. Requiring Respondent to implement the following
8 interim control measures:

9 (1) Respondent shall inspect all diversion
10 structures on a weekly basis and clean the
11 structures as necessary to maintain hydraulic
12 performance. Respondent shall report all
13 blockages at diversion structures that result in
14 dry weather discharges on Respondent's Daily
15 Monitoring Report submitted to the Department on
16 a monthly basis. Respondent shall record whether
17 or not a discharge is occurring from each
18 diversion structure to an outfall, as observed at
19 each diversion structure during the weekly
20 inspections, and shall make this report available
21 to the Department upon request by the Department.

22 (2) Respondent shall prohibit all
23 dischargers who request Respondent's approval
24 prior to a non-permit, periodic, or one-time
25 batch discharge from discharging during rain
26 events. Exceptions shall be made only if

1 extenuating circumstances can be demonstrated to
2 show that it is unreasonable to apply this
3 restriction.

4 c. Requiring Respondent to comply with all the
5 terms, schedules and conditions of the Permit, except those
6 modified by Paragraph 12.a. above, or of any other NPDES
7 waste discharge permit or modified permit issued to
8 Respondent while this Amended Order is in effect.

9 d. Requiring Respondent to demonstrate that each
10 untreated CSO discharge has been eliminated, subject to the
11 storm return frequencies specified in Paragraph 12.a. of
12 this Amended Order, by a means approved by the Department,
13 within twelve months of the scheduled date when compliance
14 is required in this Amended Order. (Nothing in this
15 paragraph shall prevent the Department from enforcing this
16 Amended Order during the twelve month demonstration
17 period.)

18 e. Requiring Respondent to identify each discharge
19 that is converted to a storm sewer discharge only.

20 f. Requiring Respondent, in the event that
21 Respondent chooses to retain a Discharge with any connected
22 sanitary wastes, to apply for a modification of
23 Respondent's permit requesting a waste load increase and
24 appropriately sized mixing zone. (Nothing in this
25 paragraph shall affect the Department's or the Commission's
26 discretion over granting such a request.)

1 g. Requiring Respondent, upon receipt of a written
2 notice from the Department for any violations of the
3 Amended Order, to pay the following civil penalties:

4 (i) \$1,000 for each day of each violation
5 of each provision of the compliance schedules set
6 forth in Paragraph 12.a.

7 (ii) \$2,500 per outfall per day for each
8 CSO outfall for which Respondent fails to
9 demonstrate elimination of untreated CSO
10 discharges as specified in Paragraph 12.d.
11 Discharges that are listed and regulated in
12 Respondent's Permit as may be allowed in
13 Paragraph 12.f. shall not be subject to
14 stipulated civil penalties under the terms of
15 this Order.

16 13. Respondent agrees that the requirements and dates
17 specified in Paragraph 12 above are firm commitments to
18 undertake and complete those tasks within the time required for
19 the completion of each task subject only to extraordinary events
20 beyond Respondent's reasonable control which causes or may cause
21 a delay or deviation in performance of the requirements of this
22 Amended Order. In the event of such an extraordinary event,
23 Respondent shall immediately notify the Department verbally of
24 the cause of delay or deviation and its anticipated duration,
25 the measures that have been or will be taken to prevent or
26 minimize the delay or deviation, and the timetable by which

1 Respondent proposes to carry out such measures. Respondent
2 shall confirm in writing this information within five (5)
3 working days of the onset of the event. It is Respondent's
4 responsibility in the written notification to demonstrate to the
5 Department's satisfaction that the delay or deviation has been
6 or will be caused by circumstances beyond the control and
7 despite due diligence of Respondent. If Respondent so
8 demonstrates, the Department shall extend times of performance
9 of related activities under the Stipulation and Final Order as
10 appropriate. Circumstances or events beyond Respondent's
11 control include, but are not limited to, acts of nature,
12 unforeseen strikes, work stoppages, fires, explosion, riot,
13 sabotage, or war. Increased cost of performance or consultant's
14 failure to provide timely reports shall not be considered
15 circumstances beyond Respondent's control.

16 14. Regarding the violations set forth in Paragraphs 4 and
17 5 above, which are expressly settled herein without penalty,
18 Respondent and the Department hereby waive any and all of their
19 rights to any and all notices, hearing, judicial review, and to
20 service of a copy of the final order herein. The Department
21 reserves the right to enforce this order through appropriate
22 administrative and judicial proceedings.

23 15. Regarding the schedule set forth in Paragraph 12.a.
24 above, Respondent acknowledges that Respondent is responsible
25 for complying with that schedule regardless of the availability
26 of any federal or state grant monies.

1 16. The terms of this Amended Stipulation and Final Order
2 may be amended by the mutual agreement of the Commission and
3 Respondent, after notice and opportunity for public comment; or
4 with respect to the compliance schedules or limitations herein,
5 by the Commission if it finds, after review and evaluation of
6 the facilities plan including alternative discharge limitations
7 and the alternative schedules required under Paragraph 7.a.,
8 that modification of this Amended Order is reasonable. It is
9 understood that the draft facility plan submitted on July 1,
10 1993, has provided substantial additional information that was
11 not available when the original order was entered. Therefore,
12 it is intended that any modification of this order under this
13 paragraph be justified by a showing of substantial and new
14 circumstances or substantial and new technologies.

15 17. Respondent acknowledges that it has actual notice of
16 the contents and requirements of the Amended Order and that
17 failure to fulfill any of the requirements hereof would
18 constitute a violation of this Amended Order and subject
19 Respondent to payment of civil penalties pursuant to Paragraph
20 12.g. above.

21 18. This Amended Order shall terminate 60 days after
22 Respondent demonstrates full compliance with the requirements of
23 the schedule set forth in Paragraph 12.a. above.

24 19. If it becomes necessary to allocate wasteloads as a
25 result of either the Willamette River or the Columbia River
26 being designated as Water Quality Limited, the parties agree

1 that Respondent's reductions in discharges pursuant to this
2 agreement will be considered as contributing to Respondent's
3 share of the obligation to achieve water quality standards.
4 Nothing in this paragraph shall affect the Commission's
5 authority to revise water quality standards pursuant to
6 applicable law.

7 20. The Respondent shall continue to implement the
8 Cornerstone Projects, as outlined in the draft facilities plan
9 which was submitted to DEQ on July 1, 1993, on a schedule that
10 is approved in the final facilities plan.

11 21. The Respondent may submit to the Department no later
12 than December 1, 2001, and December 1, 2006, or at other
13 appropriate times during the implementation of the facilities
14 plan, an updated facilities plan report evaluating the
15 effectiveness of CSO control technologies, including, if
16 appropriate, recommendations for reevaluation of activities
17 necessary to accomplish the requirements of this Order if new
18 information or technology has become available. DEQ shall
19 approve or disapprove the recommendations within six months of
20 receipt of the updated facilities plan.

21 22. The Respondent shall implement CSO control measures as
22 outlined in the facilities plan in a phased approach, with the
23 highest priority for control of CSO discharges in high contact
24 recreation areas.

25 23. Respondent, the Commission, and the Department agree
26 that further reductions in untreated discharges beyond the level

1 to be achieved through the Enhanced Draft Federal Level
2 alternative, particularly in the period of May 1 through October
3 31, are desirable if the reductions can be done in a cost
4 effective manner. Further, it is recognized that during the
5 term of the Order advances in technology may result in
6 additional cost-effective control measures not currently known
7 or available.

8 a. During the period of this order, whenever
9 sewerage planning, capital improvement projects, operation
10 and maintenance planning, and other water quality
11 management activities are undertaken that are not included
12 with the approved facility plan, an evaluation shall be
13 made of opportunities to achieve further reductions in the
14 frequency and volume of CSOs. Such evaluation shall take
15 into account generally accepted technologies, potential
16 innovative technologies, cost effectiveness, and
17 environmental benefit achieved. Potential innovative
18 technologies will include measures used elsewhere that may
19 have application in Portland as well as those pioneered by
20 Portland. Technologies evaluated should include, but not
21 be limited to, the following:

- 22 • Separation of sewers in selected basins where
23 determined to be beneficial.
- 24 • Continual replacement of deteriorated trunk and
25 interceptor lines with larger diameter pipes to
26

1 provide additional inline storage to convey more
2 wastewater for treatment.

- 3 • Implementation of operational enhancements to
4 reduce the quantity of pollutants discharged when
5 overflows do occur: e.g., sewer flushing, street
6 cleaning by vacuuming/washing, etc.
- 7 • Addition of further treatment technology to the
8 wet weather treatment facility to further reduce
9 the pollutants being discharged.
- 10 • Enhanced inflow and pollutant source control:
11 e.g., organic composting stormwater filters and
12 permeable pavements.
- 13 • Comprehensive and multi objective water quality
14 improvement strategies in all tributaries to the
15 Willamette River within Portland. Such
16 strategies should include preservation and
17 enhancement of riparian environments and wetland
18 systems, storm water management, water
19 conservation, implementation of BMPs, source
20 control of roadway runoff including pretreatment
21 facilities, implementation of land use policies
22 and requirements that benefit water quality,
23 development of private property stewardship
24 programs, and other strategies designed to
25 prevent pollutants from reaching the Willamette
26 River.

1 The respondent shall implement all measures which are
2 cost effective.

3 b. The Respondent shall report on the
4 evaluations undertaken and the projects implemented as
5 part of the annual report required by Section
6 12.a.(11).

7 c. For the purposes of this Order, cost
8 effective shall be as defined in the final facilities
9 plan required by Paragraph 12.a.(1), subject to review
10 and approval by the Commission.

11 d. Respondent shall submit to DEQ no later than
12 September 1, 2010, an approvable facilities plan
13 report outlining the methods for achieving further
14 reductions in the frequency and volumes of CSOs after
15 the term of this Amended Order. Methods evaluated
16 should include, but not be limited to, those listed in
17 Section a. of this paragraph. This facilities plan
18 shall be subject to approval by the Environmental
19 Quality Commission.

20 24. The Respondent shall report to the Commission in a
21 public forum its progress for CSO reductions as outlined in
22 paragraph 23, above, at a time established by the Commission and
23 the Respondent in the years 2001 and 2010.

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RESPONDENT

8-1-94
Date

Mike Lindberg
(Name) Mike Lindberg
(Title) Commissioner of Public Utilities

DEPARTMENT OF ENVIRONMENTAL QUALITY

August 11, 1994
Date

Fred Hansen
Fred Hansen, Director

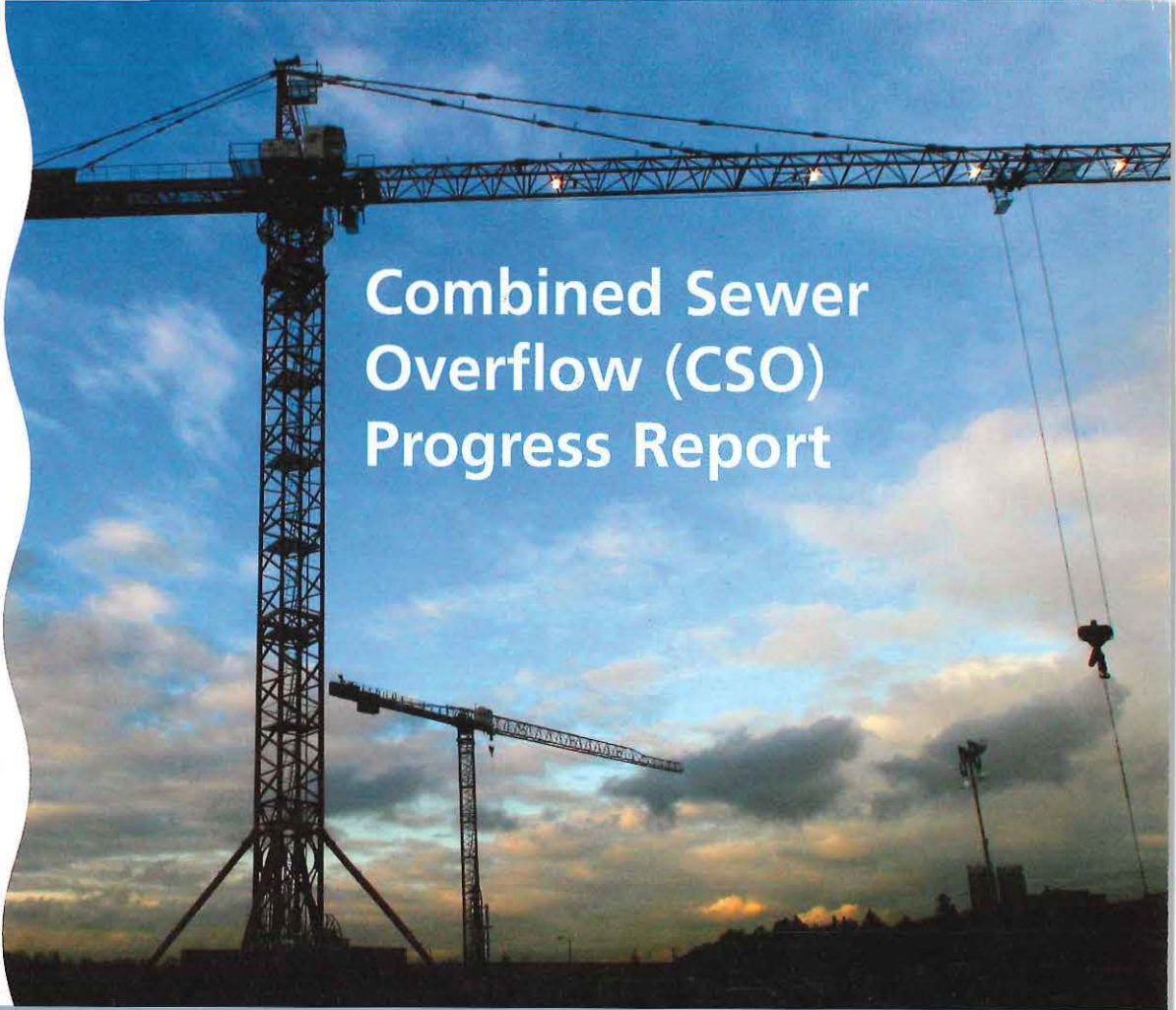
FINAL ORDER

IT IS SO ORDERED:

ENVIRONMENTAL QUALITY COMMISSION

August 11, 1994
Date

William W. Wessinger
William W. Wessinger, Chairman
Environmental Quality Commission



Combined Sewer Overflow (CSO) Progress Report



ENVIRONMENTAL SERVICES
CITY OF PORTLAND
A River Renaissance project

January 2004

working for clean rivers

Our Mission

The Bureau of Environmental Services serves the Portland community by protecting public health, water quality and the environment. We protect the water quality of surface and ground waters and conduct activities that plan and promote healthy ecosystems in our watersheds. We provide sewage and stormwater collection and treatment services to accommodate Portland's current and future needs.



One year ago, Environmental Services started building the West Side Big Pipe. This project is part of the City's Combined Sewer Overflow (CSO) program, the largest capital construction project in Portland's history. It will be a 14-foot diameter, 3.5-mile long pipeline that will start at SW Clay Street, run under Naito Parkway, and cross under the Willamette River to connect with a huge, new pump station on Swan Island.

When construction is complete in 2006, the West Side Big Pipe will capture combined sewage flows from the west side of the Willamette River and carry them to the wastewater treatment plant. Then the City will begin building a large CSO tunnel on the east side of the Willamette River. All CSO construction will be finished by 2011. Upon completion, CSOs to the river will be reduced by 94%.

Since the program began in 1991, projects have reduced annual CSO volume from six billion gallons to 2.7 billion gallons. The city has met every milestone established for the program by the Oregon Department of Environmental Quality.

CSO projects are having a positive effect on water quality and a positive effect on the local economy. By the end of 2003, 76 local firms had worked on the project with contracts valued at more than \$20 million. That includes contracts with more than 60 minority, women, and emerging small business (M/W/ESB) firms for CSO project work valued at over \$4.1 million. As the project moves forward many more job opportunities will arise.



Dean Marriott, Director Environmental Services

history of Combined Sewer Overflows in Portland

Portland's early sewers carried wastewater directly to the Willamette River and the Columbia Slough until the interceptor system and Columbia Boulevard Wastewater Treatment Plant opened in 1952. Today, most sewage flows through the interceptor system to the treatment plant but some overflows to the Willamette River when it rains.

During rain events, Portland's combined sewer system carries sewage from homes and businesses along with stormwater runoff from streets and other hard surfaces to the interceptor system. Excessive stormwater runoff causes the combined stormwater and sanitary sewage overflows to the Willamette River.

Portland has an Amended Stipulation and Final Order (ASFO) agreement with the State of Oregon that requires a 94% reduction of combined sewer overflows (CSOs) to the Willamette by 2011.



what we have done since 1991

The Cornerstone Projects were designed to reduce CSOs by keeping stormwater runoff out of the combined sewer system. Cornerstone projects divert nearly two billion gallons of stormwater annually away from combined sewers. The total cost to build Cornerstone Projects is about \$167 million. Environmental Services has spent about \$124 million to date on four Cornerstone Project areas.

❶ **Downspout Disconnection 1992-2005**

Residents of selected neighborhoods disconnect downspouts from the combined sewer system and allow their roof water to drain to gardens and lawns. This reduces the stormwater entering the sewer system and reduces CSOs.

Residents can do the work themselves and earn \$53 per downspout, or they can have community groups and local contractors disconnect for them. Community groups earn \$13 for each downspout they disconnect. The City also provides community groups with the materials and training. More than 41,000 homeowners have disconnected downspouts removing more than 835 million gallons of stormwater per year from the combined sewer system.



❷ **Sewer Separation - 1993 to today**

In some Portland neighborhoods, Environmental Services installed new pipes to separate stormwater from sewage and remove stormwater runoff from the combined sewer system.



Environmental Services plans additional sewer separation projects in east Portland to relieve basement flooding. These projects will have the added benefit of helping to reduce combined sewer overflows.

③ Sump Installation - 1991-1998

Environmental Services installed about 3,000 sumps and sedimentation manholes throughout east Portland in areas served by combined sewers. The sumps collect residential street runoff and allow stormwater to seep into the ground rather than flow into the combined sewer system. Sedimentation manholes upstream of the sumps trap sediments and pollutants before stormwater flows to sumps and drains into the soil.

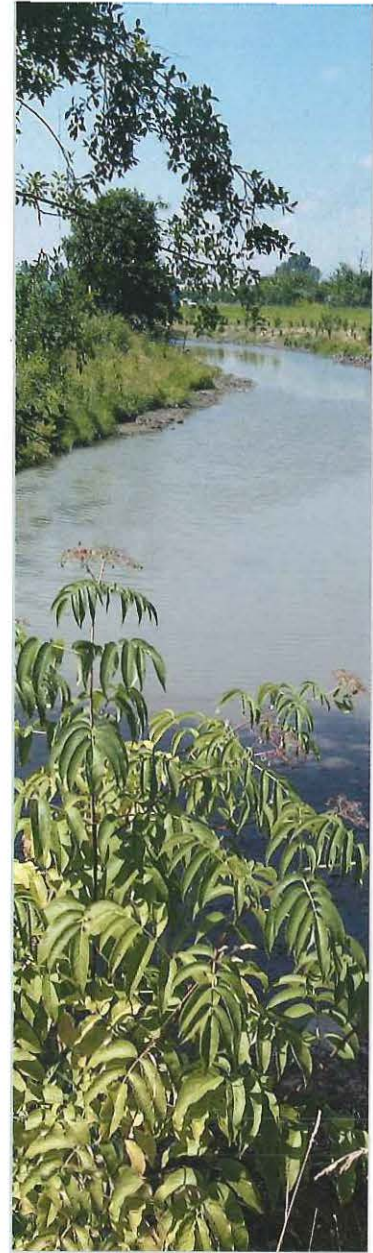
④ Stream Diversion 1995-2006

Environmental Services is building a new pipeline to divert Tanner Creek and smaller West Hills streams from the combined sewer system. These creeks were piped into the sewer system decades ago to make way for development. Today, this relatively clean runoff contributes to CSOs.

All five phases of the Tanner Creek Stream Diversion project will be complete by December 2006.

Columbia Slough Projects

In 2000, Environmental Services completed several projects to reduce CSOs to the Columbia Slough by more than 99%. The total cost of the Columbia Slough projects was \$195 million.



Columbia Slough in north Portland

Columbia Slough Big Pipe

The \$70 million Columbia Slough Consolidation Conduit, completed in October 2000, captures 99% of the sewage and stormwater that once overflowed into the Columbia Slough when it rains.

Columbia Boulevard Treatment Plant Improvements

Environmental Services expanded treatment capacity at the Columbia Boulevard Wastewater Treatment Plant to accommodate the added flow from the Columbia Slough Big Pipe.

All Columbia Slough projects were completed by the ASFO deadline of December 1, 2000.

Wastewater Treatment Plant final clarifiers



what is going on now



West Side Big Pipe

Environmental Services broke ground on the West Side Big Pipe in November 2002. The 14-foot diameter tunnel will capture sewage and stormwater on the west side of the Willamette River.

Portland hired the German company, Herrenknecht, to build two tunnel boring machines (TBMs) for the West Side Big Pipe project. The machines arrived in Portland in July 2003. Christened "Lewis and Clark", the tunnel boring machines begin their journey from NW Nicolai and Front Avenue. Lewis is tunneling north under the Willamette River to the Swan Island Pump Station (currently under construction). Clark will tunnel south to SW Clay Street and Naito Parkway. Large tunnel inflow and access shafts are being built at NW Upshur, SW Ankeny in Waterfront Park and at SW Clay Street at Naito Parkway.

Swan Island Pump Station

The Swan Island CSO Pump Station is under construction. When west side CSO construction is complete in 2006, the West Side Big Pipe will carry sewage and stormwater to Swan Island by gravity and the Swan Island Pump Station will pump it to the Columbia Boulevard Wastewater Treatment Plant. When the East Side Big Pipe is complete in 2011, the Swan Island facility will pump sewage from both tunnels, with a total pumping capacity of 220 million gallons per day.



Southwest Parallel Interceptor

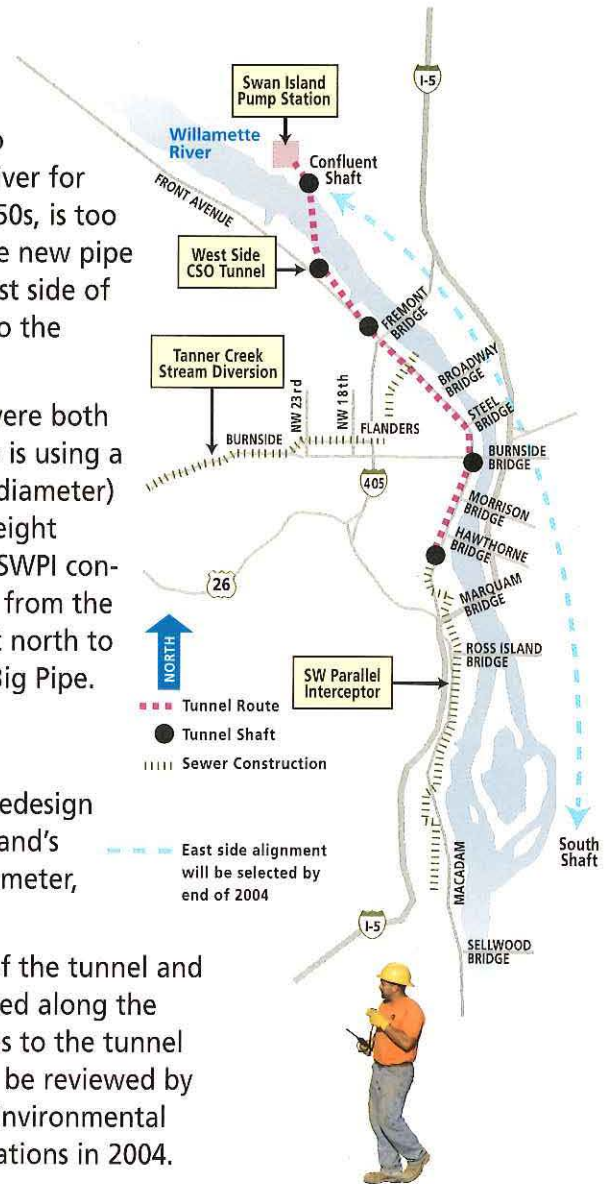
The Southwest Parallel Interceptor (SWPI) is a three to six-foot diameter pipe that parallels the Willamette River for about three miles. The old interceptor, built in the 1950s, is too small to handle both wastewater and storm flows. The new pipe will intercept most combined flows from the southwest side of the Willamette. The flows from this pipe will drop into the West Side CSO Big Pipe tunnel.

Work is complete on SWPI Segments 1 and 2, which were both open-trench construction jobs. Environmental Services is using a microtunneling machine to build Segment 3 (six-foot diameter) between SW Bancroft and Clay Streets. There will be eight microtunnel access shafts on this last segment. When SWPI construction is complete in 2005, the pipeline will extend from the intersection of SW Taylors Ferry Rd and Virginia Street north to SW Clay Street where it connects with the West Side Big Pipe.

East Side Big Pipe

In 2003, Environmental Services began engineering predesign work on the East Side Big Pipe, the largest of all Portland's CSO projects. The pipeline will be about 22-feet in diameter, six miles long and more than 100 feet deep.

Engineers are working to determine the exact route of the tunnel and how deep it needs to be. Several shafts are also planned along the alignment to provide surface access, sewer connections to the tunnel and venting. Route alignment and shaft locations will be reviewed by key stakeholders to evaluate neighborhood impacts. Environmental Services will select the tunnel alignment and shaft locations in 2004.



Community Enhancement

The Community Benefit Opportunity (CBO) Program helps minimize construction impacts on communities. Environmental Services works with neighborhoods affected by CSO construction to develop community projects that improve neighborhood livability.

In 2003, Environmental Services began work on eight CBO projects for communities affected by West Side CSO construction. The projects include bicycle and pedestrian paths, street trees, and residential traffic circles.

An East Side CBO program will be established in 2005/2006.





The Clean River Plan

The Clean River Plan is a comprehensive effort to clean up the Willamette River, create healthier tributaries and watersheds, improve habitat for endangered fish and create a livable, sustainable community. Reducing combined sewer overflows (CSOs) is a key part of the Clean River Plan. The Plan is part of Portland's River Renaissance effort and it outlines activities in all Portland watersheds to promote clean rivers and streams, including:

- ✓ expanding Portland's program to disconnect residential downspouts from the combined sewer system,
- ✓ encouraging commercial landowners to install swales, vegetated ponds, and other facilities to store and filter runoff,
- ✓ planting more street and landscape trees to absorb rainfall, filter stormwater runoff, and shade streams, and
- ✓ offering incentives to homeowners to reduce stormwater runoff from private property.



Your sewer dollars at work

Paying For the Program

Environmental Services will have spent more than \$1 billion dollars by the time the CSO Program is finished in 2011. Sewer rates pay for the program. No federal money is currently available to help fund CSO projects. Sewer rates are increasing gradually to pay for new sewer construction. The average residential monthly sewer bill in 2003 was about \$43. The average monthly sewer bill is expected to be \$65 a month by 2011.

Environmental Services is committed to meeting all regulatory requirements by completing CSO construction by the 2011 deadline in the most cost effective manner. The CSO abatement program also reflects the City of Portland's commitment to clean rivers and healthy watersheds, and to making Portland a livable, sustainable community for future generations.



ENVIRONMENTAL SERVICES CITY OF PORTLAND

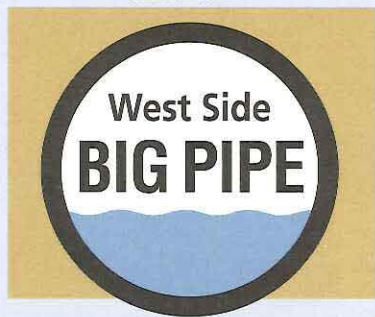


Dan Saltzman, Commissioner
Dean Marriott, Director

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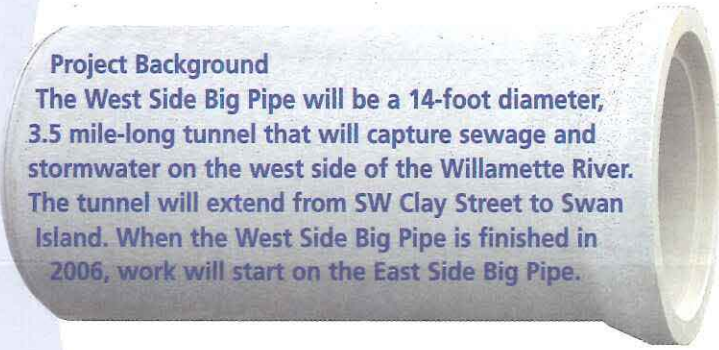


FOR A CLEANER RIVER

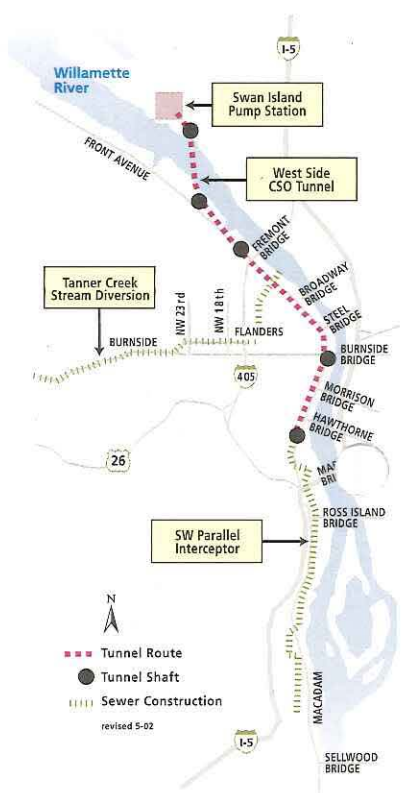
UPDATE

ENVIRONMENTAL SERVICES CITY OF PORTLAND WINTER 2004

Portland's Clean River Plan is a comprehensive approach to improving water quality in our rivers and streams. It includes strategies for dealing with pollution in the Willamette River, improving watershed health, restoring habitat for endangered salmon and steelhead, and eliminating almost all combined sewer overflows (CSOs). CSOs occur nearly every time it rains in Portland. During a CSO, stormwater quickly fills the combined sewers, which carry both sanitary sewage and runoff from streets, parking lots, and rooftops. CSOs contain bacteria from untreated sewage as well as other pollutants in the stormwater. Environmental Services controlled CSOs to the Columbia Slough in 2000 (99 percent reduction) and will reduce overflows to the Willamette by more than 94 percent by 2011.

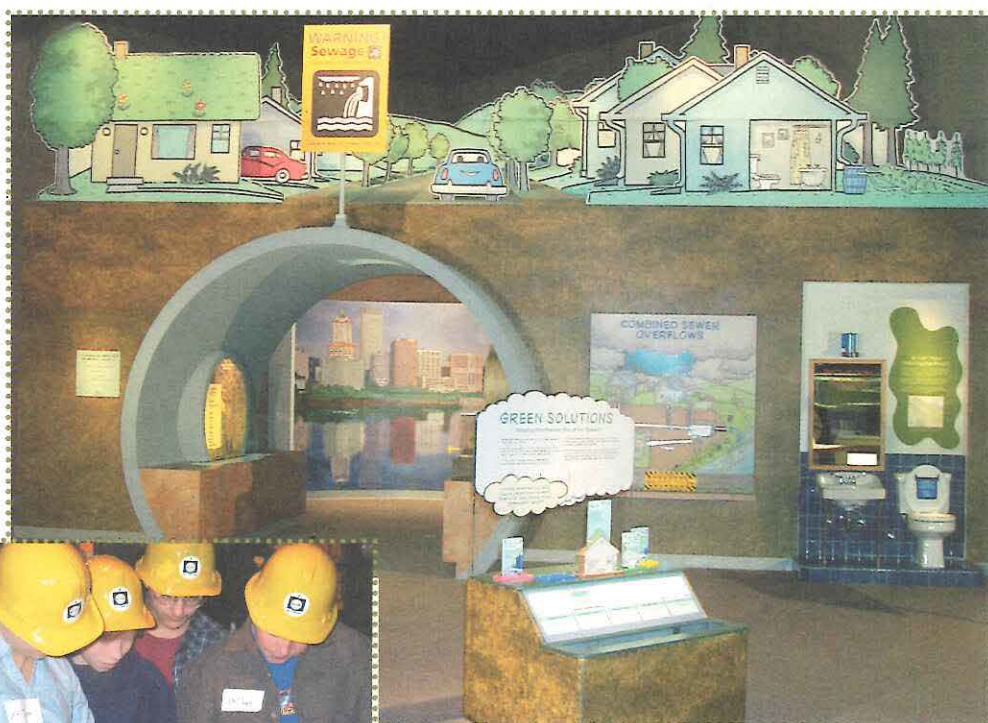


Project Background
The West Side Big Pipe will be a 14-foot diameter, 3.5 mile-long tunnel that will capture sewage and stormwater on the west side of the Willamette River. The tunnel will extend from SW Clay Street to Swan Island. When the West Side Big Pipe is finished in 2006, work will start on the East Side Big Pipe.



OMSI Exhibit Opens

The Combined Sewer Overflow (CSO) exhibit at the Oregon Museum of Science and Industry (OMSI) opened November 6. City Commissioner Dan Saltzman, Environmental Services Director Dean Marriott and Mt. Tabor Middle School students attended a morning ribbon-cutting to open the exhibit to the public. Then 250 people attended an evening party at OMSI to recognize supporters who made construction of the exhibit possible. They include Impregilo/S.A. Healy Joint Venture, CH2M Hill, MWH Americas, Inc., Parsons Brinckerhoff Quade & Douglas, Inc., Carollo Engineers, HDR Engineering, Inc., Jacobs Associates, and Brown and Caldwell.



▲ the CSO exhibit at OMSI has many elements that entertain and inform

◀ students check out part of the completed exhibit



ENVIRONMENTAL SERVICES
CITY OF PORTLAND
A River Renaissance project
Dan Saltzman, Commissioner
Dean Marriott, Director

Swan Island Pump Station

Construction of the massive Swan Island CSO pump station began in November 2002. The 200-foot deep shaft walls are complete and work to cut off the ground water below the walls is underway. Construction crews will begin excavating the shaft this winter. When it's finished in 2006, the facility will have the capacity to pump 220 million gallons per day.

Original plans for the aboveground part of the pump station have changed. The new design features a one-story, rectangular building next to the pump station shaft. Smaller outbuildings over the shaft will provide elevator access to the pump station underground. This revision will allow the contractor to complete construction more quickly and for less money.

Peninsular Force Main

The Peninsular Force Main will convey sewage and stormwater by pressure from the Swan Island Pump Station, through the existing Peninsular Tunnel and on to the Columbia Boulevard Wastewater Treatment Plant. The force main consists of a 30-inch and a 48-inch pipe side by side in one casing. It will be approximately 1,400 feet long and will range in depth from 20 to 100 feet. Construction will involve building two 40 by 50-foot shafts, one in the Albina Rail Yards and one at North Going Street and Greeley Avenue. Construction is scheduled to begin in summer 2004 and be complete at the end of 2005.

Tunnel Progress

Lewis, the northbound tunnel boring machine (TBM), tunneled about 275 feet and paused while Clark, the southbound TBM, prepares for tunneling. The machines will work simultaneously. Tunnel boring occurs underground with up to 12 workers in the tunnel at one time. Lewis will work 24-hours a day, seven days a week until it crosses under the river and reaches Swan Island. Clark is scheduled to work 24-hours a day, five days a week under Front Avenue until it reaches Clay Street in 2005.

Tunnel Shafts

Construction is underway on all tunnel shafts. The Nicolai Shaft is the primary access for tunnel construction and is where the TBMs, crews, and all materials and equipment are lowered 120 feet underground. Excavated soil from the tunnel exits at the Nicolai shaft. As the TBMs move forward, soil is pumped back through the tunnel to the Nicolai shaft and shipped by barge to Ross Island for use in lagoon restoration.

pre-cast reinforced concrete tunnel segments stacked and ready for assembly in the tunnel ➤



▲ the TBM cutterhead Clark is lowered into the Nicolai Shaft - Clark will tunnel south to connect with the Southwest Parallel Interceptor

This sample section shows 3 rings- each 4 foot wide x 14 foot diameter ring consists of 5 concrete segments plus the key stone - thousands of these rings will line the Big Pipe tunnel ▼



Ground Improvements

Stabilizing the ground under the Burnside, Broadway and Steel Bridges is underway. This involves drilling holes to inject concrete below the bridge foundations. The hardened soil and concrete stabilizes the ground under the bridge foundations during construction of the West Side Big Pipe.

Current ground improvement schedule:

Burnside Bridge – completed

Steel Bridge – three phases between Jan and March 2004

Broadway Bridge – begins March 2004

Tanner Extension Conduit

The Tanner Extension Conduit will connect the existing Tanner sewer to the West Side Big Pipe. To make this connection, two shafts must be constructed. A micro-tunnel boring machine will be used underground to build the conduit, eliminating the need for open trenches. The construction location is near the Fremont Bridge on NW Front Avenue. The work has begun and will be completed in mid-2005 with periods of inactivity.

Southwest Parallel Interceptor

The Southwest Parallel Interceptor Segment 3 (SWPI3) pipeline will collect sewage and stormwater from southwest Portland and convey it to the West Side Big Pipe at Clay Street. All eight shafts needed to build the 1.5-mile long, six to seven-foot diameter interceptor are currently under construction. The ninth and southernmost shaft was deleted from the design. Micro-tunneling is scheduled to begin in February 2004 and continue to the end of the year.

Traffic and Pedestrian Impacts

As we have progressed with the project, adjustments to our traffic control have minimized disruptions to motorists, pedestrians and cyclists. Occasional lane closures at the Clay Street Shaft on SW Naito Parkway accommodate large equipment moving in and out of the site. Traffic control will also be used during the ground improvement work under the Steel and Broadway Bridges and throughout the SWPI 3 project area.

Pedestrian paths have been reconstructed and a crosswalk closed at the Ankeny Shaft site under the Burnside Bridge in Waterfront Park.

Work Schedule and Hours

Although most aboveground construction at the tunnel and SWPI shafts occurs during the day, there are times when the work must continue into the night. There is work on Saturday and Sunday only if necessary. Usual hours of operation are Monday through Friday, 7:00 a.m. to 6:30 p.m.

Shaft construction will be ongoing throughout the project, although there will be periods of inactivity. Tunneling beneath Front Avenue will go on 24 hours a day, five to six days a week. There will be little if any noise from this work.



Questions from Ratepayers

What about safety on the West Side CSO project?

Safety is a top priority. The City has a full time safety officer and the general contractor has four who monitor safety efforts and provide ongoing mandatory training. Because of this dedication, several segments of the project have very low accident rates and some segments have had no accidents.

What's the cost to ratepayers?

The construction contract for this project is \$293 million dollars. The total 20-year CSO abatement program will cost more than \$1 billion by the time it's complete in 2011. The average monthly residential sewer bill is now about \$42 and will be about \$65 in 2011. The City receives no government funding for the program.

How much work is going to local contractors?

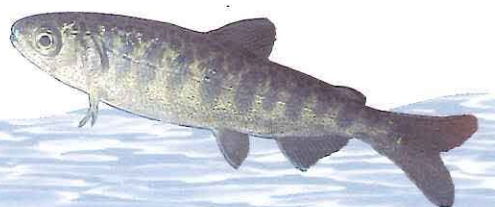
To date, 76 local firms have worked on the project with contracts valued at more than \$20 million.

What happens to the tunnel during an earthquake?

In an earthquake the tunnel will move with the ground. The tunnel is designed to function without disruption during an earthquake.

How many outfalls will remain once the project is complete and where are they?

Four CSO outfalls will remain on the west side of the Willamette River when the West Side Big Pipe is complete. The remaining CSO outfalls will be located; (1) near the Marquam Bridge, (2) near the Burnside Bridge at the Ankeny Pump Station, (3) in the NW Industrial area at Nicolai, and 4) at the confluence of Balch Creek and the Willamette River.



For More Information

- **Printed Updates:** will be mailed regularly
- **Call:** Diana Hinton 503-823-2827 for more information or to request a presentation to your group
- **Emailed Updates:** send your email address to dianah@bes.ci.portland.or.us
- **Online:** www.cleanriverworks.com
- **Free presentation** at the West Side Big Pipe Nicolai Shaft construction site, with current photos and viewing the actual shaft from the perimeter fence. Call Joleen Jensen-Classen at 503-823-2822 for information and to register, or email joleenj@bes.ci.portland.or.us.

Printed on recycled paper. PL 0401

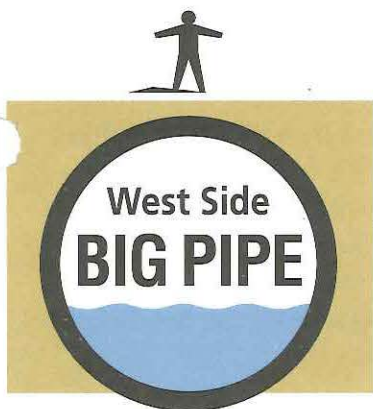
Being Part of The Big Picture

East Side CSO Tunnel

The East Side tunnel will collect, convey, and store sewage and stormwater from the east side of the Willamette River. It will be about 30,000 feet long and will connect with the Swan Island Pump Station. The project is in the preliminary design phase and is focused on selecting a route and tunnel size. The preliminary design phase is scheduled for completion in July 2004. The final design will then be completed and construction will begin in late 2006. The project will be completed by the end of 2011.

River Renaissance

River Renaissance is a citywide effort to restore the health of the Willamette River Watershed.



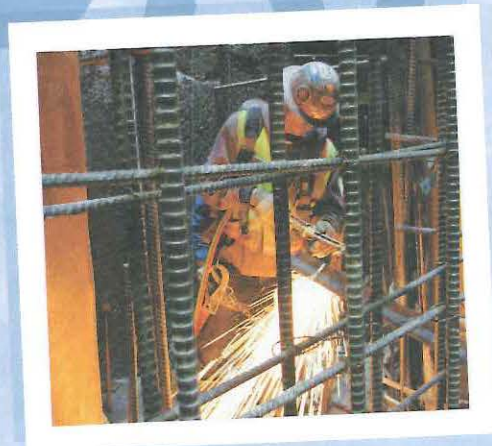
FOR A CLEANER RIVER

[Project Map and Schedules](#)

[Q&A Section](#)

[Presentations Available](#)

UPDATE



ENVIRONMENTAL SERVICES
CITY OF PORTLAND
1120 SW Fifth Avenue, Room 1000
Portland Oregon, 97204 - 1912





Oregon

- Theodore R. Kulonogski, Governor

Department of Environmental Quality

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

August 2, 2004

Jan V. V. Betz
Deputy City Attorney
Portland City Attorney's Office
1221 SW 4th Avenue, Rm 430
Portland, OR 97204

RE: WQ/M-NWR-01-100

Dear Ms. Betz:

On August 2, 2004 the Environmental Quality Commission issued the attached Final EQC Order in Case No. WQ/M-NWR-01-100. The Final Order found that your client, City of Portland, is liable for a civil penalty of \$9,000, to be paid to the State of Oregon. While your client has 60 days to seek judicial review of the decision, the penalty is due and payable 10 days after the date of the Final Order, pursuant to Oregon Revised Statute (ORS) 183.090.

Please immediately send a check or money order in the amount of \$9,000, made payable to "State Treasurer, State of Oregon," to the Business Office, Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

If we do not receive payment in full by August 12, 2004, we will file the Final Order with the appropriate counties, thereby placing a lien on any property your client owns within Oregon. We will also refer the Final Order to the Department of Revenue and/or a private collection agency for collection, pursuant to ORS 293.231. Statutory interest on judgments is nine percent per annum.

If you have any questions, please call Deborah Nesbit at DEQ's Office of Compliance and Enforcement in Portland, (503) 229-5340.

Sincerely,

Andrea Bonard
Acting Assistant to the Commission

cc: Business Office, DEQ
Jeff Bachman, OCE, OD, DEQ
Water Quality DEQ
Lyle Christensen, NWR, DEQ
City of Portland, c/o Dean Marriott, Director, Bureau of Environmental
Services, 1211 SW Fifth Avenue, Room 1000, Portland OR 97204
Ann Redding, Office of Administrative Hearings, Transportation Hearings
Division, 1905 Lana Ave NE, Salem, OR 97314

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

In the Matter of)
) EQC Case No. WQ/M-NWR-01-100
City of Portland,)
) FINAL ORDER
)
)

On July 15, 2004, the Environmental Quality Commission considered the City of Portland's Petition for Commission Review in this matter. The City was represented by Assistant City Attorney Jan V.V. Betz. The Department was represented by Environmental Law Specialist Jeff Bachman and Assistant Attorney General Lynne Perry. The Commission heard oral arguments and considered written materials supplied by the City and the Department.

The Commission adopts the Findings of Fact in the Proposed Order issued by the Administrative Law Judge on March 10, 2003 (Attached as Exhibit 1 to this Final Order).

The Commission adopts the conclusion that the City has violated ORS 468B.025(1)(b) because it discharged wastes into the waters of the State and the discharge reduced the quality of the waters below water quality standards. The Commission concludes that the statute does not require that the discharger have any specified degree of mental culpability. In other words, there is no requirement that the discharge be negligent, or reckless or intentional.

The statute does not include terms that require such elements for a violation. Under ORS 174.010 and applicable judicial decisions it would be inappropriate for the Commission to insert terms that the Legislature has omitted. Further, the Commission concludes that it has consistently interpreted the statute and similarly worded statutes and rules as not requiring proof of mental culpability. *See In the Matter of City of Coos Bay*, 1998 WL 481883, *aff'd in part, rev'd in part sub nom EQC v. City of Coos Bay*, 171 Or App 106 (2000). Rather, negligence, recklessness, and intent are factors that are considered in determining the appropriate penalty amount. See ORS 468.130(2)(f). The Commission adopts the conclusion and opinion of the Administrative Law Judge to the extent consistent with this order.

The Commission adopts the Administrative Law Judge's conclusion that the City is subject to a civil penalty in the amount of \$9,000.

Dated this 2nd day of August, 2004.

Stephanie Hallock

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

Attachment
GENJ7048



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

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

August 2, 2004

Jan V. V. Betz
Deputy City Attorney
Portland City Attorney's Office
1221 SW 4th Avenue, Rm 430
Portland, OR 97204

RE: WQM-NWR-01-100

Dear Ms. Betz:

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Please immediately send a check or money order in the amount of \$9,000, made payable to "State Treasurer, State of Oregon," to the Business Office, Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

If we do not receive payment in full by August 12, 2004, we will file the Final Order with the appropriate counties, thereby placing a lien on any property your client owns within Oregon. We will also refer the Final Order to the Department of Revenue and/or a private collection agency for collection, pursuant to ORS 293.231. Statutory interest on judgments is nine percent per annum.

If you have any questions, please call Deborah Nesbit at DEQ's Office of Compliance and Enforcement in Portland, (503) 229-5340.

Sincerely,

Andrea Bonard

Andrea Bonard
Acting Assistant to the Commission

cc: Business Office, DEQ
~~Jeff Bachman, OCE, OD, DEQ~~
Water Quality DEQ
Lyle Christensen, NWR, DEQ
City of Portland, c/o Dean Marriott, Director, Bureau of Environmental
Services, 1211 SW Fifth Avenue, Room 1000, Portland OR 97204
Ann Redding, Office of Administrative Hearings, Transportation Hearings
Division, 1905 Lana Ave NE, Salem, OR 97314

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

In the Matter of)	
	)	EQC Case No. WQ/M-NWR-01-100
City of Portland,)	
	)	FINAL ORDER
)	
)	

On July 15, 2004, the Environmental Quality Commission considered the City of Portland's Petition for Commission Review in this matter. The City was represented by Assistant City Attorney Jan V.V. Betz. The Department was represented by Environmental Law Specialist Jeff Bachman and Assistant Attorney General Lynne Perry. The Commission heard oral arguments and considered written materials supplied by the City and the Department.

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The statute does not include terms that require such elements for a violation. Under ORS 174.010 and applicable judicial decisions it would be inappropriate for the Commission to insert terms that the Legislature has omitted. Further, the Commission concludes that it has consistently interpreted the statute and similarly worded statutes and rules as not requiring proof of mental culpability. *See In the Matter of City of Coos Bay*, 1998 WL 481883, *aff'd in part, rev'd in part sub nom EQC v. City of Coos Bay*, 171 Or App 106 (2000). Rather, negligence, recklessness, and intent are factors that are considered in determining the appropriate penalty amount. See ORS 468.130(2)(f). The Commission adopts the conclusion and opinion of the Administrative Law Judge to the extent consistent with this order.

The Commission adopts the Administrative Law Judge's conclusion that the City is subject to a civil penalty in the amount of \$9,000.

Dated this 2nd day of August, 2004.

Stephanie Hallock

Stephanie Hallock, Director

Department of Environmental Quality

On behalf of the Environmental Quality Commission

Attachment

GENJ7048

State of Oregon
Department of Environmental Quality

Memorandum

Date: June 24, 2004
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Agenda Item A: Contested Case No. WQ/M-NWR-01-100 regarding the City of Portland, Ankeny Pump Station, July 15, 2004 EQC Meeting

Appeal to EQC On April 7, 2003, the City of Portland (City) appealed a Proposed Order (Attachment F) that assessed the City a \$9,000 civil penalty for discharging waste into waters of the state.

Background The Ankeny Pump Station is part of the City's wastewater collection system. It is located on the Willamette River near the Burnside Bridge. The City is required to maintain two separate and independent electrical power sources to operate the pump station. Portland General Electric (PGE) provided the primary electrical feed through its Canyon Substation and an alternate electrical feed through its Substation E.

During repair work on February 6, 2001, PGE rerouted the alternate feed to the Canyon Substation as a safety precaution. It did not, however, route the alternate feed back through Substation E when it finished its repair work. Thus, after February 6, both the primary and alternate feeds were routed through the Canyon Substation. A power outage affecting the Canyon Substation occurred approximately six weeks later. Because the City did not have separate and independent power sources, the outage cut off all electrical power to the Ankeny Pump Station. As a result, raw sewage entering the pump station overflowed into the Willamette River. An estimated 2.5 million gallons of raw sewage discharged to the Willamette River before power was restored to the pump station.

The Department of Environmental Quality (DEQ, Department) issued a Notice of Assessment of Civil Penalty to the City on May 21, 2001. The Notice alleged a violation of Oregon Revised Statutes (ORS) 468B.025(1)(b) and assessed a civil penalty of \$10,000. This initial penalty calculation included an upward adjustment for the cause of the violation (negligence), but DEQ later deleted that allegation and issued an amended Notice in which the penalty was recalculated and reduced to \$9,000.

DEQ and the City agreed to offer briefs and stipulated facts in lieu of a hearing. The two issues before the hearing officer were (1) whether the City was liable for discharging wastes to waters of the state, regardless of fault, and (2) whether the

civil penalty assessed was appropriate. On March 10, 2003, the hearing officer issued a proposed order concluding that the City was liable for the discharge of waste into the Willamette River on March 18, 2001, notwithstanding any act or omission by PGE. The hearing officer also concluded that DEQ's penalty assessment was correct.

In its petition for review and exceptions and brief (Attachment D), the City requests that the Commission reverse the hearing officer's conclusion that the City is liable for the discharge of waste to waters of the state, and withdraw the civil penalty assessed in this case.

In its response (Attachment C), the DEQ requests that the Commission uphold the hearing officer's Proposed Order.

**Issue on
Appeal**

The *sole* issue now before the Commission is whether ORS 468B.025(1)(b) is a strict liability statute (i.e. whether it imposes liability without regard to fault). DEQ and the City otherwise agree and have stipulated to the pertinent facts.

The statute provides as follows:

"(1) Except as provided in ORS 468B.050 or 468B.053, no person shall:

* * *

(b) Discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the Environmental Quality Commission."

The City does not dispute that the discharge reduced the quality of the receiving water below water quality standards. Rather, the City argues that DEQ cannot establish a violation of ORS 468B.025(1)(b) without establishing that the City was negligent.

DEQ and the City agree that the text of the statute is the best evidence of the legislature's intent. They disagree, however, on what the legislature meant by the words it used in the statute. The City's position is that because the legislature did not include express language to the effect that ORS 468B.025(1)(b) imposes strict liability, liability cannot be imposed without regard to fault. DEQ's position, and the conclusion of the hearing officer, is that the language of ORS 468B.025(1)(b) is unambiguous. The statute prohibits the discharge of waste

into the waters of the state, and the City discharged waste to the waters of the state. The statute need not also include the words "strict liability" or "strictly liable." Its plain language already expresses a strict liability standard.

**EQC
Authority**

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

Alternatives

The Commission may:

1. Affirm the hearing officer's Proposed Order that the City violated ORS 468B.025(1)(b) by discharging waste to the Willamette River and is liable for the \$9,000 civil penalty, which is what the Department requests;
2. Reverse the hearing officer's decision based on the City's exceptions and brief, which is what the City requests;
3. Uphold the hearing officer's decision, but adopt different reasoning; or
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.¹ The proposed order was issued under current statutes and rules governing the Hearing Officer Panel Pilot Project.² Under these statutes, the Department's contested case hearings must be conducted by a hearing officer appointed to the panel, and the Commission's authority to review and reverse the hearing officer's decision is limited by the statutes and the rules of the Department of Justice that implement the project.³

The most important limitations are as follows:

- (1) The Commission may not modify the form of the hearing officer's Proposed Order in any substantial manner without identifying and explaining the modifications.⁴
- (2) The Commission may not modify a recommended finding of historical fact unless it finds that the recommended finding is not supported by a

¹ OAR 340-011-0132.

² Or Laws 1999 Chapter 849.

³ *Id.* at § 5(2); § 9(6).

⁴ Or Laws 1999 Chapter 849 § 12(2).

preponderance of the evidence.⁵ Accordingly, the Commission may not modify any historical fact unless it has reviewed the entire record or at least all portions of the record that are relevant to the finding.

- (3) The Commission may not consider any new or additional evidence but may remand the matter to the hearing officer to take the evidence.⁶

The rules implementing the Hearing Officer Panel statute have more specific provisions addressing how Commissioners must declare and address any ex parte communications and potential or actual conflicts of interest.⁷

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

- (1) The Commission will not consider matters not raised before the hearing officer unless it is necessary to prevent a manifest injustice, and⁸
- (2) The Commission will not remand a matter to the hearing officer to consider new or additional facts unless the proponent of the new evidence has properly filed a written motion explaining why evidence was not presented to the hearing officer.⁹

Attachments

- A. Letter from Mikell O'Mealy, dated May 28, 2004
- B. City of Portland's Reply to DEQ's Response, dated July 21, 2003
- C. DEQ's Response to the City of Portland's Exceptions and Brief, dated June 27, 2003
- D. City of Portland's Exceptions and Brief, dated May 8, 2003
- E. City of Portland's Petition for Commission Review, dated April 7, 2003
- F. Hearing Officer's Proposed Order, dated March 10, 2003
- G. DEQ's Memorandum in Support of Notice of Civil Penalty Assessment, dated December 12, 2002
- H. City of Portland's Memorandum of Law, dated December 12, 2002
- I. Stipulated Facts, dated December 10, 2002
- J. DEQ's Amended Notice of Assessment of Civil Penalty, dated November 15,

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

⁶ *Id.* at § 8; OAR 137-003-0655(4).

⁷ OAR 137-003-0655(5); 137-003-0660.

⁸ OAR 340-011-0132(3)(a).

⁹ *Id.* at (4).

Agenda Item A: Contested Case No. WQ/M-NWR-01-100 regarding the City of Portland,
Ankeny Pump Station
July 15, 2004 EQC Meeting
Page 5 of 6

2002

- K. Notice of Prehearing Conference, dated November 7, 2002
- L. Notice of Hearing, dated October 15, 2002
- M. Ruling Granting Motion, dated October 14, 2002
- N. Notice of Hearing, dated September 11, 2002
- O. City's Request for a Hearing and Answer to Notice of Assessment and Civil Penalty, dated June 12, 2001
- P. DEQ's Notice of Assessment of Civil Penalty, dated May 21, 2001

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

May 28, 2004

Via Certified Mail

Jan V.V. Betz
Deputy City Attorney
Portland City Attorney's Office
1221 SW 4th Ave., Rm 430
Portland, OR 97204

Lynne A. Perry
Department of Justice
General Counsel, Natural Resources
1162 Court St. NE
Salem, OR 97301

Jeff Bachman
Environmental Law Specialist
Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

RE: Case No. WQ/M-NWR-01-100

The appeal in the above referenced case has been set for the July 15, 2004, Environmental Quality Commission meeting, which begins at 1:00 p.m. The meeting will be held at the Department of Environmental Quality Headquarters building, located at 811 SW Sixth Ave., in Portland, Oregon. As soon as the meeting agenda and Commission record for this case are available, I will forward these to you.

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

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

Sincerely,

Mikell O'Mealy
Assistant to the Commission



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5 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
6 OF THE STATE OF OREGON

7 IN THE MATTER OF:
8 CITY OF PORTLAND,
9 Respondent/Appellant

Hearing Officer Panel No: 102453
DEQ No. WQ/M-NWR-01-100
CITY OF PORTLAND'S REPLY TO DEQ'S
RESPONSE

10
11
12
13 **BACKGROUND**

14 In its Response to the City of Portland's Exceptions and Brief, DEQ accurately
15 summarizes the background of the sequence of events leading up to an overflow of sewage from
16 the City's Ankeny Pump Station in March of 2001.

17 In addition to the summary information in DEQ's Response, it is important also to
18 understand that the City complied with DEQ and EPA requirements for Class I reliability for
19 Mechanical, Electric, and Fluid System and Component Reliability. Redundant electrical power
20 to Ankeny Pump Station was supplied by PGE from two different power grids. *See Stipulated*
21 *Facts*, paragraph 3. The City was in compliance with all applicable permit requirements and
22 operated the Ankeny pump station pursuant to DEQ-approved design standards.

23 The remaining issue is whether strict liability is the standard applied to the City in this
24 instance under ORS 468B.025(1)(b).

1 DISCUSSION

2 A. Inapplicability of the *Coos Bay* case.

3 Throughout the proceedings of the current case, DEQ has relied on *EQC v. City of*
4 *Coos Bay*, 171 Or App 106 (2000), to support its argument that ORS 468B.025(1)(b) is a strict
5 liability statute. In its Response to City of Portland’s Exceptions and Brief, however, DEQ
6 acknowledges that the Oregon Court of Appeals did not expressly address ORS 468B.025(1)(b)
7 in the *Coos Bay* case. *See*, DEQ Response to City of Portland’s Exceptions and Brief (DEQ
8 Response) at page 5. In fact, in the *Coos Bay* case DEQ’s interpretation of ORS 468B.050 and
9 its prior practice of enforcement on the basis that discharges that violated NPDES permit
10 conditions constituted discharging without a permit was invalidated by the decision of the Court
11 of Appeals. *Coos Bay* at page 651. The court stated that, “if the legislature wished ORS
12 468B.050(1)(a) to apply to violations of permit conditions, it could have said so. It certainly
13 knows how to do that, as evinced by the working or ORS 468B025(2), which [prohibits
14 violations of permit conditions].” *Id.* at 651. In *Coos Bay*, as in the present case, DEQ has
15 incorrectly interpreted the applicability of the statute.

16 In the Commission’s analysis of the *Coos Bay* case, which was appealed by the City of
17 *Coos Bay* to the Court of Appeals as discussed above, the Commission reviewed DEQ’s
18 treatment of the first of the two pipeline failures that ultimately resulted in the imposition of a
19 civil penalty: “It should be noted that the Department did not proceed to formal notice of
20 violation and civil penalty on the [first] break and discharge. In that instance, it appears that the
21 City had engineered the pipeline, prepared for reasonably-expected eventualities, operated the
22 pipeline as designed, and then had some unanticipated intervening force that caused or
23 contributed to the failure. The City was given opportunity to address that failure and restore the
24 system to its initial standards. It chose not to.” *In the Matter of: City of Coos Bay*, August 11,
25 1998, Findings of Fact, Conclusions of Law and Opinion, 1998 WL481883, at page 6.
26 Apparently a strict liability standard did not apply in the first pipeline rupture.

1 DEQ asserts that the facts in the *Coos Bay* case and the situation at issue here are similar,
2 in support of its argument that the Commission should reach the same conclusion in this case.
3 DEQ Response at page 3. The Commission’s Findings of Fact in the *Coos Bay* case concluded
4 that the City of Coos Bay knew of the instability of the pipeline after the first rupture and failed
5 to make repairs. In the case at issue here, the City was in compliance with all requirements and
6 the Ankeny pump station operators had no knowledge that the secondary power source had been
7 rerouted. *See Stipulated Facts*. These are not “similar facts.”

8 In *Coos Bay* the Commission concluded that a strict liability standard applied to ORS
9 468B.050(1) on the basis of three factors: that whether a violation resulted from a negligent or
10 an intentional act is considered in determining the amount of a civil penalty under administrative
11 rules; that the legislature *generally* has included a mental state requirement expressly in a statute;
12 and that a strict liability standard is “more consistent with the general legislative policies
13 governing water quality protection (emphasis added).” *In the Matter of: City of Coos Bay*, at
14 page 8. The Commission then concluded that a strict liability standard also applied to ORS
15 468B.025(1)(b). These are not the factors considered by courts in Oregon when interpreting the
16 intent of the legislature in drafting a statute. *See, Portland General Electric Company v. Bureau*
17 *of Labor and Industries*, 317 Or. 606 (1993); Respondent’s Exceptions and Brief, pages 3-4.

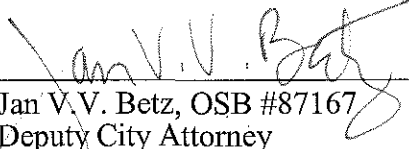
18 **B. Applicability of ORS 468B.025(1)(b).**

19 As the Court of Appeals concluded in *Coos Bay*, the legislature knows how to articulate
20 standards and the applicability of a statute in the language of the statute. If the legislature
21 intended to include a strict liability standard in ORS 468B.025(1)(b), it could have said so. DEQ
22 argues that the best evidence of the meaning of ORS 468B.025(1)(b) is “the words used in *that*
23 *particular statute*.” DEQ Response at page 6 (emphasis in original). The City agrees with DEQ
24 that the best evidence of the meaning of ORS 468B.025(1)(b) is the language of the statute,
25 which notably does not include a strict liability standard.
26

1 through specific legislation. The Commission should analyze ORS 468B.025(1)(b) in
2 accordance with accepted rules for construction of statutes and, as provided in ORS 174.010,
3 “not . . . insert what has been omitted, or . . . omit what has been inserted” in determining the
4 meaning of a statute.

5
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10
11 Dated this 21st day of July, 2003.

12
13 Respectfully submitted,

14
15 
16 _____
17 Jan V. V. Betz, OSB #87167
18 Deputy City Attorney
19 Of Attorneys for Respondent, City of Portland
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing City of Portland's Reply to DEQ's Response

on:

LYNNE A. PERRY
DEPARTMENT OF JUSTICE
GENERAL COUNSEL, NATURAL RESOURCES
1162 COURT ST. NE
SALEM, OR 97301
Attorney for Department of Environmental Quality

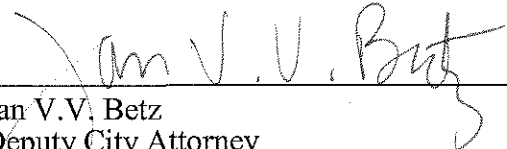
And

ENVIRONMENTAL QUALITY COMMISSION
ASSISTANT TO THE DIRECTOR
DEPARTMENT OF ENVIRONMENTAL QUALITY
811 SW SIXTH AVENUE
PORTLAND, OR 97204

And

JEFF BACHMAN
ENVIRONMENTAL LAW SPECIALIST
DEPARTMENT OF ENVIRONMENTAL QUALITY
911 SW SIXTH AVENUE
PORTLAND, OR 97204

on July 21, 2003, by mailing to said persons a correct copy thereof, contained in a sealed envelope, with postage paid, and deposited in the post office at Portland, Oregon on said day.



Jan V.V. Betz
Deputy City Attorney
Of Attorneys for City of Portland

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

June 27, 2003

Environmental Quality Commission
c/o Mikell O'Mealy
Assistant to the Director
Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

Re: Hearing Officer Panel No. 102453
DEQ No. WQ/M-NWR-01-100

Dear Ms. O'Mealy:

Please find enclosed for filing DEQ's Response to the City of Portland's Exceptions and Brief in the above-referenced matter.

Sincerely,

Lynne Perry
Assistant Attorney General
Natural Resources Section

LAP:la/GENG1201.DOC

Enclosure
cc(w/encl): Jan Betz
Jeff Bachman

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

5 IN THE MATTER OF:

6 CITY OF PORTLAND,

7 Respondent/Appellant
8

Hearing Officer Panel No: 102453
DEQ No. WQ/M-NWR-01-100

DEQ RESPONSE TO CITY OF PORTLAND'S
EXCEPTIONS AND BRIEF

9 **INTRODUCTION AND BACKGROUND**

10 On March 18, 2001, an estimated 2.5 million gallons of raw sewage discharged from the
11 City of Portland's Ankeny Pump Station into the Willamette River after a power failure. DEQ
12 later issued a Notice of Assessment of Civil Penalty in which it cited the City for violating ORS
13 468B.025(1)(b) by causing or allowing the sewage to discharge from the pump station to the
14 river. The sole issue now before the EQC is whether ORS 468B.025(1)(b) is a strict liability
15 statute. The parties otherwise agree and have stipulated to the pertinent facts.

16 As more fully described in the City's brief, the City is required to maintain two separate
17 and independent sources of electric power to its pump station. The City sought to comply with
18 this requirement by providing for redundant electrical sources. The primary supply was to come
19 from the Canyon Substation and the alternate supply was to come from Substation E. During
20 repair work on February 6, 2001, PGE routed the alternate supply from Substation E to the
21 Canyon Substation (the same substation providing the primary power supply to the pump station)
22 and apparently failed to reroute the alternate supply back to Substation E upon completing its
23 work. As a result, the City's pump station was without the required redundancy from at least
24 February 6 until March 18, 2001. On March 18, 2001, there was a power failure at the Canyon
25 Substation. That power failure cut off all power to the City's pump station, after which the
26 discharge at issue occurred.

1 The City asserts that the discharge from the Ankeny Pump Station was caused by an
2 "unanticipated intervening force" and, for that reason, the City has not violated ORS
3 468B.025(1)(b). The City takes the position that violation of ORS 468B.025(1)(b) requires
4 negligence on its part; and that absent such negligence, it cannot be liable. This argument is
5 inconsistent with the plain language of the statute and has already been rejected by the EQC in
6 earlier cases.

7 **DISCUSSION**

8 **A. DEQ's position is supported by the plain language of the statute.**

9 This appeal stems from a disagreement regarding the interpretation of ORS
10 468B.025(1)(b). That statute provides as follows:

11 "(1) Except as provided in ORS 468B.050 or 468B.053, no person shall:

12 * * *

13 (b) Discharge any wastes into the waters of the state if the discharge
14 reduces the quality of such waters below the water quality standards established
15 by rule for such waters by the Environmental Quality Commission."

16 The City does not dispute that the discharge reduced the quality of the receiving water
17 below water quality standards.

18 Although the parties disagree as to whether ORS 468B.025(1)(b) requires DEQ to
19 prove negligence, they appear to agree on *how* the statute should be analyzed. As the
20 City correctly notes:

21 "In interpreting the intent of the legislature in drafting a statute, the Oregon Supreme
22 Court has held that 'the text of the statutory provision itself * * * is the best evidence of
23 the legislature's intent.' *Portland General Electric Company v. Bureau of Labor and
24 Industries*, 317 Or 606, 610 (1993) ("*PGE*"). The legislature also has enacted a general
25 rule for construction of statutes and has directed courts 'not to insert what has been
26 omitted, or to omit what has been inserted' in determining the meaning of a statute. ORS
174.010."

(City's Exceptions and Brief at 3.) The *PGE* case further directs that "words of common usage
should be given their plain, natural, and ordinary meaning." *PGE*, 317 Or at 611.

1 However, after citing to the *PGE* analysis and the well-accepted tools of statutory
2 construction described therein, the City ignores the text of the statute (e.g. the "best
3 evidence" of its meaning) in favor of a number of unrelated arguments.

4 The text of the statute makes plain that DEQ need not prove negligence to
5 establish a violation of ORS 468.025(1)(b). ORS 468B.025(1)(b) is silent with respect to
6 fault or culpability. The violation requires nothing more than a "discharge." That
7 discharge is undisputed. In essence, the City is asking the Commission to do precisely
8 what the City has cautioned against, namely, to insert words into the statute that the
9 legislature has chosen to omit (or to ignore the plain meaning of the words used). The
10 Commission is not at liberty to do so.

11 **B. This Commission has already addressed and rejected the City's argument.**

12 This is not new territory for this Commission. The Commission has already addressed
13 and rejected the very argument now made by the City. *In the Matter of: City of Coos Bay*, 1998
14 WL 481883 (Or Env Qual Com 1998),), affirmed in part, reversed in part sub nom *EQC v. City*
15 *of Coos Bay*, 171 Or App 106 (Or App 2000) ("*Coos Bay* case").¹ On similar facts in the *Coos*
16 *Bay* case, the Commission concluded that:

17 "The City [of Coos Bay], by and through the operation of the sewage disposal
18 system, caused the sewage sludge to discharge into the bay. The City is **strictly**
19 **liable** [under ORS 468B.025(1)(b)] for the operation of its system and any
adverse impact it may have on the health and welfare of the public." (Emphasis
Added.)²

20 The Commission rejected the argument made by the City of Coos Bay regarding the need
21 to establish fault or culpability under ORS 468B.025(1)(b), stating:

22 _____
23 ¹ Full cite: *In the Matter of the Notice of Violation, Department Order, and Assessment of Civil Penalty for*
24 *Discharging Wastes without a Permit and for Reducing Water Quality, City of Coos Bay, Respondent*, No. WQMW-
25 *WR-96-277*, 1998 WL 481883 (Or Env Qual Com August 11, 1998), affirmed in part, reversed in part sub nom
26 *EQC v. City of Coos Bay*, 171 Or App 106 (Or App 2000).

² The *Coos Bay* case is not unique. The Commission has consistently determined that principles of strict liability
apply to violations of ORS 468B.025(1). See e.g., *In the matter of: DEQ v. Marshall's Oil and Insulation*
Company, 1999 WL 1257847 (Or Env Qual Com 1999); *In the matter of: DEQ v. Tom Vuyovich*, 1998 WL 770479
(Or Env Qual Com 1998).

1 "[The] City argues that proof of intent to discharge is required to establish a
2 violation of the statute. The City's argument is based upon the use of the term
3 'discharge' as well as what it perceives to be a statutory scheme wherein a
4 violation of ORS 468B.025(1)(a) requires proof of negligence and ORS
5 468B.025(1)(b) requires proof of intent. The City finds support for this purported
6 legislative scheme in the use of the verbs 'cause,' 'discharge' and 'violate' in the
7 different subsections of the statute. The City also argues that a culpable mental
8 state should be inferred because the violations are also declared to be public
9 nuisances in ORS 468B.025 (3)."

6 "The City's arguments are not persuasive. **Nothing in the plain ordinary
7 meaning of either 'cause' or 'discharge' requires or even suggests that proof
8 of intent, recklessness, or negligence is an element of the violation.** Similarly,
9 nothing in the context, 'legislative scheme' or legislative history leads to that
10 conclusion." 1998 WL 481883 *8 (emphasis added).

9 The City has offered no persuasive argument as to why this Commission should ignore the plain
10 language of the statute, well-settled rules of statutory construction, or its own earlier rulings.

11 **C. The City's operation of the pump station was the cause of the discharge.**

12 The City refers to PGE's rerouting of the alternate power supply as the "unanticipated
13 intervening force" that led to the discharge. The legal "cause" of the discharge was, however,
14 the operation of the pump station, not the availability of an alternate power source. (In fact, the
15 City's position begs the question of what or who would be deemed to have caused the discharge
16 if the City had never employed an alternate power source.) As in *Coos Bay*, "The City, by and
17 through the operation of the [pump station], caused the [discharge]." 1998 WL 481883 *7.

18 *Coos Bay* is consistent with the interpretation given similar strict liability ("no
19 discharge") language in the Clean Water Act in which the "cause" of a spill is deemed to be the
20 polluting enterprise itself, not the conduct of the defendant or a third party. *See e.g., U.S. v. Tex-*
21 *Tow, Inc.*, 589 F2d 1310, 1313-14 (7th Cir 1978) (presence of defendant's barge at pier was legal
22 or proximate cause of spill despite fact that defendant was not at fault and spill was attributable
23 to act or omission of third party).

24 **D. The City's arguments are not on point.**

25 Despite acknowledging the weight and importance of the plain language of the statute,
26 the City's focuses its argument on other, wholly unrelated issues.

1 First, in its discussion of the facts, the City notes that in the *Coos Bay* case the
2 Department did not pursue penalties for the first of the City's two pipeline failures. This
3 Commission cannot reasonably rely on the Department's multi-faceted decision to pursue or not
4 pursue enforcement (or to offer technical assistance in lieu of enforcement) in any particular
5 matter, as an interpretation of the statute at issue.

6 Second, the City notes that Oregon Court of Appeals did not expressly address ORS
7 468B.025(1)(b) in its review of the *Coos Bay* case. This is true, albeit irrelevant. On appeal, the
8 City of Coos Bay *admitted* that it violated ORS 468B.025(1)(b) by allowing the cited discharge
9 to occur, so the interpretation of ORS 468B.025 was not squarely before the Court of Appeals.
10 *See*, 171 Or App at 109. Although the Court of Appeals focused on ORS 468B.050, the EQC's
11 ruling with respect to ORS 468B.025 was directly on point.

12 Third, the City relies on rulings regarding the strict liability standard in the criminal
13 context. These cases are not on point. This is an administrative proceeding and ORS
14 468B.025(1)(b) is a civil, not criminal, statute. This is a distinction with a difference.

15 The case on which the city relies (*State of Oregon v. Chang Hwan Cho*, 297 Or 195
16 (1984) ("*Cho*")) involved the interpretation of a wildlife statute in light of specific provisions of
17 Oregon's Criminal Code (ORS Chapter 161). ORS 161.045(3) states in relevant part that those
18 provisions "[do] not bar, suspend or otherwise affect any right or liability to damages, penalty,
19 forfeiture or other remedy authorized by law to be recovered or enforced in a *civil* action, * * *."
20 (Emphasis added.)

21 Moreover, the *Cho* court expressly distinguished between a "violation" and a "crime,"
22 noting that the distinction supports requiring a culpable mental state for a crime:

23 "The designation of an offense as a misdemeanor (or felony) invokes the potential of
24 incarceration of offenders. As opposed to a violation, the heightened impact on the
25 liberty interest of the alleged misdemeanant or felon provides support for a culpability
26 requirement in crimes." *Cho*, 297 Or at 201.

1 Having first determined that the wildlife law at issue established a crime, not merely a violation,
2 the *Cho* court then determined that one needed to act with a culpable mental state to commit the
3 crime alleged. The *Cho* case does not hold that a culpable mental state is required to commit a
4 criminal violation and is irrelevant to the interpretation of statutes that do not purport to impose
5 any criminal sanction at all. *See also* ORS 161.105(1)(a) (culpable mental state not required if
6 offense merely constitutes a violation, unless statute expressly includes a mental state
7 requirement).³

8 The City also points to strict liability language in other unrelated environmental statutes
9 as evidence that ORS 468B.025(1)(b) does not impose strict liability. This argument fails on two
10 grounds. First, it requires this Commission to ignore the best evidence as to the meaning of ORS
11 468B.025(1)(b), namely the words used in *that* particular statute. Second, it ignores the easy
12 argument to the contrary, namely, statutes in which the legislature has expressly included a
13 *negligence* standard (*see e.g.* ORS 468B.450--negligent discharge of oil to waters of the state).
14 DEQ could as easily argue that the legislature expressly requires negligence on a discharger's
15 part where negligence is actually required. However, the legislature chose *not* to include a
16 negligence standard in ORS 468B.025(1)(b).

17 Finally, the City asserts that "it complied with the Class I Reliability Standards for
18 provision of electrical power for the Ankeny Pump Station." (City's Exceptions and Brief at 5.)
19 This is directly refuted by the stipulated facts. (*See* Stipulated Facts ¶¶ 6-8.) The Class I
20 Reliability Standards require separate and independent power sources. On March 18, 2001, the
21 City did not have separate and independent power sources available to the pump station. Its

22 _____
23 ³ The other two criminal cases cited by the City also interpret criminal statutes in the context of Oregon's Criminal
24 Code. In *State v. Miller*, 309 Or 362, 368, the Supreme Court determined that the "offense of DUII does not nor has
25 it ever required proof of a culpable mental state," despite the fact that the text of the DUII statute does not state as
26 much expressly. In *State v. Andrews*, 174 Or App 354, 363 the Court of Appeals addressed whether a conviction
for carrying a loaded firearm required proof that the defendant knew the gun was loaded. The Court noted that the
Oregon Criminal Code "[expressed] a policy adverse to the use of 'strict liability' concepts in criminal law, *whenever
the offense carries a possibility of sentence of imprisonment.*" 174 Or App at 363 (emphasis added). Again, these
cases are driven by the provisions of the Oregon Criminal Code (ORS Chapter 161) and are wholly irrelevant to
interpretation of a civil statute that does not impose any form of criminal sanction, imprisonment or otherwise.

1 *intent* to comply with those standards is not relevant to whether a discharge to the river occurred.
2 At best, the City's intent is relevant to whether DEQ could properly assess a higher penalty for
3 the violation based on a negligent or intentional act. The Department's \$9,000 penalty
4 assessment is *not* based on a negligent act.

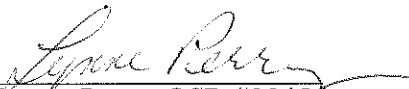
5 **CONCLUSION**

6 In sum, it is clear based on the plain language of the statute, well-settled rules of statutory
7 construction, and the Commission's own rulings that strict liability attaches to a discharge of
8 waste to waters of the state under ORS 468B.025(1)(b). Here, the relevant discharge was caused
9 by the City's operation of the Ankeny Pump Station. For that reason, the City is liable under
10 ORS 468B.025(1)(b). The Hearing Officer's Proposed Order should be affirmed.

11 Dated this 27th day of June 2003.

12 Respectfully submitted,

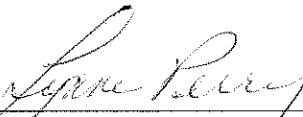
13 HARDY MYERS
14 Attorney General

15 
16 Lynne Perry, OSB #90456
17 Assistant Attorney General
18 Natural Resources Section
19 Oregon Department of Justice
20
21
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on June 27, 2003, I served a true and correct copy of DEQ'S
3 RESPONSE TO CITY OF PORTLAND'S EXCEPTIONS AND BRIEF by first-class mail on:

4 Jan Betz
5 City Attorney's Office
6 1221 SW 4th Ave Suite 430
7 Portland, OR 97204

8 
9 _____
10 Lynne Perry, #90456
11 Assistant Attorney General
12 Of Attorneys for DEQ
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CITY OF
PORTLAND, OREGON
OFFICE OF CITY ATTORNEY

Jeffrey L. Rogers, City Attorney
City Hall, Suite 430
1221 S.W. 4th Avenue
Portland, Oregon 97204
Telephone: (503) 823-4047
Fax No.: (503) 823-3089

May 8, 2003

HAND DELIVERED

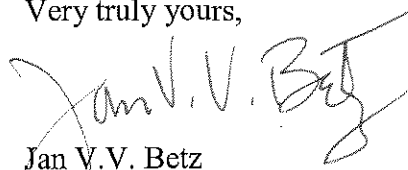
ENVIRONMENTAL QUALITY COMMISSION
C/O DEQ – ASSISTANT TO THE DIRECTOR
811 SW 6TH AVENUE
PORTLAND, OR 97204

Re: HEARING OFFICER PANEL CASE NO. 102453
AGENCY CASE NO. WQ/M-NWR-01-100

Dear Assistant to the Director:

Enclosed please find Respondent/Appellant City of Portland's Exceptions and Brief and attachments in the above-referenced matter.

Very truly yours,


Jan V.V. Betz
Deputy City Attorney

Enclosures
:JB

RECEIVED
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Oregon DEQ
Office of the Director



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5 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
6 OF THE STATE OF OREGON

7 In The Matter of City of Portland,
8 Respondent/Appellant

EXCEPTIONS AND BRIEF

9 HEARING OFFICER PANEL CASE NO.
10 102453

11 AGENCY CASE NO. WQ/M-NWR-01-100

12
13 **I. HISTORY OF THE CASE**

14 On May 21, 2001, the Department of Environmental Quality (Department) issued a
15 Notice of Assessment of Civil Penalty to Respondent City of Portland, alleging violation of ORS
16 468B.025 (1)(b). On November 15, 2002, the Department amended the Notice to reduce the civil
17 penalty from \$10,000 to \$9,000.

18 The City and the Department met twice for informal discussion of this matter and were
19 unable to come to agreement. The City timely requested a contested case hearing and the parties
20 agreed to submit stipulated facts and briefs to the Hearing Officer.

21 On March 10, 2003, Administrative Hearing Officer Andrea H. Sloan issued a Proposed
22 Order concluding that the City is liable for the discharge of waste into waters of the state,
23 regardless of fault, and that the \$9,000 civil penalty assessed by the Department is appropriate.

24 The City of Portland timely filed a Petition for Commission Review of the Hearing
25 Officer's Proposed Order on April 8, 2003.

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II. EXCEPTIONS

1. Respondent objects to the Hearing Officer's conclusion that the City is liable for the discharge of waste into waters of the state, regardless of fault.

2. Respondent objects to the imposition of a civil penalty in this matter.

III. ARGUMENT

A. ORS 468B.025 (1)(b) is Not a Strict Liability Statute

At page 2 of the Proposed Order, attached hereto, the Hearing Officer concluded that the City was liable for discharge of waste into waters of the state, regardless of fault. At page 4 of the Proposed Order, the Hearing Officer concluded that "Notwithstanding the actions or omissions of [a third party], Respondent is ultimately liable for the discharge of waste into the Willamette River on March 18, 2001."

i. ORS 468B.025 (1)(b) -- As Applied to the Facts

The Hearing Officer relied on the conclusions of the Environmental Quality Commission (EQC or Commission) in an earlier case, *In the Matter of the Notice of Violation, Department Order, and Assessment of Civil Penalty for Discharging Wastes Without a Permit and For Reducing Water Quality, City of Coos Bay, Respondent*, No. WQMW-WR-96-277 ("*Coos Bay*"). In that case, a pipeline in the City's sewer system failed twice in a two-year period. The Department determined that the City of Coos Bay did not make timely repairs, which resulted in the second failure. Regarding the first pipeline failure, the EQC noted that "[t]he City had engineered the pipeline, prepared for reasonably-expected eventualities, operated the pipeline as designed, and then had some *unanticipated intervening force* that caused or contributed to the failure." *Coos Bay* at p.6 (emphasis added). The Department did not assess a civil penalty in that instance.

In the present case, the parties stipulated to the facts set out in the Hearing Officer's Findings of Fact. Proposed Order, at page 2. The facts establish that Respondent contracted with Portland General Electric (PGE) to provide redundant electrical power sources to the Ankeny

1 Pump Station through two different power grids. PGE deenergized one of the power grids (the
2 Substation E grid) that provided the alternate power supply to the Ankeny Pump Station because
3 of a safety hazard at a construction site. A PGE employee notified an on-site City construction
4 manager not associated with the operation of the sewer system that the power lines were
5 deenergized. PGE rerouted the alternate power supply to the Ankeny Pump Station from
6 Substation E to the Canyon Substation, the same substation that provided the primary power
7 source to Ankeny. When the Canyon Substation power failed on March 18, 2001, the outage cut
8 off *all* electrical power to the Ankeny Pump Station because of PGE's actions. In this
9 circumstance, as the EQC concluded regarding the first pipeline failure in *Coos Bay*, PGE's failure
10 to provide power to Ankeny Pump Station from two different power grids was an *unanticipated*
11 *intervening force* that caused the discharge of sewage to the Willamette River on March 18,
12 2001.

13 ***ii. ORS 468B.025 (1)(b) -- Statutory Interpretation***

14 When the Oregon legislature drafted ORS 468B.025 (1)(b), it did not include language
15 expressing its intent to create a strict liability standard. As set out in Respondent City of
16 Portland's Memorandum of Law to the Hearing Panel in this case, the legislature has clearly
17 articulated its intent to impose a strict liability standard in a number of environmental statutes.
18 See Respondent's Memorandum of Law, No. WQ/M-NWR-01-100, at page 3, attached hereto.
19 In fact, even where a strict liability standard is articulated in a statute, some statutes provide for
20 defenses to liability. *Id.*

21 In interpreting the intent of the legislature in drafting a statute, the Oregon Supreme Court
22 has held that "the text of the statutory provision itself * * * is the best evidence of the legislature's
23 intent." *Portland General Electric Company v. Bureau of Labor and Industries*, 317 Or. 606,
24 610 (1993). The legislature also has enacted a general rule for construction of statutes and has
25 directed courts "not to insert what has been omitted, or to omit what has been inserted" in
26 determining the meaning of a statute. ORS 174.010.

1 In the *Coos Bay* case, the City of Coos Bay appealed the EQC's decision to the Court of
2 Appeals. The Court of Appeals did not discuss the statutory interpretation of ORS 468B.025
3 (1)(b); however, the court did specifically address the statutory interpretation of ORS 468B.050
4 (1), which prohibits discharges into waters of the state without first obtaining a permit. The court
5 concluded that the EQC had incorrectly interpreted that statute and stated that, "if the legislature
6 wished ORS 468B.050 (1)(a) to apply to *violations* of permit conditions, it could have said so, as
7 evinced by the wording of 468B.025 (2), which plainly prohibits [permit violations]." *EQC v.*
8 *City of Coos Bay*, 171 Or App 106, 110 (2000) (emphasis added). Similarly, if the legislature
9 wished to impose a strict liability standard in ORS 468B.025 (1)(b), it could have said so, as it has
10 in a number of other statutes.

11 In the Proposed Order in the present case, the Hearing Officer stated that the Court of
12 Appeals in the *EQC v. City of Coos Bay* case "affirmed the EQC order concerning violations of
13 ORS 468B.025 (1)(b)." Proposed Order at page 4. In fact, the court in that case did not address
14 or analyze the provisions of ORS 468B.025 (1)(b), it merely reversed the EQC's determination
15 that Coos Bay had violated ORS 468B.050 (1)(a) and "otherwise affirmed" the EQC's order
16 without discussion. *EQC v. City of Coos Bay* at 111.

17 The Oregon Court of Appeals has directly addressed the issue of statutory interpretation
18 regarding the strict liability standard in the criminal context in *State of Oregon v. Chang Hwan*
19 *Cho*, 297 Or. 195 (1984) ("*Cho*"). In *Cho*, the court concluded that a statute that regulated the
20 purchase or sale of wildlife, without a clear indication of legislative intent to dispense with a
21 culpable mental state requirement, is not a strict liability offense, stating that "the mere enactment
22 of a crime without an expressly required culpable mental state is insufficient to establish such a
23 clear indication." *Cho* at page 201. *See also, State v. Miller*, 309 Or. 362, 366 (1990); *State v.*
24 *Andrews*, 174 Or App 354,364 (2001)("in the absence of a clear legislative indication to the
25 contrary, proof of a culpable mental state is required").

26 \\\ \ \ \

1 ***B. Operation of the Municipal Wastewater Collection and Treatment System***

2 The City of Portland's wastewater collection and treatment system is operated pursuant to
3 a National Pollutant Discharge Elimination System (NPDES) permit issued by the Department.
4 Pump stations are part of the system that is regulated under the NPDES permit. *See Proposed*
5 *Order, Findings of Fact, at page 2.* The Ankeny Pump Station is served by two sources of
6 electricity from two different power grids. *Id.* The Department is responsible for reviewing the
7 design of sewage pump stations and has developed general design criteria. The Department's
8 design criteria require EPA Class I reliability standards for mechanical and electrical components
9 and alarms and a secondary source of electrical power. EPA's Class I Reliability Standard for
10 power sources requires two separate and independent sources of electric power from either two
11 separate utility substations or from one substation and a works based generator. *See Exhibits A*
12 *and B to Respondent's Memorandum of Law, attached hereto.* The City of Portland complied
13 with the Class I Reliability Standards for provision of electrical power for the Ankeny Pump
14 Station, as required by the Department.

15 If the Department, in its role as regulatory overseer regarding design standards for
16 municipal wastewater treatment and collection systems, has determined that Class I Reliability
17 standards are not adequate to protect public health and the environment, it should evaluate that
18 issue internally as a technical matter, rather than as an enforcement matter.

19 **IV. CONCLUSION**

20 The City complied with Department and EPA design criteria for primary and secondary
21 sources of electrical power. The acts or omissions of PGE constitute an unanticipated intervening
22 or superseding force that caused the discharge of untreated sewage to the Willamette River.

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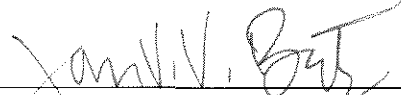
1 ORS 468B.025 (1)(b) does not articulate a strict liability standard. The principles of
2 statutory interpretation do not permit a court to insert words or standards into a statute where the
3 legislature has not done so. The legislature has enacted statutes with express provisions regarding
4 strict liability. It did not do so here and it is not the province of the reviewing body to rewrite the
5 statute.

6 **V. ALTERNATIVE CONCLUSIONS OF LAW AND ORDER**

7 The City of Portland requests that the Commission reverse the Hearing Officer's
8 conclusion of law that the City is liable for the discharge of waste into waters of the state,
9 regardless of fault, and withdraw the civil penalty assessed by the Department. The City of
10 Portland requests that the Commission enter a Final Order to that effect.

11 Dated this 8th day of May, 2003.

12 Respectfully submitted,

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14 
15 Jan V. V. Betz, OSB #87167
16 Deputy City Attorney
17 Of Attorneys for Respondent
18 City of Portland
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CERTIFICATE OF SERVICE

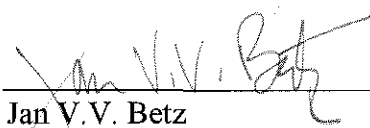
I hereby certify that I served the foregoing Exceptions and Brief on:

ENVIRONMENTAL QUALITY COMMISSION
C/O DEQ – ASSISTANT TO THE DIRECTOR
811 SW 6th AVENUE
PORTLAND, OR 97204

And

LYNNE A. PERRY
DEPARTMENT OF JUSTICE
GENERAL COUNSEL, NATURAL RESOURCES
1162 COURT ST. NE
SALEM, OR 97301
Attorney for Department of Environmental Quality

on May 8, 2003, by hand delivery to the Assistant to the Director and by mailing to said attorney a correct copy thereof, contained in a sealed envelope, with postage paid, and deposited in the post office at Portland, Oregon, on said day.



Jan V. V. Betz
Deputy City Attorney
Of Attorneys for City of Portland

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

IN THE MATTER OF:

**City of Portland,
Respondent,**

) **PROPOSED ORDER**

)

)

)

) Hearing Officer Panel Case No. 102453

) Agency Case Number WQ/M-NWRR-01-100

) Multnomah County

HISTORY OF THE CASE

On May 21, 2001, the Department of Environmental Quality (Department) issued a Notice of Assessment of Civil Penalty (Notice) to Respondent City of Portland. The Notice alleged that Respondent violated ORS 468B.025(1)(b). On November 15, 2002, the Department amended the Notice to reduce the penalty assessed from \$10,000 to \$9,000.

On June 21, 2001, Respondent requested a hearing and denied that it violated ORS 468B.025(1)(b). Respondent also offered two affirmative defenses.

At a prehearing conference on November 14, 2002, the Department and Respondent proposed offering stipulated facts and briefs in lieu of a hearing. Respondent and the Department filed stipulated facts and briefs on December 12, 2002.

Andrea H. Sloan, from the Hearing Officer Panel, presided as the Administrative Law Judge (ALJ). Respondent was represented on the briefs and at the prehearing by Jan V. Betz, Deputy City Attorney. The brief for the Department was prepared by Lynne Perry, Assistant Attorney General. Jeff Bachman, Lay Representative, represented the Department at the prehearing conference, and joined Ms. Betz in signing the stipulated facts.

EVIDENTIARY RULINGS

Respondent and the Department offered stipulated facts. These facts were admitted as Exhibit 1. A hearing was not convened, no other evidence was offered, and the record closed on January 8, 2003.

ISSUES

1. Whether Respondent is liable, under ORS 468B,925(1)(b), regardless of fault.
2. Whether the civil penalty assessment is appropriate.

FINDINGS OF FACT

1. Respondent operates a wastewater collection, treatment, control and disposal system as authorized by a National Pollution Discharge Elimination System permit issued by the Department.

2. Respondent's system includes the Ankeny Pump Station, which is located adjacent to the Willamette River near the Burnside Bridge, off SW Front Avenue/SW Naito Parkway, in Portland.

3. For the purpose of creating redundant electrical power sources in the event of a power failure, Respondent contracted with Portland General Electric (PGE) to provide two separate electrical feeders to Ankeny Pump Station from two different power grids. The primary feed to the station is through PGE's Canyon Substation. The alternate power feed is through PGE's Substation E.

4. On February 6, 2001, a sinkhole developed on NW Front Avenue/SW Naito Parkway, as a result of construction work being conducted by Respondent's Bureau of Environmental Services (BES) related to improvements to Respondent's sewage collection system.

5. As a safety precaution during repair of the sinkhole, PGE deenergized the underground voltage feeder conductors that ran through the sinkhole from PGE's Substation E. PGE personnel notified on-site BES construction manager, Mark Hutchinson, that the power lines were being deenergized.

6. At the time that the power lines in the sinkhole were deenergized, PGE rerouted the alternate power feed to the Ankeny Pump station from Substation E through Canyon Substation.

7. Power was restored to businesses and facilities in the vicinity of the sinkhole the next day, February 7, 2001.

8. A power outage affecting PGE's Canyon Substation occurred on March 18, 2001. Because the alternate power feed to the station had not been routed back through Substation E following completion of the sinkhole repairs, the outage cut-off all electrical power to the Ankeny Pump Station.

9. Because of the power outage, sewage flowing into the Ankeny Pump Station overflowed into the Willamette River. BES estimated that approximately 2.5 million gallons of raw sewage discharged from the Ankeny Pump Station into the river before power was restored at 8:36 a.m.

CONCLUSIONS OF LAW

1. Respondent is liable for the discharge of waste into waters of this state, regardless of fault.

2. The amount of civil penalties assessed by the Department was appropriate.

OPINION

In this case, there are only two issues to be resolved: 1) whether Respondent is liable for the discharge of waste into waters of the state, regardless of fault; and 2) whether the penalty assessment is correct. 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). Following review of the record and the briefs submitted by the parties, I conclude that the Department has met its burden on both issues.

Liability

ORS 468B.025 provides, in pertinent part, as follows: “[N]o person shall: * * * (b) Discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the Environmental Quality Commission.” ORS 468B.025(1)(b).

Respondent admitted that waste was discharged from its Ankeny Pump Station on March 18, 2001, and did not contest whether the discharge reduced the quality of the water below water quality standards. Respondent argues that it is not liable, however, because Respondent did not *cause* the discharge, and that the actions or omissions of PGE were the actual cause of the discharge. Respondent further argues that the actions or omissions of PGE were beyond its control and that Respondent cannot be liable, under ORS 468B.025(1)(b), for a discharge that it did not cause. In support, Respondent argues that the statute does not impose a strict liability standard, unlike other environmental statutes,¹ which specifically articulate strict liability. Alternatively, Respondent argues that even if the statute imposes a strict liability standard, the actions or omissions of PGE were an intervening or superceding cause of the discharge, and that Respondent should not be liable for PGE’s actions or omissions.

The Department counters that the statute, ORS 468B.025(1)(b), is silent as to culpability, and that the violation only requires a discharge, which Respondent has stipulated occurred. The Department further argues that the Environmental Quality Commission (EQC) has already addressed and rejected a similar argument that a city could not be liable under ORS 468B.025(1)(b) because the statute did not specifically articulate a strict liability standard.² The

¹ Respondent cites the following statutes as examples of environmental statutes with an articulated strict liability standard: ORS 468B.060; ORS 468B.310; ORS 465.255; ORS 466.640; and ORS 466.825.

² In a similar action, the EQC rejected the City of Coos Bay’s argument that it was not liable under ORS 468B.025(1)(b) because the statute did not impose a strict liability standard. See *Finding of Fact, Conclusions of Law and Opinion, In the Matter of the Notice of Violation, Department Order, and*

EQC specifically rejected the argument proffered by the City of Coos Bay, that ORS 468B.025(1)(b) required proof of intent. "Nothing in the plain ordinary meaning of either 'cause' or 'discharge' requires or even suggests that proof of intent, recklessness or negligence is an element of the violation. Similarly, nothing in the context, 'legislative scheme' or legislative history leads to that conclusion." And, in *EQC v. City of Coos Bay*, 171 Or App 106, 111 (2000), the Court of Appeals affirmed the EQC order concerning violation of ORS 468B.025(1)(b).

I am not persuaded with Respondent's argument that the statute must be analyzed in light of *Portland General Electric Company v. Bureau of Labor and Industries*, 317 Or 606 (1993). In *PGE*, the meaning of the statute was not clear, so the court set out a hierarchy of factors to consider in determining the intended meaning of statutory language. Here, there is no ambiguity in the statute. The statute prohibits the discharge of waste. Waste was discharged from Respondent's pump station. Notwithstanding the actions or omissions of PGE, Respondent is ultimately liable for the discharge of waste into the Willamette River on March 18, 2001.

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 \$9,000 in civil penalties based on Respondent's violation of ORS 468B.025(1)(b). 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."³

Based on this record, the civil penalty assessment of \$9,000 is accurate and appropriate.

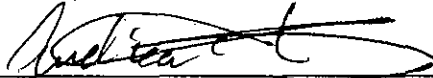
Assessment of Civil Penalty for Discharging Wastes without a Person and for Reducing Water Quality, City of Coos Bay, Respondent, No. WQMW-WR-96-277.

³ The penalty calculation utilized by the Department is set out in full in the Appendix, which is incorporated by reference to this order as if fully set forth herein.

PROPOSED ORDER

I propose that the Board issue the following order:

Respondent is subject to a civil penalty in the amount of \$9,000.



Andrea H. Sloan
Administrative Law Judge
Hearing Officer Panel

ISSUANCE AND MAILING DATE:

March 10, 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).

APPENDIX

VIOLATION 1: Discharging wastes that reduced the quality of state waters below a water quality established by the Environmental Quality Commission in violation of Oregon Revised Statute 468B.025(1)(b).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(c).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0045(1)(a)(B)(i). Based on the volume of raw sewage discharged to the Willamette River, the Department finds that the violation had a significant adverse affect on the environment.

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 \$6,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0042(1).

“P” is Respondent’s prior significant action(s) and receives a value of 7 pursuant to OAR 340-012-0045(1)(c)(A)(viii). At the time of the violation, Respondent’s prior significant actions, Case Nos. WQMW-NWR-90-89, WQMW-NWR-94-253, WQMW-NWR-94-305, WQMW-NWR-95-181, WQ/SW-NWR-98-013A, and WQ/M-NWR-99-043 consisted of six Class 1 equivalent violations.

“H” is the past history of the Respondent in taking all feasible steps or procedures necessary to correct any prior significant action(s) and receives a value of -2 because Respondent has corrected its 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 because the violation was not repeated or continuous.

“R” is the cause of the violation and receives a value of 0 as it is the most appropriate finding under the rules. The violation was not caused by unavoidable accident, or Respondent’s negligence, intentional conduct or flagrant conduct. Under these circumstances, the most appropriate value for the “R” factor is 0.

“C” is Respondent’s cooperativeness in correcting the violation and receives a value of 0. While Respondent was cooperative, it could not correct the violation, could not make reasonable efforts to minimize the effects of the violation, and has not taken extraordinary measures to prevent reoccurrence of the violation.

“EB” is the approximate dollar sum of the economic benefit that Respondent gained through noncompliance, and receives a value of 0 as the City did not receive an economic benefit.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$6,000 + [(0.1 \times \$6,000) \times (7 + (-)2 + 0 + 0 - 0) + 0] \\ &= \$6,000 + (\$600 \times 5) + \$0 \\ &= \$6,000 + \$3,000 + \$0 \\ &= \$9,000 \end{aligned}$$

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

3 IN THE MATTER OF:
4 CITY OF PORTLAND

5 Respondent.

RESPONDENT'S
MEMORANDUM OF LAW

HEARING OFFICER PANEL CASE
No. 102453

AGENCY CASE No. WQ/M-NWR-01-100
MULTNOMAH COUNTY

10
11 I. PROCEDURAL BACKGROUND

12 On May 21, 2001, the Department of Environmental Quality issued a Notice of
13 Assessment of Civil Penalty in the above-referenced matter. The City timely filed an Answer and
14 requested a hearing. The City also requested an informal discussion and met with Department
15 representatives on two occasions to discuss this matter. After the parties were unable to come to
16 agreement, a contested case hearing was scheduled. The parties subsequently agreed to submit
17 stipulated facts and present the remaining issues of law by memorandum to the Hearing Officer
18 for resolution.

19 II. BACKGROUND

20 As set out in the Stipulated Facts regarding this case, the City of Portland's Ankeny Pump
21 Station is powered by electricity under a contract with Portland General Electric (PGE). The City
22 contracted with PGE to provide primary and secondary power to the Ankeny Pump Station from
23 separate electrical feeders connected to two different power grids. Ankeny Pump Station is a
24 component of the City's wastewater collection system and is designed to pump wastewater flows
25 from western portions of the City to the Columbia Boulevard Wastewater Treatment Plant.

26 The system for provision of electrical power to the Ankeny Pump Station was designed

1 pursuant to the U.S. Environmental Protection Agency's technical bulletin entitled, "Design
2 Criteria for Mechanical, Electric, and Fluid System and Component Reliability" (U.S. Government
3 Printing Office: EPA-430-99-74-001), which is attached hereto as Exhibit A. The method for
4 providing a redundant power source to the Ankeny Pump Station is in compliance with the State
5 of Oregon Department of Environment Quality "Oregon Standards for Design and Construction
6 of Wastewater Pump Stations, May 2001, which is attached hereto as Exhibit B.

7 DEQ is responsible for reviewing the design of sewage pump stations and has developed
8 general design criteria. See Exhibit B, II and III, pages 4-5; ORS 468B.055; OAR 340 Division
9 52. Among other things, DEQ's general design criteria requires EPA Class I reliability standards
10 for mechanical and electrical components and alarms and a secondary source of electrical power.
11 Exhibit B, page 5-6. EPA's Class I Reliability standard for power sources requires the following:

12 * * *

13 Two separate and independent sources of electric power shall be
14 provided to the works from either two separate utility substations
15 or from a single substation and a works based generator. If
16 available from the electric utility, at least one of the works' power
sources shall be a preferred source (i.e., a utility source which is
one of the last to lose power from the utility grid due to loss of
power generating capacity). * * *

17 Exhibit A, page 40, ¶ 231.

18 In February of 2001, PGE disconnected the secondary power source to an area serving
19 NW Front Avenue, including the Ankeny Pump Station, when a sinkhole developed during a
20 construction project which exposed gas and electric utility conduits and created a potentially
21 dangerous situation. PGE restored power to the area the following day, however, PGE
22 apparently rerouted the secondary power source to the Ankeny Pump Station through the same
23 power grid that also provided electricity to the primary power source to Ankeny.

24 In March the PGE substation, which at that time provided both primary and secondary
25 power to Ankeny, failed and the pump station could not operate, resulting in untreated sewage
26 overflows to the Willamette River.

1 DEQ subsequently issued a Notice of Assessment of Civil Penalty, alleging that the City
2 "caused or allowed approximately 2.5 million gallons of raw sewage to discharge from its Ankeny
3 Pump Station * * *" in violation of ORS 468B.025 (1)(b).

4 III. LEGAL STANDARD

5 DEQ initially alleged that one of the bases for its determination that the City violated ORS
6 468B.025 was the City's negligence. DEQ subsequently amended its civil penalty assessment and
7 dropped the negligence finding. The City's response to DEQ's Notice of Assessment of Civil
8 Penalty denied that the City caused or allowed raw sewage to discharge from the Ankeny Pump
9 Station and asserted that the loss of electric power to Ankeny, which was beyond the control of
10 the City, was the cause of the discharge.

11 ORS 468B.025 is Not a Strict Liability Statute

12 The Oregon legislature's intent to create a strict liability standard for a number of
13 environmental statutes is evident and express. ORS 468B.025 does not contain any express
14 statement regarding a standard of liability.

15 In the following environmental statutes, the legislature has clearly articulated its intent to
16 impose a strict liability standard:

17 ORS 468B.060, Liability for damage to fish or wildlife or habitat --
18 states that a responsible party shall be strictly liable;

19 ORS 468B.310, Liability for violation of ORS 468B.305, Entry of
20 oil into waters of state prohibited; exceptions -- articulates a strict
21 liability standard and provides for defenses to liability;

22 465.255, Strict liability for remedial action costs for injury or
23 destruction of natural resource -- contains an affirmative statement
24 regarding standard of liability, and provides defenses to such
25 liability;

26 ORS 466.640, Strict liability for spill or release; exceptions --
articulates a strict liability standard and provides for defenses;

ORS 466.825, Strict liability of owner or permittee -- sets out a
strict liability standard for owners and permittees of leaking
underground storage tanks.

1 Statutory Interpretation

2 It is a fundamental premise of statutory interpretation that “the text of the statutory
3 provision itself * * * is the best evidence of the legislature’s intent.” *Portland General Electric*
4 *Company v. Bureau of Labor and Industries*, 317 Or. 606, 610 (1993) (“*PGE*”). In addition,
5 ORS 174.010 instructs a court “not to insert what has been omitted, or to omit what has been
6 inserted,” in its attempt to understand the meaning of a statute.

7 The court in *PGE* also concluded that the context of the statute at issue and related
8 statutes should be considered in analyzing statutory provisions. In contrast to ORS 468B.025,
9 other environmental statutes outlined above (including others in chapter 468B) contain *express*
10 provisions regarding strict liability while ORS 468B.025 does not. A court should not insert what
11 has been omitted. Clearly, the legislature knows how to insert a strict liability standard in a
12 statute when it wishes to. *See also, State of Oregon v. Chang Hwan Cho*, 297 Or. 195, 201
13 (1984)(holding that a statute regulating the purchase or sale of wildlife, without a clear indication
14 of legislative intent to dispense with a culpable mental state requirement, is not a strict liability
15 crime).

16 A second level of analysis of legislative intent, if necessary, is consideration of a statute’s
17 legislative history, and finally, if the intent of the legislature remains unclear, a court should
18 employ general maxims of statutory construction. *PGE* at 612. In determining the legislature’s
19 intent in the enactment of ORS 468B.025, it is not necessary to go beyond interpreting the
20 language of the statute itself, which, unlike other sections of chapter 468B and other Oregon
21 environmental statutes, does *not* contain any express statement regarding strict liability.

22 The Department of Environmental Quality has asserted in the past that the statutory
23 authority for assessment of civil penalties is evidence of the legislature’s intent to insert a strict
24 liability standard into ORS 468B.025. *See* ORS 468.130 and ORS 468.140. Under ORS 468.130
25 (2)(f), a factor to be considered in imposing a civil penalty is whether the violation was caused by
26 an unavoidable accident, negligence or an intentional act. The Department has argued that the

1 existence of this provision in chapter 468 indicates the legislature's intent to impose a strict
2 liability standard in ORS 468B.025. Such logic is circular and presupposes that a violation of
3 ORS 468B.025 has been determined. If the Department concludes that a violation has occurred,
4 then the civil penalty factors are considered to determine the amount of the penalty. These same
5 factors provide guidance for imposition of civil penalties for a variety of violations, many of which
6 do not have a strict liability standard.

7 The Department also has argued that ORS 468.140 (1)(b) is evidence of the legislature's
8 intent to impose a strict liability standard on ORS 468B.025. ORS 468.140 (1) provides that any
9 person who violates provisions of enumerated statutes will be assessed a civil penalty established
10 by rule. In addition to chapter 468B, the statutes listed in ORS 468.140 (1)(b) include statutes
11 that merely contain definitions and provisions for construction grants for sewage treatment works
12 (ORS 454.505 to 454.535); statutes that provide for ownership of municipal sewage systems and
13 financing their construction (ORS 454.205 to 454.255); and statutes regarding environmental
14 crimes, which already contain a range of liability standards for different crimes (ORS 468.920 to
15 468.956). *See* Exhibit C for a summary of the statutes listed in ORS 468.140 (1)(b).

16 If the legislature had intended ORS 468.140 (1)(b) to impose a strict liability standard on
17 the statutes listed therein, surely it would not have included statutes governing construction and
18 financing of sewage treatment works and environmental crimes, which already prescribe standards
19 of liability.

20 *Intervening or Superseding Cause*

21 Even if strict liability did apply in this case, PGE's action constitutes an intervening or
22 superseding cause that is a defense to liability. The City complied with all technical and
23 regulatory requirements regarding the design and operation of the Ankeny Pump Station,
24 including the provision of a secondary power source with Class I reliability. PGE failed to
25 provide power through the alternate power grid so that a failure of the primary power grid caused
26 the overflow of untreated sewage from the Ankeny Pump Station. The acts or omissions of a

1 third party were the *sole* cause of the overflow on March 18, 2001.

2 IV. CONCLUSION

3 ORS 468B.025 does not impose a strict liability standard. The legislature did not provide
4 any express statement of its intent to impose such a standard and the context of the statutory
5 scheme demonstrates that the legislature has inserted its express intent regarding strict liability in
6 other environmental statutes. The City complied with all regulatory requirements in its design,
7 construction and operation of the Ankeny Pump Station. The operation of PGE's power grids
8 and the power failure on March 18, 2001, were beyond the City's control.

9 We respectfully request the hearing officer to find in favor of the City in this matter and
10 make a determination that the City is not liable for a violation ORS 468B.025.

11
12 Dated this 12th day of December, 2002.

13
14 Respectfully submitted,

15
16 _____
17 Jan V. V. Betz, OSB #87167
18 Deputy City Attorney
19 Of Attorneys for Respondent, City of Portland
20
21
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26

TECHNICAL BULLETIN

DESIGN CRITERIA FOR MECHANICAL, ELECTRIC,
AND FLUID SYSTEM AND COMPONENT RELIABILITY

Supplement to Federal Guidelines for Design,
Operation, and Maintenance of Waste Water
Treatment Facilities

Office of Water Program Operations
U. S. Environmental Protection Agency
Washington, D. C. 20460

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 - Price \$5

EXHIBIT A
PAGE 1 OF 56

U.S. EPA LIBRARY REGION 10 MATERIALS

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FOREWORD

In response to the recent clean water legislation, this country will undertake an unprecedented building program for new and improved municipal wastewater treatment works. It is the responsibility of the EPA to ensure that the Federal funds authorized under Title II of PL 92-500 for this program will be justifiably spent. Accordingly, we must ensure that these works have been designed with a high degree of technical excellence and will operate effectively day in and day out. As a part of this effort, this Technical Bulletin provides a national standard to help ensure that unacceptable degradation of the works' effluent does not occur from time to time as a result of periodic maintenance or the malfunctioning of mechanical, electric, and fluid systems and components.

To assure a workable and effective document, we have involved all sectors of the wastewater treatment industry in the development and review of this Technical Bulletin. In this regard, I particularly wish to thank the EPA Technical Advisory Group for Municipal Waste Water Systems for their advice and counsel.

The design criteria contained in this Technical Bulletin are meant to be specific enough to have force and meaning, yet have administrative flexibility so as to permit innovation as to how the intent of the criteria will be met in each individual case. It is our intent to update and revise these criteria as experience dictates.

I am confident that through the continued efforts and cooperation of the engineering profession, the objective of improved reliability of wastewater treatment works will be achieved.



Robert L. Sansom
Assistant Administrator
for Air and Water Programs

DESIGN CRITERIA FOR MECHANICAL,
ELECTRIC, AND FLUID SYSTEM AND
COMPONENT RELIABILITY

Purpose

The purpose of this Technical Bulletin is to amplify and supplement the Federal Guidelines for Design, Operation, and Maintenance of Wastewater Treatment Facilities with regard to establishing minimum standards of reliability for mechanical, electric, and fluid systems and components. This Technical Bulletin provides reliability design criteria for wastewater treatment works projects seeking Federal financial assistance under PL 92-500.

Applicability of Technical Bulletin

New treatment works and additions or expansions to existing treatment works shall comply with this Technical Bulletin. Portions of existing works, for which the addition or expansion is dependent for reliable operation, shall comply with this Technical Bulletin to the degree practicable. There may be some treatment works for which fulfillment of some of the design criteria may not be necessary or appropriate. There will be other cases in which these criteria are insufficient, and additional criteria will be identified by the Regional Administrator. It is expected that additional criteria may be needed

for unusual environmental conditions and for new processes. Within this context, the design criteria should be used as a reference, allowing additions or deletions as an individual case may warrant.

A basic requirement specified in these criteria is component backup. However, system reliability can also be attained through flexibility in the design and operation of systems and components. This document does not attempt to define requirements for system flexibility

Definitions

The following definitions apply to the terms used in this Technical Bulletin:

Component - A single piece of equipment which performs a specific function in the wastewater treatment works. In this context a component may be an entire piece of process equipment (e.g., sedimentation basin or vacuum filter) or may be a single piece of equipment (e.g., a valve or a pump).

Controlled Diversion - Diversion in a controlled manner of inadequately treated wastewater around the treatment works to navigable waters.

Design Flow - That flow used as the basis of design of a component and/or system.

Design Period The period of time from first operation ~~EXHIBIT A~~ per year at which the treatment works is expected to treat the design flow.

Effluent Limitation - Any restriction established by a State or the EPA Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

Fluid System - A system within the treatment works which contains liquid or gaseous fluids. This includes the main wastewater treatment system, parts of the sludge handling and disposal system, and auxiliary systems.

Hydraulic Capacity - The maximum flow capacity of a component which does not result in flooding or overflowing.

Navigable Waters - The waters of the United States, including the territorial seas, as defined in PL 92-500.

Peak Wastewater Flow - The maximum wastewater flow expected during the design period of the treatment works.

Reliability - A measurement of the ability of a component or system to perform its designated function without failure. In this Technical Bulletin, reliability pertains to mechanical, electric, and fluid systems and components only and includes the maintainability of those systems and components. Reliability of biological processes, operator training, process design, or structural design is not within the scope of this Technical Bulletin. The reliability aspects related

to works influent from combined sewers are not within the scope of this Technical Bulletin.

Unit Operation - An operation involving a single physical or chemical process. Examples of a unit operation are comminuting, mixing, sedimentation, aeration, and flocculation.

Vital Component - A component whose operation or function is required to prevent a controlled diversion, is required to meet effluent limitations, or is required to protect other vital components from damage.

Wastewater Treatment Works - The works that treats the wastewater, including the associated wastewater pumping or lift stations, whether or not the stations are physically a part of the works.

Holding ponds or basins are considered included, whether or not the ponds or basins are physically a part of the works.

Terms Used in Specifying Criteria

The following are clarifications of terms used in specifying criteria in this Technical Bulletin:

Shall - Used to specify criteria which are mandatory. Departure from these criteria requires a Departure Request to be submitted by the Grant Applicant and approval of the request by the Regional Administrator.

- Permissible - Used to clarify the intent of mandatory criteria by giving examples of designs which are in conformance with the criteria.
- Consideration and Where Practicable - Used to specify criteria which shall be considered by the Grant Applicant, but which are not mandatory.

Reliability Classification

This Technical Bulletin establishes minimum standards of reliability for three classes of wastewater treatment works. Unless identified as applying to a particular class, all criteria contained in this document apply equally to all three classes. The reliability classification shall be selected and justified by the Grant Applicant, subject to the approval of the Regional Administrator, and shall be based on the consequences of degradation of the effluent quality on the receiving navigable waters. This document does not specify requirements for classifying works; however, suggested guidelines are:

Reliability

Class I

Works which discharge into navigable waters that could be permanently or unacceptably damaged by effluent which was degraded in quality for only a few hours. Examples of Reliability Class I works might be those discharging near drinking water reservoirs, into shellfish waters, or in close proximity to areas used for water contact sports.

Reliability
Class II

Works which discharge into navigable waters that would not be permanently or unacceptably damaged by short-term effluent quality degradations, but could be damaged by continued (on the order of several days) effluent quality degradation. An example of a Reliability Class II works might be one which discharges into recreational waters.

Reliability
Class III

Works not otherwise classified as Reliability Class I or Class II.

Note: Pumping stations associated with, but physically removed from, the actual treatment works could have a different classification from the works itself.

100. WORKS DESIGN CRITERIA

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00. WORKS DESIGN CRITERIA

110. WORKS LOCATION

The potential for damage or interruption of operation due to flooding shall be considered when siting the treatment works.

The treatment works structures and electrical and mechanical equipment shall be protected from physical damage by the maximum expected one hundred (100) year flood. The treatment works shall remain fully operational during the twenty-five (25) year flood if practicable; lesser flood levels may be permitted dependent on local situations, but in no case shall less than a ten (10) year flood be used. Works located in coastal areas subject to flooding by wave action shall be similarly protected from the maximum expected twenty-five (25) and one hundred (100) year wave actions.

Existing works being expanded, modified, upgraded or rehabilitated shall comply with these criteria to the degree practicable.

The flood and wave action elevations used to implement these criteria shall be determined and justified by the Grant Applicant, using available data sources where appropriate. Elevations for

specific location may be available from local or state studies as well as studies by the following Federal organizations U.S. Army Corps of Engineers, U.S. Geological Survey, U.S. Soil Conservation Service, National Oceanic and Atmospheric Administration, and Tennessee Valley Authority.

The works shall be accessible in all normal seasonal conditions, including the expected annual floods

120. PROVISIONS FOR WORKS EXPANSION AND/OR UPGRADING

All new works and expansions to existing works shall be designed for further expansion except where circumstances preclude the probability of expansion. During a works' upgrading or expansion the interruption of normal operation shall be minimized and shall be subject to the approval of the Regional Administrator.

130. PIPING REQUIREMENTS

13 Pipes Subject to Clogging

Provisions for Flushing of Pipes

The works shall have provisions for flushing with water and/or air all scum lines, sludge lines, lime feed and lime sludge lines, and all other lines which are subject to clogging. The design shall be such that flushing can be accomplished without causing violation of effluent limitations or without cross-connections to the potable water system.

131.2 Provisions for Mechanical Cleaning of Pipes

All piping subject to accumulation of solids over a long period of time shall have sufficient connections and shall be arranged in a manner to facilitate mechanical cleaning. This may include the main wastewater treatment process piping, service water system piping, and sludge process piping. Special attention shall be paid to piping containing material which has a tendency to plug, such as scum lines, drain lines, and lime sludge lines. System design shall be such that the mechanical cleaning can be accomplished without violation of effluent limitations.

Provisions for Draining Pipes

Where practicable, all piping shall be sloped and/or have drains (drain plug or valve) at the low points to permit complete draining. Piping shall be installed with no isolated pockets which cannot be drained.

Maintenance and Repair of Feed Lines

Lines feeding chemicals or process air to basins, wetwells, and tanks shall be designed to enable repair or replacement without drainage of the basins, wetwells or tanks.

40. COMPONENT MAINTENANCE AND REPAIR REQUIREMENTS141. Component Repair

Every vital mechanical component (mechanical components include such items as pumps, bar screens, instrumentation and valves, but not piping, tanks, basins, channels, or wells in the works shall be designed to enable repair or replacement without violating the effluent limitations or causing a controlled diversion. To comply with this requirement, it is permissible to use the collection system storage capacity or holding basins and to perform maintenance during the low influent flow periods. This requirement applies to shutoff and isolation valves. Provisions shall be made in the initial works design to permit repair and replacement of these types of valves.

Example: This criterion applies to the isolation valves of main wastewater pumps. The following are examples of ways these valves could be maintained. Pump suction isolation valves can be maintained if the works has a two compartment main pump wetwell and if the works can continue operation (during the diurnal low flow period, for example) with one part of the wetwell isolated. Pump discharge isolation valves connected to a pressurized outlet header can be maintained if the collection system storage capacity is sufficiently large to permit all main wastewater pumps to be stopped (collection system storage capacity is used) while the valve in question is removed and blind flanges installed.

Component Access Space

Adequate access and removal space shall be provided around all components to permit easy maintenance and/or removal and replacement without interfering with the operation of other equipment. Components located inside buildings or other structures shall be removable without affecting the structural integrity of the building or creating a safety hazard. Normal disassembly of the components is permissible for removal and replacement. This criterion is not intended to be applicable to the removal or replacement of large tanks, basins, channels, or wells.

Note: This criterion requires that consideration be given to the sizing of doors, stairways, hallways, hatches, elevators and other access ways in the initial works design. It also requires that special thought be given to the physical layout of piping systems and components in the initial design, especially to components located above and below the ground level of buildings and to unusually large components. The complete path of removal from in-plant location, through hatches, doors and passageways, to a truck or other service vehicle should be checked and defined for each component.

Component Handling

The works shall have lifting and handling equipment available to aid in the maintenance and replacement of all components. In addition, the placement of structures and other devices such as pad-eyes and hooks to aid component handling shall be considered in the initial design. This is particularly

important for large and/or heavy components which require special handling and lifting equipment. Means shall be provided for removal of components located above and below the ground level of buildings and other structures. This criterion is not intended to be applicable to the removal or replacement of large tanks, basins, channels, or wells.

144. Essential Services

Essential services, such as water, compressed air, and electricity, shall be made available throughout the works where required for cleaning, maintenance, and repair work. To facilitate cleaning wetwells, tanks, basins and beds, water (supplied from a non-potable water system or the works' effluent) shall be supplied at these points by means of a pressurized water system with hydrants or hose bibs having minimum outlet diameters of one inch.

150. ISOLATION OF HAZARDOUS EQUIPMENT

Equipment whose failure could be hazardous to personnel or to other equipment shall have means for isolation, such as shutoff valves, or shutoff switches and controls located away from the equipment to permit safe shutdown during emergency conditions.

System Design Criteria

200. SYSTEM DESIGN CRITERIA

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200. SYSTEM DESIGN CRITERIA

210. WASTEWATER TREATMENT SYSTEM

The wastewater treatment system includes all components from and including the bar screens and wastewater pumps to and including the works outfall.

211. System Requirements

The wastewater treatment system shall be designed to include the following:

211.1 Trash Removal or Comminution

The system shall contain components to remove and/or comminute trash and all other large solids contained in the wastewater.

211.2 Grit Removal

The system shall contain components to remove grit and other heavy inorganic solids from the wastewater. This requirement shall not apply to types of treatment works which do not pump or dewater sludge, such as waste stabilization ponds.

211. Provisions for Removal of Settled Solids

All components, channels, pump wells and piping prior to the degritting facility or primary sedimentation basin shall be accessible for cleaning out settled solids. The provisions shall enable manual or mechanical cleaning of equipment on a periodic basis without causing a controlled diversion or causing violation of effluent limitations.

211.4 Treatment Works Controlled Diversion

Wastewater treatment works shall be provided with a controlled diversion channel or pipe sized to handle peak wastewater flow. Actuation of the controlled diversion shall be by use of a gravity overflow. The overflow elevation shall be such that the maximum feasible storage capacity of the wastewater collection system will be utilized before the controlled diversion will be initiated. The controlled diversion flow shall be screened to remove large solids unless the wastewater flow has been previously screened. The actuation of a controlled diversion shall be alarmed and annunciated (see Paragraph 243 of this Technical Bulletin) and the flow shall be measured and recorded.

System Design Criteria

All Reliability Class I wastewater treatment works shall have a holding basin to augment the storage capacity of the collection system. The controlled diversion system and the holding basin shall be designed to permit the wastewater retained by the holding basin to be fully treated in the wastewater treatment works. The capacity of the holding basin shall be sized by the Grant Applicant based on the constraints and conditions applicable to that specific treatment works.

2

Unit Operation Bypassing

The design of the wastewater treatment system shall include provisions for bypassing around each unit operation, except as follows. The term unit operation does not apply to pumps in the context of this criterion. Unit operations with two or more units and involving open basins, such as sedimentation basins, aeration basins, disinfectant contact basins, shall not be required to have provisions for bypassing if the peak wastewater flow can be handled hydraulically with the largest flow capacity unit out of service. All other unit operations with three or more units shall not be required to have provisions for bypassing if the peak wastewater flow can be handled hydraulically with the two largest flow capacity units out of service.

System Design Criteria

The comminution facility shall be provided with a means for bypassing regardless of the number and flow capacity of the comminutors.

The bypassing system for each unit operation shall be designed to provide control of the diverted flow such that only that portion of the flow in excess of the hydraulic capacity of the units in service need be bypassed. With the exception of the comminution facility, which shall have a gravity overflow, the actuation of all other unit operation bypasses shall require manual action by operating personnel. All power actuated bypass valve operators shall be designed to enable actuation with loss of power and shall be designed so that the valve will fail as is, upon failure of the power operator. A disinfection facility having a bypass shall contain emergency provisions for disinfection of the bypassed flow.

212. Component Backup Requirements

Requirements for backup components for the main wastewater treatment system are specified below for Reliability Class I, II, and III works.

Except as modified below, unit operations in the main wastewater treatment system shall be designed such that, with the largest flow capacity unit out of service, the hydraulic

capacity (not necessarily the design-rated capacity) of the remaining units shall be sufficient to handle the peak waste water flow. There shall be system flexibility to enable the wastewater flow to any unit out of service to be distributed to the remaining units in service.

Equalization basins or tanks shall not be considered a substitute for component backup requirements

212. Reliability Class I

For components included in the design of Reliability Class I works, the following backup requirements apply.

212. .1 Mechanically-Cleaned Bar Screens or Equivalent Devices

A backup bar screen shall be provided. It is permissible for the backup bar screen to be designed for manual cleaning only. Works with only two bar screens shall have at least one bar screen designed to permit manual cleaning

212. 1.2 Pumps

A backup pump shall be provided for each set of pumps which performs the same function. The capacity of the pumps shall be such that with any one pump out of service, the remaining pumps will have capacity to handle the peak flow. It is permissible for one pump to serve as backup to more than one set of pumps.

212.1.3 Comminution Facility

If comminution of the total wastewater flow is provided, then an overflow bypass with an installed manual or mechanically-cleaned bar screen shall be provided.

The hydraulic capacity of the comminutor overflow bypass shall be sufficient to pass the peak flow with all comminution units out of service.

212.1.4 Primary Sedimentation Basins

There shall be a sufficient number of units of a size, such that with the largest flow capacity unit out of service, the remaining units shall have a design flow capacity of at least 50 percent of the total design flow to that unit operation.

1.5 Final and Chemical Sedimentation Basins, Trickling Filters, Filters and Activated Carbon Columns

There shall be a sufficient number of units of a size, such that with the largest flow capacity unit out of service, the remaining units shall have a design flow capacity of at least 75 percent of the total design flow to that unit operation.

1.6 Activated Sludge Process Components

1.6. Aeration Basin

A backup basin shall not be required; however, at

least two equal volume basins shall be provided.

(For the purpose of this criterion, the two zones of a contact stabilization process are considered as only one basin.)

212.1.6.2

Aeration Blowers or Mechanical Aerators

There shall be a sufficient number of blowers or mechanical aerators to enable the design oxygen transfer to be maintained with the largest capacity unit out of service. It is permissible for the backup unit to be an uninstalled unit, provided that the installed unit can be easily removed and replaced. However, at least two units shall be installed.

212.1.6.3

Air Diffusers

The air diffusion system for each aeration basin shall be designed such that the largest section of diffusers can be isolated without measurably impairing the oxygen transfer capability of the system.

212.1.7

Chemical Flash Mixer

At least two mixing basins or a backup means for adding and mixing chemicals, separate from the basin, shall be provided. If only one basin is provided, at least two mixing devices and a bypass around the basin

shall be provided. It is permissible for one of the mixing devices to be uninstalled, provided that the installed unit can be easily removed and replaced.

212.1.8 Flocculation Basins

At least two flocculation basins shall be provided.

212.1.9 Disinfectant Contact Basins

There shall be a sufficient number of units of a size, such that with the largest flow capacity unit out of service, the remaining units shall have a design flow capacity of at least 50 percent of the total design flow to that unit operation.

212.2 Reliability Class II

The Reliability Class I requirements shall apply except as modified below.

212.2. Primary and Final Sedimentation Basins and Trickling Filters

There shall be a sufficient number of units of a size such that, with the largest flow capacity unit out of service, the remaining units shall have a design flow capacity of at least 50 percent of the design basis flow to that unit operation

212.2.2 Components Not Requiring Backup

Requirements for backup components in the wastewater treatment system shall not be mandatory for components which are used to provide treatment in excess of typical biological (i. e., activated sludge or trickling filter), or equivalent physical/chemical treatment, and disinfection. This may include such components as:

Chemical Flash Mixer

Flocculation Basin

Chemical Sedimentation Basin

Filter

Activated Carbon Column

3 Reliability Class III

The Reliability Class I requirements shall apply except as modified below.

3. Primary and Final Sedimentation Basins

There shall be at least two sedimentation basins.

212.3.2 Activated Sludge Process Components

212.3.2.1 Aeration Basin

A single basin is permissible.

System Design Criteria

3.2.2 Aeration Blowers or Mechanical Aerators

There shall be at least two blowers or mechanical aerators available for service. It is permissible for one of the units to be uninstalled, provided that the installed unit can be easily removed and replaced.

3.2.3 Air Diffusers

The Reliability Class I requirements shall apply.

3.3 Components Not Requiring Backup

Requirements for backup components in the wastewater treatment system shall not be mandatory for components which are used to provide treatment in excess of primary sedimentation and disinfection, except as modified above. This may include such components as

Trickling Filter

Chemical Flash Mixer

Flocculation Basin

Chemical Sedimentation Basin

Filter

Activated Carbon Column

213 Component Design Features and Maintenance Requirements

Provisions for Isolating Components

Each component shall have provisions to enable it to be isolated from the flow stream to permit maintenance and repair of the component without interruption of the works operation. Where practicable, simple shutoff devices, such as stop logs and slide gates, shall be used.

213 Main Wastewater System Pump Isolation

The use of in-line valves to isolate the main wastewater pumps shall be minimized. It is permissible to place shutoff valves on the suction and discharge lines of each pump. However, in such a case, alternate means shall be provided for stopping flow through the pump suction or discharge lines to permit maintenance on the valves.

Example: Pump discharge isolation and check valves are not needed if the pumps have a free discharge into an open channel rather than discharging into a pressurized discharge header. Pump suction isolation valves can be maintained if the plant has a two compartment wetwell design and if the plant can continue operation (during the diurnal low-flow period, for example) with one part of the wetwell isolated.

2. Component Protection

213.2. Protection from Overload

Components or parts of components subject to clogging, blockage, binding or other overloads shall be protected from damage due to the overload. Examples of components requiring protection include the rake mechanism of bar screens, comminuting equipment, the grit-removal mechanism in degritting facilities, and sludge and scum arms of sedimentation basins.

213.2.2 Protection from Freezing

Components or parts of components which are wetted and subject to freezing shall be designed to ensure that the components will be operable during winter climatic conditions anticipated at the works. Examples of components or parts of components which may require protection include bar screens, comminuting equipment, the grit-removal mechanism in degritting facilities, mechanical aerators and the scum arm of sedimentation basins.

2.3 Protection from Up-Lift Due to Ground Water

In-ground tanks and basins shall be protected from up-lift due to ground water. If sufficient ballast is not provided in each tank or basin, other means for ground water relief shall be provided.

213.3 Slide Gates

Consideration shall be given to providing mechanical operators or other mechanical assistance for slide gates which, due to their size or infrequent use, may not be easily removable by manual means alone.

213.4 Bar Screens or Equivalent Devices

213.4.1 Provisions for Manual Cleaning

Manually-cleaned bar screens or mechanically-cleaned bar screens which can be manually cleaned shall have accessible platforms above the bar screen from which the operator can rake screenings easily and safely when the screens are in operation.

213.4.2 Provisions for Lifting and Handling Equipment

The design of the equipment and the works shall contain provisions for easily and safely lifting and handling all parts of a mechanically-cleaned bar screen. Special attention shall be given to the proper location of eyes, rails, and hooks located above the equipment to facilitate lifting and handling.

213.5 Comminution Equipment and Degritting Facility

All mechanical components shall be easily removable for maintenance and repair.

213.6 Sedimentation Basins

The main drive mechanism and reducing gears shall be maintainable and repairable without draining the basin.

The number of other operating parts which require draining the basin for repair and maintenance shall be minimized.

213.7 Aeration Equipment

213.7.1 Component Maintenance

Mechanical aerators or air diffusers shall be easily removable from the aeration tank to permit maintenance and repair without interrupting operation of the aeration tank or inhibiting operation of the other aeration equipment.

213.7.2 Filtration of Air

If air is supplied to fine bubble diffusers, air filters shall be provided in numbers, arrangement and capacities to furnish at all times an air supply sufficiently free from dust to minimize clogging of the diffusers.

213.8 Chemical Mixing Basin and Flocculation Basin

213.8.1 Component Maintenance

The mixing and flocculating devices shall be completely removable from the basin to allow maintenance and repair of the device, preferably without draining the basin.

213.8.2 Chemical Feed Line Cleaning

Chemical feed lines shall be designed to permit their being cleaned or replaced without draining the mixing basin or interrupting the normal flow through the basin.

213.8.3 Provisions for Isolation

Isolation valves or gates for the mixing or flocculation basin shall be designed to minimize the problems associated with operation of these devices after long periods of idleness and the resulting buildup of chemical deposits. Access and capability for cleaning debris and deposits which interfere with valve or gate closure shall be provided

213.9 Filters and Activated Carbon Columns

There shall be easy access to the interior of carbon columns and filters to permit maintenance and repair of internal mechanisms.

220. SLUDGE HANDLING AND DISPOSAL SYSTEM

This system includes all components and unit processes from the sludge pumps servicing the sedimentation basins to the final disposal of waste products, including ancillary components. Sludge disposal includes the special handling and treatment of sludge bypassing a normal stage of treatment. In some treatment works the system may also include processes such as recalcination of lime or regeneration of activated carbon.

221. System Requirements

The sludge handling and disposal system shall be designed to include the following:

221. Alternate Methods of Sludge Disposal and/or Treatment

Alternate methods of sludge disposal and/or treatment shall be provided for each sludge treatment unit operation without installed backup capability

221.2 Provisions for Preventing Contamination of Treated Wastewater

All connections (sludge, scum, filtrate, supernatant, or other contaminated water flows), direct or indirect, from the sludge handling system to the wastewater treatment system shall be at a point in the wastewater treatment system that will ensure adequate treatment.

222 Component Backup Requirements

For components included in the design of the sludge handling and disposal system of Reliability Class I, II or III works the following backup requirements apply

222.1 Sludge Holding Tanks

Holding tanks are permissible as an alternative to component or system backup capability for components downstream of the tank, provided the following requirements are met. The volume of the holding tank shall be based on the expected time necessary to perform maintenance and repair of the component in question. If a holding tank is used as an alternative to backup capability in a sludge treatment system which is designed for continuous operation, the excess capacity in all components downstream of the holding tanks shall be provided to enable processing the sludge which was retained together with the normal sludge flow.

222.2 Pumps

A backup pump shall be provided for each set of pumps which performs the same function. The capacity of the pumps shall be such that with any one pump out of service the remaining pumps will have capacity to handle the peak flow. It is permissible for one pump to serve

to more than one set of pumps. It is also permissible for the backup pump to be uninstalled, provided that the installed pump can be easily removed and replaced. However, at least two pumps shall be installed.

222.3 Anaerobic Sludge Digestion

222.3.1 Digestion Tanks

At least two digestion tanks shall be provided. At least two of the digestion tanks provided shall be designed to permit processing all types of sludges normally digested.

222.3.2 Mixing Equipment

If mixing is required as part of the digestion process, then each tank requiring mixing shall have sufficient mixing equipment or flexibility in system design to ensure that the total capability for mixing is not lost when any one piece of mechanical mixing equipment is taken out of service. It is permissible for the backup equipment not to be installed (e.g., a spare uninstalled digester gas compressor is permissible if gas mixing is used); not be normally used for sludge mixing (e.g., sedimentation basin sludge pumps may be used); or not be full capacity (e.g., two 50 percent-capacity recirculation pumps would comply with this requirement).

222.4 Aerobic Sludge Digestion

222.4 Aeration Basin

A backup basin is not required.

222.4.2 Aeration Blowers or Mechanical Aerators

At least two blowers or mechanical aerators shall be provided. It is permissible for less than design oxygen transfer capability to be provided with one unit out of service. It is permissible for the backup unit to be an uninstalled unit, provided that the installed unit can be easily removed and replaced.

222.4.3 Air Diffusers

The air diffusion system for each aeration basin shall be designed such that the largest section of diffusers can be isolated without measurably impairing the oxygen transfer capability of the system.

222.5 Vacuum Filter

There shall be a sufficient number of vacuum filters to enable the design sludge flow to be dewatered with the largest capacity vacuum filter out of service

Note: Since the design basis of sludge dewatering equipment is often not continuous operation, this criterion does not necessarily require additional vacuum filter capacity if the installed equipment is operated on less than a 24 hour-per-day basis and if the normal operating hours can be extended on the remaining units to make up the capacity lost in the unit out of service.

System Design Criteria

222.5.1 Auxiliary Equipment

Each vacuum filter shall be serviced by two vacuum pumps and two filtrate pumps. It is permissible for the backup to the normal vacuum or filtrate pump to be an uninstalled unit, provided that the installed unit can be easily removed and replaced; or to be a cross-connect line to the appropriate system of another vacuum filter.

222.6 Centrifuges

There shall be a sufficient number of centrifuges to enable the design sludge flow to be dewatered with the largest capacity centrifuge out of service. It is permissible for the backup unit to be an uninstalled unit, provided that the installed unit can be easily removed and replaced.

Note: Since the design basis of sludge dewatering equipment is often not continuous operation, this criterion does not necessarily require additional equipment if the installed equipment is operated on less than a 24 hour-per-day basis and if the normal operating hours can be extended on the remaining units to make up the capacity lost in the unit out of service.

222.7 Incinerators

A backup incinerator is not required (see Paragraph 22 for requirements for alternate sludge disposal capability). Auxiliary incinerator equipment whose failure during incinerator operation could result in damage to the

incinerator shall be provided with backups (e.g. failure of a center shaft cooling fan could result in damage to the center shaft of a multi-hearth incinerator). In such cases, automatic actuation of the backup auxiliary equipment shall be provided.

223. Component Design Features and Maintenance Requirements

223.1 Provisions for Isolating Components

Each component shall have provisions to enable it to be isolated from the flow stream to permit maintenance and repair of the component without interruption of the works' operation. Where practicable, simple shutoff devices, such as stop logs and slide gates, shall be used.

223.2 Component Protection

223.2.1 Protection from Overload

Components or parts of components subject to clogging, blockage, binding or other overloads shall be protected from damage due to the overload.

223.2.2 Protection from Freezing

Components or parts of components which are wetted and subject to freezing shall be designed to ensure that components will be operable during winter climatic conditions anticipated at the works.

223.2 Protection from Up-Lift Due to Ground Water

In-ground tanks and basins shall be protected from up-lift due to ground water. If sufficient ballast is not provided in each tank or basin, other means for ground water relief shall be provided.

223.3 Slide Gates

Consideration shall be given to providing mechanical operators or other mechanical assistance for slide gates which due to their size or infrequent use, may not be easily removable by manual means alone.

223.4 Aeration Equipment

223.4.1 Component Maintenance

Mechanical aerators or air diffusers shall be easily removable from the aeration tank to permit maintenance and repair without interrupting operation of the aeration tank or inhibiting operation of the other aeration equipment.

223.4.2 Filtration of Air

If air is supplied to fine bubble diffusers, air filters shall be provided in numbers, arrangement and capacities to furnish at all times an air supply sufficiently free from dust to minimize clogging of the diffusers.

223.5 Anaerobic Sludge Digester

At least three access manholes shall be provided in the top of the tank. One opening shall be large enough to permit the use of mechanical equipment to remove grit and sand. A separate side wall manhole shall also be provided.

223.6 Incinerators

There shall be easy access to the interior of incinerators to permit maintenance and repair of internal mechanisms. Multi-hearth incinerators shall have manhole on each hearth level.

230. ELECTRIC POWER SYSTEM

The following criteria shall apply only to those portions of the system supplying power to vital components.

231. Power Sources

Two separate and independent sources of electric power shall be provided to the works from either two separate utility substations or from a single substation and a works based generator. If available from the electric utility, at least one of the works' power sources shall be a preferred source (i. e., a utility source which is one of the last to lose power from the utility grid due to loss of power generating capacity). In geographical areas where it is projected that sometime during the design period of the works, the electric utility may reduce the rated line voltage (i. e., 'brown out' during peak utility system load demands, a works based generator shall be provided as an alternate power source, where practicable. As a minimum, the capacity of the backup power source for each class of treatment works shall be:

Reliability

Class I

Sufficient to operate all vital components, during peak wastewater flow conditions, together with critical lighting and ventilation.

Reliability

Class II: Same as Reliability Class I, except that vital components used to support the secondary processes (i. e., mechanical aerators or aeration basin air compressors) need not be included as long as treatment equivalent to sedimentation and disinfection is provided.

Reliability

Class III: Sufficient to operate the screening or comminution facilities, the main wastewater pumps, the primary sedimentation basins, and the disinfection facility during peak wastewater flow condition, together with critical lighting and ventilation.

Note: This requirement concerning rated capacity of electric power sources is not intended to prohibit other forms of emergency power, such as diesel driven main wastewater pumps.

232. Power Distribution External to the Works

The independent sources of power shall be distributed to the works' transformers in a way to minimize common mode failures from affecting both sources.

Example: The two sets of distribution lines should not be located in the same conduit or supported from the same utility pole. The two sets of overhead distribution lines, if used, should not cross nor be located in an area where a single plausible occurrence (e. g., fallen tree) could disrupt both lines. Devices should be used to protect the system from lightning.

233. Transformers

Each utility source of power to the works shall be transformed to usable voltage with a separate transformer. The transformers shall be protected from common mode failure by physical separation or other means.

Power Distribution Within the Works

234.1 Service to Motor Control Centers

The interna power distribution system shall be designed such that no single fault or loss of a power source will result in disruption (i. e., extended not momentary) of electric service to more than one motor control center associated with the Reliability Class I, II, or III vital components requiring backup power per Paragraph 231 above.

234.2 Division of Loads at Motor Control Centers

Vital components of the same type and serving the same function shall be divided as equally as possible between at least two motor control centers. Nonvital components shall be divided in a similar manner where practicable.

Power Transfer

Where power feeder or branch circuits can be transferred from one power source to another, a mechanical or electrical safety device shall be provided to assure that the two power sources cannot be cross-connected, if unsynchronized. Automatic transfer shall be provided in those cases when the ime delay required to manually transfer power could result in a failure to meet effluent limitations, a failure to process peak influent flow, or

cause damage to equipment. Where automatic pump control is used, the control panel power source and pump power source shall be similarly transferred. The actuation of an automatic transfer switch shall be alarmed and annunciated.

Example: An example for feeder distribution and bus transfer which meets these criteria is shown in Figure 1. The two power sources from utility substations are connected to the motor control centers through circuit breakers. A circuit breaker is provided to cross-connect the two motor control centers in the event one of the two normally energized power feeders fail. Additional backup capability has been achieved for the main pump by connecting one of the three pumps to the motor control center cross-connect. This assures that two out of three pumps will be available in the event of a panel fire or panel bus short circuit.

235. Breaker Settings or Fuse Ratings

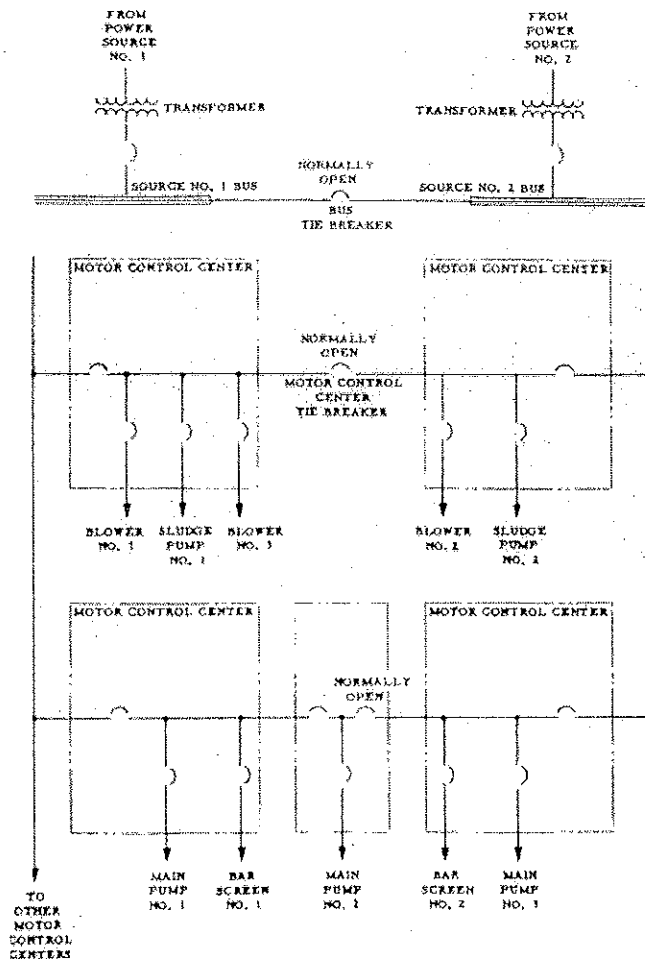
Breaker settings or fuse ratings shall be coordinated to effect sequential tripping such that the breaker or fuse nearest the fault will clear the fault prior to activation of other breakers or fuses to the degree practicable.

236. Equipment Type and Location

Failures resulting from plausible causes, such as fire or flooding, shall be minimized by equipment design and location.

The following requirements apply:

System Design Criteria



FEEDER DISTRIBUTION AND POWER TRANSFER

FIGURE 1

236.1 Switchgear Location

Electric switchgear and motor control centers shall be protected from sprays or moisture from liquid processing equipment and from breaks in liquid handling piping.

Where practicable, the electric equipment shall be located in a separate room from the liquid processing equipment.

Liquid handling piping shall not be run through this room

The electric switchgear and motor control centers all be located above ground and above the one hundred (100) year flood (or wave action) elevation.

236.2 Conductor Insulation

Wires in underground conduits or in conduits that can be flooded shall have moisture resistant insulation as identified in the National Electric Code.

236.3 Motor Protection from Moisture

All outdoor motors shall be adequately protected from the weather. Water-proof, totally enclosed or weather-protected, open motor enclosures shall be used for exposed outdoor motors. Motors located indoors and near liquid handling piping or equipment shall be, at least, splash-proof design. Consideration shall be given to providing heaters in motors located outdoors or in areas where condensation may

occur

System Design Criteria

The following criteria shall apply to motors (and their local controls) associated with vital components. All outdoor motors, all large indoor motors (i. e., those not readily available as stock items from motor suppliers), and, where practicable, all other indoor motors shall be located at an elevation to preclude flooding from the one hundred (100) year flood (or wave action) or from clogged floor drains. Indoor motors located at or below the one hundred year flood (or wave action) elevation shall be housed in a room or building which is protected from flooding during the one hundred year flood (or wave action). The building protection shall include measures such as no openings (e. g., doors, windows, hatches) to the outside below the flood elevation and a drain sump pumped to an elevation above the flood elevation.

236.4 Explosion Proof Equipment

Explosion proof motors, conduit systems, switches and other electrical equipment shall be used in areas where flammable liquid, gas or dust is likely to be present

236. Routing of Cabling

To avoid a common mode failure, conductors to components which perform the same function in parallel shall not be routed in the same conduit or cable tray. Conduits housing

such cables shall not be routed in the same underground conduit bank unless the conduits are protected from common mode failures (such as by encasing the conduit bank in a protective layer of concrete).

236.6 Motor Protection

Three phase motors and their starters shall be protected from electric overload and short circuits on all three phases.

Large motors shall have a low voltage protection device which on the reduction or failure of voltage will cause and maintain the interruption of power to that motor.

Consideration shall be given to the installation of temperature detectors in the stator and bearings of large motors in order to give an indication of overheating problems.

237. Provisions for Equipment Testing

Provisions shall be included in the design of equipment requiring periodic testing, to enable the tests to be accomplished while maintaining electric power to all vital components. This requires being able to conduct tests, such as actuating and resetting automatic transfer switches, and starting and loading emergency generating equipment.

System Design Criteria

Maintainability

The electric distribution system and equipment shall be designed to permit inspection and maintenance of individual items without causing a controlled diversion or causing violation of the effluent limitations.

Emergency Power Generator Starting

The means for starting a works based emergency power generator shall be completely independent of the normal electric power source. Air starting systems shall have an accumulator tank(s) with a volume sufficient to furnish air for starting the generator engine a minimum of three (3) times without recharging. Batteries used for starting shall have a sufficient charge to permit starting the generator engine a minimum of three (3) times without recharging. The starting system shall be appropriately alarmed and instrumented to indicate loss of readiness (e.g., loss of charge on batteries, loss of pressure in air accumulators, etc.).

240. INSTRUMENTATION AND CONTROL SYSTEMS

These criteria cover the requirements for the instrumentation and control systems:

241. Automatic Control

Automatic control systems whose failure could result in a controlled diversion or a violation of the effluent limitations shall be provided with a manual override. Those automatic controls shall have alarms and annunciators to indicate malfunctions which require use of the manual override. The means for detecting the malfunction shall be independent of the automatic control system, such that no single failure will result in disabling both the automatic controls and the alarm and annunciator.

242. Instrumentation

Instrumentation whose failure could result in a controlled diversion or a violation of the effluent limitations shall be provided with an installed backup sensor and readout. The backup equipment may be of a different type and located at a different point, provided that the same function is performed. No single failure shall result in disabling both sets of parallel instrumentation.

System Design Criteria

Alarms and Annunciators

Alarms and annunciators shall be provided to monitor the condition of equipment whose failure could result in a controlled diversion or a violation of the effluent limitations. Alarms and annunciators shall also be provided to monitor conditions which could result in damage to vital equipment or hazards to personnel. The alarms shall sound in areas normally manned and also in areas near the equipment. Treatment works not continuously manned shall have the alarm signals transmitted to a point (e. g., fire station, police station, etc.) which is continuously manned. The combination of alarms and annunciators shall be such that each announced condition is uniquely identified. Test circuits shall be provided to enable the alarms and annunciators to be tested and verified to be in working order.

Alignment and Calibration of Equipment

Vital instrumentation and control equipment shall be designed to permit alignment and calibration without requiring a controlled diversion or a violation of the effluent limitations.

250. AUXILIARY SYSTEMS

The auxiliary system include typical systems such as

Drain system, for

Components

Systems

Treatment works

Compressed air system, for

Pneumatic controls

Pneumatic valve operators

Hydropneumatic water systems

Air lift pumps

Service water systems, for

High pressure water

Gland seals

General service

Fuel supply system, for

Digester heaters

Incinerators

Building heat

System Design Criteria

Lubrication oil system, for

Pumps

Blowers

Motors

Chemical supply and addition system, for

Disinfection

Sludge conditioning

Chemical treatment of wastewater

The reliability requirements of these systems are dependent on the function of each system in the wastewater treatment works. If a malfunction of the system can result in a controlled diversion or a violation of the effluent limitations, and the required function cannot be done by any other means, then the system shall have backup capability in the number of vital components (i. e., pumps, motors, mechanical stirrers) required to perform the system function. If the system performs functions which can be performed manually or by some other means, then backup components shall not be required.

Example: A compressed air system supplying air to air lift pumps, which are pumping return activated sludge from the secondary sedimentation basin to the aeration tanks, is an example of an auxiliary system whose failure could degrade effluent quality. If no other means for supplying air or pumping sludge were available, then this system would be required to have backup vital components, such as compressors.

Example: If the compressed air system only supplied air to pneumatic controls which could not affect effluent quality, then the system would not require any backup components.

251. Backup Components

Auxiliary systems requiring backup components shall have a sufficient number of each type of component such that the design function of the system can be fulfilled with any one component out of commission. Systems having components of different capacities shall meet this criterion with the largest capacity component out of commission. It is permissible for the backup component to be uninstalled, provided that the installed component can be easily removed and replaced. However, at least two components shall be installed.

Example: A chemical addition system supplying chlorinated water to the contact chamber and having six chlorinators and one water supply pump which just meets capacity requirements, would be required by this criterion to have one additional chlorinator and one additional pump.

252. Requirements for System, Component and Treatment Works Drains and Overflows

All system, component and works drains and overflows shall discharge to an appropriate point in the main wastewater treatment process to ensure adequate treatment. Drains flowing to a two-compartment wetwell shall be designed to discharge to either compartment of the wetwell.

52.1 Works Drains

The works shall have sufficient drains to enable all spilled or leaked raw or partially treated wastewater, sludge, chemicals or any other objectionable substance to freely drain out of the area of concern. Special attention shall be given to specifying sufficient cleanouts in drain lines which are likely to clog (e.g., drain lines handling lime). All floors within buildings and structures shall be sloped to permit complete draining.

2 Sump Pumps

Sump pumps shall be of a non-clog type. Sump pumps are considered vital components and each sump shall be provided with two full capacity sump pumps.

3 Equipment Overflows

All equipment located within buildings and which can overflow shall be equipped with an adequately sized overflow pipe. The overflow shall be directed to a gravity drain.

252.4 Surface Water Drains

The works' grounds shall be graded and drains provided in order to prohibit surface water from draining into pump wells, tanks, basins, beds, or buildings. Drains

which handle uncontaminated water only shall not be connected to the contaminated drain system.

252.5 Component Dewatering

All pump wells, tanks, basins and beds, with the exception of aeration tanks, shall be designed to enable complete dewatering in a reasonable length of time in order to minimize the component downtime for maintenance or repairs. Where practicable, these components shall have sloped bottoms to enable the units to be completely drained.

252.6 Drain Backflow

Drains shall be designed to prevent backflow from other sources which would cause flooding or violation of the effluent limitations. The drain system shall be designed to prevent the entrance of storm water during the one hundred year flood (or wave action) condition.

253. Continuity of Operation

The failure of a mechanical component in an auxiliary system shall not result in disrupting the operating continuity of the wastewater treatment system or sludge handling and disposal system to the extent that flooding, failure, malfunctioning or damage to components in those systems results.

System Design Criteria

Example: A seal water system with normal and backup water supplies must transfer automatically to the backup upon failure of the normal supply in order to protect the equipment which needs the seal water to prevent damage.

Emergency Fuel Storage

If a vital component requires fuel for operation, then the fuel supply system design shall include provisions for fuel storage or a standby fuel source. The capacity of stored gaseous or liquid fuel shall be determined by the Grant Applicant based on the plausible downtime of the normal fuel supply and the expected consumption rate. The emergency system shall be physically separate from the normal fuel supply up to its connection to the fuel distribution system within the works.

Disinfectant Addition System

The capacity of the disinfectant addition system shall be designed with due consideration of abnormal operating conditions, such as having a disinfectant contact basin out of service. It is permissible for the additional capacity required for abnormal conditions to be separate and independent from the normal disinfectant addition system.

State of Oregon
Department of Environmental Quality

Oregon Standards for Design and Construction
of
Wastewater Pump Stations
May, 2001

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Oregon Standards for Design and Construction of Wastewater Pump Stations

May, 2001

I. Purpose

The goal of these guidelines is to provide for dependable sewage pumping facilities that protect the environment. The guidelines establish design standards and technical criteria for pump stations that can be reliably operated and economically maintained by state-certified operations personnel.

The guidelines provide a basis for review by DEQ review engineers, under Oregon Administrative Rule 340 Division 52 (OAR340-52), *Review of Plans and Specifications*. They also provide a reference for Design Engineers (hired by the Developer or the Owner), and for Sewer System Owners (usually a city or sanitary district).

Since these guidelines are broad and general, wastewater utilities and other sewer system Owners are encouraged to develop supplemental standards as necessary to address local needs, preferences, and existing equipment. Conflicts between the Owner's established standards and DEQ guidelines should be discussed and resolved at the pre-design stage. On request, these guidelines will be revised as warranted to reflect new information and advances in technology.

II. Applicability

These criteria apply to the design of sewage pump stations where DEQ has review responsibility under state law. Hence, the criteria apply to all pump stations serving two or more homes. They shall govern and take precedence over less stringent design requirements that may have been established by the Owner of a sewer system, unless otherwise approved by DEQ.

In general, the criteria apply to all public and private facilities from which sewage flows cannot readily be halted in cases of equipment breakdown or overload, potentially causing an uncontrollable raw sewage overflow. Examples of non-municipal facilities which are extremely impractical to close, and for that reason should observe these guidelines, include schools, apartment complexes, hospitals, mobile home parks, private housing, marinas, airports, prisons, large parks, resorts, and highway rest areas.

These criteria apply to both package-type and site-built stations. The criteria do not apply to on-site sewage disposal systems, which follow other state standards established in OAR 340-73. Also they are not applicable to pump stations at individual homes, factories, or manufacturing

plants where, in case of failure, sewage can readily be halted and the entire station can be removed from service without risk of a sewage overflow.

III. General Design Criteria

Design of the pump station shall include:

- A station with firm capacity to pump the peak hourly and peak instantaneous flows associated with the 5-year, 24-hour storm intensity of its tributary area, without overflows from the station or its collection system.
- A design consistent with EPA Class I reliability standards for mechanical and electrical components and alarms.
- A pumping system consisting of multiple pumps, with one spare pump sized for the largest series of same-capacity pumps to provide for system redundancy.
- Pumps with a minimum of five years' service history for a similar duty and size, unless otherwise approved by the Owner. To ensure a valid warranty, pumps shall either be supplied directly by the manufacturer, or by suppliers who are authorized and licensed by the manufacturer to provide manufacturer's warranty services for the pumps to be furnished
- Inlet, station, and force main piping with all necessary pressure control and measurement features, surge protection systems, air-vacuum/release valves, isolation valves, couplings, odor control systems, and other appurtenances required for a complete and operable system.
- Mechanical systems for heating and ventilating as required by the selected station equipment, local climatic conditions, and applicable codes.
- Plumbing systems for potable water, washdown, and drainage, unless otherwise approved by the Owner.
- Appropriate sound attenuation for noise created by pumping, mechanical, or electrical systems, including a standby generator.
- Electrical systems for lighting, power, communications, security, control, and instrumentation. A motor control center is to be provided for motor starters, accessories, and devices. The motor control center shall provide an isolated, ultra-filtered power, 120 VAC section designed with separate branch circuits for microprocessor-based instrumentation, controls, etc.
- A secondary source of electrical power. Standby generators shall be of sufficient size to start and run the Firm Pumping Capacity of the station, along with all other associated electrical loads necessary to keep the station operational and functioning. At the Owner's discretion, a

secondary power feeder from an independent substation may be required as a redundant power source. With the Owner's approval, the requirement for standby power may be satisfied by providing a trailer-mounted generator and an emergency power connection with manual transfer switch meeting the Owner's specifications.

- A complete system of alarms and alarm telemetry to facilitate operation and maintenance of the station at all hours, including an autodialer or radio telemetry.
- Where required by the Owner, a design to allow remote monitoring of the station through a connection with a Supervisory Control and Data Acquisition (SCADA) system so the Owner can remotely control and monitor station activities. Programmable logic controllers and alarm telemetry must meet the Owner's preferences and standards.
- Structures of adequate size, with interior and exterior clearances to facilitate access for ease of operation and maintenance of all systems. Architectural aspects shall be subject to the Owner's approval.
- Site development including an access road and parking, security, lighting, drainage, signs, and landscaping meeting the Owner's requirements.

IV. Design Report

A. General

The Design Engineer shall prepare a design report meeting the DEQ guidelines for pump station design reports, as published on the internet at the following location:

<http://waterquality.deq.state.or.us/wq/wqrules/Opsplans.htm>.

In conjunction with preparation of the report, design will involve the following activities and responsibilities of the Design Engineer:

- Review the Owner's *Wastewater Management Master Plan* and applicable Technical Memoranda, to identify future capacity and facility requirements related to the pump station. The Design Engineer shall verify through analysis that the assumptions in the *Wastewater Management Master Plan* are applicable and, if warranted, recommend revisions. The Design Engineer shall confirm that the proposed design capacity meets or exceeds the peak instantaneous sewage flow associated with a 5-year storm, as defined in DEQ flow-projection guidelines.
- As part of this work, the Design Engineer shall develop system-head curves to verify pump and piping sizing and selection. A series of system head curves shall be prepared to reflect force main system aging, maximum and minimum

wet well operating levels, and various combinations of pumps running at various flow requirements.

- The Owner may require the Design Engineer to conduct a detailed hydraulic physical scale model of the proposed wet well. A report documenting the study process, results, conclusions, and recommendations shall then be prepared. Video documentation of the model testing of the final configuration shall also be prepared.

B. Site Selection

Site selection shall be based on the following criteria:

- The *Wastewater Management Master Plan*, and any subsequent work by a Developer and by Owner's staff to refine siting for a specific pump station;
- Proximity to existing or future gravity trunk, force main, and receiving sewer;
- Collection system hydraulic capacity requirements;
- Access to facility including construction access;
- Elevation and drainage (i.e., above the 100-year floodplain);
- Size of the parcel;
- Topography of the site including sufficient setback to allow for fill, cut, and transition to existing contour elevations at the property lines;
- Utilities on and near the site;
- Geotechnical considerations including liquifaction and landslide potential;
- Environmental considerations (i.e., wetlands, sensitive habitat, greenway, etc.);
- Zoning requirements;
- Permits;
- Operation and maintenance considerations;
- Impact to the public including visual impacts;
- Ownership and easement aspects, avoiding difficult acquisitions when possible;
- Capital, operating, and maintenance costs over design life.

Final selection of the site must be approved by the Owner.

C. Design Report Contents

The Design Engineer's report shall contain the following elements, as appropriate for the particular type of facility:

- Vicinity map
- A complete table of Design Data, which shall generally follow applicable portions of the design data example from the DEQ website:
<http://waterquality.deq.state.or.us/wq/wqrules/Opsplans.htm>.

- Wet well and vault buoyancy calculations, which shall be based on immersion with an assumed groundwater level at the surface.
- Site development showing existing, new, and future planned improvements.
- Flow projections, capacity requirements, and system-curve calculations.
- Pump and force main selection based on system-head curve analysis.
- Proposed pump curves and system-head curves.
- Piping plans, crosssections, and elevations, which shall include above-ground and below-ground facilities, tie-ins, and surge protection.
- Storm drains and water lines.
- Mechanical systems including HVAC.
- Plumbing systems.
- Electrical systems including lighting, power, communications, security, controls, instrumentation, and SCADA.
- Backup power system.
- Proposed sequence of work
- When warranted, or when requested by the Owner, a surge analysis to establish sizing and
 - characteristics of surge-protection devices. Surge protection shall be designed to prevent damage to the existing infrastructure, prevent column separation in the discharge piping, and excessive surge-related pressures at the pump station.
- When warranted, or when requested by the Owner, an analysis of flowmeter selection and sizing alternatives.
- Force main detention calculations for the dry-weather period, including an evaluation of sulfide control alternatives where average detention will exceed 35 minutes, with design calculations for the selected control system.
- For projects to expand or replace existing facilities:
 - An approach and plan to maintain pump station operations during construction
 - The Design Engineer's field investigation data and professional evaluation of the force main discharge manhole and downstream sewer system, in accordance with DEQ guidelines, with respect to hydraulic capacity, corrosion, and serviceability.
- To the extent required by the Owner, cost alternatives, plans, schematics, photographs, test results, etc.

In conjunction with report preparation, the Design Engineer shall identify and work with all permitting agencies that have jurisdiction or authority over the work as required to gain the necessary reviews, approvals, and permits. Agencies which may have permitting authority for a particular project are:

- Department of Environmental Quality (predesign report and plan review, approval to construct, review of draft and final O&M manual, approval to operate, and NPDES 1200C erosion control permit).
- Municipal and county building and construction permits, roads and street

permits, greenway permits, floodplain development permits, and conditional use/zone change.

- Division of State Lands (wetlands and creek or river crossing permits).
- U. S. Army Corps of Engineers (wetlands and creek or river construction permits).
- United States Fish and Wildlife Service, Oregon Department of Fish and Wildlife, and National Marine Fisheries Service (wetlands, creek or river crossings, and other permits).
- Oregon Department of Transportation Highway Division (permit to work within State highway right-of-way).
- Federal Aviation Administration.
- Any affected railroads (crossings, access easements, and other permits of entry).

V. Pumps

A. General

The minimum number of pumps per station shall be two.

The Design Engineer shall select pumps to provide the required firm capacity and pressure. Firm pumping capacity is defined as the ability to deliver the rated station capacity with the largest pump out of service.

The rated station capacity is defined as the five-year, peak hourly wet-weather flow or the 10-year peak hourly dry-weather flow, whichever is higher. A higher rated station capacity may be established at the Owner's discretion.

It is the Design Engineer's responsibility to make the determination and recommendation regarding the appropriate type of pumping units. However, the Owner shall have the right to review the recommendation and select an alternate pump type.

Due to overall reliability, economy, and the availability of replacements, submersible pumps in a dry well or in a wet well shall be the standard for new wastewater pump stations. Grinder pumps, self-priming pumps, vacuum-primed pumps, vertical turbine pumps, and nonclog pumps in dry wells with close coupled or extended shaft motors shall not be considered for the construction of new pump stations, unless otherwise approved by the Owner.

System-head curve data shall include the following: system curves considering new and aged pipe, high and low wet well levels, initial and build-out conditions for dry and wet weather flows; design operating point; net positive suction head requirements; hydraulic efficiency; force main discharge elevation; horsepower requirements; revolutions per minute; and other operating conditions required for each pump and combination of pumps.

Selection of pumps with flat pump curves shall be avoided where a small change in total dynamic head will result in a large change in pump flow.

Minimum size solid to be passed by the selected pumps shall be a three-inch sphere, unless otherwise approved by the Owner.

Pumps shall be selected with the required operating point near the maximum efficiency point on the pump curve, within the pump's recommended operating range, and within the manufacturer's recommended limits for radial thrust and vibration. The size and number of pumps shall be selected so that the range of inflow can be met without starting and stopping pumps too frequently and without requiring excessive wet well storage.

The motor size shall be selected so that entire pump curve is non-overloading and within the manufacturer's recommended limits. Pump equipment shall be dynamically balanced to prevent vibration. No surge cavitation or vibration shall be allowed within the limits of the stable operating range indicated on the pump curve.

Unless waived by the Owner, a factory-certified pump test curve for the each of the actual pump units to be installed at the station shall be required. Where the Owner has required an adjustable-frequency drive, the pump shall be shop tested using the actual drive unit. The pump manufacturer shall be responsible for furnishing the adjustable frequency drive, for matching the motor and the drive, and for coordinating the collection of data and the design effort to limit harmonics. However, a factory pump test shall not be grounds for waiver of any pump acceptance tests after installation.

The criteria set forth below in Section B, Piping and Appurtenances, shall be followed for the recommended suction velocity. If necessary to prevent cavitation and excessive turbulence for high-flow pumps, a larger suction line than the pump inlet diameter may be provided to reduce velocity and maintain available net positive suction head.

Pumps shall be adequately anchored to pump bases in accordance with applicable codes and the manufacturer's recommendation. Anchor bolts shall be stainless steel, 300 series minimum. Wedge-type or chemical-type anchor bolts are not allowed for rotating equipment. Edges on concrete pump bases shall be chamfered with a minimum one-inch chamfer.

B. Submersible Pumps in a Dry Well

Submersible pumps housed in a dry well shall be equipped with moisture-sensing probes, over-temperature detectors, positive oil circulating cooling of motor,

stainless steel motor and pump shafting, gray iron impeller, powder epoxy bowl and impeller, silicon carbide mechanical seals, bearing retaining rings on the shaft, and stainless steel wear rings. Pumps shall have volute and suction inlet handholes and inspection plates. Pumps shall have cleanout-type suction elbows.

Each pumping unit shall be complete with pump, motor, and anchor bolts all mounted on a common baseplate. Each pump shall be supplied with lifting eye bolts or lugs, and plugged gauge cock connections on the suction and discharge nozzles.

C. Submersible Pumps in a Wet Well

Submersible pumps in a wet well shall be equipped with moisture-sensing probes, over-temperature detectors, positive oil circulating cooling of motor, stainless steel motor and pump shafting, gray iron impeller, powder epoxy bowl and impeller coating, silicon carbide mechanical seals, bearing retaining rings on the shaft, and stainless steel wear rings.

Guide-rail connection assemblies shall be provided to set and remove the pumps without entering the wet well. Cable-guide assemblies shall not be allowed for setting and removing the pump from the wet well. Rails, lifting chains, and lift cables shall be stainless steel. Each pumping unit shall be complete with pump, discharge elbow, motors, couplings, coupling guard, anchor bolts, and guide-rail connection assemblies.

The check valves and pressure gauges shall be located in a shallow valve vault outside of the wet well. The gauge shall be upstream, and the isolation valve downstream, of the check valve for each pump. A bypass pumping system, additional downstream gauge, and additional main isolation valve may also be required at the discretion of the Owner.

D. Sump Pumps

In a dry well, sump pumps shall be installed and permanently wired into the station. Pump controls shall be provided as a package by the sump-pump manufacturer.

E. Temporary Pumping Plan

The Design Engineer shall provide a temporary pumping plan to maintain wastewater system operations during construction. This plan shall include requirements for firm pumping capacity, piping installation, controls, standby power requirements, and sequence of construction.

F. Pump Motors

Motors shall be either Factory Mutual or Underwriter's Laboratories approved. Unless otherwise required by the Owner, motors shall be rated 460 volts, 3 phase, 60 Hz. Motors shall meet Federal Department of Energy efficiency requirements as currently established in the Energy Policy Act of 1992.

All motors installed below the 100-year flood elevation or overflow elevation of the wet well shall be submersible motors. All pumps installed in the wet well shall be total enclosed fan cooled explosion-proof motors for operation in Class 1, Division 1, hazardous locations, in accordance with Article 500 of the NEC.

For all pumps installed in the wet well, the design of the motor shall permit full-load continuous operation either completely dry or fully submerged in the pumped liquid. Motor windings are to be all copper and epoxy encapsulated (aluminum windings or components are not acceptable). All motors shall be close coupled unless otherwise approved by the Owner.

National Electrical Manufacturers Association motor design shall be "B." Starting code letter/locked rotor kilovolt amps per horsepower rating shall be "F" or better. Motor windings shall be all copper with class "H" rating or approved equivalent. The motor temperature shall not exceed class "B" temperature limits as measured by resistance method when the motor is operated at full load at 1.15 safety factor continuous in a maximum ambient temperature of 40°C.

Motor nameplate horsepower must exceed the maximum required by the pump under all possible operating conditions. Bearing temperature rise at rated load shall not exceed 60°C.

Significant over-sizing of motors should be avoided since both efficiency and power factors drop in motors running below their full load rating. A 1.15 service factor shall be specified. The number of motor starts per hour is dependent upon the size of the motor, and must not exceed the manufacturer's recommendation for the intended service and starting conditions.

G. Variable-Speed Drives

The design engineer may select variable-speed pump drives as a non-standard feature, with the Owner's approval. Variable-speed drives shall be designed and programmed to provide a flushing velocity in the force main of at least 3.5 feet per second at the beginning of each pumping cycle.

After an initial flushing of the maximum practical duration, depending on wetwell volume, the pumping velocity may be reduced. Velocities shall not be allowed to fall below 2 feet per second, due to solids settlement, eventual plugging of the force

main, and station failure. All variable-speed drives on raw sewage pumps shall be programmed to maintain a fluid velocity of at least 2 feet per second in the force main after initial flushing at minimum 3.5 feet per second.

Variable-speed drives shall not be installed on stations without an installed flowmeter to facilitate verifying the percent-of-speed necessary to accomplish self-cleansing velocities. As a standard, unless otherwise required by the Owner, one spare 3/4-inch buried PVC electrical conduit shall be routed from the control center to the flow meter vault.

H. Spare Parts

For each size and type of pump, a complete set of mechanical seals, a gasket set, wear rings, and a spare impeller (for each size of pump in the installation and for each pump direction if side discharge) shall be provided, unless otherwise approved or required by the Owner.

VI. Piping and Appurtenances

A. General

Piping and valves shall be in accordance with AWWA standards. Design fluid velocities shall be:

Pump suction lines.....3 to 5 feet per second
Pump vertical discharge lines..... 6 to 10 feet per second
Pump discharge lines including force mains.....3.5 to 8 feet per second

Vertical discharge piping on pumps with variable-speed drives shall be sized to maintain minimum design velocities during the programmed initial flushing period. All valves shall be accessible to the operators for operation and maintenance without entering a wet well.

B. Pipe

The Design Engineer is responsible for selecting pipe material for the project, subject to approval of the Owner. The standard for station wastewater piping shall be cement-mortar lined or plastic-lined ductile iron pipe and fittings.

The standard for force-main piping shall be cement-lined ductile iron pipe or cement-mortar lined and coated steel pipe. Heavy-wall PVC plastic and high-density polyethylene pipe may be allowed for force mains with the Owner's approval. Plastic-lined ductile iron, PVC, or HDPE pipe shall be used for air-

injected force mains. Cast iron and asbestos cement shall not be allowed for force mains.

Suction piping from the wet well and discharge piping to the force main headers shall be provided for installed pumps and for any future pumping units. Pump discharge piping for stations containing three or more pumps shall connect to the force main discharge manifold with wyes. In manifolds, wyes shall be the same size diameter as the manifold, unless otherwise required by the Owner. Discharge piping shall be designed for disassembly and removal from the station.

To the extent possible, the force main shall be designed to avoid a reduction in gradient or a change from a positive to a negative gradient, intermediate high points, and plateaus. In the force main, two 45 degree elbows shall be used in lieu of 90 degree elbows. Cutoff walls shall be used in the trench for slopes of 20 percent and over, per standard practice.

Unless otherwise approved by the Owner, all force mains shall have a connection with an isolation valve for temporary bypass pumping. The connection shall be located in a valve vault. Force mains shall discharge into a separate manhole offset from the gravity sewer, except as otherwise approved by the Owner. Dual force mains may be required at the Owner's discretion.

C. Joints

To accommodate minor settlement, buried joints should be push-on type or other flexible joint. Mechanical joints may be used on fittings. Restrained joints may be used to limit or eliminate the need for thrust blocks to provide restraint against thrust forces due to internal pressures.

Where harnessed mechanical joints are used for joint restraint, stainless steel rods shall be used. Thrust screws or thrust nuts will not be allowed as joint restraints for sewage force mains. To allow for differential settlement, flexible couplings or sleeves shall be installed on the inlet and discharge piping where piping enters the pump station floor, foundation, and wall.

Penetration of the wall between the wet well and dry well shall be made using embedded pipe spools with attached weep ring. Joints under concrete floors shall be all welded. Grooved-end couplings (Victaulic or equal) will not be allowed, except on specific approval of the Owner.

Exposed joints shall be flanged (AWWA C115 or ANSI B16.1). Flexible-sleeve type couplings shall be provided on the suction and discharge of pumps in the dry well. Piping runs with mechanical joints and couplings must be adequately supported. Flexible couplings must be constrained by tie rods. Couplings and

anchorage on pump suction and discharge pipes shall be designed to prevent the pump from being used as restraint.

D. Check Valves

A check valve on each pump discharge shall be the standard. The check valve shall be mounted in the horizontal position to avoid solids from settling back on the check valve. Check valves shall be located outside of the wet well.

The valve shall be a swing-check valve with external arm and spring lever. Ball check valves shall not be allowed on sewage pumps without the Owner's specific approval. The check valve may have an electronic position indicator wired to a SCADA system, where required by the Owner.

The Design Engineer shall do a hydraulic surge analysis for each system to determine that the standard check valve will meet the needs of the system. If not, then check valves shall have a hydraulic cylinder or equivalent surge control.

E. Isolation Valves

An isolation sluice gate shall be provided to isolate the wet well from the inlet sewer, unless otherwise approved by the Owner. Isolation valves shall be provided on the inlet and discharge of each installed pump in a dry well. For submersible pumps in a wet well, an isolation valve shall be provided in a separate valve vault on the discharge side of each pump.

Unless waived by the Owner, isolation valves with a blind flange shall be installed for future pumps in a dry well. An intermediate isolation valve may also be required by the Owner on the force main, as a special station requirement. Discharge isolation valves shall be resilient seated full-port gate valves, plug valves, or knife gates at the Owner's discretion.

Sluice gates shall only be allowed for isolation of the trunk sewer from the wet well or to isolate two wet well compartments. Knife gate valves shall only be allowed on the suction piping from the wet well to the pump when space is limited and the hydraulic head is less than 20 feet.

Valves for buried service shall be provided with standard AWWA operating nut and protected from vehicular traffic.

F. Air Release Valves

Air relief, air-vacuum release, or combination air release and vacuum valves shall be of a type and brand manufactured for the specific purpose in sewage service, and

shall be provided at critical locations in the pump station and force main. The valves shall serve to prevent air being captured inside the piping system, or prevent collapse of the piping system because of vacuum conditions. Each valve shall be sized with the proper orifice size suitable for the volume of air to be admitted or released and each shall be provided with an isolation valve.

For each air-valve assembly, the pipe-nipple connection to the manifold and all other piping in the assembly shall be copper. An insulated coupling, ball valve, and pipe union shall be provided on each assembly to allow maintenance and removal of the air valve. The air-release valve discharge piping in pump stations shall be piped to the station wet well.

G. Surge Protection

Pump and pipeline systems shall be protected against damage from transient pressures. A reduction in gradient or a change from a positive to a negative gradient in piping shall be avoided if possible. Protection against surges and water-column separation shall be provided by means of air-cushion check valves, surge-anticipation and surge-relief valves, air-relief valves, and surge tanks. Discharge piping and the force main shall be analyzed by the Design Engineer, who is then responsible for preparing a surge analysis which documents surge aspects of the installed system.

H. Vents and Drains

Manual vents and drains shall be provided at all high and low points in the piping and at all locations required to facilitate draining and filling equipment or piping for maintenance. A 1/4-inch gauge cock shall be provided on the top of the volute discharge to allow removal of air after servicing and prior to putting pumps in the dry well pump back in service. This vent line shall be plumbed to discharge to the wet well or sump pump. Vaults containing valves and meters shall drain by gravity to the wet well.

I. Flow Meters

Unless waived or otherwise approved by the Owner, a properly sized magnetic or transient-time flow meter shall be installed on the pump station force main inside the station, or in a shallow vault located in the yard. Meter sizing shall take into consideration installed capacity, flow ranges, and future capacity of the station. A drainable bypass around the flow meter shall be provided for use during meter maintenance and repair. Flow meters shall be installed on all stations with variable-speed pump controllers.

J. Gauges

A pressure gauge shall be installed on the suction and discharge side of each pump that is installed in a dry well, and in the valve vault on the discharge side of each submersible pump. Discharge gauge range shall be adequate to measure the shutoff head on the pump. Suction-side gauges shall be compound type.

Gauges shall be mounted on suction and discharge piping immediately adjacent to the pump, without intervening check or isolation valves. Permanent gauges on pumps under 5 HP may be waived at the Owner's discretion. The standard mounting for gauges in sewage service shall be a flanged, liquid filled, annular seal, designed to protect the gauge from sewage contact.

Alternatively, gauges may be side-mounted on a pipe saddle in horizontal position, following a normally closed horizontal isolation valve. Isolation valves shall be stainless steel ball valves.

Assemblies for side-mounted gauges shall be installed using ½" Schedule 80 stainless steel pipe. Each side-mounted gauge shall be protected with a diaphragm seal. A drip leg shall be provided below the seal, containing a normally open drain valve.

Both annular and diaphragm seals and gauges shall be liquid filled, with suitable taps, gauge cocks, and pressure relief. Gauge face size, units, and style shall be as approved by the Owner.

As a special requirement of the Owner, pressure transducers may also be provided for suction and discharge pressure monitoring, and shall provide 4 to 20 milliamp (mA) signals to a programmable logic controller or wastewater SCADA system. Transducers shall be adequately supported for vertical and lateral support.

Mounting assemblies for pressure transducers shall be similar to those required for pressure gauges. Gauge and transducer assemblies may be configured on a single manifold, if desired, allowing independent isolation of each component, provided that they are mounted on a flanged annular seal.

K. Piping and Fittings

Piping less than two inches in diameter connected to the wastewater piping shall be 316 stainless steel or PVC. Screwed pipe shall be minimum Schedule 80. Galvanized steel piping shall not be allowed except for seawater, tapwater, and potable applications.

L. Supports

All pipe supports shall be painted to match the piping and shall have a grouted base of at least 1½-inches. Properly located and sized pipe supports shall be provided. No loads shall be transmitted to pump flanges.

All pipe restraints shall be designed to resist maximum expected surge and earthquake forces. Pipe restraints shall be adequately anchored for vertical and lateral support.

Base ells shall be installed on pedestals at vertical ells. Base ells shall not be required to provide any horizontal thrust restraint.

M. Cleaning of Force Main

Force mains less than 300 feet shall be cleaned by conventional methods provided there is access from both the discharge manhole and the station and discharge force main. Pig launch and retrieval systems shall be provided at all other stations, unless waived by the Owner as not being required, particularly at stations equipped with variable-speed drives.

The minimum acceptable system for package-type stations is a camlock type connection with an isolation valve. This type of pig-launcher connection may be acceptable to an Owner equipped with a portable sewage pump that has total dynamic head and flow capacities exceeding the proposed pump station. For other package-type stations and site-built stations, a pig launch system shall be provided that is permanently piped to utilize the station's installed sewage pumps.

N. Galvanic Corrosion Control System

Corrosion control equipment shall be provided as needed to adequately protect the station piping, force mains, and downstream sewers for the design life of the facility.

Galvanic corrosion control systems shall be designed, inspected, and tested by a corrosion control engineer. Design shall include an impressed current system with rectifiers, insulation flange kits, and pipe-flange bonding wires for continuous bonding. Nylon insulation bushings are to be installed between all dissimilar metals in piping (i.e., brass fittings connected to manifolds), between pumps and inlet, and discharge piping, so as to insulate from inductance current caused by motors.

An electrolytic insulating blanket shall be provided on all corrosion-protected pipelines installed near corrosion-protected natural gas lines. A separation of 25 feet or greater, if required by corrosion control design or the gas utility, shall be maintained between pipelines installed parallel to corrosion-protected natural gas lines. Where lines cross, the electrolytic blanket shall extend 25 feet on either side

of the pipeline at the crossing or greater if required by corrosion control design or the gas utility.

O. Airborne Odor Control System

The Design Engineer shall conduct an odor control evaluation of the upstream collection system, wet well, and discharge system. The odor control system shall include minimizing or preventing production of odorous compounds, treatment of odorous compounds, containing and treating foul air, and enhancing dispersion of foul air. The Design Engineer shall design an odor control system, when required by the Owner, in accordance with current practice and the Owner's preference.

P. Dissolved Hydrogen Sulfide Controls

Dissolved H₂S concentrations discharged from force mains into gravity sewers shall be consistent with a design life of 75 years for concrete manholes and concrete or ductile-iron sewers. To prevent premature collapse of pipelines and manholes, and to minimize odor problems and employee hazards, the H₂S content of force mains shall be designed to remain below 0.1 mg/l at 20° C at the point of discharge into a gravity sewer system.

H₂S controls shall be provided to meet this standard where warranted, either designed for summer operation, or year round, as necessary. H₂S controls shall be provided for all stations where the anaerobic detention in a force main averages more than 35 minutes during low-flow periods in July-August-September. Detention time shall be computed as the volume contained in the force main divided by the average daily flowrate that is tributary to the station during July, August, and September.

Backdrainage

Where feasible on ascending mains of moderate size and length, H₂S controls should preferably consist of an inexpensive backdrainage system to drain the entire force main automatically on a daily basis. The design of the wet well must be oversized to accommodate the contents of the force main.

Backdrainage systems shall employ a full-port pneumatic pinch valve or electrical plug valve wired to close during pumping, and to reopen when the pump stops. To minimize excessive re-pumping, an adjustable timer may be installed to prevent the valve from opening for a period of 60 – 120 minutes after pump operation.

Solenoid valves may be installed on pneumatic lines, but shall not be used in place of pinch or plug valves on sewage lines.

Backdrainage valves shall be installed in a shallow vault at an elevation which permits the entire forcemain to drain empty. A manual isolation valve shall be installed to permit maintenance of the valve without disrupting pumping operations.

Electrical operators for plug valves shall be explosion-proof type where required by code for installation in a valve vault.

Air Injection

Alternatively, where backdrainage of a force main is not feasible, continuous air injection should be considered to prevent anaerobic conditions from developing. The design air delivery shall be at a rate of 2 standard cubic feet per minute (SCFM) per inch diameter of force main. Air injection systems shall be designed for continuous injection, and shall be installed without timers.

Force mains utilizing air injection for sulfide control shall be constructed of plastic, plastic-lined steel, or plastic-lined ductile iron, and shall not be fitted with air-release valves. Temporary blow-offs that may be installed at high points for acceptance testing shall be capped or plugged prior to placing the main in service.

Pumps shall be sized to pump against the head of the pressurized force main. Due to absence of air-release valves in a pressurized main, static head on the pumps shall be computed as the sum of all ascending segments in the main. Vertical undulations in pipe and bedding during the installation of a pressurized force main must be prohibited during construction, unless accounted for in the static head calculation and accommodated in sizing the pump.

Static head at the air injector shall be computed as the sum of all ascending segments, including pipe undulations caused during construction, that are downstream from the injection point. The ascending pipe segments between the pump and the air injector tap should be disregarded for the purpose of computing the actual air injection rate and sizing air injection controls.

Design calculations for sizing the compressor, receiver, and controls shall address both standard airflows and actual airflows under static pressure. Design calculations shall include a schematic profile of the force main based on surveyed topography and the proposed installation.

Air injection equipment must be fully gauged, metered, and adjustable. The pressure regulating valve between the compressor receiver and the airflow meter shall be adjustable between the working pressure of the receiver and the static head on the injector. All compressor receiver tanks shall be fitted with an automatic

condensate purge. Airflow meters shall be rotameter type. Airflow shall be trimmed using a needle valve or equivalent control valve.

Rotameters shall be sized for actual airflow, and not for the theoretical airflow at standard temperature and pressure. Range of the airflow pressure gauge shall be based on the static head of the pressurized main at the point of air injection, instead of the dynamic head that would be attained during pumping. .

Due to heat, no plastic components shall be employed in the air injection system.. Rotameter tubes shall be pyrex body. The bottom of the vertical riser in the air piping which houses the rotameter shall contain a drip leg with purge cock. Air injection piping will normally be 1" annealed copper, unless otherwise approved by the Owner.

Due to the slow growth of sulfide bacteria, the mechanical and electrical design of air injection and backdrainage systems will not require redundant or standby equipment, unless stipulated by the Owner.

Chemical Controls

Where an economical air injection or backdrainage system is impractical or undesirable, chemical alternatives must be considered. However, the design of chemical addition systems which do not prevent the growth of sulfide forming bacteria systems must conform to EPA Class I reliability with respect to component redundancy, standby power, and failure alarms. Chemical systems to be considered include solution feeders for calcium nitrate, hydrogen peroxide, hypochlorite, and potassium permanganate. The selection of chemical controls shall be based on the recommendation of the design engineer, subject to the Owner's approval.

Systems shall be designed for continuous feed to maintain the H₂S concentration of the force-main discharge below 0.1 mg/l at all times. Systems shall be complete and operational, including all tankage and spill containment, pumps, piping, valves, gauges, meters, recorders, control panel, electrical systems, controls, and failure alarms.

Sewer and Manhole Coatings

For extremely small discharges or low-sulfide situations arising from detention times of less than one hour, the durability of the system may be sufficiently protected by installing a corrosion-proof armoring or durable acid-proof coating to the downstream gravity sewer system.

Headworks Controls

For long force mains which discharge directly into the headworks channel of a treatment plant, the corrosion hazard is minimal, compared with gravity sewers. However, the Owner may desire some degree of sulfide control to minimize nuisance odors and gas hazards at the plant. Ferrous chloride or calcium nitrate solution should then be injected into the wet wells of pumps discharging into a treatment plant headworks, so as to reduce sulfides to a range of 1 - 2 mg/l. Such systems are non-critical, may operate seasonally, and may not require a Reliability Class I design approach unless stipulated by the Owner.

VII. Structures

A. General

All structures and equipment shall be designed per applicable Codes. The seismic importance factor for wastewater pump stations shall be in accordance with the UBC and local municipal standards. Proper anchorage including seismic design requirements shall be provided to tie the related structure walls to the foundation and the roof to the walls.

The purpose of the structure is to provide a protective environment for the equipment, controls, and appurtenances. Structures will not normally be occupied. All equipment shall have adequate clearance from other equipment and walls to allow performance of maintenance and repair work.

All electrical, control, and instrument panels have a minimum 42-inch clearance in front of the panels, or greater if required by Code. All freestanding panels shall be set on a three-inch or higher concrete curb. All wall-mounted panels shall be affixed to the wall at an elevation that allows easy accessibility, generally 4 to 6½ feet.

A plastic vapor barrier shall be provided under the pump station structures. Waterproofing shall be provided on the exterior buried walls of the structures. Water stops shall be installed at all cold concrete construction joints. Seals at piping and conduit wall penetrations into the station shall be watertight.

Noise from electric motors, pumps, generator, and fans shall be controlled to the satisfaction of the Owner and adjacent property owners. The engineer shall use an effective combination of barriers (building walls, sound-deadening panels, etc.) and sound-absorbing material to reduce noise to a level that is acceptable to them.

B. Buildings

Pump station buildings should be suitable for the intended service, site, and neighborhood. For example, unless otherwise approved or required by the Owner, above-grade building walls shall be gray, split-face block or precast concrete construction, with pattern, color scheme, and roofline as required by the pump station location and land use ordinances. Interior walls must be suitable for wet environment where washdown may occur.

The engineer should review station requirements with the Owner prior to design. Normally the standard wet well-dry well pump station should include at least three separate rooms: a pump room, a control room, and a generator room. As an alternative, the generator may be housed in an approved outdoor enclosure. The generator room may be eliminated, at the Owner's discretion, where a portable generator can provide standby power of sufficient reliability.

Buildings for submersible pump stations shall consist of two separate rooms: a control room and a generator room. However, where the Owner can provide reliable standby power with a portable generator, an above-grade structure is not required for submersible pump stations.

For all stations having an above-grade building, a restroom should be provided unless otherwise approved by the Owner.

C. Wet Well

The wet well shall be constructed of shrinkage-control concrete mix with low specific conductivity and suitable for wastewater storage structures. The pump station shall be designed to provide a self-cleaning wet well. Wet well bottom hopper walls shall be sloped a minimum of 45 degrees, and ideally 60 degrees, to the inlet of the pumps.

All equipment and fixtures in the wet well shall be explosion proof and corrosion proof. Corrodable metals including galvanized steel, brass, aluminum, and zinc-cadmium plated steel shall not be used in wet wells.

Unless otherwise approved by the Owner, the wet well shall be isolated from the inlet gravity sewer to allow for maintenance of the wet well.

Inlet discharge into the wet well shall not be lower than the pump high-water alarm elevation. Unless otherwise approved by the Owner, the inlet shall discharge onto a shelf or fillet with noncascading discharge into the wet well. Location of the inlet discharge shall provide for proper flow patterns to each pump suction. The wet well shall be designed to avoid vortexing, approach velocity imbalance, cavitation, and low local velocities.

The wet well shall be designed to prevent septic action from taking place during periods of extreme low flow. The dissolved hydrogen sulfide content of the wet well shall be maintained below 0.1 mg/l.

A steeply sloped incoming sewer entrance with a trench-type wet well, designed to create a hydraulic jump for self-cleaning, may be provided at the Owner's discretion. Such designs must provide adequate storage volume in the approach sewer and wet well to operate a trench-type wet well.

Stations without on-site standby generators or a second source of power shall be designed for a minimum one hour of holding time at the 5-year peak hourly design flow. Inlet sewers shall not be used to provide wet-well storage, except for linear self-cleaning designs.

Bar racks or inlet grinders may be special station requirements of the Owner, as may arrangements where the wet well is split into two compartments. Each compartment shall then be designed with an independent level control system. Approximately one-half of the station pumping capacity shall be connected to each compartment, isolated by a slide gate. The station shall be designed to operate with either half of the wet well out of service.

D. Dry Well

The dry well shall be constructed of concrete at site-built stations. At package-type stations, the dry well shall be constructed of concrete or steel.

Adequate cathodic protection shall be provided for steel dry wells. The standard for cathodic protection of permanent pump stations shall be impressed current, as designed for each specific site by a qualified corrosion engineer.

At the Owner's discretion, "temporary" pump stations which will be abandoned or removed and salvaged in the near future may be protected using an adequate number of sacrificial metal anodes with a suitable test station.

E. Floors and Roof

Elevations of pump station ground-level finished floors and the top of submersible pump station wet wells shall be designed for a minimum of two feet above the 100-year base flood elevation.

Interior concrete floor surfaces shall be protected with a sealer-hardener coating. Nonskid-type floor coatings shall be provided around pumps and equipment where maintenance will be performed.

Floors shall be sloped to floor drains or sumps at a slope of not less than 3/8-inch per foot (3%), or greater where warranted. Floor drains or gratings shall be located to minimize drainage across the floor. Floor drains shall be provided in every room except generator and control rooms.

Floor gratings shall be made of galvanized steel, aluminum, or fiberglass-reinforced plastic, as approved by the Owner.

The roof for aboveground structures shall be a metal or wooden truss system with commercial-grade standing seam metal roofing, unless otherwise approved by the Owner. Selection of pitch and colorations shall harmonize with the surroundings, subject to Owner approval.

If access to the roof is required for removal or maintenance of equipment, fall-protection anchors must be located where personnel can attach to anchors before stepping on the roof. In the area of the roof access hatch, the roof surface shall provide for traction and adequate footing for safety.

F. Doors, Windows, Stairs, Ladders, and Hardware

Unless otherwise approved by the Owner, the pump station shall have pressed-steel, insulated, continuously welded, hollow metal doors and frames. Exterior doors shall be 16-gauge construction with 14-gauge frames. Access to the pump room, generator room, and wet well access room shall be through an exterior door.

Door pulls, cover plates, and striker plates shall be stainless steel. Locks shall allow personnel to secure the door from the inside to provide security for personnel while performing maintenance operations. The contractor shall provide locks with interchangeable-type cylinders that can be keyed to the Owner's standard. Locks shall be deadbolt type as manufactured by Best Universal Lock keyed to the Owner's standards, or approved equal. The Owner is responsible for changing out the lock core after construction is complete.

Double access doors shall be provided for access to the wet well. All internal areas of the wet well shall be visible from the access doors. Hatches shall be installed with either safety webbing across the hatch opening or removable handrails that can be placed in chocks around the opening, according to the Owner's preference.

Dry well access shall provide for removal of the equipment installed in it. Doors, hatches, and access shaft shall provide for removal of the largest piece of equipment. The full-size access hatch and shaft shall be minimum 36 inches in diameter.

No exterior windows shall be provided, unless required by the Owner.

A stairway for access into an underground pump station dry well shall be installed instead of a ladder. Stairways instead of ladders shall also be constructed between floors of a pump station where applicable and feasible.

Ladders shall be stainless steel, anodized aluminum or fiberglass reinforced plastic, as approved by the Owner. Provide handrails or a safety post that extends three feet above the ladder for safe access onto the ladder.

Also provide a safety climb rail (ladder full protection system) for use with a full-body safety harness per the Oregon OSHA standards where use of a tripod retrieval system is not feasible. Unless otherwise approved by the Owner, provide the Oregon OSHA standard tripod with a full-body safety harness.

Provide railings around access openings in the floor inside pump stations for safety. Areas around any confined space entry shall be designed to be suitable for use of the Owner's retrieval equipment.

Permanent access ladders and manhole steps shall not be installed in wetwells.

G. Painting

Pumps, piping, and appurtenances shall be painted with an epoxy enamel and colored according to the following chart:

ITEM	COLOR OF PIPING	COLOR OF LETTERING
Pumps	OSHA Safety Blue	n/a
Potable Water and Valves	Light Blue	Black
Non-Potable Water	OSHA Safety Red	n/a
Industrial and Seal Water System Water	Dark Blue w/Red Bands	White
Air Compressor	Instrument Air	n/a
Odor Control System	Dark Green w/Light Brown Bands	White
Drive Shaft Guard Cage	OSHA Safety Red	n/a
General Hazardous Equipment	OSHA Safety Red	n/a
Overhead Crane Rail/Lifting	OSHA Safety Yellow	n/a

ITEM	COLOR OF PIPING	COLOR OF LETTERING
Hook	w/Black Striping	
General Warning—Equipment	OSHA Safety Yellow	n/a
Outside Parking Post (Bollards)	OSHA Safety Yellow w/Reflectors	n/a
Ventilation System	White	n/a
Electrical Conduit	Dark Green	n/a
Generator	Manufacturer's Standard	n/a
Generator Exhaust	Heat Resistant Aluminum	n/a

Paint scheme for other equipment shall comply with the *Scheme for Identification of Piping Systems* (ANSI A13.1).

Identification of piping and other utility lines shall include the use of pipe markers that indicate the type of utility line and the direction of flow. Moving parts of operating units, mechanical and electrical parts, and motor or fan shafts shall not be painted. Code-required labels, or any equipment identification, performance rating, name, or nomenclature shall not be painted.

Copper, brass, and stainless steel shall not be painted. Stencil the weight on all major equipment, including wastewater pumps and motors and all other equipment over 500 pounds.

Unless waived by the Owner, the exterior and interior surfaces of building walls and interior surfaces shall be painted with two coats of 100 percent acrylic latex in an approved color consistent with the pump station location and zoning ordinances.

A sacrificial, clear anti-graffiti coating shall be applied to all exterior vertical building walls.

H. Equipment Removal

Pump Room

A load test certified electric hoist and trolley or approved equal shall be provided in the pump room above the dry well, as the Owner's preferred method for moving equipment. These preferred criteria are subject to waiver at the Owner's discretion, based on pump

size and station layout and accessibility. The rated capacity of the hoist shall be stenciled on the rail and clearly visible.

Design shall ensure adequate horizontal and vertical clearance between the overhead crane hoists and other installed equipment to allow for lifting and moving of motors and pump equipment to the station doors via the monorail.

Hoist and trolley shall utilize fastened or retractable power cords to supply power to the unit as it moves along from the wall. The hoist and trolley shall have two speeds and be controlled from a pendant-type controller.

Stations Without an Above Grade Structure

If the weight of the pump exceeds the Owner's truck-mounted crane capacity, or if site constraints restrict use of a truck-mounted crane, a hoist-jib crane shall be provided at the station. It shall be capable of lifting, removing the equipment from the below grade structure, and loading the equipment onto the Owner's maintenance vehicle.

Design shall ensure adequate horizontal and vertical clearance between the hoist and other equipment.

Generator Room

For installations with a generator room installed at the time of building construction, eye-bolts shall be installed for assisting with maintenance and repairs of the generator. If eye-bolts are not installed, a portable hoisting system for generator maintenance and repairs shall be provided.

I. Bulletin Board and Reference Shelf

Unless waived by the Owner, a three-foot x four-foot bulletin board shall be provided in the control room for posting operating information with an adjacent shelf to hold Operations and Maintenance Manuals and other reference data. Each shall be placed in a suitable and functional location, as approved by the Owner.

J. Fire and Safety

Appropriate safety warning signs shall be posted near all hazardous equipment in plain unobstructed view and shall include warnings for automatic starting of pumps, generator, and other equipment. Adequate and safe access shall be provided to all equipment. Smoke detectors shall be installed in every room and the alarms shall interface with the station alarm telemetry system. Fire extinguishers rated for class A, B, and C fires shall be provided in the pump room, control room, and generator room. Install a fire

suppression system per National Fire Protection Code requirements in the generator room.

VIII. Mechanical

A. HVAC

Stations with pumps in a dry well shall be designed with ventilation systems for the dry well to be a Class 1 Division 2 classification per NFPA 820. At a minimum, separate ventilation systems shall be provided for the wet well and dry well. Interconnections between the dry well and wet well ventilation systems are not allowed.

All equipment in the wet well and dry well shall be classified according to NFPA 820. The dry well shall be designed for a minimum of six air changes per hour. Dehumidification equipment shall be provided in the dry well to protect equipment located there. At stations with a dry well, the wet well shall be designed for a minimum of 12 continuous complete air changes per hour. At stations where submersible pumps are installed in the wet well and there is no structure above the wet well, a passive ventilation system is standard.

The HVAC system shall provide for the protection of the equipment in the control room or exterior-mounted control panel. The HVAC system in the control room shall be for the entire room and not for the individual cabinets. If a generator room is provided, a separate ventilation system shall be provided in that room. The ventilation system in the generator room shall be designed for cooling of the operating generator. The ventilating system shall maintain operation following generator shut-down and cool-off to provide for operators to occupy the room.

The amount of heat necessary for the station is that amount required to keep pipes and other water containing equipment from freezing. An indoor temperature of 54°F and an outdoor temperature of 10°F should be used for heating design, unless otherwise stipulated by the Owner. Heating of the wet well is not required.

The amount of cooling required shall be based on equipment motor and device requirement. Ventilation shall be adequate to ensure that equipment motors and devices, including sensitive electronic equipment, are operated in their intended design temperature range.

Ventilation openings shall be screened with a sufficiently fine mesh to prevent entry by birds, rodents, snakes, and bugs.

B. Plumbing

Potable water service for use at the station shall be provided from a metered 1½-inch copper service connection, or as approved by the Owner. A reduced pressure backflow prevention device shall be provided on the water service as required by OAR 333-61-070. A backflow preventor shall be provided for the hose bibb used for wet-well washdown, isolating it from all other water usage at the station. If the reduced-pressure device or backflow preventor is located outside of a structure, it shall be insulated and heat traced.

In the pump room, at least two ¾-inch hose bibbs shall be provided, unless otherwise approved by the Owner. Hose bibbs shall be located a minimum of five feet away from any electrical equipment. One hose bibb shall be installed inside the aboveground structure near the access doors for interior-exterior use.

One hose bibb shall be installed for wash down of the wet well. Each hose bibb shall be provided with a hose rack with 75 feet of approved hose. If hose bibbs are installed outside of the building, locking hose bibb covers shall be provided.

Safety showers and eye wash stations shall be provided wherever chemicals are used requiring such safety equipment.

C. Drainage

The building drainage system shall consist of floor drains and hub drains with cast iron drain pipe, unless otherwise approved by the Owner. If required, a holding sump and sump pumps shall be provided. The drainage system shall be designed to handle drainage from the pump seals, air release valves, and housekeeping. Vaults containing valves or meters shall be drained by gravity drains or sump pumps to the wet well.

D. HVAC Performance Test

Unless waived by the Owner, a certified performance test of the ventilation system shall be performed is prior to acceptance of the station.

IX. Site Improvements

A. Access

Vehicular access to pump stations shall have a 24-foot-wide public right-of-way and a minimum 16-foot-wide paved road at a 15 percent maximum slope, unless otherwise approved by the Owner. Site layout of the pump station shall take into consideration vehicle access. Provisions shall be made for adequate turning radius and room for outriggers for the Owner's equipment, such as a dump truck, backhoe, and crane truck required for the removal of equipment.

Access shall be provided around the entire perimeter of the pump station for required maintenance equipment. For completely buried stations, room shall be provided to access hatches and vents with equipment, including adequate clearance from overhead power lines to allow for safe operation of a crane. Parking space shall be provided for two maintenance vehicles.

Pump station access hatches, vaults, manholes, and equipment, including pad-mounted transformers, shall be located to minimize access problems. Access for maintenance trucks shall be provided at all manholes and vaults.

Above-grade equipment and piping shall be protected by bollards. A concrete pad shall be placed around vaults which is suitable for confined space personnel-retrieval equipment. Vaults shall be designed for expected vehicle loading, with a minimum H-20 loading. Site layouts must allow maintenance vehicles to access the site when the vaults are open.

B. Vaults and Manholes

Vaults, manholes, and drains shall be located inside the fenced pump station site. Vaults shall be designed for the expected vehicle loading with a minimum H-20 vehicle loading.

Vaults shall be provided with standard lockable, spring-loaded, double-leaf access doors, and fitted with a safety net system.

If feasible, vaults shall be designed to avoid designation as a confined space. Areas around any confined space entry shall be suitable for use of standard retrieval equipment.

Vaults that are six feet and deeper shall have stairways or installed ladders with extensions per OSHA standards.

C. Landscaping

Landscaping and irrigation systems shall meet the requirements of the Owner.

If an automatic irrigation system is required by the Owner, the controls should be inside the pump station aboveground structure. If no aboveground structure is provided, then the controls for the irrigation system should be housed in a lockable enclosure.

D. Fencing

Unless otherwise approved by the Owner, pump station sites should be enclosed by a fence, or other approved enclosure. A double-leaf gate should be provided that is wide enough for all vehicles and equipment accessing the site.

Fence webbing or other screening may also be required, at the Owner's discretion.

E. Drainage

Building internal drains shall connect to a sanitary sewer or the station wet well.

Vaults shall be drained to the station wet well by sump pumps, or through gravity drain lines fitted with a discharge flap-gate.

All gravity drains shall be trapped with a P-trap. P-traps need not be primed, unless a trap-priming system is required by the design Engineer, Owner, or plumbing inspector.

Building roof drains and site drains shall connect to the stormwater system. On-site stormwater detention shall be provided, if required by the permitting agencies having jurisdiction.

An emergency overflow pipe from the wet well is recommended to minimize the potential for sewage contact under extreme conditions exceeding the design capacity of the station. Overflow pipes shall be installed in the wet well as high as possible without causing a sewer backup or basement flooding, and shall be equipped with a dedicated overflow alarm.

X. Electrical, Controls, and Instrumentation

A. General Criteria

All instrumentation, controls, and alarms shall be integrated with the Owner's existing systems, unless otherwise approved by the Owner. If this includes a programmable logic controller or SCADA system, then the Design Engineer shall coordinate and comply with the Owner's requirements.

All panels, equipment, and materials shall bear the Underwriter's Laboratories label or Factory Mutual rating as applicable. All design, materials, and installation shall comply with the NEC, NFPA, UBC, and other applicable local Codes.

The project design engineer shall verify during design that sufficient electrical service capacity for the planned build-out condition is available at the site, and that space for it is provided.

Control circuit design drawings shall be represented in a power-off position. In a control power-off position, the manual or automatic controls shall not allow the start of any

pumps. The pump controller shall include a control power on/off switch so that in a control power-off condition the manual or automatic controls shall not allow the start of any pumps.

Unless waived by the Owner, pump control and alarm circuit diagrams shall be included in the design plans and shall include the following identification to aid in reading the diagram:

Buss #, wire #, switches (pressure, temperature, H-O-A, etc.), relay contacts, relays (control, alarm, time delay, etc.), buss #, control description label , and # of control relay contacts. In the design plans, provide a relay schedule adjacent to the diagram indicating the function of each relay.

The Design Engineer shall assign the contractor responsibility for labeling all wires and control devices inside the control panel, or on the face of it. All labeling shall be in accordance with the Owner's specifications and direction.

A pump-control-sequence description shall be prepared by the Design Engineer. The sequence shall be included in the design specifications and the Operations and Maintenance Manual.

B. Lockout Safety

Removable disconnects shall be provided in the main panel to ensure open circuits for safety while working on switch gear. Alternatively, provide circuit breakers with a lockout tag out safety switch handle to provide a switched disconnect of power for use during maintenance operations on machinery.

C. Circuit Breakers

Specify magnetic motor protector application circuit breakers with adjustable trip setting and built-in ground fault protection in accordance with sizing deemed required by the site electrical provider.

D. Switch Gear Rating Coordination

The circuit breakers shall be designed so that the main circuit breakers will not trip when a supplied breaker is overloaded. The current interrupting capacity rating of switch gear including the main service breaker, circuit breakers, and the transfer switch shall be coordinated per NEC requirements.

E. Power System Monitoring

Power System Monitor shall be as approved by the Owner.

F. Ground Fault Protection

The specification shall require the contractor's bid to include the services of a competent independent contractor who will test and provide written certification of complete ground-fault testing and verification.

G. Junction Boxes

Junction box connections for the pump power cable shall be located above flood elevation at stations with dry wells. Junction box connections for the pump power cable shall be located out of the wet well, sealed at both ends with duct seal, and accessible for maintenance at submersible pump stations. Conduits for power cables for submersible pumps installed in a wet well shall be oversized to facilitate maintenance.

H. Motor Starter Design

All motor starters shall be equipped to provide under-voltage release and overload protection on all three phases. Motor starter coil and contacts shall be easily replaceable without removing the motor starter from its mounted position or without the removal of the phase conductors. Fuses shall be provided on the primary and secondary sides of the control power transformers and separate power control transformer for each motor starter.

Motor starter circuits shall be designed to allow operation of the circuit in HAND mode, should failure of the programmable logic controller occur. The circuit interlocks, including the over-temperature and starter-overload contacts, shall be hard-wired in HAND mode outside of the programmable logic controller. The control circuit shall be designed so that an alarm does not result for an H-O-A switch selection of OFF or HAND mode, or upon lockout of the circuit breaker.

Soft-start reduced voltage type solid-state motor starters shall be required on all pump motors, unless otherwise approved by the Owner. On larger capacity stations, also provide manual bypass contacts with soft-start, allowing for manual operation of the starters should solid-state starter controls fail.

I. Motor Control Center Switch-Gear Equipment

Unless otherwise approved by the Owner, motor control center switch-gear equipment shall be factory-assembled sections. All motor control center circuit breakers and motor starters shall be NEMA-approved equipment consistent and compatible with their location and use.

Each motor shall have an individual disconnect and shall have provisions for lock-out and tag-out.

J. Wiring and Buss Bars

Stranded copper wire shall be used for all power and control wire sizes; solid copper wire is not acceptable. No aluminum wire shall be allowed for any station wiring.

The motor control center and other control panels shall have buss bars and connectors constructed of tin-plated solid copper. Split buss shall be provided at very large stations, and stations where the approved standby power is not sufficient to supply the full load of the station.

All wires shall be permanently labeled in a manner as approved by the Owner.

K. Seismic Braces

Seismic braces shall be installed on all electric service cabinets and other freestanding equipment per Code requirements. Details of the seismic braces shall be included in the design drawings.

L. Service Panel

The service breaker panel for lighting and auxiliary equipment shall have balanced loads within 15 percent for each phase.

The panel shall have its own transformer and not rely on a transformer in the control panel for service voltage.

All circuit breakers shall be labeled in accordance with the NEC.

Panels shall have 25 percent spare circuits for future use.

M. Electrical Conduit

Underground conduit shall be in accordance with the NEC.

Indoor aboveground conduit shall be rigid galvanized steel with sealed fittings. Liquid-tight flexible conduit shall be used at motor terminations and all other locations where required by Code.

N. Electrical Outlets

For operation of miscellaneous station equipment or power tools, provide 20-amp, 120-volt electrical outlets with ground-fault protection. All outlets shall have wet-location gasketed covers to protect against splashing.

O. Equipment Grounding Conductors

Equipment grounding conductors shall be run to each motor and properly bonded to the motor frame. Conductors shall be one continuous length, with no splices, and sized according to the latest NEC requirements. Conductors shall be grounded to the grounding buss at the motor control center. All other metallic devices shall also be properly grounded.

P. Fail-Safe Design Alarm Relays

Alarm relays shall be designed to be energized during normal pump station operation. Relay fail-safe design shall alert operators through the wastewater alarm system should an alarm condition occur that de-energizes the alarm relay as designed, or should an alarm relay fail and de-energize.

Where electro-mechanical relays are installed, standard relays with bayonet base mounting shall be provided to simplify replacement of defective units.

Q. Pump Station Control Circuits

The project design engineer shall contact the Owner's staff to review the applicable requirements, as established by the Owner:

- Alarm relays shall be normally energized-type relays (i.e., fail-safe).
- Control relays shall be normally de-energized (i.e., energize to initiate control functions).
- Provide hard-wire motor starter circuit including interlock protection devices (i.e., hard-wire logic not part of programmable controller programming) to allow manual control of pumps when programmable logic controller failure occurs.
- Check valve open signal from limit switch prevents pump start at call signal.
- Pump fail alarm and pump shutdown if check-valve limit switch does not actuate within specified adjustable time delay at pump startup.

R. Pump Status Indication

For each pump include the following indicator lights: pump call (white); pump running (green); pump off (red); and pump failure (flashing red), unless otherwise approved by the Owner.

All indicating lights shall be connected to a push-to-test button to test for proper functioning of the bulbs. Indicator lamps shall be either transformer or diode-type device.

Provide an externally non-resettable elapsed time meter for each pump in service.

S. Alarms, Telemetry, and SCADA

Separate alarms and discrete alarm points shall be provided for sewage overflow level, high wet well level, and loss of standby reserve capacity, which occurs when the reserve pump or standby pump is called to RUN.

The overflow alarm enables the Owner to meet DEQ requirements for immediate reporting of a sewage overflow. The loss of standby reserve capacity, defined as simultaneous operation of all installed pumps, shall also be alarmed. Each occurrence of this alarm condition indicates a potential sewage overflow. For that reason, they should be reported to DEQ on a monthly basis, indicating the status of system reliability.

The loss of standby alarm shall be initiated with a call for the reserve pump or "last pump", resulting in all pumps running. To avoid nuisance alarms, this function should be disabled whenever the station is attended. Kill switch for the alarm may be either manual or automatic, at the Owner's discretion. A "high water" alarm level in the wet well will not be accepted as a substitute for alarm conditions involving simultaneous operation of all pumps or overflows.

The Owner may require additional alarms to facilitate operation and maintenance. Consideration should be given to alarming the following:

- pump vibration and temperature
- low wet well level
- dry well flooding
- intrusion
- check-valve failure to open
- seal water pressure failure
- loss of utility power
- standby generator failure to start or energize
- chemical feed failure
- volatile gas detection
- air or instrument compressor failure

Station status and alarm conditions shall be displayed on the station panel view.

All alarms shall be transmitted to the Owner's operations staff by means of an autodialer or radio telemetry system.

Supplemental alarm lights may be installed at the station. Audible alarms shall not be installed in residential areas.

T. Alarm and Control Relay Resets

Provide an alarm push-button reset. Reset of alarm indication or conditions shall not occur automatically after an alarm condition clears unless otherwise programmed by the software.

U. Backup Power

For stations without a dedicated backup generator or a secondary electrical feed, install a manual transfer switch and an emergency plug-in power connection to the station for use with an approved portable generator. The plug-in connector shall be as approved by the Owner.

V. Standby Generator

A diesel-oil fueled, engine-driven electric generator unit shall be provided for all pump stations, unless otherwise approved by the Owner.

Skid-mounted package generator units shall consist of an engine, alternator, controls, switchgear, and auxiliary systems suitable for installation inside a building. The generator unit shall be installed on spring isolation supports to reduce vibration from the unit into the foundation and for seismic protection. The generator unit shall be fully shop assembled, wired, and tested from a single engine-generator manufacturer.

Generator Unit

The electrical generator unit shall be designed with the following features, except as otherwise approved or required by the Owner:

- 1) The frequency output of the generator shall be 60 Hertz +/- 1 Hertz.
- 2) The voltage output shall be 480 volt, 3-phase, +/- 4.8 volts. The generator shall have a solid-state voltage regulator capable of maintaining voltage within 2 percent at any constant load from 0-100 percent of rating.

- 3) The generator shall be the brushless alternator type. All generator windings are to be constructed of copper only.
- 4) The generator unit shall have sufficient capacity to supply all starting current requirements of the firm station pumping capacity. Upon application of the rated load, the instantaneous voltage dip shall not exceed 20 percent of the load and shall recover to the rated voltage within one second.
- 5) The generator shall be provided with a unit-mounted circuit breaker.
- 6) The generator unit shall be provided with a permanently installed load bank equal to 100 percent of the capacity of the generator. The load bank shall utilize the radiator discharge for cooling.
- 7) In residential areas, provide a hospital-grade silencer and sound-dampened inlet air louvers to reduce engine noise at the property line. For pump stations in industrial and commercial areas, a critical-grade silencer may be allowed if approved by the Owner.
- 8) All exhaust piping inside the building shall be insulated and lagged and the cold face temperature shall be 150°F maximum. On the exhaust manifold, install a water drain trap and wrap the exhaust piping in non-asbestos insulation.
- 9) Oil fill system, oil pan spill dike, and oil drain line including hose extension shall be provided as part of the skid-mounted unit.

Fuel

The fuel tank installation shall be a double walled steel sub-base fuel tank on the emergency generator unit for 24 hours of operation at fuel pumping capacity load. The tank size shall be within allowable Code requirements. When required by Code, the fuel tank shall be installed in a protective vault located adjacent to the generator structure. All diesel storage tanks shall have a desiccant dry air filter on vents to prevent the condensation of water within the tank.

A large-capacity 2-micron combination fuel filter and water separator shall be included on the fuel line between the fuel tank and the engine.

The engine fuel injector control shall include an energize-to-run solenoid and an automatic throttle to close by spring tension upon stop signal, control system failure, or engine alarm.

Engine Unit

The engine unit shall be designed with the following features:

- 1) An air-cooled engine shall be provided where air cooled engines in the required horsepower are available and noise mitigation measures can be met. If a water-cooled engine is provided, it shall be furnished with anti-freeze.
- 2) The engine shall not be equipped with a turbocharger unless one it is required to provide an economically sized unit.
- 3) The maximum engine speed shall be 1800 RPM.
- 4) The engine shall be equipped with an oil-sump heater (for an air-cooled engine) or an engine-block coolant heater (for a water-cooled engine). The heater units shall be rated to ensure a preheating temperature of 100°F. The heater shall automatically disconnect upon engine start and run.
- 5) The battery shall be sized to provide sufficient charge for five cranking cycles, each a minimum of ten-second periods. The battery trickle charger shall be a float-equalize type. The charger output shall be sized to recharge the batteries to full charge within one hour after five automatic cranking cycles in a row. The charger shall be equipped with an ammeter and voltmeter to allow proper adjustment of the unit. The generator shall automatically supply power to the battery charger when it is operating and service power is not available.
- 6) The engine shall have an electronic speed governor that shall hold the engine speed to within ½ cycle per second of rated value.

Controls

The engine shall include the following instruments with analog or digital readouts for monitoring performance: oil pressure gauge; engine temperature gauge; RPM tachometer; and a non-resettable hour-run meter.

The panel shall be equipped with the following instruments to monitor the three- phase generator: voltmeter; ammeter; frequency meter; and panel illumination light.

Light-emitting diode-type panel lights shall be provided to indicate run status (as green lights), anticipatory warnings to the operator (as yellow lights), and failure conditions (as red lights) including the following conditions: emergency generator run status; engine failure due to overheat; low oil pressure; over RPM; low fuel; and low battery voltage.

A remote indicator shall be provided and installed in the control room to indicate run status and whether connected to operating load.

A push-to-test button shall be provided for testing all panel indicator lights.

A test/auto/off engine-control switch shall be provided to allow exercising the engine under load.

An automatic emergency shutdown shall be provided for the following conditions: over cranking, over speed, low oil pressure, and high coolant temperature. The controls shall be interlocked to drop the electrical load prior to the emergency shutdown. The engine starting controls and transfer switch shall include an unloaded generator cool-down delay.

An exercising timer shall be provided with the generator, providing for automatically or manually exercising the generator. A three-position MANUAL-OFF-AUTO selector switch shall be provided. The timer shall be a programmable timer designed to automatically exercise the engine-generator for a period of one to four hours per one- to seven-day interval.

The load bank control shall accept a contact from the automatic transfer switch that is closed when the utility source is normally operative and open when the utility source is inoperative. The load bank shall also accept a contact that is closed when the generator is running, and open when the generator is off. These contacts shall be interlocked so the load bank will not energize when the generator is connected to the plant load. In addition, the load-bank control shall provide a set of auxiliary contacts which open to inhibit the transfer switch from transferring to the generator source while the load bank is energized.

Selector switch in AUTO — Normal Operation

When the timer provides a signal to start the engine-generator, a maintained signal shall be provided to the engine-generator control panel. The load bank shall be energized if the generator is running, the voltage is within limits, the utility source is operative, and all other permissive conditions have been met. When the exercise is complete, the load bank shall de-energize. The engine-generator shall continue to run through the cool-down cycle. If the utility source is lost during the exercise period, the exercise circuit shall be disengaged, the engine-generator shall remain running, and the transfer switch shall connect the generator to the station load.

Selector switch in AUTO — Standby Operation

The exercise timer shall be disengaged during this period.

Selector switch in MANUAL — Normal Operation

The load bank shall be permitted to energize if the generator is running, the voltage is within the limits, the utility source is operative, and all other permissive conditions have been met.

Selector switch in MANUAL — Standby Operation

The exercise timer shall be disengaged during this period.

Transfer Switch — Automatic

The station shall have an interlock-protected emergency power transfer switch to automatically start the generator in the event of loss of any phase of power, reverse power, or low voltage brownout.

The transfer switch shall include time-delay controls for the following functions: prevent start-stop short cycling of the standby generator due to momentary dips in line voltage, transfer the load to the generator when it is at the rated voltage and frequency, return to line power with adjustable time delay when line power is restored, and initiate an engine shutdown. Note: provide programmed neutral time delay (i.e., adjustable 0-10 seconds to allow equipment to coast off before transfer) or in-phase monitor (i.e., large units to match generator-to-line phasing).

The generator shall have a disconnect plug and interlock at the transfer switch for isolation of the unit to prevent automatic operation during maintenance.

A load-sequencer control with four normally closed and four normally open auxiliary contacts for the control system shall be provided. These shall be capable of operating prior to transfer in either direction, so as to avoid control/alarm relay problems at transfer. If applicable, the Owner may require inputs to a wastewater SCADA system to indicate the normal condition (i.e., automatic transfer switch not switched to standby power source), transfer by the automatic transfer switch to standby power, generator run, and generator fail-to-run after an automatic switchover to standby power.

The automatic transfer switch shall be mounted within sight of the generator control panel or generator remote-status annunciator panel for ease of operation.

Transfer switch operation by a programmable controller is allowable.

Transfer Switch — Manual

A manual transfer system shall require the use of an enable key to sequentially open the line power service and then transfer it to the standby power service connection.

The Design Engineer shall ensure the transfer switch is rated at the same amperage-interrupting capacity rating as the line power service.

The following warning sign shall be posted in OSHA Safety Red color on the transfer switch panel:

“DO NOT TRANSFER POWER UNDER LOAD”

Maintenance Service Contract

A one-year service contract shall be required of the standby generator vendor, to be furnished by the contractor as part of their requirements as listed in the design specifications. This service contract shall include all routine service checks recommended by the manufacturer during the first year of operation. The contractor shall coordinate this work with the operations staff of the Owner.

W. Lighting

Provide motion detector exterior lighting on all four sides of the above grade structure with interior manual on/off switch. Low-level exterior evening lighting compatible with the surrounding area shall be provided mounted on a pole or above grade structure. Fluorescent lighting shall be used in the structure interior. No permanent lighting shall be provided in the wet well. An emergency battery-powered lighting system shall be provided in the station. Provide lighted exit signs at the station access doors that are interconnected with the emergency lighting system.

XI. Construction Management Specifications

A. Design Engineer’s Responsibilities

The Design Engineer, with concurrence of the Owner, shall specify testing, inspection, startup, documentation, and warranty work for the project. The Design Engineer shall have ultimate responsibility for inspection and certification of the quality and dependability of the facility, in accordance with ORS 468 and OAR 340-52.

The Design Engineer shall include in the project specifications suitable requirements for quality of construction, material testing, and inspection. Material testing shall be performed by a qualified testing service acceptable to the Owner.

Inspectors familiar with pump station construction (including electrical, mechanical, and structural construction) shall be provided during construction by the Design Engineer or his approved representative.

In all projects, the Design Engineer shall be assigned the task of writing the Operations and Maintenance Manual for the pump station, or for updating an existing station manual, as applicable. Manuals shall meet DEQ guidelines. By the 50% and 90% construction points, the Design Engineer shall provide draft and final manuals for submittal to DEQ.

The Design Engineer shall also be responsible for obtaining manufacturer's manuals and operating instructions from the contractor. The Engineer shall assemble them into an organized supplement or separate companion volume to the Operations and Maintenance Manual, for the use of the Owner.

The Owner shall be responsible for submitting one copy of the final manual, in a form fully acceptable to the Owner, to DEQ for review. The manual shall be submitted without the supplemental manufacturer's materials or instructions. The Owner shall be responsible for obtaining DEQ approval of the manual prior to authorizing startup of the pump station.

B. Coordination of New Construction at Existing Stations

During construction of an expanded or renovated pump station, the contractor shall be required by the contract specifications to maintain wastewater system operations at existing facilities. If this necessitates a temporary pump system, then its firm capacity shall be no less than the instantaneous 5-year peak flow tributary to the station. Temporary pump systems shall be furnished with standby power and alarms, and shall operate at EPA Class I Reliability.

Where temporary pumping at an existing station is required, the plans shall note the required construction sequence for pipe connections, pumps, and standby power requirements.

C. Pump Inspection

The Design Engineer shall provide services to confirm proper pump installation, as applicable to the project:

- Upon initial installation and prior to startup, conduct a "soft foot check" to verify proper installation of the equipment base plate to the concrete supporting structure.
- Upon initial installation and startup, measure the level of vibration. Submersible

pumps in a wet well shall be checked prior to submersion. As applicable in dry well stations, also check shafts for correct alignment, including parallel and angular misalignment, and shaft end-float.

D. Operational Testing

The Design Engineer shall include in the project specifications an operational test procedure to demonstrate the proper operation of all equipment at the station. This shall include simulated failure conditions to demonstrate the warning displays.

The contractor shall be responsible for performing all required operational tests under active inspection by the Design Engineer. The contractor shall be required to test and adjust all equipment after all construction is completed to ensure proper operation. The contractor shall field align and balance pumps and motors per manufacturer's recommendations. The Engineer shall coordinate and assist in resolving deficiencies during operational tests including all pump station mechanical equipment, electrical controls, emergency power operations, and control warning displays.

As applicable, the operational acceptance test shall include the following equipment run test demonstrations:

- Operate the pump station in hand or on automatic control for 48 hours without an equipment or control failure.
- Operate the generator under full load conditions using a resistance load bank as required for eight hours. The test shall be performed with the station access doors closed to test the ventilation system capacity.
- Provide certified performance testing of the ventilation system.
- Perform a hoist equipment load test and provide certification.

E. Field Acceptance Tests

During or immediately following operational testing by the contractor, the Design Engineer shall conduct and record all field acceptance tests. The following tests shall be performed on clean water:

- Measure total head at shutoff head for each centrifugal sewage pump. Note any discrepancy from the manufacturer's test curve. Show measured elevations and shutoff head calculations on a diagram for each pump, along with the manufacturer's pump curve. At stations without pressure gauges, the Design Engineer shall determine shutoff head using a temporary gauge mounted between each pump and its check valve.
- Measure total dynamic head, motor rpm, and power draw for each pump during

operation.

- Measure flowrate of each pump using the station flowmeter. At stations without flowmeters, flow shall be estimated using pressure gauges and the pump curve, as described in DEQ guidelines posted on the internet at:

<http://waterquality.deq.state.or.us/wq/wqrules/Opmpump.htm>

The Design Engineer shall conduct, review, and approve the inspection establishing substantial completion. Unless otherwise agreed with the Owner, the Design Engineer shall then provide the Owner with a copy of results of the inspection and obtain the Owner's consent to proceed with startup and final testing.

The Design Engineer shall provide the start-up coordinator and other professional staff as necessary to work with the construction contractor in the successful start-up of the completed facilities, in accordance with the start-up checklist.

F. Operator Training

Prior to startup, the Contractor shall provide training of Owner's personnel by factory-trained representatives of equipment, pumps, controls and other devices in accordance with the approved specifications. This training shall emphasize theory of operation and maintenance of electrical controls, hydrogen sulfide control system, pumps, motors, generators, instruments, HVAC equipment and controls, alarm telemetry devices, and other major equipment.

Training should be coordinated by the contractor to minimize Owner's staff time in multiple training sessions. Unless otherwise approved, eight hours of training for Owner's staff shall be standard. The training proposal shall be subject to Owner's acceptance prior to conducting the training.

G. Acceptance and Startup

Pump station acceptance shall be subject to the Owner's approval and written notice of acceptance. The date of acceptance shall be the effective date for transfer of operational responsibility for a new pump station from the contractor to the Owner.

Equipment warranty dates shall commence on the effective date of the transfer, unless otherwise agreed.

At the Owner's discretion, the contractor may be required to submit the electrical utility billing and other utility billings, paid up to the effective date of the transfer, to the Owner, and to transfer billings to the Owner.

No startup shall be undertaken or allowed without completion of operator training and DEQ approval of the Operations and Maintenance Manual, in accordance with OAR 340-52. DEQ approval of the manual constitutes permission for startup.

H. Project Close Out

Unless otherwise approved by the Owner, the Design Engineer shall be responsible for closing out the project, including:

- The Design Engineer shall restore property-corner monumentation which is disturbed or destroyed during construction. Set new corners after construction is complete.
- Provide full and complete survey and measurements for record drawings.
- Complete all documentation for close-out of the project, including preparation of record drawings. The record electrical drawings shall show the actual wire number labels if different from the design drawings.
- Provide services to perform and confirm equipment calibrations.
- Provide services to perform point-to-point checkout of systems from field devices or contacts through control panels and remote terminal unit, if applicable.
- These services may include programming and integration of the pump station remote programmable logic controller into a SCADA System, where applicable, along with control schematics.
- Unless otherwise agreed by the Owner, the Design Engineer and the Contractor shall be responsible for all programming costs, including costs for programming and loading into the Owner's devices performed through a programming service selected by the Owner.
- The Design Engineer shall send DEQ a certification of proper construction in accordance with the approved plans, per OAR 340-52-045, or as required in DEQ's plan approval.

I. Warranty

All equipment at the station shall include at least one-year full parts and service warranty from the date of acceptance by the Owner. Normally the manufacturer's warranty documentation shall name both the contractor and the Owner as holders of the warranty.

Unless otherwise agreed, the manufacturer or equipment supplier who is fulfilling the manufacturer's warranty shall commence all required warranty repairs within 24 hours of notification by the Owner of the requirement for warranty service.

J. Warranty Tests

Warranty tests shall be as approved and required by the Owner. The Design Engineer may be required to conduct or witness additional vibration checks and measurements at intervals of 3-months, 6-months and at the 10-month warranty inspection.

K. Operations and Maintenance Manual

For all pump stations, an Operations and Maintenance Manual shall be compiled and written by the Design Engineer, and shall be approved by DEQ prior to startup.

Format and Content

The format and contents of the manual shall meet the requirements of DEQ's guidelines for pump station O&M manuals, as published at

<http://waterquality.deq.state.or.us/wq/wqrules/Opsman.htm>

The name of the pump station shall be noted on the spine of the manual. Binding shall be three-ring binder, preferably locking type to prevent accidental opening. Binding shall be sized to prevent a "bulged" condition. Tabbed dividers and a table of contents shall be included.

Manuals for the operation of pump stations that are equipped with pressure gauges shall include DEQ standard instructions for the use and maintenance of gauges:

<http://waterquality.deq.state.or.us/wq/wqrules/Opspump.htm>

Equipment literature, including supplier's and manufacturer's manuals, shall be separately bound, and shall not be submitted to DEQ for review.

One copy of the final manual acceptable to the Owner shall be submitted to DEQ for approval prior to startup.

O&M Manual Information

The contractor shall be required by the project specifications to furnish the following information for inclusion in the Design Engineer's operations and maintenance section:

- a. Sequence of operations including description of the operation and interaction of systems and subsystems during startup, operation in

automatic mode, operation in manual mode, and operation with backup power. This includes, but is not limited to, equipment, pumps, piping, valves, HVAC, electrical, controls, and instrumentation.

- b. Station operation including updated information on the actual pumps installed.
- c. Utilities.
- d. A consolidated summary of required routine scheduled maintenance and scheduled preventative and predictive maintenance for all station equipment along with references to the location within the manual where detailed information may be found.
- e. Safety.
- f. Spare parts list including name, address, and telephone number of supplier and manufacturer.
- g. Emergency plans and procedures.

Equipment Literature Supplement

The contractor shall be required by the project specifications to furnish the following information for the equipment literature supplement:

- a. Disassembly and reassembly instructions.
- b. Parts lists, by generic title and identification number.
- c. Name, location, and telephone number of nearest supplier and spare parts warehouse.
- d. Manufacturer's certifications, including calibration data sheets and specified calibration procedures and/or methods, for installed equipment.
- e. Warranty forms and information for all installed equipment as provided by the contractor.

Maintenance Programs

The Design Engineer's Operations and Maintenance Manual shall include a planned maintenance program of preventive and predictive maintenance activities. Maintenance shall be triggered by frequencies (elapsed calendar days, run time, etc.) or on demand. Maintenance shall include lubrication, cleaning, inspection, oiling, adjusting, equipment condition monitoring, and rebuilding to factory specifications.

Preventive Maintenance

Unless waived or otherwise approved by the Owner, the Design Engineer's O&M Manual shall include a table of planned maintenance activities and actions for each piece of equipment and other components of the facilities. The table shall include the recommended schedule for periodic opening and inspection of equipment, and other standard maintenance procedures including lubrication.

Predictive Maintenance

Unless waived or otherwise approved by the Owner, the Design Engineer's O&M Manual shall include a table of periodic performance testing of equipment. The table shall include recommendations for using and interpreting various investigative techniques such as thermography, vibration analysis, precision measurements, lube oil analysis, nondestructive testing, electrical resistance tests, corrosion tests, and declining shutoff head.

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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
FOR THE STATE OF OREGON

IN THE MATTER OF:

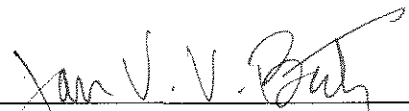
City of Portland,
Respondent

PETITION FOR COMMISSION REVIEW
Hearing Officer Panel Case No. 102453
Agency Case No. WQ/M-NWRR-01-100
Multnomah County

Respondent City of Portland hereby requests review by the Environmental Quality
Commission of the Hearing Officer's Opinion in the above-referenced matter.

Dated this 7th day of April, 2003.

Respectfully submitted,



Jan V. V. Betz, OSB #87167
Deputy City Attorney
Of Attorneys for Respondent City of Portland

CERTIFICATE OF SERVICE

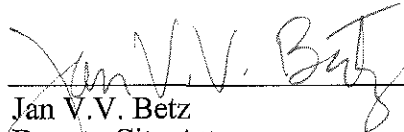
I hereby certify that I served the foregoing Petition for Commission Review on:

Deborah Nesbitt,
Representative for the Environmental Quality Commission
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

And

Lynne A. Perry,
Assistant Attorney General
Department of Justice
General Counsel Natural Resources
1162 Court St. NE
Salem, OR 97301

on April 7, 2003, by mailing to said Representative and Attorney a correct copy thereof,
contained in a sealed envelope, with postage paid, and deposited in the post office at Portland,
Oregon on said day.



Jan V.V. Betz
Deputy City Attorney
City of Portland

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APR 08 2003

OFFICE OF COMPLIANCE
AND ENFORCEMENT
DEPARTMENT OF ENVIRONMENTAL QUALITY

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

IN THE MATTER OF:

**City of Portland,
Respondent,**

) **PROPOSED ORDER**

)

)

)

) Hearing Officer Panel Case No. 102453

) Agency Case Number WQ/M-NWRR-01-100

) Multnomah County

HISTORY OF THE CASE

On May 21, 2001, the Department of Environmental Quality (Department) issued a Notice of Assessment of Civil Penalty (Notice) to Respondent City of Portland. The Notice alleged that Respondent violated ORS 468B.025(1)(b). On November 15, 2002, the Department amended the Notice to reduce the penalty assessed from \$10,000 to \$9,000.

On June 21, 2001, Respondent requested a hearing and denied that it violated ORS 468B.025(1)(b). Respondent also offered two affirmative defenses.

At a prehearing conference on November 14, 2002, the Department and Respondent proposed offering stipulated facts and briefs in lieu of a hearing. Respondent and the Department filed stipulated facts and briefs on December 12, 2002.

Andrea H. Sloan, from the Hearing Officer Panel, presided as the Administrative Law Judge (ALJ). Respondent was represented on the briefs and at the prehearing by Jan V. Betz, Deputy City Attorney. The brief for the Department was prepared by Lynne Perry, Assistant Attorney General. Jeff Bachman, Lay Representative, represented the Department at the prehearing conference, and joined Ms. Betz in signing the stipulated facts.

EVIDENTIARY RULINGS

Respondent and the Department offered stipulated facts. These facts were admitted as Exhibit 1. A hearing was not convened, no other evidence was offered, and the record closed on January 8, 2003.

ISSUES

1. Whether Respondent is liable, under ORS 468B,925(1)(b), regardless of fault.
2. Whether the civil penalty assessment is appropriate.

FINDINGS OF FACT

1. Respondent operates a wastewater collection, treatment, control and disposal system as authorized by a National Pollution Discharge Elimination System permit issued by the Department.
2. Respondent's system includes the Ankeny Pump Station, which is located adjacent to the Willamette River near the Burnside Bridge, off SW Front Avenue/SW Naito Parkway, in Portland.
3. For the purpose of creating redundant electrical power sources in the event of a power failure, Respondent contracted with Portland General Electric (PGE) to provide two separate electrical feeders to Ankeny Pump Station from two different power grids. The primary feed to the station is through PGE's Canyon Substation. The alternate power feed is through PGE's Substation E.
4. On February 6, 2001, a sinkhole developed on NW Front Avenue/SW Naito Parkway, as a result of construction work being conducted by Respondent's Bureau of Environmental Services (BES) related to improvements to Respondent's sewage collection system.
5. As a safety precaution during repair of the sinkhole, PGE deenergized the underground voltage feeder conductors that ran through the sinkhole from PGE's Substation E. PGE personnel notified on-site BES construction manager, Mark Hutchinson, that the power lines were being deenergized.
6. At the time that the power lines in the sinkhole were deenergized, PGE rerouted the alternate power feed to the Ankeny Pump station from Substation E through Canyon Substation.
7. Power was restored to businesses and facilities in the vicinity of the sinkhole the next day, February 7, 2001.
8. A power outage affecting PGE's Canyon Substation occurred on March 18, 2001. Because the alternate power feed to the station had not been routed back through Substation E following completion of the sinkhole repairs, the outage cut-off all electrical power to the Ankeny Pump Station.
9. Because of the power outage, sewage flowing into the Ankeny Pump Station overflowed into the Willamette River. BES estimated that approximately 2.5 million gallons of raw sewage discharged from the Ankeny Pump Station into the river before power was restored at 8:36 a.m.

CONCLUSIONS OF LAW

1. Respondent is liable for the discharge of waste into waters of this state, regardless of fault.

2. The amount of civil penalties assessed by the Department was appropriate.

OPINION

In this case, there are only two issues to be resolved: 1) whether Respondent is liable for the discharge of waste into waters of the state, regardless of fault; and 2) whether the penalty assessment is correct. 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). Following review of the record and the briefs submitted by the parties, I conclude that the Department has met its burden on both issues.

Liability

ORS 468B.025 provides, in pertinent part, as follows: “[N]o person shall: * * * (b) Discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the Environmental Quality Commission.” ORS 468B.025(1)(b).

Respondent admitted that waste was discharged from its Ankeny Pump Station on March 18, 2001, and did not contest whether the discharge reduced the quality of the water below water quality standards. Respondent argues that it is not liable, however, because Respondent did not *cause* the discharge, and that the actions or omissions of PGE were the actual cause of the discharge. Respondent further argues that the actions or omissions of PGE were beyond its control and that Respondent cannot be liable, under ORS 468B.025(1)(b), for a discharge that it did not cause. In support, Respondent argues that the statute does not impose a strict liability standard, unlike other environmental statutes,¹ which specifically articulate strict liability. Alternatively, Respondent argues that even if the statute imposes a strict liability standard, the actions or omissions of PGE were an intervening or superceding cause of the discharge, and that Respondent should not be liable for PGE’s actions or omissions.

The Department counters that the statute, ORS 468B.025(1)(b), is silent as to culpability, and that the violation only requires a discharge, which Respondent has stipulated occurred. The Department further argues that the Environmental Quality Commission (EQC) has already addressed and rejected a similar argument that a city could not be liable under ORS 468B.025(1)(b) because the statute did not specifically articulate a strict liability standard.² The

¹ Respondent cites the following statutes as examples of environmental statutes with an articulated strict liability standard: ORS 468B.060; ORS 468B.310; ORS 465.255; ORS 466.640; and ORS 466.825.

² In a similar action, the EQC rejected the City of Coos Bay’s argument that it was not liable under ORS 468B.025(1)(b) because the statute did not impose a strict liability standard. See *Finding of Fact, Conclusions of Law and Opinion, In the Matter of the Notice of Violation, Department Order, and*

EQC specifically rejected the argument proffered by the City of Coos Bay, that ORS 468B.025(1)(b) required proof of intent. “Nothing in the plain ordinary meaning of either ‘cause’ or ‘discharge’ requires or even suggests that proof of intent, recklessness or negligence is an element of the violation. Similarly, nothing in the context, ‘legislative scheme’ or legislative history leads to that conclusion.” And, in *EQC v. City of Coos Bay*, 171 Or App 106, 111 (2000), the Court of Appeals affirmed the EQC order concerning violation of ORS 468B.025(1)(b).

I am not persuaded with Respondent’s argument that the statute must be analyzed in light of *Portland General Electric Company v. Bureau of Labor and Industries*, 317 Or 606 (1993). In *PGE*, the meaning of the statute was not clear, so the court set out a hierarchy of factors to consider in determining the intended meaning of statutory language. Here, there is no ambiguity in the statute. The statute prohibits the discharge of waste. Waste was discharged from Respondent’s pump station. Notwithstanding the actions or omissions of PGE, Respondent is ultimately liable for the discharge of waste into the Willamette River on March 18, 2001.

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 \$9,000 in civil penalties based on Respondent’s violation of ORS 468B.025(1)(b). 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.”³

Based on this record, the civil penalty assessment of \$9,000 is accurate and appropriate.

Assessment of Civil Penalty for Discharging Wastes without a Person and for Reducing Water Quality, City of Coos Bay, Respondent, No. WQM-WR-96-277.

³ The penalty calculation utilized by the Department is set out in full in the Appendix, which is incorporated by reference to this order as if fully set forth herein.

PROPOSED ORDER

I propose that the Board issue the following order:

Respondent is subject to a civil penalty in the amount of \$9,000.



Andrea H. Sloan
Administrative Law Judge
Hearing Officer Panel

ISSUANCE AND MAILING DATE:

March 10, 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).

APPENDIX

VIOLATION 1: Discharging wastes that reduced the quality of state waters below a water quality established by the Environmental Quality Commission in violation of Oregon Revised Statute 468B.025(1)(b).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(c).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0045(1)(a)(B)(i). Based on the volume of raw sewage discharged to the Willamette River, the Department finds that the violation had a significant adverse affect on the environment.

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 \$6,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0042(1).

“P” is Respondent’s prior significant action(s) and receives a value of 7 pursuant to OAR 340-012-0045(1)(c)(A)(viii). At the time of the violation, Respondent’s prior significant actions, Case Nos. WQMW-NWR-90-89, WQMW-NWR-94-253, WQMW-NWR-94-305, WQMW-NWR-95-181, WQ/SW-NWR-98-013A, and WQ/M-NWR-99-043 consisted of six Class 1 equivalent violations.

“H” is the past history of the Respondent in taking all feasible steps or procedures necessary to correct any prior significant action(s) and receives a value of -2 because Respondent has corrected its 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 because the violation was not repeated or continuous.

“R” is the cause of the violation and receives a value of 0 as it is the most appropriate finding under the rules. The violation was not caused by unavoidable accident, or Respondent’s negligence, intentional conduct or flagrant conduct. Under these circumstances, the most appropriate value for the “R” factor is 0.

“C” is Respondent’s cooperativeness in correcting the violation and receives a value of 0. While Respondent was cooperative, it could not correct the violation, could not make reasonable efforts to minimize the effects of the violation, and has not taken extraordinary measures to prevent reoccurrence of the violation.

“EB” is the approximate dollar sum of the economic benefit that Respondent gained through noncompliance, and receives a value of 0 as the City did not receive an economic benefit.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$6,000 + [(0.1 \times \$6,000) \times (7 + (-)2 + 0 + 0 - 0) + 0] \\ &= \$6,000 + (\$600 \times 5) + \$0 \\ &= \$6,000 + \$3,000 + \$0 \\ &= \$9,000 \end{aligned}$$

CERTIFICATE OF SERVICE

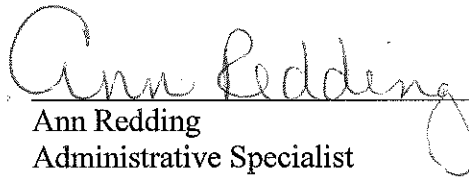
I certify that on March 10, 2003, I served the attached Proposed Order by mailing in a sealed envelope, by certified mail or with first class postage prepaid, as noted below, a copy thereof addressed as follows:

CITY OF PORTLAND
JAN V V BETZ
OFFICE OF THE CITY ATTORNEY
1221 SW FOURTH STE 430
PORTLAND OR 97204

BY FIRST CLASS AND CERTIFIED MAIL
CERTIFIED MAIL RECEIPT # 7002 2410 0001 7406 0897

JEFF BACHMAN
OREGON DEQ
OFFICE OF COMPLIANCE AND ENFORCEMENT
811 SW 6TH AVE
PORTLAND OR 97204

BY FIRST CLASS MAIL


Ann Redding
Administrative Specialist

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

December 12, 2002

By Fax (503-945-5547) and First-Class Mail

Ms. Andrea Sloan
Hearing Officer
Hearing Officer Panel
1905 Lana Avenue NE
Salem, OR 97314

Re: In the Matter of the City of Portland
HOP Case No. 102453

Dear Judge Sloan:

Please find enclosed the Department of Environmental Quality's Memorandum in Support of its Notice of Civil Penalty Assessment, together with the Stipulated Facts to which the parties have agreed.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lynne Perry".

Lynne Perry
Assistant Attorney General
Natural Resources Section

LAP:lal/GEND9974

Enclosures
cc (by fax): Jan Betz
Jeff Bachman

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

6 IN THE MATTER OF:
7 CITY OF PORTLAND,
8 Respondent

Hearing Officer Panel No: 102453
DEQ No. WQ/M-NWR-01-100
DEQ MEMORANDUM IN SUPPORT OF
NOTICE OF CIVIL PENALTY ASSESSMENT

9
10
11 INTRODUCTION
12

13 On March 18, 2001, an estimated 2.5 million gallons of raw sewage discharged from the
14 City of Portland's Ankeny Pump Station (pump station) into the Willamette River after a power
15 failure. (Stipulated Facts, ¶ 9.) The Department of Environmental Quality (Department) later
16 issued a Notice of Assessment of Civil Penalty in which it cited the City of Portland (City) for
17 violating ORS 468B.025(1)(b) by causing or allowing the sewage to discharge from the pump
18 station to the river. The Department and the City have stipulated to the relevant facts. The
19 parties' disagreement relates to whether ORS 468B.025(1)(b) imposes liability without regard to
20 fault. This memo is therefore limited to that issue.¹

21 ///

22 ///

23 ///

24
25 ¹ The parties have agreed to simultaneous briefing. The Department reserves the right to deliver
26 a responsive brief if the City's brief raises additional issues not addressed by the Department
herein.

1 **DISCUSSION**

2 The City asserts that the discharge from the Ankeny Pump Station was beyond its control
3 and, for that reason, it has not violated ORS 468B.025(1)(b). The City takes the position that
4 violation of ORS 468B.025(1)(b) requires negligence on its part; absent such negligence, it
5 cannot be liable.²

6 The City's argument is, however, belied by the plain language of the statute, which
7 provides in relevant part as follows:

8 "(1) Except as provided in ORS 468B.050 or 468B.053, no person shall:

9 * * *

10 (b) Discharge any wastes into the waters of the state if the discharge
11 reduces the quality of such waters below the water quality standards established
12 by rule for such waters by the Environmental Quality Commission."
ORS 468B.025(1)(b).

13 ORS 468B.025(1)(b) is silent with respect to culpability. The violation requires nothing more
14 than a discharge. That discharge is undisputed. The City has therefore violated ORS
15 468B.025(1)(b).

16 Moreover, the City's argument has already been addressed and rejected by the
17 Environmental Quality Commission (Commission). *In the Matter of: City of Coos Bay*, 1998
18 WL 481883 (Or Env Qual Com 1998), *aff'd* in relevant part, 171 Or App 106 (Or App 2000)
19 (“Coos Bay case”).³ On similar facts in the *Coos Bay* case, the Commission concluded that:

20 “The City [of Coos Bay], by and through the operation of the sewage disposal
21 system, caused the sewage sludge to discharge into the bay. The City is strictly
22

23 ² The City does not dispute that the discharge reduced the quality of the receiving water below
water quality standards.

24 ³ Full cite: *In the Matter of the Notice of Violation, Department Order, and Assessment of Civil*
25 *Penalty for Discharging Wastes without a Permit and for Reducing Water Quality, City of Coos*
26 *Bay, Respondent*, No. WQMW-WR-96-277, 1998 WL 481883 (Or Env Qual Com August 11,
1998), affirmed in part, reversed in part sub nom *EQC v. City of Coos Bay*, 171 Or App 106 (Or
App 2000).

1 liable [under ORS 468B.025(1)(b)] for the operation of its system and any
adverse impact it may have on the health and welfare of the public.”⁴

2 The Commission rejected the argument made by the City of Coos Bay regarding the need
3 to establish fault or culpability under ORS 468B.025(1)(b) stating:

4 “[The] City argues that proof of intent to discharge is required to establish a
5 violation of the statute. The City's argument is based upon the use of the term
6 'discharge' as well as what it perceives to be a statutory scheme wherein a
7 violation of ORS 468B.025(1)(a) requires proof of negligence and ORS
8 468B.025(1)(b) requires proof of intent. The City finds support for this purported
legislative scheme in the use of the verbs 'cause,' 'discharge' and 'violate' in the
different subsections of the statute. The City also argues that a culpable mental
state should be inferred because the violations are also declared to be public
nuisances in ORS 468B.025 (3).”

9 “The City's arguments are not persuasive. Nothing in the plain ordinary meaning
10 of either 'cause' or 'discharge' requires or even suggests that proof of intent,
recklessness, or negligence is an element of the violation. Similarly, nothing in
11 the context, 'legislative scheme' or legislative history leads to that conclusion.”

12 This portion of the decision was subsequently affirmed by the Oregon Court of Appeals. 171 Or
13 App 106.

14 Despite this strict liability framework, the City has argued that it did not “cause” the
15 discharge to the river. Rather, the City takes the position that the discharge was caused by
16 Portland General Electric’s failure to reenergize an alternate electrical source that was
17 deenergized during City work on a sinkhole in early February 2001; the theory being that had an
18 alternate electrical source been available, it would have been used during the mid-March power
19 outage, thereby preventing the discharge to the river.

20 The legal “cause” of the discharge was, however, the operation of the pump station, not
21 the availability of an alternate power source. (In fact, the City’s position begs the question of
22 what or who would be deemed to have caused the discharge if the City had never employed an

23 _____
24 ⁴ The *Coos Bay* case is not unique. The Commission has consistently determined that principles
25 of strict liability apply to violations of ORS 468B.025(1). See e.g., *In the matter of: DEQ v.*
26 *Marshall's Oil and Insulation Company*, 1999 WL 1257847 (Or Env Qual Com 1999); *In the*
matter of: DEQ v. Tom Vuyovich, 1998 WL 770479 (Or Env Qual Com 1998).

1 alternate power source.) As in *Coos Bay*, “The City, by and through the operation of the [pump
2 station], caused the [discharge].” *Coos Bay* is consistent with the interpretation given similar
3 strict liability (“no discharge”) language in the Clean Water Act in which the “cause” of a spill is
4 deemed to be the polluting enterprise itself, not the conduct of the defendant or a third party. *See*
5 *e.g., U.S. v. Tex-Tow, Inc.*, 589 F2d 1310, 1313-14 (7th Cir 1978) (presence of defendant’s barge
6 at pier was legal or proximate cause of spill despite fact that defendant not at fault and spill was
7 attributable to act or omission of third party).

8 In sum, based on both the plain language of the statute and the relevant case law, it is
9 clear that strict liability attaches to a discharge of waste to waters of the state under ORS
10 468B.025(1)(b). Here, the relevant discharge was caused by the City’s operation of the Ankeny
11 Pump Station. For that reason, the City is liable under ORS 468B.025(1)(b).


12 **CONCLUSION**

13 For the foregoing reasons, the Department's Notice of Assessment of Civil Penalty should
14 be affirmed.

15 Dated this 12th day of December 2002.

16
17
18 Respectfully submitted,

19 HARDY MYERS
Attorney General

20
21 
22 Lynne Perry, OSB #90456
Assistant Attorney General
23 Natural Resources Section
Oregon Department of Justice



CITY OF
PORTLAND, OREGON

OFFICE OF CITY ATTORNEY

Jeffrey L. Rogers, City Attorney
City Hall, Suite 430
1221 S.W. 4th Avenue
Portland, Oregon 97204
Telephone: (503) 823-4047
Fax No.: (503) 823-3089

December 12, 2002

BY FAX: 503-945-5304

ATTENTION: ANN REDDING

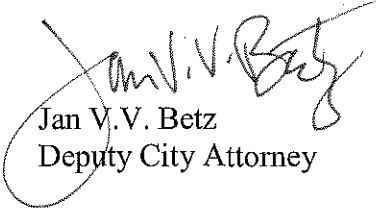
ADMINISTRATIVE LAW JUDGE ANDREA SLOAN
HEARING OFFICER PANEL
1905 LANA AVENUE NE
SALEM, OR 97314

Re: *In the Matter of City of Portland*
Hearing Officer Panel Case No. 102453
Agency Case No. WQ/M-NWR-01-100

Dear Judge Sloan:

Attached is the City of Portland's Memorandum of Law in the above-referenced matter. After consultation with your office, we are sending full copies of the exhibits by overnight mail, since apparently your fax machine cannot accept such large documents. Pages from exhibits that are referenced in the Memorandum are attached.

Very truly yours,


Jan V.V. Betz
Deputy City Attorney

JB:JB

FAATJAN.WRK\ANKENY HEARING OFFICER COR.doc

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

3 IN THE MATTER OF:
4 CITY OF PORTLAND

5 Respondent.

RESPONDENT'S
MEMORANDUM OF LAW

HEARING OFFICER PANEL CASE
No. 102453

6 AGENCY CASE No. WQ/M-NWR-01-100
7 MULTNOMAH COUNTY
8
9
10

11 I. PROCEDURAL BACKGROUND

12 On May 21, 2001, the Department of Environmental Quality issued a Notice of
13 Assessment of Civil Penalty in the above-referenced matter. The City timely filed an Answer and
14 requested a hearing. The City also requested an informal discussion and met with Department
15 representatives on two occasions to discuss this matter. After the parties were unable to come to
16 agreement, a contested case hearing was scheduled. The parties subsequently agreed to submit
17 stipulated facts and present the remaining issues of law by memorandum to the Hearing Officer
18 for resolution.

19 II. BACKGROUND

20 As set out in the Stipulated Facts regarding this case, the City of Portland's Ankeny Pump
21 Station is powered by electricity under a contract with Portland General Electric (PGE). The City
22 contracted with PGE to provide primary and secondary power to the Ankeny Pump Station from
23 separate electrical feeders connected to two different power grids. Ankeny Pump Station is a
24 component of the City's wastewater collection system and is designed to pump wastewater flows
25 from western portions of the City to the Columbia Boulevard Wastewater Treatment Plant.

26 The system for provision of electrical power to the Ankeny Pump Station was designed

1 pursuant to the U.S. Environmental Protection Agency's technical bulletin entitled, "Design
2 Criteria for Mechanical, Electric, and Fluid System and Component Reliability" (U.S. Government
3 Printing Office: EPA-430-99-74-001), which is attached hereto as Exhibit A. The method for
4 providing a redundant power source to the Ankeny Pump Station is in compliance with the State
5 of Oregon Department of Environment Quality "Oregon Standards for Design and Construction
6 of Wastewater Pump Stations, May 2001, which is attached hereto as Exhibit B.

7 DEQ is responsible for reviewing the design of sewage pump stations and has developed
8 general design criteria. See Exhibit B, II and III, pages 4-5; ORS 468B.055; OAR 340 Division
9 52. Among other things, DEQ's general design criteria requires EPA Class I reliability standards
10 for mechanical and electrical components and alarms and a secondary source of electrical power.
11 Exhibit B, page 5-6. EPA's Class I Reliability standard for power sources requires the following:

12 * * *

13 Two separate and independent sources of electric power shall be
14 provided to the works from either two separate utility substations
15 or from a single substation and a works based generator. If
16 available from the electric utility, at least one of the works' power
sources shall be a preferred source (i.e., a utility source which is
one of the last to lose power from the utility grid due to loss of
power generating capacity). * * *

17 Exhibit A, page 40, ¶ 231.

18 In February of 2001, PGE disconnected the secondary power source to an area serving
19 NW Front Avenue, including the Ankeny Pump Station, when a sinkhole developed during a
20 construction project which exposed gas and electric utility conduits and created a potentially
21 dangerous situation. PGE restored power to the area the following day; however, PGE
22 apparently rerouted the secondary power source to the Ankeny Pump Station through the same
23 power grid that also provided electricity to the primary power source to Ankeny.

24 In March the PGE substation, which at that time provided both primary and secondary
25 power to Ankeny, failed and the pump station could not operate, resulting in untreated sewage
26 overflows to the Willamette River.

1 DEQ subsequently issued a Notice of Assessment of Civil Penalty, alleging that the City
2 “caused or allowed approximately 2.5 million gallons of raw sewage to discharge from its Ankeny
3 Pump Station * * * ” in violation of ORS 468B.025 (1)(b).

4 III. LEGAL STANDARD

5 DEQ initially alleged that one of the bases for its determination that the City violated ORS
6 468B.025 was the City’s negligence. DEQ subsequently amended its civil penalty assessment and
7 dropped the negligence finding. The City’s response to DEQ’s Notice of Assessment of Civil
8 Penalty denied that the City caused or allowed raw sewage to discharge from the Ankeny Pump
9 Station and asserted that the loss of electric power to Ankeny, which was beyond the control of
10 the City, was the cause of the discharge.

11 ORS 468B.025 is Not a Strict Liability Statute

12 The Oregon legislature’s intent to create a strict liability standard for a number of
13 environmental statutes is evident and express. ORS 468B.025 does not contain any express
14 statement regarding a standard of liability.

15 In the following environmental statutes, the legislature has clearly articulated its intent to
16 impose a strict liability standard:

17 ORS 468B.060, Liability for damage to fish or wildlife or habitat --
18 states that a responsible party shall be strictly liable;

19 ORS 468B.310, Liability for violation of ORS 468B.305, Entry of
20 oil into waters of state prohibited; exceptions -- articulates a strict
21 liability standard and provides for defenses to liability;

22 465.255, Strict liability for remedial action costs for injury or
23 destruction of natural resource -- contains an affirmative statement
24 regarding standard of liability, and provides defenses to such
25 liability;

26 ORS 466.640, Strict liability for spill or release; exceptions --
articulates a strict liability standard and provides for defenses;

ORS 466.825, Strict liability of owner or permittee -- sets out a
strict liability standard for owners and permittees of leaking
underground storage tanks.

1 Statutory Interpretation

2 It is a fundamental premise of statutory interpretation that “the text of the statutory
3 provision itself * * * is the best evidence of the legislature’s intent.” *Portland General Electric*
4 *Company v. Bureau of Labor and Industries*, 317 Or. 606, 610 (1993) (“PGE”). In addition,
5 ORS 174.010 instructs a court “not to insert what has been omitted, or to omit what has been
6 inserted,” in its attempt to understand the meaning of a statute.

7 The court in *PGE* also concluded that the context of the statute at issue and related
8 statutes should be considered in analyzing statutory provisions. In contrast to ORS 468B.025,
9 other environmental statutes outlined above (including others in chapter 468B) contain *express*
10 provisions regarding strict liability while ORS 468B.025 does not. A court should not insert what
11 has been omitted. Clearly, the legislature knows how to insert a strict liability standard in a
12 statute when it wishes to. *See also, State of Oregon v. Chang Hwan Cho*, 297 Or. 195, 201
13 (1984)(holding that a statute regulating the purchase or sale of wildlife, without a clear indication
14 of legislative intent to dispense with a culpable mental state requirement, is not a strict liability
15 crime).

16 A second level of analysis of legislative intent, if necessary, is consideration of a statute’s
17 legislative history; and finally, if the intent of the legislature remains unclear, a court should
18 employ general maxims of statutory construction. *PGE* at 612. In determining the legislature’s
19 intent in the enactment of ORS 468B.025, it is not necessary to go beyond interpreting the
20 language of the statute itself, which, unlike other sections of chapter 468B and other Oregon
21 environmental statutes, does *not* contain any express statement regarding strict liability.

22 The Department of Environmental Quality has asserted in the past that the statutory
23 authority for assessment of civil penalties is evidence of the legislature’s intent to insert a strict
24 liability standard into ORS 468B.025. *See* ORS 468.130 and ORS 468.140. Under ORS 468.130
25 (2)(f), a factor to be considered in imposing a civil penalty is whether the violation was caused by
26 an unavoidable accident, negligence or an intentional act. The Department has argued that the

1 existence of this provision in chapter 468 indicates the legislature's intent to impose a strict
2 liability standard in ORS 468B.025. Such logic is circular and presupposes that a violation of
3 ORS 468B.025 has been determined. If the Department concludes that a violation has occurred,
4 then the civil penalty factors are considered to determine the amount of the penalty. These same
5 factors provide guidance for imposition of civil penalties for a variety of violations, many of which
6 do not have a strict liability standard.

7 The Department also has argued that ORS 468.140 (1)(b) is evidence of the legislature's
8 intent to impose a strict liability standard on ORS 468B.025. ORS 468.140 (1) provides that any
9 person who violates provisions of enumerated statutes will be assessed a civil penalty established
10 by rule. In addition to chapter 468B, the statutes listed in ORS 468.140 (1)(b) include statutes
11 that merely contain definitions and provisions for construction grants for sewage treatment works
12 (ORS 454.505 to 454.535); statutes that provide for ownership of municipal sewage systems and
13 financing their construction (ORS 454.205 to 454.255); and statutes regarding environmental
14 crimes, which already contain a range of liability standards for different crimes (ORS 468.920 to
15 468.956). *See Exhibit C* for a summary of the statutes listed in ORS 468.140 (1)(b).

16 If the legislature had intended ORS 468.140 (1)(b) to impose a strict liability standard on
17 the statutes listed therein, surely it would not have included statutes governing construction and
18 financing of sewage treatment works and environmental crimes, which already prescribe standards
19 of liability.

20 *Intervening or Superseding Cause*

21 Even if strict liability did apply in this case, PGE's action constitutes an intervening or
22 superseding cause that is a defense to liability. The City complied with all technical and
23 regulatory requirements regarding the design and operation of the Ankeny Pump Station,
24 including the provision of a secondary power source with Class I reliability. PGE failed to
25 provide power through the alternate power grid so that a failure of the primary power grid caused
26 the overflow of untreated sewage from the Ankeny Pump Station. The acts or omissions of a

1 third party were the *sole* cause of the overflow on March 18, 2001.

2 IV. CONCLUSION

3 ORS 468B.025 does not impose a strict liability standard. The legislature did not provide
4 any express statement of its intent to impose such a standard and the context of the statutory
5 scheme demonstrates that the legislature has inserted its express intent regarding strict liability in
6 other environmental statutes. The City complied with all regulatory requirements in its design,
7 construction and operation of the Ankeny Pump Station. The operation of PGE's power grids
8 and the power failure on March 18, 2001, were beyond the City's control.

9 We respectfully request the hearing officer to find in favor of the City in this matter and
10 make a determination that the City is not liable for a violation ORS 468B.025.

11
12 Dated this 12th day of December, 2002.

13
14 Respectfully submitted,

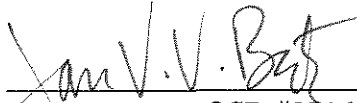
15
16 _____
17 Jan V. V. Betz, OSB #87167
18 Deputy City Attorney
19 Of Attorneys for Respondent, City of Portland
20
21
22
23
24
25
26

1 CERTIFICATE OF SERVICE

2 I hereby certify that I served the foregoing Memorandum of Law on:

3 Jeffrey R. Bachman, Environmental Law Specialist for
4 Department of Environmental Quality
5 811 SW 6th Avenue
6 Portland, OR 97204

7 on December 12, 2002, by mailing a correct copy thereof, contained in a sealed envelope, with
8 postage paid, and deposited in the post office at Portland, Oregon on said day.
9

10 

11 _____
12 Jan V.V. Betz, OSB #87167
13 Of Attorneys for Respondent
14 City of Portland
15
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26

See Attachment D of this staff report
for Exhibits A and B of Attachment H.

The same exhibits were provided for
both Attachments D and H.

EXHIBIT C

ORS 468.140 (1)(b)

1. ORS 164.785 prohibits the discarding of animal carcasses and other deleterious substances or befouling or polluting a variety of water bodies, streets and meadows, etc., and allowing such substances to remain.
2. ORS 448.305 authorizes cities to restrict access for fishing, hunting and camping activities in certain watershed areas.
3. ORS 454.010 to 454.040 contains a series of definitions and provisions for the siting of sewage treatment works and development of rates for treatment works services.
4. ORS 454.205 to 454.255 provides for ownership of municipal sewage systems and financing their construction.
5. ORS 454.605 to 454.755 contains definitions and authorizes the Environmental Quality Commission to adopt standards for design, construction and operation of subsurface sewage disposal systems.
6. ORS chapter 467 authorizes the Environmental Quality Commission to adopt rules regarding noise control.
7. ORS chapter 468 contains the general establishment, administration and functions of the Department of Environmental Quality and the Environmental Quality Commission; DEQ's enforcement and investigative authority and procedures; establishment of the pollution control facilities tax credit; pollution control bonds; financing of treatment works; environmental crimes.
8. ORS chapter 468A governs a broad range covering state regulation of air quality.
9. ORS chapter 468B governs a broad range covering regulation of water quality.

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:
CITY OF PORTLAND,

Respondent.

)
)
)
)
)
)
)

STIPULATED FACTS

NO. WQ/M-NWR-01-100

1. The City of Portland operates a wastewater collection, treatment, control and disposal system as authorized by a National Pollutant Discharge Elimination System Permit issued by the Department of Environmental Quality.

2. The City's system includes the Ankeny Pump Station, which is located adjacent to the Willamette River near the Burnside Bridge off SW Front Avenue/Naito Parkway in Portland. The station pumps raw sewage to the City's Columbia Boulevard wastewater treatment plant.

3. For the purpose of creating redundant electrical power sources in the event of power failure, the City contracted with Portland General Electric (PGE) to provide two separate electrical feeders to Ankeny Pump Station from two different power grids. The primary feed to the station is through PGE's Canyon Substation. The alternate power feed is through PGE's Substation E.

4. On February 6, 2001, a sinkhole developed in NW Front Avenue as a result of construction work being conducted by the City's Bureau of Environmental Services (BES) related to improvements to the City's sewage collection system.

5. As a safety precaution during repair of the sinkhole, PGE deenergized the underground voltage feeder conductors that ran through the sinkhole from PGE's Substation E. PGE personnel notified on-site BES construction manager Mark Hutchinson that the power lines were being deenergized.

STIPULATED FACTS

CASE NO. WQ/M-NWR-01-100

EXHIBIT 1

1 6. At that time the power lines in the sinkhole were deenergized, PGE rerouted the
2 alternate power feed to the Ankeny Pump Station from Substation E through the Canyon
3 Substation.

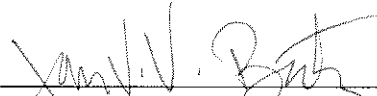
4 7. Power was restored to businesses and facilities in the vicinity of the sinkhole the
5 next day, February 7, 2001.

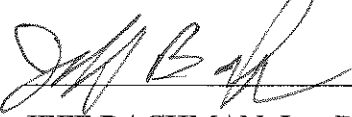
6 8. A power outage that affected PGE's Canyon Substation occurred on March 18,
7 2001. Because the alternative power feed to the station had not been routed back through
8 Substation E following completion of the sinkhole repairs, the outage cut off all electrical power
9 to the Ankeny Pump Station, .

10 9. Because of the power outage, sewage flowing into the pump station overflowed
11 into the Willamette River. BES estimated that approximately 2.5 million gallons of raw sewage
12 discharged from Ankeny Pump Station to the river before power was restored at 8:36 a.m.

13
14 DATED this 10th day of December 2002

15 IT IS SO STIPULATED:

16
17 
18 _____
19 JAN V.V. BETZ, OSB #87167
20 Portland City Attorney's Office
21 1221 SW Fourth Ave., Suite 430
22 Portland OR 97204
23 Telephone: (503) 823-4047

24 
25 _____
26 JEFF BACHMAN, Lay Representative
27 Oregon Department of Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204
Telephone: (503) 229-5950

STIPULATED FACTS

CASE NO. WQ/M-NWR-01-100

SLOAN Andrea H

From: BACHMAN Jeff
Sent: Friday, November 15, 2002 8:24 AM
To: SLOAN Andrea H; Betz, Jan
Subject: City of Portland, DEQ Case No. WQ/M-WR-01-100

Dear Judge Sloan and Ms. Betz:

DEQ will not be calling any witnesses other than Mr. Schnurbusch. We will have Lyle Christensen, the Water Quality Specialist who monitors Portland's compliance, and David Mann, our wastewater treatment engineer, available by telephone during the hearing should the Stipulated Facts present any questions.

At this time, DEQ also seeks leave to amend its Notice of Assessment of Civil Penalty to reduce the penalty assessed from \$10,000 to \$9,000 by changing the value for the "R" factor in the civil penalty calculation from 2 to 0. The Department is withdrawing its allegation that the City's negligence caused the violation. Attached is an Amended Exhibit 1 to the Notice setting forth the calculation of the reduced penalty.

<<5pdx1exh.doc>>

I

11/15/2002

AMENDED EXHIBIT 1

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

VIOLATION: Discharging wastes that reduced the quality of state waters below a water quality standard established by the Environmental Quality Commission in violation of Oregon Revised Statute 468B.025(1)(b).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(c).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0045(1)(a)(B)(i). Based on the volume of raw sewage discharged to the Willamette River, the Department finds that the violation had a significant adverse affect on the environment.

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 \$6,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0042(1).

"P" is Respondent's prior significant action(s) and receives a value of 7, pursuant to OAR 340-012-0045(1)(c)(A)(viii). At the time of violation, Respondent's prior significant actions, Case Nos. WQMW-NWR-90-89, WQMW-NWR-94-253, WQMW-NWR-94-305, WQMW-NWR-95-181, WQ/SW-NWR-98-013A, and WQ/M-NWR-99-043 consisted of six Class I equivalent violations.

"H" is the past history of Respondent in taking all feasible steps or procedures necessary to correct any prior significant action(s) and receives a value of -2 because Respondent has corrected its prior significant actions.

"O" is whether or not the violation was a single occurrence or was repeated or continuous during the period of the violation and receives a value of 0 as the violation was not repeated or continuous.

"R" is the cause of the violation and receives a value of 0 as it is the most appropriate finding under the rules. The violation was not caused by unavoidable accident, or Respondent's negligence, intentional conduct or flagrant conduct. Under these circumstances, the most appropriate value for the "R" factor is 0.

"C" is Respondent's cooperativeness in correcting the violation and receives a value of 0. While Respondent was cooperative, it could not correct the violation, could not make reasonable efforts to minimize the effects of the violation, and has not taken extraordinary measures to prevent a reoccurrence of the violation.

"EB" is the approximate dollar sum of the economic benefit that the Respondent gained through noncompliance, and receives a value of 0 as the City did not receive an economic benefit.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$6,000 + [(0.1 \times \$6,000) \times (7 + (-)2 + 0 + 0 + 0)] + \$0 \\ &= \$6,000 + [(\$600 \times 5)] + \$0 \\ &= \$6,000 + \$3,000 + \$0 \\ &= \$9,000 \end{aligned}$$



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 PREHEARING CONFERENCE

Date Mailed: November 7, 2002

JAN V BETZ
OFFICE OF THE CITY ATTORNEY
1221 SW FOURTH SUITE 430
PORTLAND OR 97204

JEFF BACHMAN
DEQ
811 SW SIXTH AVE
PORTLAND OR 97204

CERTIFIED MAIL RECEIPT #7001 1940 0000 5113 5427

RE: *In the Matter of City of Portland*
For the Oregon Department of Environmental Quality
Hearing Officer Panel Case No. 102453
Agency Case No. WQ/M-NWR-01-100

A prehearing conference has been set in the above-entitled matter before the Hearing Officer Panel.

Prehearing Date: November 14, 2002 Prehearing Time: 9:00 a.m.

Location:

By phone to:	
Jan V. Betz	(503) 823-4047
Office of the City Attorney	
Jeff Bachman	(503) 229-5950
Dept. of Environmental Quality	

A prehearing conference has been scheduled in the above-mentioned case. The following issues may be addressed during the prehearing conference: identification of issues, motions, preliminary rulings, documentary and testimonial evidence (if known), exchange of witness lists (if known), procedural conduct of the hearing, date, time and location of the hearing, and any other matter relating to the hearing.

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 Andrea H. Sloan, 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.

PLEASE PLACE IN ORIGINAL FILE

CASE NAME: City of Portland

CASE NUMBER: 102453

ALJ: Andrea Sloan

RE: PHC Ntc

Thanks, Ann ©

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><i>[Signature]</i></p>
<p>1. Article Addressed to:</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>JAN V BETZ OFFICE OF THE CITY ATTORNEY 1221 SW FOURTH SUITE 430 PORTLAND OR 97204</p> </div>	<p>B. Received by (Printed Name) <input type="checkbox"/> Date of Delivery</p> <p><i>Jenise Charbet</i> <i>[Date]</i></p>
<p>2. Article Number (Transfer from service label)</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>
<p>7001 1940 0000 5113 5427</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>PS Form 3811, August 2001 Domestic Return Receipt 102595-01-M-2509</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

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

7001 1940 0000 5113 5427

OFFICIAL USE

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

Sent To JAN V BETZ

Street, Apt. No or PO Box No. OFFICE OF THE CITY ATTORNEY

City, State, ZIP 1221 SW FOURTH SUITE 430
PORTLAND OR 97204

PS Form 3800, January 2001

See Reverse for Instructions



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: October 15, 2002

JAN V BETZ
OFFICE OF THE CITY ATTORNEY
1221 SW FOURTH SUITE 430
PORTLAND OR 97204

JEFF BACHMAN
DEQ
811 SW SIXTH AVE
PORTLAND OR 97204

CERTIFIED MAIL RECEIPT #7099 3400 0015 7214 2679

RE: *In the Matter of City of Portland*
For the Oregon Department of Environmental Quality
Hearing Officer Panel Case No. 102453
Agency Case No. WQ/M-NWR-01-100

- Issues: 1. Did the city violate ORS 468B.025 (1)(b) by causing or allowing raw sewage to discharge to the Willamette River.
2. If so, is the civil penalty correctly calculated.

A hearing has been set in the above-entitled matter before the Hearing Officer Panel.

Hearing Date: November 21, 2002 Hearing Time: 9:00 AM

**Location: DEQ Headquarters
811 SW Sixth
Portland OR 97204**

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 Andrea Sloan, 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.

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 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.

1. 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.*

PLEASE PLACE IN ORIGINAL FILE

CASE NAME: City of Portland

CASE NUMBER: 102453

ALJ: Andrea Sloan

RE: 11/21 Hrg Ntc

Thanks, Ann ☺

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none">Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.Print your name and address on the reverse so that we can return the card to you.Attach this card to the back of the mailpiece, or on the front if space permits.	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <u>DOUG ROBIN</u> C. Date of Delivery <u>16 OCT 2002</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>
1. Article Addressed to: <p>JAN V BETZ OFFICE OF THE CITY ATTORNEY 1221 SW FOURTH SUITE 430 PORTLAND OR 97204</p>	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.
2. Article Number (Transfer from service label) <u>7099 3400 0015 7214 2649</u>	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes
PS Form 3811, August 2001	Domestic Return Receipt 102595-01-M-2509

7099 3400 0015 7214 2649

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)	
Total Postage & Fees \$	
Recipient's Name <small>Always Print Clearly. It to be completed by mailer</small>	
Street, Apt. #	
City, State, Zi	

JAN V BETZ
OFFICE OF THE CITY ATTORNEY
1221 SW FOURTH SUITE 430
PORTLAND OR 97204

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

IN THE MATTER OF:

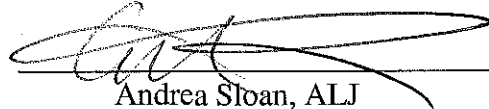
City of Portland

)
)
) **RULING GRANTING MOTION**
) Hearing Officer Panel Case No. 102453
) Agency Case No. WQ/M-NWR-01-100

On October 11, 2002 the Oregon Department of Environmental Quality filed a motion to reschedule the hearing in this matter set for October 24, 2002. The motion included a statement that Respondent City of Portland did not object to the motion.

The motion is granted and, by agreement of the parties, the October 24, 2002 hearing shall be rescheduled to November 21, 2002.

Dated this 14th day of October, 2002



Andrea Sloan, ALJ
Hearing Officer Panel



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 11, 2002

JAN V BETZ
OFFICE OF THE CITY ATTORNEY
1221 SW FOURTH SUITE 430
PORTLAND OR 97204

JEFF BACHMAN
DEQ
811 SW SIXTH AVE
PORTLAND OR 97204

CERTIFIED MAIL RECEIPT #7099 3400 0015 7214 3331

RE: *In the Matter of City of Portland*
For the Oregon Department of Environmental Quality
Hearing Officer Panel Case No. 102453
Agency Case No. WQ/M-NWR-01-100

- Issues:
1. Did the city violate ORS 468B.025 (1)(b) by causing or allowing raw sewage to discharge to the Willamette River.
 2. If so, is the civil penalty correctly calculated.

A hearing has been set in the above-entitled matter before the Hearing Officer Panel.

Hearing Date: October 24, 2002 Hearing Time: 9:00 AM

**Location: DEQ Headquarters
811 SW Sixth
Portland OR 97204**

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 Andrea Sloan, 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.

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

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.*

PLEASE PLACE IN ORIGINAL FILE

CASE NAME: City of Portland

CASE NUMBER: 102453

ALJ: Andrea Sloan

RE: 10/24 Hrg etc

Thanks, Ann ☺

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none">Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.Print your name and address on the reverse so that we can return the card to you.Attach this card to the back of the mailpiece, or on the front if space permits.	<p>A. Signature <u>[Signature]</u> <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery <u>12 SEP 2002</u></p>
1. Article Addressed to: <p>JAN V BETZ OFFICE OF THE CITY ATTORNEY 1221 SW FOURTH SUITE 430 PORTLAND OR 97204</p>	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No
2. Article Number (Transfer from service label)	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.
7099 3400 0015 7214 3331	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes

PS Form 3811, August 2001 Domestic Return Receipt 102595-01-M-2509

7099 3400 0015 7214 3331

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)		
Total Postage & Fees	\$	

Recipient's Name (Please Print Clearly) (to be completed by mailer)
JAN V BETZ
Street, Apt. 1 OFFICE OF THE CITY ATTORNEY
City, State, 2 1221 SW FOURTH SUITE 430
PORTLAND OR 97204



CITY OF
PORTLAND, OREGON
OFFICE OF CITY ATTORNEY

Jeffrey L. Rogers, City Attorney
City Hall, Suite 430
1221 S.W. 4th Avenue
Portland, Oregon 97204
Telephone: (503) 823-4047
Fax No.: (503) 823-3089

June 12, 2001

HAND DELIVERED

Deborah Nesbit
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

RECEIVED
JUN 12 2001

STATEWIDE ENFORCEMENT SECTION
DEPARTMENT OF ENVIRONMENTAL QUALITY

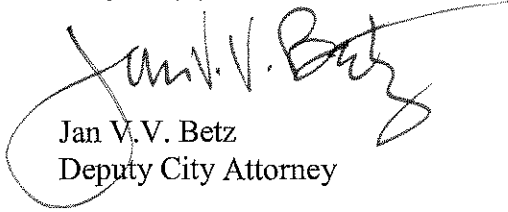
Re: Notice of Assessment of Civil Penalty
No. WQ/M-NWR-01-100
Multnomah County

Dear Ms. Nesbit:

The City of Portland requests a contested case hearing before the Environmental Quality Commission regarding the above-referenced Notice of Assessment of Civil Penalty. Enclosed is the City's Answer.

We also are hereby requesting an informal discussion with the Department regarding this matter. Please contact me to schedule a meeting for the informal discussion.

Very truly yours,


Jan V.V. Betz
Deputy City Attorney

Enclosure

JB

c. Dean Marriott
Steve Behrmdt
Marveita Redding

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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:
CITY OF PORTLAND,
Respondent

NOTICE OF ASSESSMENT OF CIVIL
PENALTY
No. WQ/M-NWR-01-100
MULTNOMAH COUNTY
ANSWER OF RESPONDENT

ANSWER

1. Respondent denies that it violated ORS 468B.025(1)(b) by discharging wastes that reduced the quality of state waters below the water quality standard established by the Environmental Quality Commission. Respondent further denies that it caused or allowed approximately 2.5 million gallons of raw sewage to discharge from its Ankeny Pump Station to the Willamette River on or about March 18, 2001.

AFFIRMATIVE DEFENSES

1. The loss of power to the Ankeny Pump Station that caused a discharge of wastes to waters of the state was beyond the control of Respondent. Respondent was not notified by PGE, the power supplier, that backup power for the Ankeny Pump Station had been disconnected.

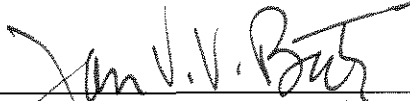
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2. PGE equipment also malfunctioned on March 18, 2001, causing the loss of the primary source of power to the Ankeny Pump Station. The PGE equipment failure was beyond the control of Respondent.

Dated this 12th day of June, 2001.

Respectfully submitted,



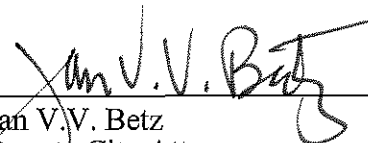
Jan V.V. Betz, OSB #87167
Of Attorneys for Respondent City of Portland

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing ANSWER on:

Deborah Nesbit
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

on June 12, 2001, by delivering by hand to said Deborah Nesbit a correct copy thereof, contained in a sealed envelope, on said day.



Jan V.V. Betz
Deputy City Attorney
City of Portland



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 21, 2001

CERTIFIED MAIL No. 70993220000489667271

City of Portland
c/o Dean Marriott, Director
Bureau of Environmental Services
1211 SW Fifth Ave., Room 1000
Portland, OR 97204-1912

Re: Notice of Assessment of Civil Penalty
No. WQ/M-NWR-01-100
Multnomah County

On March 18, 2001, an estimated 2.5 million gallons of raw sewage discharged from the City of Portland's Ankeny Pump Station to the Willamette River after a power failure. No back-up or auxiliary power was available to the pump station because the back-up supply had been disconnected by Portland General Electric (PGE) on February 6, 2001, in order to perform road repairs.

PGE disconnected the back-up power to facilitate repair of a sinkhole that developed on Front Street near the pump station. According to PGE, City Bureau of Environmental Services (BES) staff, along with staff from other city agencies, were present at an emergency meeting at the sinkhole site shortly after the sinkhole developed. At this meeting, PGE informed BES and other City staff that the road repair work would necessitate de-energizing of the back-up power supply for the Ankeny Pump Station. BES failed to ensure that the back-up power feed was re-energized when the road repair was completed prior to the overflow. As the operator of the pump station, primary responsibility for ensuring that back-up power is available rests with the City.

Discharging raw sewage to waters of the state violates a state water quality standard. The discharge of untreated or partially treated sewage to waters of the state presents a potential public health threat through direct human contact or through contact with insects that have been in contact with the sewage. Sewage is also a significant water pollutant that can harm aquatic life and render public waters unfit for human consumption and for recreational, commercial, and agricultural uses.

The Willamette River is already significantly polluted by discharges of raw sewage from the City's combined sewers that are beyond the City's current ability to control. These circumstances make it all the more important that the City make every possible effort to prevent discharges that are within its ability to control, such as the one that occurred at the Ankeny Pump Station.



The large volume of raw sewage discharged, 2.5 million gallons, had a significant adverse affect on the Willamette River. Analysis completed by the Department found that even if the river had met the water quality standard for bacteria upstream from where the pump station discharged, the overflow would have caused a violation in the numeric bacteria water quality standard for a minimum of 2.5 miles. Potentially, the discharge could have caused the entire 12.5-mile length of the Willamette from the discharge point to the confluence with the Columbia River to violate the bacteria standard.

The City is liable for a civil penalty assessment because it violated Oregon environmental law. In the enclosed Notice, I have assessed a civil penalty of \$10,000. The amount of the penalty is determined by procedures set forth in Oregon Administrative Rule (OAR) 340-012-0045. The Department's findings and civil penalty determination is attached to the Notice as Exhibit 1.

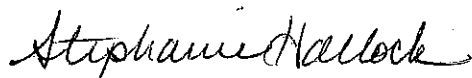
Appeal procedures are outlined in Section IV of the Notice. If the City fails to either pay or appeal the penalty within twenty (20) days, a Default Order will be entered against the City.

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

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

Copies of referenced rules are enclosed. If the City has any questions about this action, please contact Jeff Bachman with the Department's Office of Compliance and Enforcement in Portland at (503) 229-5950 or toll-free at 1-800-452-4011.

Sincerely,



Stephanie Hallock
Director

e:\winword\letters\5pdxltr.doc

Enclosures

cc: Lyle Christensen, Northwest Region, DEQ
Water Quality Division, HQ, DEQ
Department of Justice
Environmental Protection Agency
Environmental Quality Commission
Multnomah District Attorney
Jan V.V. Betz, Portland City Attorney's Office

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

3 IN THE MATTER OF:
4 CITY OF PORTLAND

5 Respondent.

)
) NOTICE OF ASSESSMENT
) OF CIVIL PENALTY
) No. WQ/M-NWR-01-100
) MULTNOMAH COUNTY
)

7 I. AUTHORITY

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

12 II. VIOLATION

13 On or about March 18, 2001, Respondent violated ORS 468B.025(1)(b) by discharging
14 wastes that reduced the quality of state waters below the water quality standard established by the
15 Environmental Quality Commission. Specifically, Respondent caused or allowed approximately
16 2.5 million gallons of raw sewage to discharge from its Ankeny Pump Station, off Naito Parkway in
17 Portland, to the Willamette River, waters of the state as defined in ORS 468B.005(8). Discharging
18 raw sewage to state waters violates the water quality standard established in OAR 340-041-
19 0445(2)(e)(B). This is a Class I violation pursuant to OAR 340-012-0055(1)(c).

20 III. ASSESSMENT OF CIVIL PENALTIES

21 The Department imposes a civil penalty of \$10,000 for the violation in Section II, above.
22 The findings and determination of Respondent's civil penalty, pursuant to OAR 340-012-0045, are
23 attached and incorporated as Exhibit 1.

24 IV. OPPORTUNITY FOR CONTESTED CASE HEARING

25 Respondent has the right to have a formal contested case hearing before the Environmental
26 Quality Commission (Commission) or its hearings officer regarding the matters set out above, at
27 which time Respondent may be represented by an attorney and subpoena and cross-examine

1 witnesses. **The request for hearing must be made in writing, must be received by the**
2 **Department within twenty (20) days from the date of service of this Notice, and must be**
3 **accompanied by a written "Answer" to the charges contained in this Notice.**

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

7 Except for good cause shown:

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

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

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

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

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

23 V. OPPORTUNITY FOR INFORMAL DISCUSSION

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

27 VI. PAYMENT OF CIVIL PENALTY

1 VI. PAYMENT OF CIVIL PENALTY

2 The civil penalty is due and payable ten (10) days after an Order imposing the civil penalty
3 becomes final by operation of law or on appeal. Respondent may pay the penalty before that time.
4 Respondent's check or money order in the amount of \$10,000 should be made payable to "State
5 Treasurer, State of Oregon" and sent to the **Business Office, Department of Environmental
6 Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.**

7
8 5-21-01
9 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: Discharging wastes that reduced the quality of state waters below a water quality standard established by the Environmental Quality Commission in violation of Oregon Revised Statute 468B.025(1)(b).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(c).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0045(1)(a)(B)(i). Based on the volume of raw sewage discharged to the Willamette River, the Department finds that the violation had a significant adverse affect on the environment.
- 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 \$6,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0042(1).
- "P" is Respondent's prior significant action(s) and receives a value of 7, pursuant to OAR 340-012-0045(1)(c)(A)(viii). At the time of violation, Respondent's prior significant actions, Case Nos. WQMW-NWR-90-89, WQMW-NWR-94-253, WQMW-NWR-94-305, WQMW-NWR-95-181, WQ/SW-NWR-98-013A, and WQ/M-NWR-99-043 consisted of six Class I equivalent violations.
- "H" is the past history of Respondent in taking all feasible steps or procedures necessary to correct any prior significant action(s) and receives a value of -2 because Respondent has corrected its prior significant actions.
- "O" is whether or not the violation was a single occurrence or was repeated or continuous during the period of the violation and receives a value of 0 as the violation was not repeated or continuous.
- "R" is the cause of the violation and receives a value of 2 as the cause of the violation was Respondent's negligent conduct. Respondent's electrical supplier informed Respondent that it had no effective back-up power when it rerouted power on February 6, 2001, to facilitate road repairs. Respondent failed to ensure back-up power was restored after completion of the road repairs. Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.
- "C" is Respondent's cooperativeness in correcting the violation and receives a value of 0. While Respondent was cooperative, it could not correct the violation, could not make reasonable efforts to minimize the effects of the violation, and has not taken extraordinary measures to prevent a reoccurrence of the violation.

"EB" is the approximate dollar sum of the economic benefit that the Respondent gained through noncompliance, and receives a value of 0 as the City did not receive an economic benefit.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$6,000 + [(0.1 \times \$6,000) \times (7 + (-)2 + 0 + 2 + 0)] + \$0 \\ &= \$6,000 + [(\$600 \times 7)] + \$0 \\ &= \$6,000 + \$4,200 + \$0 \\ &= \$10,200 \end{aligned}$$

Respondent's total civil penalty is \$10,000 as ORS 468.130(1) limits the total penalty for a single violation to \$10,000.

CERTIFICATE OF MAILING

I hereby certify that I served _____
Notice of Assessment of Civil Penalty Case No. WQIM-NWR-01-100

CITY OF PORTLAND
c/o DEAN MARRIOTT, DIRECTOR
BUREAU OF ENVIRONMENTAL SERVICES
1211 SW FIFTH AVENUE ROOM 1000
PORTLAND OR 97204

_____ a true copy of the above by placing it in a sealed envelope, with postage
and, Oregon, on 5-22-01

Deborah Nesbit
Department of Environmental Quality

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

Article Sent To:

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

CITY OF PORTLAND
c/o DEAN MARRIOTT, DIRECTOR
BUREAU OF ENVIRONMENTAL SERVICES
1211 SW FIFTH AVENUE ROOM 1000
PORTLAND OR 97204

1221 9966 4000 0225 1111



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

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

August 2, 2004

David P. Meyer
Attorney for Vickers/Nelson
612 SW Morrison Street, Ste 1300
Portland, OR 97205

RE: AQ/AB-NWR-02-181

Dear Mr. Meyer:

On August 2, 2004, the Environmental Quality Commission issued the attached Final EQC Order in Case No. AQ/AB-NWR-02-181. The Final Order found that your client, Vickers/Nelson & Associates, is liable for a civil penalty of \$7,200, to be paid to the State of Oregon. While your client has 60 days to seek judicial review of the decision, the penalty is due and payable 10 days after the date of the Final Order, pursuant to Oregon Revised Statute (ORS) 183.090.

Please immediately send a check or money order in the amount of \$7,200, made payable to "State Treasurer, State of Oregon," to the Business Office, Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

If we do not receive payment in full by August 12, 2004, we will file the Final Order with the appropriate counties, thereby placing a lien on any property your client owns within Oregon. We will also refer the Final Order to the Department of Revenue and/or a private collection agency for collection, pursuant to ORS 293.231. Statutory interest on judgments is nine percent per annum.

If you have any questions, please call Deborah Nesbit at DEQ's Office of Compliance and Enforcement in Portland, (503) 229-5340.

Sincerely,

Andrea Bonard
Acting Assistant to the Commission

cc: Business Office, DEQ
Bryan Smith, OCE, OD, DEQ
Air Quality DEQ
Dave Wall, NWR, DEQ
Vickers/Nelson & Associates, Construction Program Management, Inc., Attn:
Douglas D. Nelson, Registered Agent, 1420 NW Lovejoy #416, Portland, OR
97209
Ann Redding, Office of Administrative Hearings, Transportation Hearings
Division, 1905 Lana Ave NE, Salem, OR 97314.

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

In the Matter of)
) EQC Case No. AQ/AB-NWR-02-181
Vickers/Nelson & Associates,)
) FINAL ORDER
)
)

On July 15, 2004, the Environmental Quality Commission considered the Petition of Vickers/Nelson & Associates for review in this matter. Vickers/Nelson was represented by David P. Meyer. The Department was represented by Bryan Smith, Environmental Law Specialist and Shelley K. McIntyre, Assistant Attorney General. The Commission considered the written materials supplied by Vickers/Nelson and the Department and it heard oral arguments.

Exclusion of Evidence

The Commission rejects the Petitioner's challenge to the Administrative Law Judge's decision to exclude Exhibits R115, R117, R118, and R119. The Commission concludes that to the extent, if any, the documents have any technical relevance to the matter, the evidence would not change the findings of fact or conclusions of law even if accepted and considered in the manner most favorable to the Petitioners.

Findings of Fact

The Commission adopts the Findings of Fact and Conclusions of Law as set out in the Administrative Law Judge's Decision (Attached as Exhibit 1 to this Final Order).

Opinion

OAR 340-248-0110(2) is a valid exercise of the Commission's authority to interpret and implement ORS 468A.715(1). The actions of the Petitioner and others as set out in Findings of Fact establish that Vickers/Nelson supervised and controlled the renovation project at the John James School, and is thus an "operator" under the Department's rules.

Accordingly, the assessment of the civil penalty of \$7,200 against Vickers/Nelson is affirmed.

Dated this 2nd day of August, 2004.

Stephanie Hallock

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

Attachment
GENJ7550

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

In the Matter of)
) EQC Case No. AQ/AB-NWR-02-181
Vickers/Nelson & Associates,)
) FINAL ORDER
)
)

On July 15, 2004, the Environmental Quality Commission considered the Petition of Vickers/Nelson & Associates for review in this matter. Vickers/Nelson was represented by David P. Meyer. The Department was represented by Bryan Smith, Environmental Law Specialist and Shelley K. McIntyre, Assistant Attorney General. The Commission considered the written materials supplied by Vickers/Nelson and the Department and it heard oral arguments.

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The Commission rejects the Petitioner's challenge to the Administrative Law Judge's decision to exclude Exhibits R115, R117, R118, and R119. The Commission concludes that to the extent, if any, the documents have any technical relevance to the matter, the evidence would not change the findings of fact or conclusions of law even if accepted and considered in the manner most favorable to the Petitioners.

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Opinion

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Dated this 2nd day of August, 2004.

Stephanie Hallock

Stephanie Hallock, Director

Department of Environmental Quality

On behalf of the Environmental Quality Commission

Attachment
GENJ7550



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

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

August 2, 2004

David P. Meyer
Attorney for Vickers/Nelson
612 SW Morrison Street, Ste 1300
Portland, OR 97205

RE: AQ/AB-NWR-02-181

Dear Mr. Meyer:

On August 2, 2004, the Environmental Quality Commission issued the attached Final EQC Order in Case No. AQ/AB-NWR-02-181. The Final Order found that your client, Vickers/Nelson & Associates, is liable for a civil penalty of \$7,200, to be paid to the State of Oregon. While your client has 60 days to seek judicial review of the decision, the penalty is due and payable 10 days after the date of the Final Order, pursuant to Oregon Revised Statute (ORS) 183.090.

Please immediately send a check or money order in the amount of \$7,200, made payable to "State Treasurer, State of Oregon," to the Business Office, Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

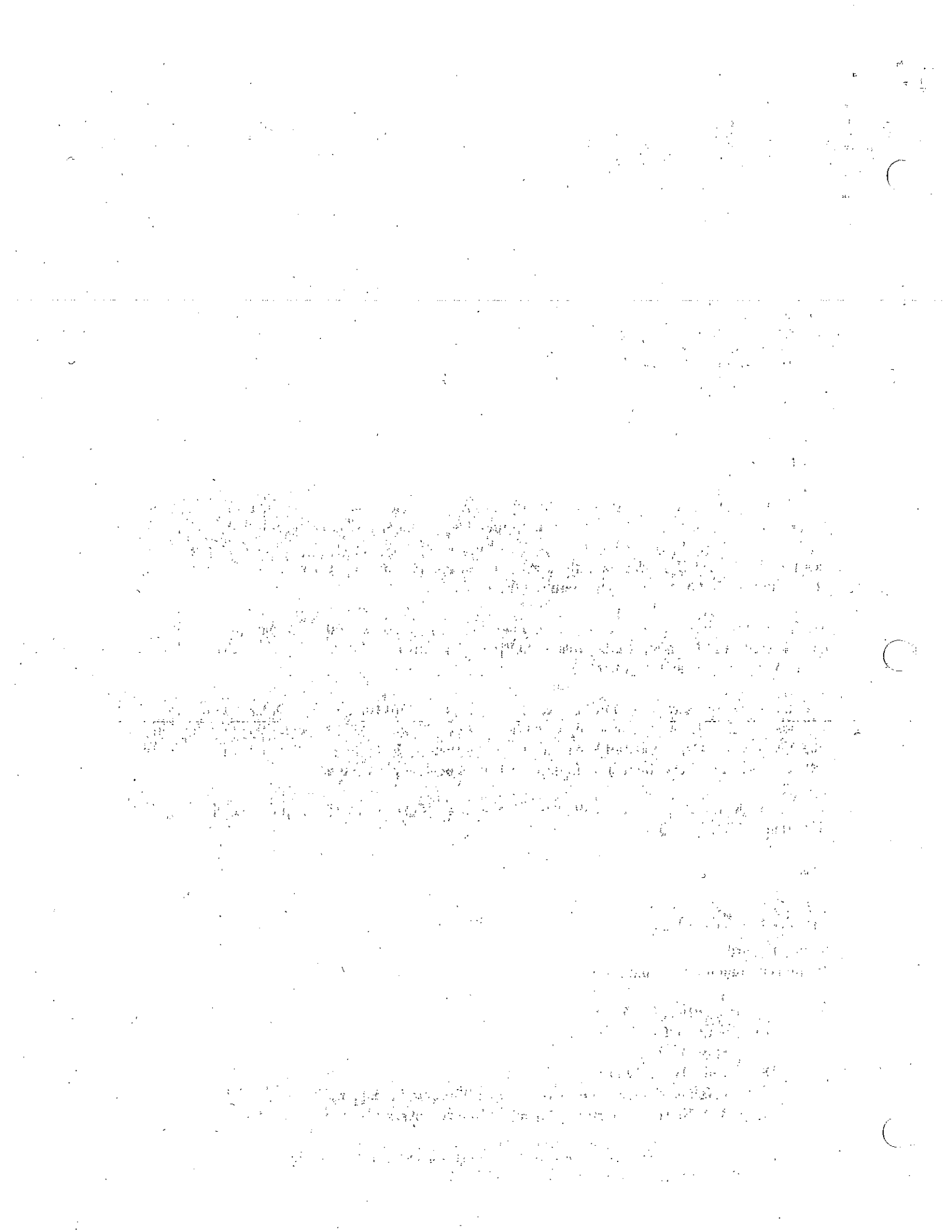
If we do not receive payment in full by August 12, 2004, we will file the Final Order with the appropriate counties, thereby placing a lien on any property your client owns within Oregon. We will also refer the Final Order to the Department of Revenue and/or a private collection agency for collection, pursuant to ORS 293.231. Statutory interest on judgments is nine percent per annum.

If you have any questions, please call Deborah Nesbit at DEQ's Office of Compliance and Enforcement in Portland, (503) 229-5340.

Sincerely,

Andrea Bonard
Acting Assistant to the Commission

cc: Business Office, DEQ
Bryan Smith, OCE, OD, DEQ
Air Quality DEQ
Dave Wall, NWR, DEQ
Vickers/Nelson & Associates, Construction Program Management, Inc., Attn:
Douglas D. Nelson, Registered Agent, 1420 NW Lovejoy #416, Portland, OR
97209
Ann Redding, Office of Administrative Hearings, Transportation Hearings
Division, 1905 Lana Ave NE, Salem, OR 97314.



State of Oregon
Department of Environmental Quality

Memorandum

Date: June 24, 2004
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Agenda Item B: Contested Case No. AQ/AB-NWR-02-181 regarding Vickers/Nelson & Associates, Construction Program Management, Inc., July 15, 2004 EQC Meeting

Appeal to EQC On October 27, 2003, Vickers/Nelson & Associates, Construction Program Management, Inc., appealed the Proposed Order (Attachment H) that assessed the company a \$7,200 civil penalty for failing to require an asbestos abatement contractor licensed by the Department of Environmental Quality (DEQ, Department) to conduct an asbestos abatement project on a North Portland facility.

Background On September 12, 2001, Vickers/Nelson & Associates, Construction Program Management, Inc. (Vickers) entered into a contract with Portland Public Schools (PPS) to provide project management services for PPS, including renovation work at the James John Elementary school, at 7439 North Charleston Avenue, Portland, Oregon. The work at the school included removing and replacing sheet vinyl from the floor of a boy's restroom. Vickers' agreement with PPS designated Vickers as an "owner's representative" for the project, making Vickers the intermediary between PPS and all contractors hired to do renovation work. Vickers solicited bids for the project, and then forwarded those bids and its recommendations to PPS. Following this process, PPS contracted with Cedar Mill Construction Company (Cedar Mill), which then sub-contracted with Addison Interiors to remove the flooring in the boy's restroom.

On August 7, 2002, PPS emailed and left a telephone voice message with Vickers advising that "CONTRACTOR CANNOT REMOVE UNTIL WE TEST FOR ASBESTOS" (emphasis in PPS original email). On August 8, Vickers notified Cedar Mills to start work on the project. On August 9, Vickers instructed Cedar Mill not to remove the flooring until August 13, after an asbestos test was complete.

Vickers learned on August 13, that the test results showed that the flooring contained asbestos. On the same day, Cedar Mill told Vickers that Addison had already removed the flooring. Vickers "shut down the site" until the extent of contamination could be determined.

On August 14, DEQ inspected the school and found that the boy's restroom

flooring, which contained friable asbestos, had been removed dry, carried through the school corridors, and placed in an uncovered dumpster.

On March 3, 2003, DEQ issued to Vickers a Notice of Civil Penalty Assessment alleging that Vickers had violated Oregon Revised Statute (ORS) 468A.715(1) and Oregon Administrative Rule (OAR) 340-248-0110(2) by allowing a contractor, who was not a Department-licensed asbestos abatement contractor, to conduct an asbestos abatement project on a facility it operated.

A contested case hearing was held, and on October 9, 2003, the Administrative Law Judge issued a Proposed Order (Attachment H) holding that Vickers was liable for the violation and the \$7,200 civil penalty.

In its Exceptions and Brief (Attachment E) and its subsequent Reply Brief (Attachment A) Vickers requests that the Commission adopt alternate findings of fact and alternate conclusions of law, and reverse the Administrative Law Judge's conclusion that Vickers is liable for the violation.

In its Response Brief (Attachment B), DEQ requests that the Commission uphold the Proposed Order.

Issues On Appeal

The over-arching issue is whether or not Vickers was an "operator" of the facility, or the renovation project at the facility, such that it should be held liable for failing to require a Department-licensed asbestos abatement contractor to conduct an asbestos abatement project. Vickers argues that it was not an operator, while the Department argues that Vickers was an operator.

OAR 340-248-0010(33) defines "owner or operator" as follows: "any person who owns, leases, operates, controls, or supervises a facility being demolished or renovated or any person who owns, leases, controls, or supervises the demolition or renovation operation or both."

Regarding this issue, Vickers makes four exceptions to the Administrative Law Judge (ALJ) decision:

1. Vickers argues that the ALJ erred by excluding evidence of DEQ's action in prior cases. Vickers argues that this evidence should be admissible to demonstrate that DEQ's interpretation of the applicable statutes and rules was inconsistent as applied to Vickers.

2. Vickers argues that the Federal AHERA (Asbestos Hazard Emergency Response Act) requirements should have been admissible to establish that PPS had a non-delegable asbestos abatement duty. Vickers also argues that this duty makes PPS the operator of the facility, and thus the only party liable for the violation.
3. Vickers argues that the Findings of Fact Numbers 1 through 10 are irrelevant, because they fail to show that Vickers was an owner or operator of the Facility. Vickers argues that the determination of whether or not it was the operator must be based on the contractual relationship between Vickers and PPS.
4. Vickers argues that the Proposed Order is legally contradictory, and contrary to the law, because the ALJ improperly expanded the legislative scope of individuals and entities liable for violations of environmental laws.

DEQ responds to these exceptions as follows:

1. DEQ replies that the ALJ properly excluded evidence of DEQ's prior action in a similar case, because those prior cases are not relevant to the issue of whether or not Vickers committed the violation.
2. DEQ replies that the ALJ properly excluded federal AHERA requirements which create asbestos obligations for schools, because AHERA does not apply to Vickers. Regardless of whether or not PPS complied with its own AHERA asbestos requirements, nothing in the AHERA requirements would exempt Vickers from meeting its own obligations under asbestos control laws.
3. DEQ replies that the Findings of Fact Numbers 1 through 10 are relevant to show that Vickers was an owner or operator of the facility, because the definition of operator does not require the existence of certain contractual relationships between parties, but rather focuses on facts indicative of "ownership, operation, control or supervision" of the facility. The Department also argues that the rules contemplate that there may be one or more operators of a facility.
4. DEQ replies that the ALJ properly applied the governing statutes and rules recognizing that there could be more than one "owner or operator" and properly concluded that Vickers was an operator based on the extent of control Vickers had over the facility or renovation project.

Alternatives

The Commission may:

1. As requested by the Department, uphold the ALJ's Proposed Order that Vickers 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 \$7,200 civil penalty.
2. As requested by Vickers, reverse the ALJ's decision, based on the reasoning offered by Vickers.
3. Uphold the ALJ's decision, but adopt different reasoning.
4. Remand the case to the ALJ 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 ALJ except as noted below.¹ The proposed order was issued under current statutes and rules governing the Hearing Officer Panel Pilot Project.² Under these statutes, the Department's contested case hearings must be conducted by a hearing officer (or ALJ) appointed to the panel, and the Commission's authority to review and reverse the ALJ's decision is limited by the statutes and the rules of the Department of Justice that implement the project.³

The most important limitations are as follows:

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

¹ OAR 340-011-0132.

² Or Laws 1999 Chapter 849.

³ *Id.* at § 5(2); § 9(6).

⁴ *Id.* at § 12(2).

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

⁶ *Id.* at § 8; OAR 137-003-0655(4).

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

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

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

Attachments

- A. Appellant's Reply Brief, dated January 16, 2004.
- B. Department's Response to Appellant's Exceptions and Brief, dated December 29, 2003.
- C. Letter from Mikell O'Mealy, dated December 29, 2003.
- D. Department's request for an extension, dated December 29, 2003
- E. Appellant's Exceptions and Brief, dated November 26, 2003.
- F. Letter from Mikell O'Mealy, dated October 31, 2003.
- G. Appellant's Petition for Commission Review, dated October 27, 2003.
- H. Proposed Order for Assessment of Civil Penalty, dated October 9, 2003.
- I. Appellant's Closing Argument and Memorandum of Legal Authority, dated August 25, 2003.
- J. Department's Closing Argument, dated August 15, 2003.
- K. Department's Memorandum of Legal Authority, dated August 14, 2003.
- L. Appellant's Hearing Memorandum, dated July 10, 2003.
- M. Exhibits from Hearing of July 11, 2003.
 - P1. Notice of Assessment of Civil Penalty, dated March 6, 2003.
 - P2. Appellant's Request For Hearing and Answer, dated March 20, 2003.
 - P3. Corrected Notice of Hearing dated June 17, 2003.
 - P4. Notice of Contested Case Rights, dated June 17, 2003.
 101. Contract between Vickers and PPS, dated September 12, 2001.
 102. Vickers' Invitation to Quote, dated July 22, 2002.
 103. Project general notes and floorplan.

⁷ OAR 137-003-0655(5); OAR 137-003-0660.

⁸ OAR 340-011-0132(3)(a).

⁹ *Id.* at (4).

104. Contract between PPS and Cedar Mill.
105. Insurance Policy for Cedar Mill.
106. Oregon Workers' Compensation Certificate of Insurance.
107. Cedar Mill's Performance Bond.
108. Cedar Mill's Payment Bond.
109. Emails between Ann White and Linda Cameron, dated August 7, 2002.
110. Notice to Proceed sent by Vickers to Cedar Mill, dated August 8, 2002.
111. Letter from Cedar Mills to Vickers, dated August 14, 2002.
112. Answer from Addison Interiors, dated March 11, 2003.
113. Handwritten notes, undated.
114. Letter from Apex Environmental to Linda Cameron, with attached invoices, dated September 17, 2002.
116. Notice of Violation and Assessment of Civil Penalty (to Princeton Property Management), dated September 30, 2002.
119. Emails between Dave Wall and Bryan Smith, dated December 10 and 16, 2002.
120. Enforcement Referral for Cedar Mill.
121. Emails sent by Don Larson and Tulla Stocker, dated August 15 and 16, 2002.
122. Contract between Apex Environmental and PPS, dated July 1, 2001.
- A1. Facsimile from Apex Environmental to Dave Wall, dated August 21, 2002.
- A2. Inspection Report, dated August 19, 2002.
- A3. Asbestos Abatement Project Notification, dated August 14, 2002.
- A4. Vickers request for bids entitled "Scope of Services," dated Summer, 2002.
- A5. Letter from Cedar Mills to Vickers, dated August 14, 2002.
- A6. Notice of Noncompliance sent to Vickers, dated October 23, 2002.
- A7. Contract between Vickers and PPS, dated September 12, 2001.
- A8. Letter from Robert Enninga to Vickers, dated August 21, 2001.
- A9. Emails between Ann White to Linda Cameron, sent between August 7 and 9, 2002.
- A10. Notice to Proceed sent by Vickers to Cedar Mill, dated August 8, 2002.
- A11. Facsimile from Greg Vickers to Bryan Smith, dated April 15, 2003.
- A12. Letter from Cedar Mill to Vickers, dated August 14, 2002.

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

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

3 IN THE MATTER OF:)
4))
5 VICKERS/NELSON & ASSOCIATES,) No. AQ/AB-NWR-02-181
6 CONSTRUCTION PROGRAM)
7 MANAGEMENT, INC.) PETITIONER'S REPLY BRIEF
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8 DEQ's Response to Petitioner's Exceptions and Brief totally
9 fails to answer any of the legal arguments made by Petitioner.
10 Indeed, it virtually acknowledges the legal errors when, in the
11 less than half a page devoted to legal insufficiency (bottom of
12 page 4 and top of page 5), it suggests that the Administrative
13 Law Judge's Proposed Order may be "weak."

14 DEQ inaccurately states, "Petitioner does not dispute the
15 facts." Indeed, Petitioner strongly challenges the so-called
16 "facts" as irrelevant to the legal issues. It is noteworthy
17 that the Proposed Order contains no Finding of Fact that
18 Petitioner was an "owner or operator" under the meaning of the
19 statute. Making that a Conclusion of Law is not the same as
20 making that a Finding of Fact, something that cannot be done
21 based on the uncontradicted evidence. Indeed, DEQ relies on a
22 **tautology**: Petitioner is an operator because it is an operator.

23 DEQ fails to show why the exclusion of prior agency action
24 was not improper under the *Moke* decision, yet the evidence is
25 that this prior agency action was admittedly the very predicate
26 of the false Notice of Assessment **in this case**. This exclusion
came in the face of the general rules of administrative law that
it is better to receive evidence that has any possible relevance
than to exclude it. Here the exclusion was to save the agency

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JAN 16 2004

Oregon DEQ
Office of the Director

1 staff from the embarrassment of having initiated this penalty
2 based on a factually false Notice of Assessment.

3 DEQ's failure in any way to respond to the Petitioner's
4 legal arguments is most telling:

5 1. Petitioner pointed out the complete legal
6 contradiction in the Proposed Order when it states
7 that "[T]he context of the statutory term 'owner or
8 operator' can be determined from the ordinary meaning
9 of these words" and then proceeds to state that "the
10 term 'owner or operator' is inexact" so as to require
11 reference to "extrinsic indicators." DEQ fails to
12 respond; one assumes because it can't.

13 2. Petitioner referred to the dictionary definition
14 of "operator" to show that it would not be covered by
15 that definition. DEQ fails to respond because it
16 cannot. Indeed, only by going far beyond the
17 definition of "operator," to include a variety of
18 other persons whom the legislature did not subject to
19 liability, does DEQ attempt to impose liability on a
20 classes of people upon which the legislature did not
21 seek to impose liability.

22 3. Petitioner cited the law that an administrative
23 agency has no authority to expand the scope of laws
24 beyond that intended by the legislature. That is
25 particularly the case for a statute imposing
26 penalties, which provisions and definitions must be
strictly construed. DEQ fails to address the clear
Oregon law, cited in Petitioner's Brief.

4. Petitioner pointed out that the very premise of
DEQ's attempt to penalize Petitioner was the false
allegation in the Notice of Assessment that Petitioner

1 "acted as the operator of the Facility when it hired
2 CMC as the general contractor, and as the principal
3 Vickers failed to hire a licensed asbestos abatement
4 contractor." When it turned out that this was an
5 entirely false predicate for the assessment, staff
6 just bull-dogged its way to impose liability on an
7 entity which was merely "the intermediary or 'go
8 between' between PPS and all contractors hired [by the
9 School District, not Vickers] to do the renovation
10 work." (Finding #3, which is accurate)

11 In short, DEQ falsely charged Petitioner and when that
12 became apparent, decided bull-headedly to proceed anyway,
13 improperly expanding those limited classes of persons upon which
14 the legislature chose to impose penalties for acts over which
15 they had substantial control, as either an "owner or operator."
16 The Commission itself should rein in a runaway prosecution that,
17 while starting off with a legally correct, but factually false
18 premise, couldn't and wouldn't acknowledge its mistakes. The
19 Commission should see to it that the statute is strictly imposed
20 only upon those upon whom the legislature decided should suffer
21 penalties, which must be strictly construed, not upon those
22 additional people whom the staff seeks to include in its
23 amorphous net. This is particularly the case where staff acts

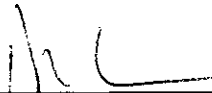
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1 so discriminatorily when it fails to impose liability on the
2 School District, about which there can be no doubt of liability!

3
4 Respectfully submitted,

5 DATED this 15th day of January, 2004.

6 DAVID P. MEYER, P.C.

7
8 
9 _____
10 David P. Meyer, OSB 89092
11 Attorney for Vickers/Nelson
12 612 SW Morrison St, Ste 1300
13 Portland, OR 97205-3816
14 (503) 224-1096
15
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26

1 CERTIFICATE OF SERVICE

2 I hereby certify that I served the foregoing PETITIONER'S

3 REPLY BRIEF on:

4 Mikell O'Mealy
5 Environmental Quality
6 Commission
7 811 SW 6th Ave
8 Portland OR 97204-1334


Shelley K. McIntyre
Assistant Attorney General
Natural Resources Section
Oregon Department of Justice
1515 SW Fifth Ave Ste 410
Portland OR 97201

8 X by mailing a full, true and exact copy thereof with the
9 U.S. Postal Service in Portland, Oregon in a sealed, first-
10 class postage prepaid envelope to the attorney's or party's
11 last known address as shown above on the date set forth
12 below.

11 _____ by causing a full, true and exact copy thereof to be
12 delivered by handing it to the attorney or party as shown
13 above on the date set forth below.

4 _____ by faxing a full, true and exact copy thereof to the
15 attorney's telephonic facsimile communication device,
16 maintained by the attorney, as shown above, which was
17 operating on the date set forth below. Attached is the
18 printed confirmation of receipt of the message generated by
19 the transmitting machine.

20 DATED this 15th day of January, 2004.

21 
22 _____
23 David P. Meyer

HARDY MYERS
Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

December 29, 2003

RECEIVED

DEC 31 2003

Oregon DEQ
Office of the Director

Mikell O'Mealy
Environmental Quality Commission
811 SW 6th Ave.
Portland, Oregon 97204

Re. Vickers/Nelson & Assoc.
DEQ's No. AQ/AB-NWR-02-181

Dear Ms. O'Mealy:

Enclosed is DEQ's Response to Petitioner's Exceptions and Brief in this matter.

Sincerely,

Shelley K. McIntyre
Assistant Attorney General
Natural Resources Section

cc: David P. Meyer, P.C.
Bryan Smith, DEQ

1 **COMMISSION'S AUTHORITY FOR MODIFYING THE**
2 **HEARING OFFICER'S FINDINGS OF FACT**

3 Under the provisions governing contested cases conducted by an ALJ assigned from the
4 Administrative Hearings Office, if the agency modifies the form of order issued by the ALJ in any
5 substantial manner, the agency must explain why it made the modification. 1999 Or. Laws, c. 849
6 §12(2). In addition, an agency may not modify a "finding of historical fact" made by the assigned
7 ALJ unless the agency determines that the finding of historic fact made by the ALJ is not supported
8 by a preponderance of the evidence in the record.¹ 1999 Or. Laws, c. 849 §12(3).

9 **PETITIONER'S EXCEPTIONS**

10 1. *Petitioner objects to the ALJ's Evidentiary Rulings.* In contested case hearings,
11 irrelevant, immaterial, or unduly repetitious evidence "shall be excluded but erroneous rulings on
12 evidence shall not preclude agency action on the record unless shown to have substantially
13 prejudiced the rights of a party." ORS 183.450(1). Under the Department's rules for contested
14 cases, evidence may be admitted if it is "relevant and material to either proving or disproving the
15 matters asserted in the Department's Notice." OAR 340-011-0131(a).

16 a. Evidence of Prior Agency Action.

17 Exhibits R115, R117, and R118 relate to a violation that was settled and never went to
18 hearing. Petitioner argues that these documents are relevant because the *Princeton* case "was the
19 very predicate" of the Department's Notice in this case and was the Department's "basis and
20 rationale for its prosecution of the present case." Petitioner argues that by admitting these exhibits,
21 it could prove that its case can be distinguished on the facts and, therefore, it is not liable. This
22 argument fails for two reasons.

23 First, contrary to Petitioner's assertion, DEQ did not rely on the *Princeton* case in bringing
24 this case. Second, even if the operator in the *Princeton* case was differently situated than Petitioner,
25 that case would not necessarily exonerate Petitioner. The Department has taken enforcement action

26 _____
27 ¹ A "finding of historical fact" is a determination by the administrative law judge that an event did or did not occur
in the past or that a circumstance or status did or did not exist either before the hearing or at the time of the hearing.
1999 Or. Laws, c. 849 §12(3).

1 against scores of violators of the asbestos rules. Each one is slightly different on the facts, but the
2 Department has held persons other than the property owner or actual demolition contractors liable
3 in the past.

4 Petitioner cites to *Moke, Inc. v. OLCC*, 68 Or. App. 800 (1984) in support of its argument
5 that the ALJ erred in excluding the exhibits at issue. In *Moke*, the OLCC had denied a liquor
6 dispenser's application for a license even though it previously had granted a license to another
7 entity under very similar facts. The OLCC had even taken official notice of certain facts concerning
8 the application that it had granted. The problem was that the OLCC failed to provide any
9 explanation of why it granted the one application but denied the other. Here, the ALJ's exclusion
10 of these exhibits was proper because Petitioner failed to demonstrate the relevancy of these exhibits
11 to the matters asserted in the Department's Notice.

12 b. The Federal AHERA Requirements.

13 Petitioner argues that the federal AHERA requirements referred to in Exhibit R119 are
14 admissible and were erroneously excluded. The ALJ properly excluded this exhibit because
15 references to AHERA are irrelevant to the case against Petitioner. The federal AHERA
16 requirements create liability for schools. Petitioner is not a school. Petitioner is the entity named
17 in the Notice, and AHERA does not apply to Petitioner.

18 Petitioner argues that AHERA is relevant because the Supremacy Clause imposes non-
19 delegable duties on schools. However, Petitioner does not show that AHERA was intended to
20 occupy the field in such a manner that it limits obligations of others. In essence, Petitioner
21 argues that AHERA, which was designed to force schools to take extra care to protect children
22 from asbestos, allows contractors and other owners or operators to ignore the impacts of their
23 asbestos abatement on children. Just because PPS had a duty under federal law to take certain
24 actions concerning asbestos does not mean that Petitioner is exempt from complying with
25 Oregon's asbestos rules.

26 //

27 //

1 2. *Petitioner objects to Findings of Fact Nos. 1-10 as being irrelevant because they*
2 *fail to show that Petitioner was an owner or operator of an asbestos abatement facility.*

3 Petitioner appears to argue here that it could not be an “owner or operator” because the school
4 was the owner or operator. This is erroneous. Petitioner presents no logical legal or policy
5 reason in favor of such an interpretation. The Department’s rules contemplate that there may be
6 one or more operators of a facility, each of whom is responsible for complying with those rules

7 Petitioner also states that “the determination of whether Petitioner was an ‘operator’
8 under the Oregon air quality laws must be based on the contractual relationship between
9 Petitioner and PPS (Portland Public Schools).” This is incorrect. Whether Petitioner was an
10 “operator” does not depend on the contractual relationship between Petitioner and PPS. OAR
11 340-248-0010(33) defines “owner or operator” as “any person who owns, leases, operates,
12 *controls, or supervises* a facility being demolished or renovated or any person who owns, leases,
13 operates, *controls, or supervises* the demolition or renovation operation, or both.” (Emphasis
14 added.) The definition of “operator” does not require the existence of certain contractual
15 relationships between parties. In fact, the rule requires the Department to gather facts indicative
16 of “ownership, operation, control, or supervision” rather than focus solely on contractual
17 relationships.

18 The proposed Findings of Fact provide the basis for the legal conclusion that Petitioner
19 had “ownership, operation, control, or supervision” of the Facility. They thus support the ALJ’s
20 Conclusion of Law that Petitioner was an “operator” of the school during August, 2002.
21 Therefore, they should not be stricken.

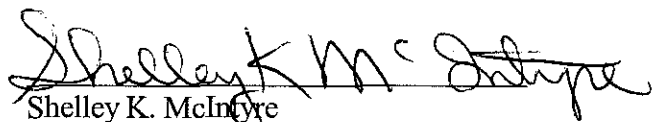
22 3. *Petitioner argues that the Administrative Law Judge’s Opinion is legally flawed.*
23 Petitioner’s vituperative assault on the ALJ’s Opinion simply argues the facts and misses the
24 point. The Commission and the Department have had to apply the definition of “owner or
25 operator” to unusual fact situations several times. Except in cases of strict liability for the owner
26 of the real property or the facility, the legal issue often turns on the extent of control the
27 respondent had over the facility and the demolition or renovation operation itself.

1 The Department submitted a Memorandum of Legal Authority August 14, 2003, which
2 we incorporate herein by this reference. That Memorandum provides the legal analysis for why
3 Petitioner was an "owner or operator" under Oregon law governing asbestos abatement projects
4 and will not be repeated here. If the Commission believes that the ALJ's Opinion portion of the
5 Proposed Order is weak for the reasons Petitioner suggests, the Commission could adopt the
6 Department's Memorandum *in lieu* thereof.

7 4. *Petitioner argues that the ALJ's proposed Conclusions of Law are neither*
8 *supported by the facts nor based on a correct analysis of the governing statute.* This exception
9 basically is a summary of all that has gone before it. Again, Petitioner is wrong. Even if
10 Petitioner was merely a "project manager" or "management agent" and did not have a contractual
11 arrangement with the party performing the asbestos abatement, the factual record supports the
12 conclusion that Petitioner controlled or supervised the demolition and renovation project at the
13 school. Because Petitioner controlled or supervised the project, it was an "owner or operator" as
14 that term is used for asbestos abatement projects.

15 DATED this 29 day of December 2003.

17 Respectfully submitted,

18 

19 Shelley K. McIntyre
20 Assistant Attorney General
21 For the Department of Environmental Quality

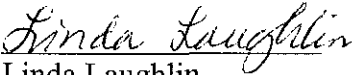
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CERTIFICATE OF SERVICE BY MAIL

I certify that on December 30, 2003, I served DEQ'S RESPONSE TO
PETITIONER'S EXCEPTIONS AND BRIEF in Case No. AQ/AB-NWR-02-181 upon
the following persons by mailing a true, exact, and full copy thereof to them at the
following addresses:

David Meyer, P.C.
621 SW Morrison St., Ste. 1300
Portland, Oregon 97205

Bryan Smith
Department of Environmental Quality
811 SW 6th Ave.
Portland, Oregon 97204


Linda Laughlin
Oregon Department Of Justice



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

811 SW Sixth Avenue

Portland, OR 97204-1390

503-229-5696

TTY 503-229-6993

December 29, 2003

Via Certified Mail

Bryan Smith
Environmental Law Specialist
811 SW Sixth Ave.
Portland, OR 97204

RE: AQ/AB-NWR-02-181

Dear Mr. Smith:

On December 29, 2003, the Environmental Quality Commission received your request for a one week extension of the deadline for submitting the Department's Reply Brief in the above referenced case. Your request has been granted and the Reply Brief must now be filed by January 4, 2004.

If you have any 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: Shelley McIntyre, Oregon Department of Justice
David P. Meyer, Attorney for Vickers/Nelson, 612 SW Morrison St., Ste 1300, Portland,
OR 97205-3816

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

Department of Environmental Quality

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

December 29, 2003

Mikell O'Mealy
Assistant to the Environmental Quality Commission
Oregon Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

RECEIVED

DEC 29 2003

Oregon DEQ
Office of the Director

Re: Vickers/Nelson & Associates, Construction Program Management, Inc.
Notice of Violation and Assessment of Civil Penalty
No. AQ/AB-NWR-02-181
Multnomah County

Dear Ms. O'Mealy:

I am writing to request a one week extension of the December 28, 2003, deadline for the Department of Environmental Quality (the Department) to submit its Brief in Reply to Vickers/Nelson's Exceptions and Brief.

The Department requests this extension because Shelley K. McIntyre, Assistant Attorney General for the Natural Resources Section of the Oregon Department of Justice, is ill and requires more time to complete the Brief in Reply.

Thank you for your consideration of this request.

Sincerely,

Bryan Smith
Environmental Law Specialist

cc: David P. Meyer, Attorney for Vickers/Nelson, 621 SW Morrison Street, Suite 1300,
Portland, OR 97205-3816

DAVID P. MEYER, P.C.

ATTORNEY AT LAW

LICENSED IN OREGON
AND WASHINGTON

621 SW MORRISON STREET, SUITE 1300
PORTLAND, OREGON 97205-3816
TELEPHONE: (503) 224-1096

FAX (503) 224-6543
law@teleport.com

November 26, 2003

Mikell O'Mealy
Environmental Quality Commission
811 SW 6th Ave
Portland OR 97204-1334

Re: Vickers/Nelson & Associates, No. AQ/AB-NWR-02-181

Dear Ms. O'Mealy:

Enclosed please find Petitioner's Exceptions and Brief in
this matter.

Thank you for your assistance.

Sincerely,

DAVID P. MEYER, P.C.



David P. Meyer

cc: Shelley K. McIntyre
Greg Vickers

RECEIVED

NOV 25 2003

Oregon DEQ
Office of the Director

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

3 IN THE MATTER OF:)
4 VICKERS/NELSON & ASSOCIATES,) No. AQ/AB-NWR-02-181
5 CONSTRUCTION PROGRAM)
6 MANAGEMENT, INC.) PETITIONER'S EXCEPTIONS AND
7 Vickers/Nelson.) BRIEF)

8 Petitioner Vickers/Nelson & Associates, Construction
9 Program Management, Inc. hereby takes exception to the
10 Evidentiary Rulings, the Findings of Fact, the Conclusions of
11 Law and the legal analyses in the Hearing Officer's Opinion and
12 to the Proposed Order, as set forth below, and submits its Brief
13 in support of these exceptions, as follows:
14

15
16 A. The Hearing Officer's following evidentiary rulings were
17 prejudicially erroneous.

18 1. Evidence of the Agency's prior action in a similar case
19 was erroneously excluded.

20 Exhibits R115, R117 and R118 related to a previous DEQ
21 proceeding in *Princeton Property Management, Inc.*, No. AQ/AB-
22 NWR-02-139 (the "Princeton" case). This evidence was clearly
23 admissible to establish the Department's previous interpretation
24 of the statutes and rules applicable in this matter,
25 particularly as the Princeton case was the very predicate of the
26

1 Agency's Notice in this case. The Department's contested case
2 rules specifically permit the admission of evidence that is
3 "relevant and material to either proving or disproving the
4 matters asserted in the Department's notice." OAR 340-011-
5 0131(a). The Princeton case is directly relevant to the
6 Department's interpretation of the law applicable to this case.
7

8 ORS 183.482(8)(b)(B) specifically mandates that the court
9 remand an agency order if the agency's exercise of discretion
10 is:

11 Inconsistent with an agency rule, an
12 officially stated agency position, or a
13 prior agency practice, if the inconsistency
is not explained by the agency. (emphasis
added)

14 Furthermore, the Model Rules for Contested Cases explicitly
15 acknowledge this standard, permitting the authorized
16 representative to present arguments on "[c]omparison of prior
17 actions of the agency in handling similar situations." OAR 137-
18 003-0555(1)(d)(B) (See OAR 340-011-0098 (DEQ governed by Hearing
19 Panel Rules)). This is consistent with case law that provides a
20 party "is entitled to even treatment by rule of law and
21 reasonable confidence that [it] has received such treatment."
22 *Moke, Inc. v. OLCC* 68 Or App 800 (1984) (emphasis added).
23

24 Indeed, the Department itself acknowledged the relevance
25 of Princeton to this matter in its e-mail, Exhibit R115, which
26

1 directly states that the basis for prosecuting Petitioner was
2 that "[Petitioner is] just like Princeton [Property
3 Management]." Clearly, the Princeton case was the Department's
4 basis and rationale for its prosecution of the present case. The
5 Hearing Officer's exclusion of this clearly relevant evidence
6 was erroneous and improper.

7
8 In Princeton, (Exhibit R117), the property owner authorized
9 Princeton directly to contract the renovation work, thereby
10 establishing Princeton as an "operator" under ORS 468A.715(1).
11 Conversely, as acknowledged by the Hearing Officer in this case,
12 Petitioner had no authority to hire contractors, much less the
13 subcontractors hired by the contractor. This distinction is
14 material to the ultimate question of whether Petitioner was an
15 "operator" of the James John School in this case.

16
17 By excluding evidence of prior agency action under the same
18 statute and rules, the Hearing Officer permits the Department
19 subjectively and selectively to enforce the law. Consistency and
20 objectivity in the Department's implementation of the air
21 quality statutes demands that the prior action against
22 Princeton, delineated in Exhibits R115, R117 and R118, be
23 admitted in this case.

24
25 The issue of even-handed treatment by the Agency in this
26 case is particularly relevant, given the Department's decision

1 not to issue a Notice of Violation Against PPS in this matter,
2 when PPS was, and continues to be, without any doubt whatsoever,
3 both the owner and operator of the James John Elementary School
4 property. In fact, the Hearing Officer specifically found that
5 Petitioner "correctly argue[d] that PPS owned and operated the
6 school property." (Hearing Officer Proposed Order, page 5).
7
8

9 2. The Federal AHERA requirements referred to in Exhibit
10 R119 are admissible to establish the clear non-delegable
11 Federal law obligations imposed on the School District with
12 respect to asbestos abatement in school buildings.

13 In Footnote 1 of her Proposed Order, the Hearing Officer
14 accurately summarized the federal AHERA requirements imposed on
15 schools regarding the inventory and abatement of asbestos in
16 their facilities. Yet, not only did the Hearing Office
17 erroneously exclude Exhibit R119, she also legally erred with
18 respect to the applicability of the federal AHERA requirements
19 to the facts in this case. Her ruling was further exacerbated by
20 her correct statement, quoted above, "that PSS owned and
21 operated the school property."

22 The Hearing Officer's statement in the Evidentiary Rulings
23 that the Department "argued that [Petitioner's] reliance on
24 AHERA was an affirmative defense" is neither consistent with the
25 record (no such objection was made) nor a correct statement of
26 law. All evidence that Petitioner offered went to demonstrate

1 that the School District, not Petitioner, was the "operator" of
2 the James John School was clearly admissible under its general
3 denial. There is no need affirmatively to plead that if PPS was
4 the "operator," then Petitioner was not the "operator."

5 Petitioner's defense is based on its specific contractual
6 relationship with PPS, on the fact that PPS had the sole
7 responsibility and authority to contract directly with others
8 for all construction and asbestos inspection work on the school
9 property, on Petitioner's lack of either ownership or operation
10 of the school facility and on the federal AHERA regulations
11 which impose non-delegable duties upon PPS as the "owner" and
12 "operator" of a school facility to take full responsibility for
13 asbestos abatement. There was absolutely no evidence in the
14 record that Petitioner was an "operator" of the school facility.
15 Indeed, AHERA demonstrates that the School District could not
16 have delegated its obligations to Petitioner. See, generally 40
17 CFR 763, Subpart E.

18 Any evidence that controverts facts necessary to be proved
19 by the Department may be shown under a general denial. *Deering*
20 *v. Alexander*, 281 Or 607 (1978).

21 Under Oregon pleading rules, evidence which
22 controverts facts necessary to be proved by
23 plaintiff may be shown under a general
24 denial. *Elston v. Wagner et al.*, 216 Or 386,
25 337 P.2d 326 (1959).

1 * * * *

2 Defendant did not assert new matter but
3 rather controverted facts necessary to be
4 established by plaintiff. Defendant's
5 general denial was a proper form of
6 pleading. [281 Or at 612-13].

7 In the present case, AHERA directly contradicts of the fact
8 that Petitioner was an "operator" of the school. In Exhibit
9 R119, the Agency tries to argue that AHERA is inapplicable in
10 this matter, as PPS delegated its AHERA obligation to
11 Petitioner. Not only is the Proposed Order absent of any finding
12 that such delegation took place, there is no legal basis in
13 AHERA for such delegation by a "local education agency" of a
14 non-delegable duty to a third party. See generally 40 CFR 763,
15 Subpart E.

16 Furthermore, this Federal legislation, specifically
17 imposing a non-delegable asbestos abatement duty on a school
18 district for its facilities, cannot, under the Supremacy Clause
19 of the United States Constitution, Article VI, be altered by any
20 state law, regulation or administrative ruling.

21 In addition to the foregoing, Exhibit R119 is admissible to
22 demonstrate the bias of the Department in favor of PPS and
23 against Petitioner:

24 ALSO [sic], we talked about why the school
25 didn't perform an asbestos survey, right?
26 Wasn't it because the modular classroom was
exempt from that requirement, as so we don't

1 want to penalize the school (to make a long
2 story short)?

3 It is incredible that the Agency would intentionally avoid
4 fining a clearly responsible public agency in order to shift
5 responsibility to the private sector.

6 Given the clear finding in the Proposed Order that
7 "[Petitioner] correctly argues that PPS owned and operated the
8 school property" (Proposed Order, p. 5; emphasis added) and the
9 further finding that PPS's subcontractor Addison performed
10 asbestos abatement without a license (Proposed Order, p. 3-4),
11 any objective fact finder would necessarily conclude that it was
12 PPS which violated ORS 468A.715(1), not Petitioner. Yet in the
13 more than one year which has transpired since the alleged
14 incident, the Department has made no effort "to penalize the
15 school".
16

17 Exhibit R103, a project drawing issued by PPS, specifically
18 states: "All asbestos work will be conducted by Portland Public
19 Schools under separate contract." Exhibit R109 is an e-mail from
20 PPS to Petitioner directing Petitioner to inform the contractor
21 that it "cannot remove the sheet vinyl until we [PPS] test for
22 asbestos." All of this evidence demonstrates that PPS, not
23 Petitioner, both owned and operated the school facility, indeed
24 specifically with respect to "all asbestos work." Refusal to
25 admit all this evidence was not only error, but demonstrated
26

1 untoward solicitude toward the School District its direct
2 contractors to whom it entrusted the work on the facility.

3
4 B. Findings of Fact Nos. 1 through 10 are irrelevant and should
5 be stricken as none of them support allegations in the Notice
6 that Petitioner was an owner or operator of an asbestos
7 abatement facility.

8 None the Hearing Officer's Findings of Fact concerning
9 Petitioner - found in her Findings Nos. 1 through 10 - in any
10 way support or establish that Petitioner was an "operator" of
11 the James John Elementary School facility. The fact that
12 Petitioner provided "management services" to the school
13 district, which both the School District and Petitioner
14 "understood . . . to mean that Respondent was the intermediary
15 or 'go between' between PPS and all contractors hired [by PPS]
16 to do the renovation work," that Linda Cameron was the "project
17 management consultant" to the School District, that Petitioner
18 solicited bids for the School District and forwarded them to the
19 School District (which determined which bid to accept and which
20 contract to enter) and in general acted to transmit
21 communications between the School District and the contractor
22 are all irrelevant to any finding or conclusion that Petitioner
23 was the "operator" of the James John Elementary School. They
24 should all be stricken.
25
26

1 In this connection, it should be noted that the Notice in
2 this case, obviously patterned on the **Princeton** case, was
3 factually "inaccurate" (according to the Hearing Officer in her
4 footnote 7) when it alleged that Petitioner "hired Cedar Mill
5 Construction Company LLC (CMC) as the general contractor for the
6 renovation project," when, in fact, it was the School District
7 which did so (Ex. R104). Thus, it is clear that this
8 fundamental misunderstanding of Petitioner's actual role in this
9 project was what brought this matter to a hearing in the first
10 place. The Hearing Officer further exacerbated this faulty
11 charge by permitting the Agency completely to change horses in
12 the middle of the proceedings by attempting to expand the scope
13 of the applicable statute. That subject will be dealt with
14 below.
15

16 The proposed finding that PPS authorized Petitioner to
17 notify Cedar Mill to "proceed with the work" is not only
18 irrelevant, it is misleading, as it implies that Petitioner gave
19 specific notice to remove the floor (only a minor part of the
20 work) when it did not. See Exhibits R102, R103 & R104 (Scope of
21 Cedar Mills work). According to the evidence (Exhibit R110),
22 Petitioner merely notified Cedar Mill, on behalf of the School
23 District, "to proceed the construction of the above referenced
24 project." That is standard procedure in every construction
25
26

1 project to indicate that the time for contract performance has
2 begun and establishes the contract completion date. That finding
3 is irrelevant to the contractor's subsequent direction to its
4 unqualified subcontractor to remove floors before an asbestos
5 survey had been made by another independent contractor of the
6 School District. That finding is both irrelevant and
7 misleading, in implying that Petitioner somehow caused or
8 authorized Cedar Mill to remove the floor.
9

10 The proposed finding that Ms. Cameron did not amend this
11 Notice to Proceed (¶ 7) should be stricken, as it has absolutely
12 no relevance to the legal issue of whether Petitioner was an
13 "owner or operator." Typically, only one notice to proceed is
14 given in any project, not multiple notices for each
15 subcontractor. That is the function of the contractor, who does
16 have control of the construction work. If Petitioner was to have
17 issued an amended notice, it could only have been done at the
18 behest of PPS, which would have directed Petitioner to
19 "communicate with the contractors." (Proposed Order, p. 3, ¶ 3).
20 There is absolutely no evidence that PPS ever authorized or
21 directed Petitioner to issue such an amended notice. This
22 finding is irrelevant and should be stricken.
23

24 Proposed finding ¶ 9, that "Ms. Cameron never actually
25 spoke to Cedar Mill personnel on August 12, 2003 regarding the
26

1 pending asbestos testing" is irrelevant and should be stricken.
2 First, it is contrary to the finding ¶ 8 that "Ms. Cameron then
3 contacted James Anderson, owner of Cedar Mill. . ." Second, it
4 has no bearing on the issue of whether Petitioner was an
5 "operator."

6 The determination of whether Petitioner was an "operator"
7 under the Oregon air quality laws must be based on the contractual
8 relationship between Petitioner and PPS. Nothing in that
9 contractual relationship made Petitioner either an "owner or
10 operator" of the school facility. That finding should be
11 stricken.
12

13 Ms. Cameron testified that, pursuant to instructions from
14 Chris Boyce, the environmental coordinator for PPS (¶ 11), she
15 "shut down the site." Again, Petitioner was clearly acting on
16 behalf of PPS, which the Hearing Office acknowledged was both
17 the owner and operator of the school facility, in transmitting
18 information to the one person with whom the School District had
19 contracted to perform the construction operations. Even had Ms.
20 Cameron given such notice solely based on her observations of a
21 violation of law, this would not have made Petitioner the
22 "operator" of the facility and more than any other person
23 "blowing the whistle" could - or indeed should - be held liable
24 for those upon whom the law specifically imposes obligations.
25
26

1 In sum, none of Findings 1 through 10 support or justify any
2 finding or conclusion that Petitioner was an "operator" of this
3 facility. Interestingly, the Hearing Officer makes no pretense
4 of making a specific Finding of Fact on the primary factual
5 issue in the case: whether Petitioner was, in fact, the
6 "operator" of the facility. Clearly, she could not have done do.
7 Instead, she relegates that factual matter to her Conclusions of
8 Law, knowing that she cannot make that as a Finding of Fact,
9 something the *Springfield* case, discussed below, required her to
10 do as a precondition for her Conclusions of Law.

11
12
13 C. The Hearing Officer's Opinion is legally contradictory
14 within itself, is contrary to the law and cannot be the basis
15 for the Conclusion of Law she reached that Petitioner "was an
operator of the school during August, 2002."

16
17 1. The Hearing Officer improperly "construed" ORS
468A.715(1)

18 The Hearing Officer correctly defined the Issues as

19 "(1) Whether Petitioner **owned or operated** the James
20 John Elementary School property during August 2002";

21 and

22 "(2) If so, whether the civil penalty assessed is
23 appropriate."

24 On page 6 of her Opinion, the Hearing Officer totally
25 contradicts herself, first by saying: "**The context of the**
26 **statutory term 'owner or operator' can be determined from the**
ordinary meaning of these words" and then, on the same page,

1 saying that the "term 'owner or operator' is **inexact**." It is a
2 oxymoron to state that words can be determined from their
3 ordinary meaning and, at the same time, be "**inexact**" so as to
4 require reference to "extrinsic indicators." The Hearing Office
5 specifically, and correctly, states:

6 The context of the statutory term 'owner or
7 operator' can be determined from the
8 ordinary meaning of these words. For
9 example, 'owner' is defined as 'to have or
10 possess as property' or 'to have control
11 over.' *The American Heritage College*
12 *Dictionary* 977 (3rd Ed 1997).¹ 'Operator' is
13 defined as 'the owner or manager of a
14 business or an industrial enterprise.' *Id.*
15 at 957.² By including the term 'operator' in
16 the statutory language, the legislature
clearly intended ORS 468A.715(1) to apply to
a broader class of people than just property
owners. Because the meaning of the term
'owner or operator' can be determined by
looking to the text and context of the
statute, further analysis is not necessary.
Coast Security Mortgage Corp. v. Real Estate
Agency, 331 Or 348, 355 (2000).

17 It is unclear why the Hearing Officer inserted the sentence
18 about the legislature's including "operator" extending the
19 statute's reach beyond "owners." That is obvious! The
20 legislature clearly intended to cover **two classes of people**:
21 those who "owned" facilities that might have asbestos and those
22 who "operated" those facilities. Clearly an owner might not be
23 an operator and an operator might not be an owner. **Princeton** was
24 a case where an operator was not the owner.

25 ¹ The definition is the same in the 4th Ed., 2000, p. 1258

26 ² The definition is the same in the 4th Ed., 2000, p. 1233

1 Having correctly stated that the words "owner" and
2 "operator" can be determined from the **common meanings of the**
3 **words themselves**, the Hearing Officer then conducts a *volte face*
4 and claims that the statute "does not define 'owner or
5 operator.'" Obviously, if the words have ordinary meaning,
6 ascertainable from the dictionary, which the Hearing Officer
7 correctly states they have, the legislature didn't need to
8 define the words - the dictionary does that!

8 Having said all of that, the Hearing Office then contracts
9 herself and claims these two words are somehow "inexact." If
10 the words can be determined by "the ordinary meaning of these
11 words," then by definition they cannot be described as
12 "inexact." Nor can the agency then expand the law passed by the
13 legislature by imposing asbestos abatement duties on "owners and
14 operators" (or as the Federal law does specifically on School
15 Districts with respect to school buildings) to cover a whole new
16 gamut of categories of people: "any person who owns, leases,
17 controls or supervises the demolition or renovation operation,
18 or both," citing OAR 340-248-0010(33)

17 A lessee of a building, for example, may neither own nor
18 operate the facility. And a supervisor might well cover anyone
19 from a foreperson, to a superintendent on a construction site, a
20 superintendent of a school district or principal of a school, or
21 any number of persons who might come under the rubric of
22 "supervisor," but who clearly are neither "owners of operators."
23 Indeed, The American Heritage Dictionary, (4th Ed. 2000) on page
24 1739 defines "Supervisor" as:

24 One who supervises; One who is in charge of
25 a particular department or unit, as in a
26 governmental agency or school district.

1 This definition is not synonymous with the clear definition of
2 "owner" or "operator" quoted above from the very dictionaries
3 invoked by the Hearing Officer. Her error is manifest when she
4 opines on page 7 of her decision, "**given that the words**
5 **operator, manager, and supervisor are generally synonymous**
6 **terms.**" In fact, these are not synonymous words; they are
7 discrete words, each with differing meanings and connotations.
8 Neither the Hearing Officer nor DEQ were ever-delegated
9 authority by the legislature to expand the legislatively
10 specified categories of persons subject to penalties. Had the
11 legislature intended to cover "managers" and "supervisors," it
12 easy could have added those words to the statute, as it could
13 have added "lessees" and "controllers."

14 While the legislature gave the DEQ the authority to "adopt
15 such rules and standards as it considers necessary and proper in
16 performing the functions vested by law in the commission" (ORS
17 468A.020(1), emphasis added), it did not vest the Commission
18 with authority to **expand the scope** of individuals and entities
19 liable for violations of the environmental laws, as the Agency
20 has attempted to do through OAR 340-248-0010(33):

21 'Owner or operator' means any person who
22 **owns, leases, operates, controls or**
23 **supervises** a facility being demolished or
24 renovated or any person who owns, leases,
25 operates, controls, or supervises the
26 demolition or renovation operation, or both.
(emphases added)

Expanding the definition of "operator" does not assist the
commission in performing any "functions" vested in the
commission. Contrarily, it improperly expands the legislatively
intended scope of the application of ORS 468A.715(1) to persons

1 other than "owners and operators."

2 The Hearing Officer's purported reliance on *Springfield*
3 *Education Assn. v School Dist.*, 290 Or 217 (1980) is misplaced.
4 *Springfield* delineates the procedure under which an agency (or a
5 court, for that matter) must determine the meaning of statutory
6 terms. *Springfield* delineates "three classes of statutory terms,
7 each of which conveys a different responsibility for the agency
8 in its initial application of the statute and for the court on
9 review of that application":

10 1) Terms of precise meaning, whether of
11 common or technical parlance, requiring only
12 fact finding by the agency and judicial
review for substantial evidence;

13 2) Inexact terms which require agency
14 interpretation and judicial review for
consistency with legislative policy; and

15 3) Terms of delegation which require
16 legislative policy determination by the
17 agency and judicial review of whether that
policy is within the delegation. [*Id.* at
223].

18 ORS 468A.020(1) use of the terms "owner" and "operator"
19 clearly falls within category (1) cited in *Springfield*: terms of
20 precise meanings of common parlance. As the Oregon Supreme Court
21 reiterated in *Gouge v. David*, 185 Or 437, 455 (1949), an agency
22 cannot construe statutes which need no construction or alter the
23 meaning of an unambiguous statute:
24

25 The courts apply to agency construction the
26 same rule that they apply to themselves: An

1 administrative agency cannot construe
2 statutes which need no construction, and
3 cannot alter the meaning of an unambiguous
4 passage: *State ex rel. Galloway v. Watson*,
5 167 OR. 403, 118 P.2d 107; *Twohy Bros. Co.*
6 *v. Ochoco Irrigation District*, 108 Or 1, 210
7 P. 873, 216 P 189

8 **2.The Hearing Office's reference to the "common law concerning**
9 **agency" is a red herring.**

10 Contrary to the Hearing Officer's Opinion, page 5,
11 Petitioner did not rely on "common law concerning agency in
12 support of its argument." Petitioner did analogize to the common
13 law concerning agency in support of its argument. The common law
14 concerning agency was originally raised by the Department in its
15 **Notice of Assessment**, on which this proceeding is based.

16 According to that Notice, Petitioner **"acted as the operator of**
17 **the Facility when it hired CMC as the general contractor, and as**
18 **the principal Vickers failed to hire a licensed asbestos**
19 **abatement contractor."** (Notice of Assessment, Page 1, ¶ 4)

20 (emphasis added). However, as clearly established by the
21 Proposed Order, Petitioner was not a "principal" of any kind.
22 According to the Hearing Officer's Proposed Order, Petitioner
23 was a "go-between" or agent. (Findings, ¶ 3).

24 Petitioner referred to the common law of agency as an
25 argument against the statement in the Notice of Assessment that
26 **Petitioner was the "principal"** and to provide a framework to
analyze the legal relationship between PPS and Petitioner.
Petitioner never acted as a principal in the operation of this

1 school facility. Its limited role was as a "go between" for
2 Portland Public Schools, as the Hearing Officer acknowledged in
3 Finding of Fact, ¶ 3.

4 This entire issue of Petitioner's role was poisoned by the
5 Agency's false initial allegation that Petitioner was a
6 principal. That error permeated the entire processing of this
7 case. It was inappropriate for the Hearing Officer to imply
8 that Petitioner was to blame for the injection of this concept
9 into the proceedings.

10
11 D. The Hearing Officer's Conclusions of Law are neither
12 supported by the facts nor are they based on a correct analysis
of the governing statute.

13 For all the reasons cited above, the purported Conclusion
14 of Law the Petitioner "was an operator of the school during
15 August, 2002" is not supported by any factual finding to that
16 affect, by any evidence to that effect, nor by a proper legal
17 application of the clear terms of the statute. Neither the
18 Agency nor the Hearing Officer had any authority to expanded the
19 coverage of the applicable statute to cover persons who are
20 neither owners nor operators, while at the same time failing and
21 refusing to proceed against those who clearly fall within the
22 terms of that statute.

23 Petitioner proposes the following **Finding of Fact**:

- 24 1. Respondent [Petitioner] neither owned nor
25 operated the James John Elementary property during
26 August 2002.

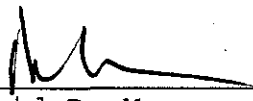
1
2 Petitioner proposes the following **Conclusions of Law**:

- 3 1. Respondent [Petitioner] was not an operator of
4 the school during August 2002.
5 2. The civil penalties assessed by the Department
6 were inappropriate.
7
8 3. The charges in the Notice in this case are
9 dismissed.

10
11 Respectfully submitted,

12 DATED this 26th day of November, 2003.

13 DAVID P. MEYER, P.C.

14 
15 _____
16 David P. Meyer, OSB 89092
17 Attorney for Vickers/Nelson
18 612 SW Morrison St, Ste 1300
19 Portland, OR 97205-3816
20 (503) 224-1096
21
22
23
24
25
26

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

3 IN THE MATTER OF:)
4 VICKERS/NELSON & ASSOCIATES,) No. AQ/AB-NWR-02-181
5 CONSTRUCTION PROGRAM)
6 MANAGEMENT, INC.) PETITIONER'S EXCEPTIONS AND
7 Vickers/Nelson.) BRIEF

8 Petitioner Vickers/Nelson & Associates, Construction
9 Program Management, Inc. hereby takes exception to the
10 Evidentiary Rulings, the Findings of Fact, the Conclusions of
11 Law and the legal analyses in the Hearing Officer's Opinion and
12 to the Proposed Order, as set forth below, and submits its Brief
13 in support of these exceptions, as follows:
14

15
16 A. The Hearing Officer's following evidentiary rulings were
17 prejudicially erroneous.

18 1. Evidence of the Agency's prior action in a similar case
19 was erroneously excluded.

20 Exhibits R115, R117 and R118 related to a previous DEQ
21 proceeding in *Princeton Property Management, Inc.*, No. AQ/AB-
22 NWR-02-139 (the "Princeton" case). This evidence was clearly
23 admissible to establish the Department's previous interpretation
24 of the statutes and rules applicable in this matter,
25 particularly as the Princeton case was the very predicate of the
26

1 Agency's Notice in this case. The Department's contested case
2 rules specifically permit the admission of evidence that is
3 "relevant and material to either proving or disproving the
4 matters asserted in the Department's notice." OAR 340-011-
5 0131(a). The Princeton case is directly relevant to the
6 Department's interpretation of the law applicable to this case.
7

8 ORS 183.482(8)(b)(B) specifically mandates that the court
9 remand an agency order if the agency's exercise of discretion
10 is:

11 Inconsistent with an agency rule, an
12 officially stated agency position, or a
13 prior agency practice, if the inconsistency
14 is not explained by the agency. (emphasis
15 added)

16 Furthermore, the Model Rules for Contested Cases explicitly
17 acknowledge this standard, permitting the authorized
18 representative to present arguments on "[c]omparison of prior
19 actions of the agency in handling similar situations." OAR 137-
20 003-0555(1)(d)(B) (See OAR 340-011-0098 (DEQ governed by Hearing
21 Panel Rules)). This is consistent with case law that provides a
22 party "is entitled to even treatment by rule of law and
23 reasonable confidence that [it] has received such treatment."
24 *Moke, Inc. v. OLCC* 68 Or App 800 (1984) (emphasis added).

25 Indeed, the Department itself acknowledged the relevance
26 of Princeton to this matter in its e-mail, Exhibit R115, which

1 directly states that the basis for prosecuting Petitioner was
2 that "Petitioner is just like Princeton [Property
3 Management]." Clearly, the Princeton case was the Department's
4 basis and rationale for its prosecution of the present case. The
5 Hearing Officer's exclusion of this clearly relevant evidence
6 was erroneous and improper.
7

8 In Princeton, (Exhibit R117), the property owner authorized
9 Princeton directly to contract the renovation work, thereby
10 establishing Princeton as an "operator" under ORS 468A.715(1).
11 Conversely, as acknowledged by the Hearing Officer in this case,
12 Petitioner had no authority to hire contractors, much less the
13 subcontractors hired by the contractor. This distinction is
14 material to the ultimate question of whether Petitioner was an
15 "operator" of the James John School in this case.
16

17 By excluding evidence of prior agency action under the same
18 statute and rules, the Hearing Officer permits the Department
19 subjectively and selectively to enforce the law. Consistency and
20 objectivity in the Department's implementation of the air
21 quality statutes demands that the prior action against
22 Princeton, delineated in Exhibits R115, R117 and R118, be
23 admitted in this case.
24

25 The issue of even-handed treatment by the Agency in this
26 case is particularly relevant, given the Department's decision

1 not to issue a Notice of Violation Against PPS in this matter,
2 when PPS was, and continues to be, without any doubt whatsoever,
3 both the owner and operator of the James John Elementary School
4 property. In fact, the Hearing Officer specifically found that
5 Petitioner "correctly argue[d] that PPS owned and operated the
6 school property." (Hearing Officer Proposed Order, page 5).
7
8

9 **2. The Federal AHERA requirements referred to in Exhibit**
10 **R119 are admissible to establish the clear non-delegable**
11 **Federal law obligations imposed on the School District with**
12 **respect to asbestos abatement in school buildings.**

13 In Footnote 1 of her Proposed Order, the Hearing Officer
14 accurately summarized the federal AHERA requirements imposed on
15 schools regarding the inventory and abatement of asbestos in
16 their facilities. Yet, not only did the Hearing Office
17 erroneously exclude Exhibit R119, she also legally erred with
18 respect to the applicability of the federal AHERA requirements
19 to the facts in this case. Her ruling was further exacerbated by
20 her correct statement, quoted above, "that PSS owned and
21 operated the school property."

22 The Hearing Officer's statement in the Evidentiary Rulings
23 that the Department "argued that [Petitioner's] reliance on
24 AHERA was an affirmative defense" is neither consistent with the
25 record (no such objection was made) nor a correct statement of
26 law. All evidence that Petitioner offered went to demonstrate

1 that the School District, not Petitioner, was the "operator" of
2 the James John School was clearly admissible under its general
3 denial. There is no need affirmatively to plead that if PPS was
4 the "operator," then Petitioner was not the "operator."

5 Petitioner's defense is based on its specific contractual
6 relationship with PPS, on the fact that PPS had the sole
7 responsibility and authority to contract directly with others
8 for all construction and asbestos inspection work on the school
9 property, on Petitioner's lack of either ownership or operation
10 of the school facility and on the federal AHERA regulations
11 which impose non-delegable duties upon PPS as the "owner" and
12 "operator" of a school facility to take full responsibility for
13 asbestos abatement. There was absolutely no evidence in the
14 record that Petitioner was an "operator" of the school facility.
15 Indeed, AHERA demonstrates that the School District could not
16 have delegated its obligations to Petitioner. See, generally 40
17 CFR 763, Subpart E.

18 Any evidence that controverts facts necessary to be proved
19 by the Department may be shown under a general denial. *Deering*
20 *v. Alexander*, 281 Or 607 (1978).

21 Under Oregon pleading rules, evidence which
22 controverts facts necessary to be proved by
23 plaintiff may be shown under a general
24 denial. *Elston v. Wagner et al.*, 216 Or 386,
25 337 P.2d 326 (1959).
26

1 * * * *

2 Defendant did not assert new matter but
3 rather controverted facts necessary to be
4 established by plaintiff. Defendant's
5 general denial was a proper form of
6 pleading. [281 Or at 612-13].

7 In the present case, AHERA directly contradicts of the fact
8 that Petitioner was an "operator" of the school. In Exhibit
9 R119, the Agency tries to argue that AHERA is inapplicable in
10 this matter, as PPS delegated its AHERA obligation to
11 Petitioner. Not only is the Proposed Order absent of any finding
12 that such delegation took place, there is no legal basis in
13 AHERA for such delegation by a "local education agency" of a
14 non-delegable duty to a third party. See generally 40 CFR 763,
15 Subpart E.

16 Furthermore, this Federal legislation, specifically
17 imposing a non-delegable asbestos abatement duty on a school
18 district for its facilities, cannot, under the Supremacy Clause
19 of the United States Constitution, Article VI, be altered by any
20 state law, regulation or administrative ruling.

21 In addition to the foregoing, Exhibit R119 is admissible to
22 demonstrate the bias of the Department in favor of PPS and
23 against Petitioner:

24 ALSO [sic], we talked about why the school
25 didn't perform an asbestos survey, right?
26 Wasn't it because the modular classroom was
exempt from that requirement, as so we don't

1 want to penalize the school (to make a long
2 story short)?

3 It is incredible that the Agency would intentionally avoid
4 fining a clearly responsible public agency in order to shift
5 responsibility to the private sector.

6 Given the clear finding in the Proposed Order that
7 "[Petitioner] correctly argues that PPS owned and operated the
8 school property" (Proposed Order, p. 5; emphasis added) and the
9 further finding that PPS's subcontractor Addison performed
10 asbestos abatement without a license (Proposed Order, p. 3-4),
11 any objective fact finder would necessarily conclude that it was
12 PPS which violated ORS 468A.715(1), not Petitioner. Yet in the
13 more than one year which has transpired since the alleged
14 incident, the Department has made no effort "to penalize the
15 school".

17 Exhibit R103, a project drawing issued by PPS, specifically
18 states: "All asbestos work will be conducted by Portland Public
19 Schools under separate contract." Exhibit R109 is an e-mail from
20 PPS to Petitioner directing Petitioner to inform the contractor
21 that it "cannot remove the sheet vinyl until we [PPS] test for
22 asbestos." All of this evidence demonstrates that PPS, not
23 Petitioner, both owned and operated the school facility, indeed
24 specifically with respect to "all asbestos work." Refusal to
25 admit all this evidence was not only error, but demonstrated
26

1 untoward solicitude toward the School District its direct
2 contractors to whom it entrusted the work on the facility.

3
4 B. Findings of Fact Nos. 1 through 10 are irrelevant and should
5 be stricken as none of them support allegations in the Notice
6 that Petitioner was an owner or operator of an asbestos
abatement facility.

7 None the Hearing Officer's Findings of Fact concerning
8 Petitioner - found in her Findings Nos. 1 through 10 - in any
9 way support or establish that Petitioner was an "operator" of
10 the James John Elementary School facility. The fact that
11 Petitioner provided "management services" to the school
12 district, which both the School District and Petitioner
13 "understood . . . to mean that Respondent was the intermediary
14 or 'go between' between PPS and all contractors hired [by PPS]
15 to do the renovation work," that Linda Cameron was the "project
16 management consultant" to the School District, that Petitioner
17 solicited bids for the School District and forwarded them to the
18 School District (which determined which bid to accept and which
19 contract to enter) and in general acted to transmit
20 communications between the School District and the contractor
21 are all irrelevant to any finding or conclusion that Petitioner
22 was the "operator" of the James John Elementary School. They
23 should all be stricken.
24
25
26

1 In this connection, it should be noted that the Notice in
2 this case, obviously patterned on the Princeton case, was
3 factually "inaccurate" (according to the Hearing Officer in her
4 footnote 7) when it alleged that Petitioner "hired Cedar Mill
5 Construction Company LLC (CMC) as the general contractor for the
6 renovation project," when, in fact, it was the School District
7 which did so (Ex. R104). Thus, it is clear that this
8 fundamental misunderstanding of Petitioner's actual role in this
9 project was what brought this matter to a hearing in the first
10 place. The Hearing Officer further exacerbated this faulty
11 charge by permitting the Agency completely to change horses in
12 the middle of the proceedings by attempting to expand the scope
13 of the applicable statute. That subject will be dealt with
14 below.
15

16 The proposed finding that PPS authorized Petitioner to
17 notify Cedar Mill to "proceed with the work" is not only
18 irrelevant, it is misleading, as it implies that Petitioner gave
19 specific notice to remove the floor (only a minor part of the
20 work) when it did not. See Exhibits R102, R103 & R104 (Scope of
21 Cedar Mills work). According to the evidence (Exhibit R110),
22 Petitioner merely notified Cedar Mill, on behalf of the School
23 District, "to proceed the construction of the above referenced
24 project." That is standard procedure in every construction
25
26

1 project to indicate that the time for contract performance has
2 begun and establishes the contract completion date. That finding
3 is irrelevant to the contractor's subsequent direction to its
4 unqualified subcontractor to remove floors before an asbestos
5 survey had been made by another independent contractor of the
6 School District. That finding is both irrelevant and
7 misleading, in implying that Petitioner somehow caused or
8 authorized Cedar Mill to remove the floor.
9

10 The proposed finding that Ms. Cameron did not amend this
11 Notice to Proceed (¶ 7) should be stricken, as it has absolutely
12 no relevance to the legal issue of whether Petitioner was an
13 "owner or operator." Typically, only one notice to proceed is
14 given in any project, not multiple notices for each
15 subcontractor. That is the function of the contractor, who does
16 have control of the construction work. If Petitioner was to have
17 issued an amended notice, it could only have been done at the
18 behest of PPS, which would have directed Petitioner to
19 "communicate with the contractors." (Proposed Order, p. 3, ¶ 3).
20 There is absolutely no evidence that PPS ever authorized or
21 directed Petitioner to issue such an amended notice. This
22 finding is irrelevant and should be stricken.
23

24 Proposed finding ¶ 9, that "Ms. Cameron never actually
25 spoke to Cedar Mill personnel on August 12, 2003 regarding the
26

1 pending asbestos testing" is irrelevant and should be stricken.
2 First, it is contrary to the finding ¶ 8 that "Ms. Cameron then
3 contacted James Anderson, owner of Cedar Mill. . ." Second, it
4 has no bearing on the issue of whether Petitioner was an
5 "operator."

6 The determination of whether Petitioner was an "operator"
7 under the Oregon air quality laws must be based on the contractual
8 relationship between Petitioner and PPS. Nothing in that
9 contractual relationship made Petitioner either an "owner or
10 operator" of the school facility. That finding should be
11 stricken.
12

13 Ms. Cameron testified that, pursuant to instructions from
14 Chris Boyce, the environmental coordinator for PPS (¶ 11), she
15 "shut down the site." Again, Petitioner was clearly acting on
16 behalf of PPS, which the Hearing Office acknowledged was both
17 the owner and operator of the school facility, in transmitting
18 information to the one person with whom the School District had
19 contracted to perform the construction operations. Even had Ms.
20 Cameron given such notice solely based on her observations of a
21 violation of law, this would not have made Petitioner the
22 "operator" of the facility and more than any other person
23 "blowing the whistle" could - or indeed should - be held liable
24 for those upon whom the law specifically imposes obligations.
25
26

1 In sum, none of Findings 1 through 10 support or justify any
2 finding or conclusion that Petitioner was an "operator" of this
3 facility. Interestingly, the Hearing Officer makes no pretense
4 of making a specific Finding of Fact on the primary factual
5 issue in the case: whether Petitioner was, in fact, the
6 "operator" of the facility. Clearly, she could not have done do.
7 Instead, she relegates that factual matter to her Conclusions of
8 Law, knowing that she cannot make that as a Finding of Fact,
9 something the *Springfield* case, discussed below, required her to
10 do as a precondition for her Conclusions of Law.

11
12
13 C. The Hearing Officer's Opinion is legally contradictory
14 within itself, is contrary to the law and cannot be the basis
15 for the Conclusion of Law she reached that Petitioner "was an
operator of the school during August, 2002."

16
17 1. The Hearing Officer improperly "construed" ORS
468A.715(1)

18 The Hearing Officer correctly defined the Issues as

19 "(1) Whether Petitioner owned or operated the James
20 John Elementary School property during August 2002";

21 and

22 "(2) If so, whether the civil penalty assessed is
23 appropriate."

24 On page 6 of her Opinion, the Hearing Officer totally
25 contradicts herself, first by saying: "The context of the
26 statutory term 'owner or operator' can be determined from the
ordinary meaning of these words" and then, on the same page,

1 saying that the "term 'owner or operator' is inexact." It is a
2 oxymoron to state that words can be determined from their
3 ordinary meaning and, at the same time, be "inexact" so as to
4 require reference to "extrinsic indicators." The Hearing Office
5 specifically, and correctly, states:

6 The context of the statutory term 'owner or
7 operator' can be determined from the
8 ordinary meaning of these words. For
9 example, 'owner' is defined as 'to have or
10 possess as property' or 'to have control
11 over.' *The American Heritage College
12 Dictionary* 977 (3rd Ed 1997).¹ 'Operator' is
13 defined as 'the owner or manager of a
14 business or an industrial enterprise.' *Id.*
15 at 957.² By including the term 'operator' in
16 the statutory language, the legislature
clearly intended ORS 468A.715(1) to apply to
a broader class of people than just property
owners. Because the meaning of the term
'owner or operator' can be determined by
looking to the text and context of the
statute, further analysis is not necessary.
*Coast Security Mortgage Corp. v. Real Estate
Agency*, 331 Or 348, 355 (2000).

17 It is unclear why the Hearing Officer inserted the sentence
18 about the legislature's including "operator" extending the
19 statute's reach beyond "owners." That is obvious! The
20 legislature clearly intended to cover **two classes of people:**
21 those who "owned" facilities that might have asbestos and those
22 who "operated" those facilities. Clearly an owner might not be
23 an operator and an operator might not be an owner. **Princeton** was
24 a case where an operator was not the owner.

25 ¹ The definition is the same in the 4th Ed., 2000, p. 1258

26 ² The definition is the same in the 4th Ed., 2000, p. 1233

1 Having correctly stated that the words "owner" and
2 "operator" can be determined from the **common meanings of the**
3 **words themselves**, the Hearing Officer then conducts a *volte face*
4 and claims that the statute "does not define 'owner or
5 operator.'" Obviously, if the words have ordinary meaning,
6 ascertainable from the dictionary, which the Hearing Officer
7 correctly states they have, the legislature didn't need to
8 define the words - the dictionary does that!

8 Having said all of that, the Hearing Office then contracts
9 herself and claims these two words are somehow "inexact." If
10 the words can be determined by "the ordinary meaning of these
11 words," then by definition they cannot be described as
12 "inexact." Nor can the agency then expand the law passed by the
13 legislature by imposing asbestos abatement duties on "owners and
14 operators" (or as the Federal law does specifically on School
15 Districts with respect to school buildings) to cover a whole new
16 gamut of categories of people: "any person who owns, leases,
17 controls or supervises the demolition or renovation operation,
18 or both," citing OAR 340-248-0010(33)

17 A lessee of a building, for example, may neither own nor
18 operate the facility. And a supervisor might well cover anyone
19 from a foreperson, to a superintendent on a construction site, a
20 superintendent of a school district or principal of a school, or
21 any number of persons who might come under the rubric of
22 "supervisor," but who clearly are neither "owners of operators."
23 Indeed, The American Heritage Dictionary, (4th Ed. 2000) on page
24 1739 defines "Supervisor" as:

24 One who supervises; One who is in charge of
25 a particular department or unit, as in a
26 governmental agency or school district.

1 This definition is not synonymous with the clear definition of
2 "owner" or "operator" quoted above from the very dictionaries
3 invoked by the Hearing Officer. Her error is manifest when she
4 opines on page 7 of her decision, "given that the words
5 operator, manager, and supervisor are generally synonymous
6 terms." In fact, these are not synonymous words; they are
7 discrete words, each with differing meanings and connotations.
8 Neither the Hearing Officer nor DEQ were ever-delegated
9 authority by the legislature to expand the legislatively
10 specified categories of persons subject to penalties. Had the
11 legislature intended to cover "managers" and "supervisors," it
12 easy could have added those words to the statute, as it could
13 have added "lessees" and "controllers."

14 While the legislature gave the DEQ the authority to "adopt
15 such rules and standards as it considers necessary and proper in
16 performing the functions vested by law in the commission" (ORS
17 468A.020(1), emphasis added), it did not vest the Commission
18 with authority to **expand the scope** of individuals and entities
19 liable for violations of the environmental laws, as the Agency
20 has attempted to do through OAR 340-248-0010(33):

21 'Owner or operator' means any person who
22 owns, leases, operates, controls or
23 supervises a facility being demolished or
24 renovated or any person who owns, leases,
25 operates, controls, or supervises the
26 demolition or renovation operation, or both.
(emphases added)

Expanding the definition of "operator" does not assist the
commission in performing any "functions" vested in the
commission. Contrarily, it improperly expands the legislatively
intended scope of the application of ORS 468A.715(1) to persons

1 other than "owners and operators."

2 The Hearing Officer's purported reliance on *Springfield*
3 *Education Assn. v School Dist.*, 290 Or 217 (1980) is misplaced.
4 *Springfield* delineates the procedure under which an agency (or a
5 court, for that matter) must determine the meaning of statutory
6 terms. *Springfield* delineates "three classes of statutory terms,
7 each of which conveys a different responsibility for the agency
8 in its initial application of the statute and for the court on
9 review of that application":

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11 common or technical parlance, requiring only
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18 ORS 468A.020(1) use of the terms "owner" and "operator"
19 clearly falls within category (1) cited in *Springfield*: terms of
20 precise meanings of common parlance. As the Oregon Supreme Court
21 reiterated in *Gouge v. David*, 185 Or 437, 455 (1949), an agency
22 cannot construe statutes which need no construction or alter the
23 meaning of an unambiguous statute:
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26 same rule that they apply to themselves: An

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8 **2. The Hearing Office's reference to the "common law concerning**
9 **agency" is a red herring.**

10 Contrary to the Hearing Officer's Opinion, page 5,
11 Petitioner did not rely on "common law concerning agency in
12 support of its argument." Petitioner did analogize to the common
13 law concerning agency in support of its argument. The common law
14 concerning agency was originally raised by the Department in its
15 **Notice of Assessment**, on which this proceeding is based.

16 According to that Notice, Petitioner "acted as the operator of
17 the Facility when it hired CMC as the general contractor, and as
18 the principal Vickers failed to hire a licensed asbestos
19 abatement contractor." (Notice of Assessment, Page 1, ¶ 4)

20 (emphasis added). However, as clearly established by the
21 Proposed Order, Petitioner was not a "principal" of any kind.
22 According to the Hearing Officer's Proposed Order, Petitioner
23 was a "go-between" or agent. (Findings, ¶ 3).

24 Petitioner referred to the common law of agency as an
25 argument against the statement in the Notice of Assessment that
26 **Petitioner was the "principal"** and to provide a framework to
analyze the legal relationship between PPS and Petitioner.
Petitioner never acted as a principal in the operation of this

1 school facility. Its limited role was as a "go between" for
2 Portland Public Schools, as the Hearing Officer acknowledged in
3 Finding of Fact, ¶ 3.

4 This entire issue of Petitioner's role was poisoned by the
5 Agency's false initial allegation that Petitioner was a
6 principal. That error permeated the entire processing of this
7 case. It was inappropriate for the Hearing Officer to imply
8 that Petitioner was to blame for the injection of this concept
9 into the proceedings.

10
11 D. The Hearing Officer's Conclusions of Law are neither
12 supported by the facts nor are they based on a correct analysis
13 of the governing statute.

14 For all the reasons cited above, the purported Conclusion
15 of Law the Petitioner "was an operator of the school during
16 August, 2002" is not supported by any factual finding to that
17 affect, by any evidence to that effect, nor by a proper legal
18 application of the clear terms of the statute. Neither the
19 Agency nor the Hearing Officer had any authority to expanded the
20 coverage of the applicable statute to cover persons who are
21 neither owners not operators, while at the same time failing and
22 refusing to proceed against those who clearly fall within the
23 terms of that statute.

24 Petitioner proposes the following **Finding of Fact**:

- 25 1. Respondent [Petitioner] neither owned nor
26 operated the James John Elementary property during
August 2002.

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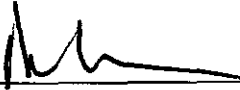
Petitioner proposes the following **Conclusions of Law**:

1. Respondent [Petitioner] was not an operator of the school during August 2002.
2. The civil penalties assessed by the Department were inappropriate.
3. The charges in the Notice in this case are dismissed.

Respectfully submitted,

DATED this 26th day of November, 2003.

DAVID P. MEYER, P.C.



David P. Meyer, OSB 89092
Attorney for Vickers/Nelson
612 SW Morrison St, Ste 1300
Portland, OR 97205-3816
(503) 224-1096

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing PETITIONER'S

EXCEPTIONS AND BRIEF on:

Mikell O'Mealy
Environmental Quality
Commission
811 SW 6th Ave
Portland OR 97204-1334


Shelley K. McIntyre
Assistant Attorney General
Natural Resources Section
Oregon Department of Justice
1515 SW Fifth Ave Ste 410
Portland OR 97201

_____ by mailing a full, true and exact copy thereof with the U.S. Postal Service in Portland, Oregon in a sealed, first-class postage prepaid envelope to the attorney's or party's last known address as shown above on the date set forth below.

X by causing a full, true and exact copy thereof to be delivered by handing it to the attorney or party as shown above on the date set forth below.

_____ by faxing a full, true and exact copy thereof to the attorney's telephonic facsimile communication device, maintained by the attorney, as shown above, which was operating on the date set forth below. Attached is the printed confirmation of receipt of the message generated by the transmitting machine.

DATED this 26th day of November, 2003.



David P. Meyer



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

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

October 31, 2003

Via Certified Mail

David P. Meyer
Attorney for Vickers/Nelson
612 SW Morrison St., Ste 1300
Portland, OR 97205-3816

RE: AQ/AB-NWR-02-181

Dear Mr. Meyer:

On October 29, 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 November 28, 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 Shelley K. McIntyre, Assistant Attorney General, and Bryan Smith, Department of Environmental Quality Environmental Law Specialist.

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: Shelley McIntyre, Oregon Department of Justice
Bryan Smith, Oregon Department of Environmental Quality

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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David Meyer
Sent to
 Attorney for Vickers/Nelson
Street, Apt. No.
 612 SW Morrison Street, Ste 1300
P.O. Box 2184
 Portland, OR 97205

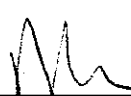
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4 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
5
6 OF THE STATE OF OREGON

7 IN THE MATTER OF:)
8)
9 VICKERS/NELSON & ASSOCIATES,) No. AQ/AB-NWR-02-181
10 CONSTRUCTION PROGRAM)
11 MANAGEMENT, INC.) PETITION FOR COMMISSION REVIEW
12) OF PROPOSED ORDER
13)
14 Vickers/Nelson.)
15)

16 Respondent Vickers/Nelson & Associates, Construction
17 Program Management, Inc. hereby petitions for Commission review
18 of the hearing officer's proposed order.
19

20 DATED this 27th day of October, 2003.
21

22 DAVID P. MEYER, P.C.
23

24 
25 _____
26 David P. Meyer, OSB 89092
Attorney for Vickers/Nelson
612 SW Morrison St, Ste 1300
Portland, OR 97205-3816
(503) 224-1096

RECEIVED

OCT 29 2003

Oregon DEQ
Office of the Director

1 CERTIFICATE OF SERVICE

2 I hereby certify that I served the foregoing PETITION FOR
3 COMMISSION REVIEW OF PROPOSED ORDER on:

4 Environmental Quality
5 Commission
6 c/o DEQ - Assistant to the
7 Director
8 811 SW 6th Ave
9 Portland OR 97204-1334
10 **VIA CERTIFIED MAIL 7001 2510**
11 **0000 1903 6605**

Shelley K. McIntyre
Assistant Attorney General
Natural Resources Section
Oregon Department of Justice
1515 SW Fifth Ave Ste 410
Portland OR 97201

9 Andrea Sloan
10 Administrative Law Judge
11 4900 SW Griffith Dr Ste 100
12 Beaverton OR 97005-4649


Bryan Smith
Environmental Law Specialist
Oregon Department of
Environmental Quality
811 SW 6th Ave
Portland OR 97204-1334

13 X by mailing a full, true and exact copy thereof with the
14 U.S. Postal Service in Portland, Oregon in a sealed, first-
15 class postage prepaid envelope to the attorney's or party's
16 last known address as shown above on the date set forth
17 below.

18 by causing a full, true and exact copy thereof to be
19 delivered by handing it to the attorney or party as shown
20 above on the date set forth below.

21 by faxing a full, true and exact copy thereof to the
22 attorney's telephonic facsimile communication device,
23 maintained by the attorney, as shown above, which was
24 operating on the date set forth below. Attached is the
25 printed confirmation of receipt of the message generated by
26 the transmitting machine.

DATED this 27th day of October, 2003.

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26

David P. Meyer

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
ENVIRONMENTAL QUALITY COMMISSION**

RECEIVED

OFFICE OF CONFORMANCE
AND ENFORCEMENT
DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

) **PROPOSED ORDER**

VICKERS/NELSON & ASSOCIATES,
Respondent,

)
)
)

) OAH Case Number: 108347
) Agency Case Number: AQ/AB-NWR-02-181
) Multnomah County

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

HISTORY OF THE CASE

On March 6, 2003, the Department of Environmental Quality (Department) issued a Notice of Assessment of Civil Penalty (Notice) to Respondent Vickers/Nelson & Associates (Respondent). The Notice alleged that Respondent violated ORS 468A.715(1) and OAR 340-248-0110(2) by allowing an unlicensed person to perform an asbestos abatement project on a facility that it operated.

On March 24, 2003, Respondent requested a hearing and submitted an Answer. A hearing was held on July 11, 2003, at 9:30 a.m., in Portland, Oregon. Andrea H. Sloan, from the Office of Administrative Hearings, presided as the Administrative Law Judge (ALJ). Attorney David Meyer represented Respondent. Testifying on behalf of Respondent were Linda Cameron, Project Manager, and Don Larson, Assistant Director of Facilities for Portland Public Schools (PPS). Also present were Doug Nelson and Greg Vickers. Environmental Law Specialist Bryan Smith represented the Department. Dave Wall, Asbestos Control Analyst, testified for the Department.

ISSUES

(1) Whether Respondent owned or operated the James John Elementary School property during August 2002.

(2) If so, whether the civil penalty assessment is appropriate.

EVIDENTIARY RULINGS

Panel Exhibits P1 through P4 and the Department Exhibits A1 through A3, A5 through A12, and R101 through R114, R116, and R120 through R122 were admitted into the record without objection.

Respondent objected to Exhibit A4, arguing that page 5 of this exhibit contained hearsay. The objection is overruled and the exhibit was admitted because hearsay is generally admissible in an

administrative hearing. ORS 183.450. The weight to be given the hearsay evidence is a determination that I will make after considering the reliability of the evidence.

The Department objected to Exhibits R115, R117 and R118, arguing that evidence relating to Princeton Property Management (Princeton) is irrelevant. Respondent countered that the Princeton documents were relevant because they demonstrated a precedent set by the Department in cases dealing with property management companies, such as Respondent.

Under ORS 183.450(1), "Irrelevant, immaterial or unduly repetitious evidence shall be excluded * * *. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible." See also OAR 137-003-0610, which essentially restates the statute. And, the Department's own rules limit the scope of a contested case hearing to "matters that are relevant and material to either proving or disproving the matters asserted in the Department's notice[.]" OAR 340-011-0131(a). The objections to Exhibits R115, R117 and R118 are sustained. The exhibits are not admitted into the record.

The Department objected to Exhibit R119, arguing that references to AHERA¹ were irrelevant. The Department further argued that Respondent's reliance on AHERA was an affirmative defense, and because Respondent did not raise this affirmative defense in its Answer, the defense was deemed waived. By its terms, AHERA applies to schools, and imposes responsibilities on schools concerning asbestos in school properties. In this case, PPS is not named in the Department's Notice. Respondent is the only entity named in the Notice and AHERA does not apply to Respondent's actions. The Department's objection to Exhibit R119 regarding references to AHERA is sustained.

The Department and Respondent stipulated that the flooring material contained asbestos, and that Addison Interiors' employees removed the flooring.

The record was left open until August 15, 2003, for the Department to submit a legal brief and for Respondent to have an opportunity to respond. The Department requested an extension of time to submit its brief. The request was granted and the record closed on August 29, 2003.

FINDINGS OF FACT

(1) Respondent is a project management company doing business in the State of Oregon. In 2001, Respondent was known as Vickers/Foster & Associates Construction Program Management, Inc. (Exs. A7 and R101.)

(2) On September 12, 2001, Respondent entered into a contract with PPS to provide project management services for the district's facility capital improvement program. This contract included renovation work at the James John Elementary School (school), located at 7439 North Charleston Avenue, Portland, Oregon. The work at the school involved, *inter alia*,

¹ AHERA is the "Asbestos Hazard Emergency Response Act" created as part of the EPA's "Asbestos in the Schools Rule," which is part of the Toxic Substances Control Act. AHERA regulations require schools to inspect for asbestos, implement response actions and submit plans concerning abatement. AHERA also requires the use of accredited asbestos inspectors, air sampling and waste disposal procedures. 40 CFR 763, Subpart E.

removing and replacing sheet vinyl from the floor of the boy's restroom in the Head Start modular classroom building at the site. (Exs. A3 and A4.)

(3) As part of its agreement with PPS, Respondent was designated as an "owner's representative" for the school renovation project. PPS and Respondent understood this to mean that Respondent was the intermediary or "go between" between PPS and all contractors hired to do the renovation work. All questions from contractors went to Respondent, who then, if necessary, relayed the questions to PPS. PPS, in turn, would reply to Respondent, who would then communicate with the contractors. Contractors did not communicate directly with PPS. PPS had ultimate authority regarding the budget, scope and final scheduling issues for the school project. One of Respondent's responsibilities, as an owner's representative, was to solicit bids from qualified contractors for the school renovation project. The invitation to quote was printed on Respondent's letterhead, and explained that the bids should be sent to Respondent's offices. Respondent received bids for the project, and forwarded these bids, along with its recommendations, to PPS. Following this process, PPS entered into a contract with Cedar Mill Construction Company (Cedar Mill) on or about August 1, 2002. (Exs. A4 and R104; testimony of Larson and Cameron.)

(4) Linda Cameron was the project management consultant assigned by Respondent to oversee the school project. Ann White was the assigned project manager from PPS. (Testimony of Larson and Cameron.)

(5) Cedar Mill was required, by agreement, to provide Respondent with a list of all subcontractors it hired for the school job. Cedar Mill did not do so. At some point prior to August 7, 2002, Cedar Mill contracted with Addison Interiors (Addison) to remove the flooring in the boy's restroom in the Head Start modular classroom building. (Ex. A2; testimony of Cameron and Wall.)

(6) Shortly before 2:00 p.m. on August 7, 2002, Ms. White e-mailed Ms. Cameron about the sheet vinyl at the school. Ms. White wrote, "CONTRACTOR CANNOT REMOVE UNTIL WE TEST FOR ASBESTOS." (Emphasis in original.) Ms. White confirmed that she had also left a voice mail message for Ms. Cameron about the sheet vinyl. (Ex. R109.)

(7) On August 8, 2002, Ms. Cameron wrote a generic letter to Cedar Mill that PPS had authorized Respondent to notify Cedar Mill to proceed with the work at the school. Ms. Cameron never sent an amended notice to proceed letter after learning that PPS suspected that the flooring might have asbestos-containing materials (ACM). (Ex. R110; testimony of Cameron.)

(8) PPS had an ongoing contract with Apex Environmental, Inc. (Apex) to perform environmental consulting services for the school district. On August 9, 2002, Ms. Cameron contacted Apex on behalf of PPS and asked the company to test the suspect sheet vinyl for asbestos. Ms. Cameron learned that Apex could not test the vinyl until August 12, 2002, following the weekend. Ms. Cameron then contacted James Anderson, owner of Cedar Mill, and advised Mr. Anderson that Apex would be testing the vinyl and that no work was to be done on

the vinyl until the test results were received on August 13, 2002. (Ex. R122; testimony of Cameron.)

(9) On August 12, 2002, Ms. Cameron was on site at the school and handed out construction badges to the workers. Ms. Cameron spoke with a gentleman whom she assumed was a foreman for Cedar Mill, but who actually was a foreman for Addison. Ms. Cameron told the foreman that he was not allowed to touch the flooring until after Apex had tested it for asbestos. The foreman told Ms. Cameron that he had seen Apex personnel on site. Ms. Cameron never actually spoke to Cedar Mill personnel on August 12, 2002 regarding the pending asbestos testing. (Testimony of Cameron.)

(10) On August 13, 2002, Ms. Cameron learned that the flooring tested positive for ACM, and notified Mr. Anderson of Cedar Mill of the test results. Mr. Anderson told Ms. Cameron that Addison had already removed the flooring. Ms. Cameron "shut down the site" until the extent of contamination could be determined. (Exs. A2, A11 and R111; testimony of Cameron.)

(11) On or about August 13, 2002, Chris Boyce, the environmental coordinator for PPS, contacted Dave Wall of the Department's asbestos control program to report a potential asbestos problem at the school. Mr. Boyce told Mr. Wall that the sheet vinyl in question had already been removed. Mr. Wall instructed Mr. Boyce to have an asbestos contractor clean up the site. (Testimony of Wall.)

(12) On August 14, 2002, Mr. Wall conducted an inspection of the site and an investigation into the asbestos complaint at the school as part of his duties with the Department. During the inspection, Mr. Wall observed that the bathroom flooring material was torn up and damaged. Mr. Wall found flooring material in an uncovered dumpster on site. The flooring material, which contained friable² asbestos, was removed dry³ and carried through the school corridors to the dumpster, causing potential release of asbestos fibers into the building and environment.⁴ Addison did not properly package or label the ACM that they removed from the boy's restroom. (Testimony of Wall.)

(13) Removal of the flooring material at the school was an asbestos abatement project.⁵ Mr. Wall checked the Department's databases and determined that Addison Interiors is not a licensed asbestos abatement contractor.⁶ (Testimony of Wall.)

² "Friable asbestos material' means any asbestos-containing material that hand pressure can crumble, pulverize or reduce to powder when dry." ORS 468A.700(8).

³ If asbestos fibers are "adequately wet" with a liquid, the release of particulate asbestos materials is minimized. OAR 340-248-0010(3).

⁴ "Asbestos fibers are respiratory hazards proven to cause lung cancer, mesothelioma and asbestosis and as such, are a danger to the public health." * * * (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." ORS 468A.705(1) and (5).

⁵ "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." ORS 468A.700(4).

CONCLUSIONS OF LAW

- (1) Respondent was an operator of the school during August, 2002.
- (2) The amount of civil penalties assessed by the Department was appropriate.

OPINION

“The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.” ORS 183.450(2). Here, the Department has the burden of proving its allegations by a preponderance of the evidence. *See, 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).

Respondent argued that it should not be subject to penalty assessments in this matter because it was not liable for the unlicensed asbestos abatement project at the school. In support, Respondent argued that PPS controlled the project (in addition to being the owner and operator of the school), and that Respondent was merely an owners’ representative, and a project manager, on the school renovation project at issue. Respondent relies on common law concerning agency in support of its argument.

The Department argues that, according to its administrative rules, Respondent met the definition of owner or operator, and was, therefore, liable for the unlicensed asbestos abatement project at the school.

I find that the Department has met its burden with respect to the alleged violation.

Owner or Operator of a Facility

ORS 468A.715(1) requires that “an owner or operator of a facility containing asbestos shall require only licensed contractors to perform asbestos abatement projects.” The statute does not define “owner or operator,” however, that phrase is defined by the Department’s administrative rules. “‘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.” OAR 340-248-0010(33).

Respondent correctly argues that PPS owned and operated the school property. This fact is undisputed and is supported by the record. Indeed, the Department’s Notice is premised on the

⁶ The Department is authorized to license asbestos abatement contractors. ORS 468A.715 and OAR 340-248-0120.

fact that Respondent *controlled or supervised* the renovation project at the school.⁷ The applicable statutes and rules do not define the terms “control or supervise,” and the meaning of these terms is, therefore, subject to some interpretation. Respondent argues that, based on this record, it did not supervise or control the school renovation because PPS retained ultimate authority over project scheduling, budgets and contracting. The Department, however, argues that Respondent did control or supervise the renovation project, based on the facts presented at hearing. Specifically, the Department relies on the facts that Respondent solicited bids on behalf of PPS and made recommendations on the selection of contractors, and that Ms. Cameron was responsible for overseeing the work of the contractors and subcontractors on the project. Ms. Cameron was in direct contact with these contractors, and reported regularly to PPS about the progress of the work at the school. Respondent was the “go between” on this project. Contractors were to go directly to Ms. Cameron, rather than PPS, with any questions or concerns. In addition, after Ms. Cameron learned that the ACM flooring had been removed, she “shut the site down until it could be determined the extent of contamination.” (Ex. A11, page 2.)

The term “owner or operator” in ORS 468A.715(1) is inexact. The Oregon Supreme Court addressed the interpretation of inexact statutory terms in *Springfield Education Association v. School District*, 290 Or 217 (1980). The Court reasoned as follows:

To determine the intended meaning of inexact statutory terms, in cases where their applicability may be questionable, courts tend to look to extrinsic indicators such as the context of the statutory term, legislative history, a cornucopia of rules of construction, and their own intuitive sense of the meaning which legislators probably intended to communicate by use of the particular word or phrase. In any event, however, the inquiry remains the same: what did the legislature intend by using the term.

Springfield at 224. See also, *PGE v. Bureau of Labor and Industries*, 317 Or 606 (1993) (to determine legislative intent, look first to the text and context of the statute).

The context of the statutory term “owner or operator” can be determined from the ordinary meaning of these words. For example, “owner” is defined as “to have or possess as property” or “to have control over.” *The American Heritage College Dictionary* 977 (3rd ed 1997). “Operator” is defined as “the owner or manager of a business or an industrial enterprise.” *Id.* at 957. By including the term “operator” in the statutory language, the legislature clearly intended ORS 468A.715(1) to apply to a broader class of people than just property owners. Because the meaning of the term “owner or operator” can be determined by looking to the text and context of the statute, further analysis is not necessary. *Coast Security Mortgage Corp. v. Real Estate Agency*, 331 Or 348, 355 (2000).

The legislature has given the Environmental Quality Commission authority to “adopt such rules and standards as it considers necessary and proper in performing the functions vested by

⁷ Respondent is also correct in arguing that the Notice is inaccurate in one respect. In the Notice, the Department alleges that “Respondent hired Cedar Mill Construction Company LLC. (CMC) as the general contractor for the renovation project.” (Ex. P1.) This is not accurate. In fact, PPS hired Cedar Mill, after Respondent solicited bids for the renovation work.

law in the commission.” ORS 468A.020(1). Within this authority, the Environment Quality Commission promulgated rules relating to environmental quality issues, including rules relating to asbestos abatement and the definition of applicable statutory terms. The issue is whether the Environmental Quality Commission’s definition of “owner or operator” is consistent with the statute. I find that it is. As noted above, the Environmental Quality Commission has defined the term to mean one who “controls or supervises.” Given that the words operator, manager and supervisor are generally synonymous terms, the rule is valid as it is within the statutory intent. *Springfield*, 290 Or at 228.

Furthermore, an agency’s interpretation of its rules will be given deference by the courts if the rule is consistent with applicable statutes, and if the legislature has given the agency broad authority to establish rules in order to further its mandate. *Martin v. ODOT*, 122 Or App 271, 274 (1993); *Don’t Waste Oregon Com. V. Energy Facility Siting*, 320 Or 132, 142 (1994) (an agency’s construction of its own rule will be affirmed if the interpretation is plausible and not inconsistent with the rule itself, the context of the rule, or some other source of law).

This record establishes, by a preponderance of the evidence, that Respondent was an “owner or operator” of the school during August 2002, as that term is defined by administrative rule. Respondent is, therefore, liable for civil penalties because of the unlicensed asbestos abatement project conducted at the school.

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.

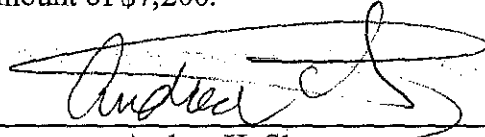
In this case, the Department determined that Respondent was liable for \$7,200 in civil penalties based on the unlicensed asbestos abatement project conducted at the school. This penalty was determined by calculating the base penalty (BP) and considering other factors, such as prior significant actions (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.”

Based on this record, the civil penalty assessment of \$7,200 is warranted.

PROPOSED ORDER

I propose that the Department issue the following order:

Respondent is subject to a civil penalty in the amount of \$7,200.



Andrea H. Sloan
Administrative Law Judge
Office of Administrative Hearings

ISSUANCE AND MAILING DATE:

October 9, 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 October 9, 2003, I served the attached Proposed Order by mailing certified and/or first class mail, in a sealed envelope, with first class postage prepaid, a copy thereof addressed as follows:

GREG VICKERS
VICKERS/NELSON & ASSOCIATES
1420 NW LOVEJOY #416
PORTLAND OR 97209

**BY FIRST CLASS MAIL AND CERTIFIED MAIL
BY CERTIFIED MAIL RECEIPT # 7001 1940 0000 1117 5630**

DAVID MEYER
ATTORNEY AT LAW
621 SW MORRISON ST STE 1300
PORTLAND OR 97205

**BY FIRST CLASS MAIL AND CERTIFIED MAIL
BY CERTIFIED MAIL RECEIPT # 7001 1940 0000 1117 5647**

BRYAN SMITH
OREGON DEQ
OFFICE OF COMPLIANCE AND ENFORCEMENT
811 SW 6TH AVE
PORTLAND OR 97204

BY FIRST CLASS MAIL



Ann Redding, Administrative Specialist
Office of Administrative Hearings
Transportation Hearings Division

DAVID P. MEYER, P.C.

ATTORNEY AT LAW

LICENSED IN OREGON
AND WASHINGTON

621 SW MORRISON STREET, SUITE 1300

PORTLAND, OREGON 97205-3816

TELEPHONE: (503) 224-1096

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August 25, 2003

RECEIVED

AUG 26 2003

by Office of
Administrative Hearings

Andrea Sloan
Administrative Law Judge
4900 SW Griffith Dr Ste 100
Beaverton OR 97005-4649

Re: In the Matter of Vickers/Nelson & Associates
Department of Environmental Quality
Case No. AQ/AB-NWR-02-181

Dear ALJ Sloan:

Enclosed please find Vickers/Nelson's Closing Argument and Memorandum of Legal Authority.

Thank you for your assistance in this matter.

Sincerely,

DAVID P. MEYER, P.C.



David P. Meyer

cc: Greg Vickers, Vickers/Nelson

Bryan Smith
Environmental Law Specialist
Oregon Department of Environmental Quality
811 SW 6th Ave
Portland OR 97204-1334

Shelley K. McIntyre
Assistant Attorney General
Natural Resources Section
Oregon Department of Justice
1515 SW Fifth Ave Ste 410
Portland OR 97201

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

7 IN THE MATTER OF:)
8)
9 VICKERS/NELSON & ASSOCIATES,) No. AQ/AB-NWR-02-181
10 CONSTRUCTION PROGRAM)
11 MANAGEMENT, INC.) VICKERS/NELSON'S CLOSING
12) ARGUMENT AND MEMORANDUM OF
13) LEGAL AUTHORITY
14 Vickers/Nelson.)
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A. Introduction

The Department of Environmental Quality ("the Department") completely has failed to prove that Vickers/Nelson & Associates, Construction Program Management, Inc. ("Vickers/Nelson") was an "owner" or "operator" of the James John School in Portland, Oregon. Accordingly, the violation and penalty against Vickers/Nelson should be dismissed.

B. Discussion

The evidence at the July 11, 2003 hearing confirmed that Vickers/Nelson at no time owned or, more significantly, operated the James John School. The Department's continued insistence that Vickers/Nelson was "an owner or operator", so as to suggest that Vickers/Nelson owned the James John School, is absurd. This memorandum focuses on the term "operator" or "facility operator"

1 as defined by the Oregon environmental laws and applied to the
2 facts in this case.

3 Vickers/Nelson agrees with the Department that Oregon law
4 makes an "operator" liable for asbestos work by non-licensed
5 contractors. ORS 468A.715(1) and OAR 340-248-0110(2).

6 Vickers/Nelson further agrees that an operator is defined by OAR
7 340-248-0010(33), as follows:
8

9 [A]ny person who [1] owns, leases, operates,
10 controls or supervises a facility being
11 demolished or renovated or any person who
12 [2] owns, leases, operates, controls, or
13 supervises the demolition or renovation
14 operation, or both. [numbers added]

15 Again, there should be no serious contention that
16 Vickers/Nelson "owns," "leases," "operates," "controls" or
17 "supervises" the James John School facility, as used in the first
18 part of the definition. There was no evidence that Vickers/Nelson
19 had any involvement with the James John School other than the
20 limited work on the modular classrooms in July and August 2002.
21 Further, there no contention that Vickers/Nelson "own[ed]" or
22 "lease[ed]" the renovation operation, as used in the second part
23 of the definition. The dispute focus on the remaining language in
24 the second part of the definition, as to whether, in its capacity
25 as project manager for Portland Public Schools, Vickers/Nelson
26 "operate[d]", "control[ed]" or "supervise[d]" the modular
classroom "renovation operation."

1 Vickers/Nelson does not cite the law of agency¹ to suggest
2 that simply being an agent meant that Vickers/Nelson is immune
3 from liability under Oregon environmental regulations, if it
4 actually operated, controlled or supervised the James John
5 renovation. Had the Portland Public Schools authorized
6 Vickers/Nelson directly to perform those tasks, there may be an
7 issue of liability. In fact, that would be similar to the case
8 against Princeton Properties (Exhibit 116), where by Princeton's
9 own admission in the agency record (Exhibit 117) the property
10 owner had authorized Princeton to operate, control and supervise
11 renovation work.²

13 The contested case rules permit "[c]omparison of prior
14 actions of the agency in handling similar situations." OAR 137-
15 003-0555(1)(d)(B). This is consistent with case law that states
16 a party "is entitled to even treatment by rule of law and
17 reasonable confidence that [it] has received such treatment."
18 Moke, Inc. v. OLCC 68 Or App 800 (1984). Unlike Princeton
19 Properties, however, Vickers/Nelson was the disclosed agent in
20

22 ¹ An agent, acting within the scope of its authority, disclosing
23 its representative capacity and acting in its principle's name,
24 is not personally liable. Porter Const. Co. v Berry Et Al., 136
Or 80, 90-91 (1931).

25 ² "Princeton Property Management has a no profit center for
26 construction, maintenance, painting or cleaning. We hire Oregon
licensed and bonded contractors to perform services." (Exhibit
117, ¶ 6)

1 its limited role as project manager to its principal, the Portland
2 Public Schools, by which Vickers/Nelson operated, controlled and
3 supervised the renovation operation at the James John modular
4 classrooms.

5 According to the substantial weight of evidence, including
6 the testimony of Don Larson, Assistant Director of Facilities and
7 Asset Management for Portland Public Schools, Vickers/Nelson's
8 role as project manager was to oversee Portland Public Schools'
9 renovation operation. The Department at most relies on anecdotal
10 evidence that Vickers/Nelson in any way operated, controlled or
11 supervised the work. Its memorandum relies on selective excerpts
12 from documents, most of which involves hearsay, to make that
13 argument.
14

15 By doing so, however, the Department necessitates a
16 comprehensive review of the evidence according to each aspect of
17 the James John "renovation operation" over which the Department
18 attempts to assert Vickers/Nelson exerted operation, control or
19 supervision. From a thorough review of the evidence, the only
20 conclusion that can be reached is that Vickers/Nelson acted solely
21 as an intermediary between the Portland Public Schools and its
22 contractors. According to the substantial weight of evidence, it
23 was the Portland Public Schools that operated, controlled and
24 supervised the renovation work.
25
26

1 1. Agreement Between Portland Public Schools and
2 Vickers/Nelson. The Department attempts to argue the scope
3 of services delineated in the Scope of Services between
4 Portland Public Schools and Vickers/Nelson (Exhibit 8)
5 somehow relates to the James John School. However, the
6 document plainly states: "The Scope of Services described
7 below is to be considered the standard of services to be
8 offered by your firm for projects assigned. Individual
9 project status, size, scope and completion schedule will of
10 course determine the applicability and appropriateness of
11 the individual items of service scope." (Exhibit 8, p. 2)
12 [underlining added]. Accordingly, inquiry must be focused
13 on the services that Vickers/Nelson actually performed at
14 the James John School project, the job for which the
15 Department is attempting to hold Vickers/Nelson liable.

18 2. Bidding Process. Based on a list of pre-approved
19 contractors provided by Portland Public Schools,
20 Vickers/Nelson obtained quotes to perform the James John
21 renovation operation for Portland Public Schools. The
22 Invitation to Quote (Exhibit 102) is clear that
23 Vickers/Nelson is inviting bids "that will be received by
24 Portland Public Schools." The invitation further provided
25 bidders with a copy of "Portland Public School's Small
26 Projects (Under \$25,000) Contract", a copy of the Portland

1 Public School project drawings (Exhibit 103) and states that
2 the contractor would be required to provide a performance
3 bond "to cover the amount of the Contract between Contractor
4 and the District." Don Larson, Assistant Director of
5 Facilities and Linda Cameron, Vickers/Nelson project manager
6 both confirmed that the Portland Public Schools, not
7 Vickers/Nelson, selected the contractor to award the
8 contract.
9

10 **3. Legal Agreement with Contractor.** The fact that
11 Vickers/Nelson did not operate, control or supervise the
12 renovation operation is further established by the fact that
13 Vickers/Nelson had no contractual or legal relationship with
14 the contractor that performed the work. The evidence,
15 including the contract (Exhibit 104), certificate of
16 insurance (Exhibit 105), workers' compensation certificate
17 (Exhibit 106), Performance Bond (Exhibit 107) and Payment
18 Bond (Exhibit 108) all confirm that Portland Public Schools
19 contracted with Cedar Mills Construction for the James John
20 renovation work. More significantly, this un rebutted fact
21 completely defies the finding that underlies the Department's
22 Notice of Violation and Assessment of Civil Penalty against
23 Vickers/Nelson, on which this contested case is based. The
24 finding by the Department was that "Vickers/Nelson entered a
25 Small Project Contract with Cedar Mill Construction Company,
26

1 Inc., for the James John School modular classroom renovation
2 work." See Notice of Violation, page 1, ¶¶ 1 and 4. With that
3 pivotal finding of the Notice of Violation disproved, the
4 Department now attempts to rely on facts neither part of the
5 Department's originals findings nor supported by the evidence
6 at the hearing, in an attempt to uphold its penalty.
7

8 **4. Notice to Proceed.** The Department cites the Cedar Mills
9 letter of August 14, 2002 (Exhibit 111) for hearsay evidence
10 that Cedar Mill "commenced work under your [Vickers/Nelson]
11 direction," in order to argue that Vickers/Nelson exercised
12 supervisory control over the job. In fact, Cedar Mill
13 commenced work pursuant to Vickers/Nelson's letter of August
14 8, 2002 (Exhibit 110) which stated that "Portland Public
15 Schools has authorized Vickers/Foster . . . as the owners'
16 representative to issue" a notice to proceed. Don Larson, the
17 Portland Public School's witness, confirmed that they
18 specifically authorized Vickers/Nelson to issue the notice to
19 proceed. This is consistent with Vickers/Nelson's limited
20 role as project manager with no authority over the
21 contractor.
22

23 **5. Scheduling/Coordination/Progress Meetings.** Again, the
24 evidence is well established by both the Portland Public
25 School and Vickers/Nelson witnesses that Portland Public
26 Schools dictated coordination of the work and any

1 modifications to the schedule or scope of work. According to
2 the witnesses, regular meetings were held at the Portland
3 Public Schools administration building where the Portland
4 Public Schools representatives would direct Vickers/Nelson as
5 to any coordination, scheduling and scope of work matters.
6 The only evidence at the hearing of any Vickers/Nelson
7 meetings at the James John job, as specified in Cedar Mill's
8 Scope of Services and referenced by the Department (Exhibit
9 A4), were those communications between Vickers/Nelson's
10 representative and the contractors regarding such "schedule
11 review, coordination and clarification" issues as Portland
12 Public Schools would specifically instruct.

14 **6. Request to Stop Flooring Work.** The Department cites the
15 fact that Vickers/Nelson informed the flooring contractor not
16 remove the flooring as evidence that Vickers/Nelson
17 controlled the work. However, the Department ignores the
18 August 7, 2002 e-mail from Ann White of Portland Public
19 Schools to Linda Cameron of Vickers/Nelson (Exhibit 109)
20 directing that the "CONTRACTOR CANNOT REMOVE UNTIL WE
21 [Portland Public Schools] TEST FOR ASBESTOS". This was
22 directive to Vickers/Nelson was confirmed at the hearing by
23 Don Larson, Portland Public Schools Assistant Director of
24 Facilities and Asset Management.
25
26

1 7. Closing the Job Site. The Department states that
2 Vickers/Nelson "decisively" (the Department's
3 characterization) shut down the site after the flooring
4 tested positive for asbestos. What the Department fails to
5 mention is that Vickers/Nelson did so only at the specific
6 request of its principal, Portland Public Schools. According
7 to the evidence, including the August 14, 2002 memorandum on
8 which the Department bases its argument (Exhibit A11, p. 1, ¶
9 4) the order to close the job site came from Apex
10 Environmental, the asbestos representative, on behalf of
11 Portland Public Schools.

13 8. Engaging An Abatement Contractor. The Department again
14 incorrectly cites Cedar Mill's scope of services (Exhibit A4,
15 ¶ 2.7) regarding the responsibility of the "Owner's
16 Representative" to engage an asbestos abatement contractor.
17 According to the testimony, Portland Public Schools also has
18 contracts with owner's representative's that are asbestos
19 consultants, who have the responsibility to engage asbestos
20 abatement contractors. That was exactly the case at the James
21 John School renovation operation where the Portland Public
22 Schools' environmental specialist Chris Boyce instructed
23 Linda Cameron of Vickers/Nelson to contact Apex Environmental
24 to conduct testing on the bathroom flooring. Apex
25 Environmental has an owner's representative contract with
26

1 Portland Public Schools (Exhibit 122), which is identical in
2 form to the Vickers/Nelson's owner's representative contract
3 with Portland Public Schools' (Exhibit 101). Again, according
4 to the testimony of Don Larson of Portland Public Schools,
5 Apex Environmental was the owner's representative intended by
6 ¶ 2.7 of the contractor's scope of services document (Exhibit
7 A4). In addition to the foregoing, the drawing for the work
8 with which Cedar Mills was provided states "[A]ll asbestos
9 work will be conducted by Portland Public Schools under
10 separate contract." (Exhibit 103). The fact that the asbestos
11 work was contracted by Portland Public Schools is confirmed
12 by the abatement contracts and invoices (Exhibit 114), as
13 well as Don Larson's testimony.
14

15 C. Conclusion

16 The James John School was at all times, including July and
17 August 2002, operated by the Portland Public Schools. Not only
18 did the Portland Public Schools, through Vickers/Foster,
19 exercise operation, control and supervision over the contractors
20 at the modular classroom renovation, it exercised direct
21 operation, control and supervision of the asbestos related
22 matters, as demonstrated by: 1) the project drawing notes
23 (Exhibit 103); 2) e-mail of Ann White (Exhibit 109); 3)
24 professional services contract with Apex Environmental (Exhibit
25
26


1 122); 4) asbestos contractor contracts and invoices (Exhibit
2 114); and 5) the testimony of its representative at the hearing.

3 According to the substantial weight of evidence, the
4 Portland Public Schools at all times operated, controlled and
5 supervised the James John modular classroom renovation operation.
6 Vickers/Nelson, acting in the limited role of project manager,
7 is not liable under Oregon environmental laws for the asbestos
8 requirements imposed on a facility operator.
9

10 Based on the foregoing, the Department should be directed
11 to dismiss the violation and penalty against Vickers/Nelson. It
12 further should be directed to publish a retraction of the April
13 10, 2003 News Release regarding the violation and penalty.

14 DATED this 25th day of August, 2003.

15 DAVID P. MEYER, P.C.
16

17 
18 _____
19 David P. Meyer, OSB 89092
20 Attorney for Vickers/Nelson
21 612 SW Morrison St, Ste 1300
22 Portland, OR 97205-3816
23 (503) 224-1096
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing
VICKERS/NELSON'S CLOSING ARGUMENT AND MEMORANDUM OF LEGAL

AUTHORITY on:

Andrea Sloan
Administrative Law Judge
4900 SW Griffith Dr Ste 100
Beaverton OR 97005-4649
(503) 644-5790 (fax)

Shelley K. McIntyre
Assistant Attorney General
Natural Resources Section
Oregon Department of Justice
1515 SW Fifth Ave Ste 410
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(503) 229-5120 (fax)

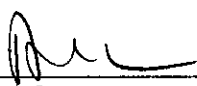
Bryan Smith
Environmental Law Specialist
Oregon Department of
Environmental Quality
811 SW 6th Ave
Portland OR 97204-1334
(503) 229-6762 (fax)

_____ by mailing a full, true and exact copy thereof with the U.S. Postal Service in Portland, Oregon in a sealed, first-class postage prepaid envelope to the attorney's or party's last known address as shown above on the date set forth below.

_____ by causing a full, true and exact copy thereof to be delivered by handing it to the attorney or party as shown above on the date set forth below.

_____ by faxing a full, true and exact copy thereof to the attorney's telephonic facsimile communication device, maintained by the attorney, as shown above, which was operating on the date set forth below. Attached is the printed confirmation of receipt of the message generated by the transmitting machine.

DATED this 25th day of August, 2003.



David P. Meyer

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:) CLOSING ARGUMENT
VICKERS/NELSON & ASSOCIATES,)
CONSTRUCTION PROGRAM)
MANAGEMENT, INC.,)
an Oregon corporation,)
Respondent.) NO. AQ/AB-NWR-02-181
MULTNOMAH COUNTY

This Closing Argument is offered in support of the Notice of Assessment of Civil Penalty No. AQ/AB-NWR-02-181 (Notice) issued on March 6, 2003, by the Department of Environmental Quality (the Department or DEQ) to Vickers/Nelson & Associates, Construction Program Management, Inc., an Oregon corporation, (Respondent). A contested case hearing was held on this matter before the Honorable Andrea Sloan on July 11, 2003.

I. CLOSING ARGUMENT

Through the testimony and the exhibits that it presented at this contested case hearing, the Department has shown that an unlicensed contractor performed an asbestos abatement project at the James John Elementary school, located at 7439 North Charleston Avenue in Portland, Oregon (the Facility). The Department has also shown that Respondent is responsible for the violation of allowing an unlicensed contractor to perform an asbestos abatement project at a Facility it owned or operated. Oregon Administrative Rule (OAR) 340-248-0010(33) defines the term "owner or operator" as "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 project, or both."

Respondent was an owner or operator of the Facility in question because it contracted with the owner of the Facility to perform "project management services" for a renovation project at the Facility, and then provided those services. Pursuant to this contract, Respondent solicited and evaluated sealed bids from contractors wishing to perform this renovation project. Respondent recommended a contractor to the owner of the Facility, directed the contractor in performing the renovation project, scheduled and conducted progress meetings with the contractor, and discouraged the contractor from communicating with the owner of the Facility. Specifically, Respondent instructed the contractor to direct its subcontractor to remove

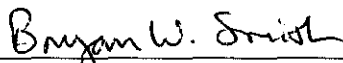
1 asbestos-containing flooring from the Facility. Respondent then exercised its control over the project by
2 reversing these instructions to the contractor, ordering the contractor to refrain from having the flooring
3 removed. Finally, Respondent's Project Management Consultant Linda Cameron stated that she "shut the
4 site down" after the flooring was removed, demonstrating that Respondent was supervising and had control
5 of the Facility.

6 The scope of services provided by Respondent, and the authority exercised by Respondent, make
7 clear that Respondent was the owner or operator of the Facility. Additionally, the Department of Justice
8 (DOJ) reviewed the applicable definition of "owner or operator" in the Oregon Administrative Rules and
9 submitted a memorandum concluding that Respondent was an owner or operator of the Facility at the time
10 that the asbestos abatement project was performed by an unlicensed contractor. Because Respondent was
11 an owner or operator of the Facility at that time, it is responsible for the violation of allowing an unlicensed
12 contractor to perform an asbestos abatement project at a Facility it owned or operated.

13 II. CONCLUSION

14 Based on the above argument, the Department respectfully requests that the Hearings Officer
15 uphold the Department's \$7,200 civil penalty against Respondent for the violation of Oregon Revised
16 Statutes (ORS) 468A.715(1) and OAR 340-248-0110(2).

17
18 Dated: August 15, 2003

19
20
21 
22 Bryan Smith, Environmental Law Specialist
23 Department of Environmental Quality
24 Office of Compliance and Enforcement
25
26
27



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

August 14, 2003

Andrea Sloan, Hearing Officer
Office of Administrative Hearings
1905 SE Lana Avenue NE
Salem, OR 97314

Re: In the Matter of Vickers/Nelson & Associates
DEQ's No. AQ/AB-NWR-02-181

Dear Ms. Sloan:

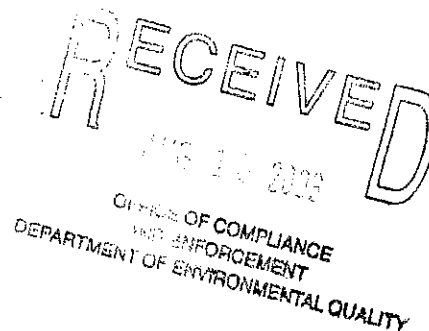
Enclosed is the Department of Environmental Quality's Memorandum of Legal Authority in response to Respondent's legal argument on the issue of whether Respondent was an owner or operator of the project.

Sincerely,

Shelley K McIntyre *lal*
Shelley K. McIntyre
Assistant Attorney General
Natural Resources Section

SKM:lal/GENG5649.DOC

cc: David Meyer, Attorney-at-Law
Bryan Smith, DEQ



BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF)
)
Vickers/Nelson & Associates,) No. AQ/AB-NWR-02-181
Construction Program Management, Inc.)
) MEMORANDUM
) OF LEGAL AUTHORITY

Issue

Whether Respondent Vickers/Nelson & Associates (previously Vickers/Foster & Associates, referred to herein as Vickers/Nelson) was an owner or operator as that term is used in the statute and administrative rules concerning asbestos abatement projects.

Background

Vickers/Nelson filed a Hearing Memorandum in which it argues that it is not liable because it was merely a project manager or “management agent” and did not have a specific written contract with the party performing the asbestos abatement project. Vickers/Nelson relies on Oregon agency law in support of its defense. This argument fails because the term “owner or operator” is defined in the Department’s rules.

As stated in its Hearing Memorandum, Vickers/Nelson had a Personal/Professional Services Contract with School District No. 1, Portland Public Schools (District), to perform “Project Management Services for Facility Capital Improvement Program (sic) 2002 Construction.” Resp. Ex. 101. In a letter dated August 21, 2001 from Robert E. Enninga to Mr. Greg Vickers, the District set out a list of services for which Vickers/Nelson would be responsible. Agency’s Ex. 8. These included a full array of project management and supervision responsibilities from the design phase through the close out phase for each project.

Pursuant to its contract with the District, Vickers/Nelson selected certain pre-approved contractors to submit sealed bids to the District for the work. The District eventually entered into a separate contract with Cedar Mill Construction Company to perform certain work. Resp. Ex. 104. After the District entered into a contract with Cedar Mills Construction Company, Vickers/Nelson carried out its project management responsibilities for the construction phase.

These responsibilities included being on the site and communicating directly with the contractor. The Scope of Services for the project states that the contractor “shall coordinate all work with the Owner’s representative.” Agency’s Ex. 4, Section 2.1. The contractor was required to notify Vickers/Nelson when the contractor was ready for inspection of the major stages of work. *Id.* at Section 2.2. Vickers/Nelson was responsible for scheduling and conducting progress meetings to review the schedule,

coordinate and clarify any issues, track drawings, and proposals, and address "other project administration issues." *Id.* at Section 2.3.

By letter dated August 14, 2002, James Anderson, representing Cedar Mill Construction, stated to Linda Cameron, Project Management Consultant for Vickers/Nelson, that Cedar Mill Construction had "commenced with work *under your direction*" at the school. Resp. Ex. 111, emphasis added. Furthermore, Ms. Cameron admitted that she "had duly informed the flooring contractor not to do any work" in the area containing asbestos flooring. *Id.* Thus, Ms. Cameron herself obviously believed that she had the authority, as the Project Management Consultant for Vickers/Nelson, to direct the contractor and subcontractors to begin and stop work. That is, she had control over what the contractors and subcontractors could and could not do.

Legal Discussion

A. *Vickers/Nelson was an "owner or operator" under Oregon law governing asbestos abatement projects.*

When performing asbestos abatement projects, Oregon law requires an owner or operator of a facility containing asbestos to use licensed contractors to do the work. The only exceptions are for private residences if the residence is occupied by the owner and the owner-occupant performs the asbestos abatement work, and employees of the facility's owner or operator that have been trained and certified pursuant to the Department's administrative rules. ORS 468A.715 and 468A.755.

The statute does not define the term "owner or operator," but the Environmental Quality Commission did so when it adopted the administrative rules implementing ORS 468A.700 to 468A.755. OAR 340-248-0010(33) defines this term as follows:

"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."

Note that the definition addresses control over the physical facility and the demolition or renovation operation itself. Based on this definition, whether Vickers/Nelson actually signed a specific written contract with the party who performed the asbestos abatement project at the facility is only one factor to consider when determining whether it was the "owner or operator" of the facility.

Vickers/Nelson invited bids for the renovation. Vickers/Nelson drafted the invitation. The bidders submitted their bids to Vickers/Nelson, who reviewed them and made a recommendation to the District. Vickers/Nelson admits that it was the project manager for the renovation. Such management included supervising the renovation work.

The contract between the District and the contractor demonstrates the amount of supervisory control that Vickers/Nelson had over the renovation project. The contract states that the contractor must obtain approval from Vickers/Nelson to perform certain tasks. For example, "The Contractor shall not cut or penetrate structural portion without Owner's representative [Vickers/Nelson's] approval." Agency's Ex. 4, Section 2.6. Furthermore, if the contractor suspects asbestos, the "Contractor shall immediately stop work * * * and notify Owner's Representative." *Id.* at Section 2.7. Vickers/Nelson's authority over the contractor demonstrates that Vickers/Nelson operated, controlled, and supervised the renovation project.

Vickers/Nelson's own statements demonstrate its controlling and supervisory position. In a memo dated August 14, 2002 from Linda Cameron, Vickers/Nelson's project manager, to Debra Berry of Head Start, Ms. Cameron stated she was aware of the District's concerns about asbestos in the vinyl tiles and contacted Apex to schedule testing. Agency's Ex. 11. She also told the contractor not to touch the boys' restroom until she received the test results from Apex. She reiterated this order in person when she was at the site. She also stated that after Apex phoned her with the results of the tests, "I shut the site down." This ability to schedule testing, direct the contractor, and decisively shut down a site shows that she controlled and supervised the renovation.

B. Common law determination of an agent's liability does not apply

In its Hearing Memorandum, Vickers/Nelson relies on common law to argue that it is not liable for the asbestos violations because common law indicates that an agent, acting within the scope of its authority, is not personally liable. This reliance on common law is misplaced because the state legislature and the Environmental Quality Commission established the statutory and administrative law concerning asbestos abatement projects. Those laws, not the common laws of agency, bind the Department and all persons involved in asbestos abatement projects.

Pursuant to its statutory authority, the EQC adopted OAR 340 Division 248 to flesh out the statutory provisions and provide specific requirements and guidelines for handling asbestos. The rules define the term "owner or operator," and nothing in those rules refers to Oregon's agency/principal common law.

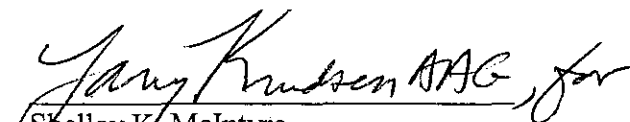
Vickers/Nelson argues that it is not an owner or operator because although it performed project management services, it did not actually "hire" the contractor or have a contractual relationship with the contractor. However, the fact that the District contracted with Cedar Mill Construction for the renovation work is not controlling because the definition of owner or operator in OAR 340-248-0110 does not require a contractual relationship. OAR 340-248-0110 explicitly states that a person who controls or supervises a renovation project is an owner or operator. As described above, there is no doubt that Vickers/Nelson controlled and supervised the project.

Conclusion

Because Vickers/Nelson supervised and controlled the renovation project at James John School, it was an "owner or operator" as that term is defined in the Department's administrative rules. A contractual arrangement is not required in order for a person who otherwise controls or supervises a renovation operation to be held liable.

DATED this 14 day of August 2003.

Respectfully submitted,


Shelley K. McIntyre
Assistant Attorney General, for
Department of Environmental Quality

1 CERTIFICATE OF SERVICE BY MAIL

2 I certify that on August 14, 2003, I served the foregoing MEMORANDUM OF LEGAL
3 AUTHORITY upon the parties hereto by facsimile a true, exact and full copy thereof to:

4
5 Andrea Sloan, Hearing Officer
6 Office of Administrative Hearings
7 1905 SE Lana Avenue NE
8 Salem, OR 97314
9 Fax no. (503) 644-5790

10
11 David Meyer
12 621 SW Morrison St, Ste 1300
13 Portland, OR 97205
14 Fax no. (503) 224-6543

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23
24
25
26
Larry Knudsen #89004
Shelley K. McIntyre #84401 *for*
Assistant Attorney General

621 SW Morrison St, Ste 1300
Portland, Oregon 97205-3816
(503) 224-1096 (phone)
(503) 224-6543 (fax)
law@teleport.com

DAVID P. MEYER, PC
Attorney at Law
LICENSED IN OREGON & WASHINGTON

Fax

To: Andrea Sloan,
Administrative Law Judge

From: David Meyer

Fax: (503) 644-5790

Pages: 9

Re: DEQ/Vickers/Nelson

Date: July 10, 2003

Urgent For Review Please Reply For Your Records

Attached is Respondents memorandum for the hearing scheduled for 9:30, tomorrow, July 11, 2003. Thank you.

cc: Bryan Smith
Environmental Law Specialist
Oregon Department of Environmental Quality
(503) 229-6762 (fax)

Greg Vickers
Vickers/Nelson & Associates
(503) 233-4909 (fax)

The information contained in this facsimile transmission is confidential and is intended only for the use of the individual to whom or entity to which it is addressed. It may contain information protected by the attorney-client privilege. If the reader of this message is not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the content of this communication is strictly prohibited. If you have received this facsimile transmission in error, please immediately notify the sender by collect telephone call to (503) 224-1096 and return the original facsimile to the above address via the U.S. Postal Service.

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)	
)	
VICKERS/NELSON & ASSOCIATES,	)	No. AQ/AB-NWR-02-181
CONSTRUCTION PROGRAM)	
MANAGEMENT, INC.	)	VICKERS/NELSON'S HEARING
	)	MEMORANDUM
Vickers/Nelson.)	

Introduction

Vickers/Nelson & Associates, Construction Program Management, Inc. appeals the civil penalty in this matter, based on its alleged operation of the James John School in Portland, Oregon, pursuant to ORS 468A.715(1) and OAR 340-248-0110(2). At all times relevant hereto, the James John School was operated by Portland Public Schools. There is neither a factual nor a legal basis on which to assess a civil penalty against Vickers/Nelson in this matter.

A. Factual Background

On September 12, 2001, Portland Public Schools entered a Professional/Personal Services Contract with Vickers/Nelson to perform project management services. (Exhibit 101). In July 2002, Portland Public Schools requested Vickers/Nelson obtain bids for renovation of the modular classrooms at the James John Elementary School. On July 22, 2002, using a list pre-approved Portland Public Schools contractors, Vickers/Nelson asked several

1 contractors to provide Portland Public Schools with sealed bids
2 for the work. (Exhibit 102). The invitation stated the bid would
3 be "received by Portland Public Schools" and that the successful
4 bidder would enter the "Portland Public School's Small Project
5 Contact," which was attached. The invitation also attached a copy
6 of the project drawing that stated: "All asbestos work will be
7 conducted by Portland Public Schools under separate contract."
8 (Exhibit 103).
9

10 On August 1, 2002, Portland Public Schools (not
11 Vickers/Nelson, as stated in the Notice of Violation and
12 Assessment of Civil Penalty) entered a Small Project Contract with
13 Cedar Mill Construction Company, Inc., for the James John School
14 modular classroom renovation work. (Exhibit 104). Pursuant to the
15 contract, Cedar Mill provided the facility operator, Portland
16 Public Schools, with a Certificate of Liability Insurance (Exhibit
17 105), Certificate of Workers Compensation Insurance (Exhibit 106),
18 Performance Bond (Exhibit 107) and Payment Bond (Exhibit 108).
19

20 On August 7, 2002, Portland Public Schools e-mailed
21 Vickers/Nelson stating "Contractor [Cedar Mill] cannot remove the
22 sheet vinyl until we [Portland Public Schools] test for
23 asbestos." (Exhibit 109). On August 9, 2002, Vickers/Nelson faxed
24 Cedar Mill stating, "Portland Public School District has
25 authorized" Vickers/Nelson to issue a notice to proceed. (Exhibit
26 110). The same day, Linda Cameron, Vickers/Nelson project manager,

1 left a voice mail for Cedar Mills' owner James Anderson informing
2 him that Portland Public Schools was performing asbestos testing
3 on the boy's bathroom and to proceed in other areas until results
4 were received.

5 On August 12, 2002, Vickers/Nelson delivered badges to the
6 flooring subcontractor Addison Interiors and told them not to
7 remove the sheet vinyl in the boy's bathroom until Portland Public
8 Schools tests were complete. The August 14, 2002 letter from Cedar
9 Mills' owner James Anderson to Vickers/Nelson confirms this
10 communication to its subcontractor. (Exhibit 111).

11 On August 13, 2002, however, Addison Interiors removed the
12 sheet vinyl, which was later found to contain asbestos. According
13 to Addison, because the flooring "was located in a modular
14 building," they "did not suspect the flooring could contain
15 asbestos." (Exhibit 112). According to Cedar Mill's James
16 Anderson, it was "no big deal," as Addison used "wet methods."
17 (Exhibit 113). Immediately thereafter, Portland Public Schools
18 contracted with Apex Environmental to remove the asbestos, as
19 shown by a copy of the invoice to Portland Public Schools, which
20 Apex provided to Vickers/Nelson, the project manager. (Exhibit
21 114).

22 B. Legal Analysis

23 Vickers/Nelson at no time was the operator of the James
24 John School; it is not subject to liability pursuant to ORS
25
26

1 468A.715(1) and OAR 340-248-0110(2). The DEQ Notice of Violation
2 and Assessment of Civil Penalty wrongly states that
3 Vickers/Nelson "acted as the operator of the Facility [James
4 John School] when it hired CMC [Cedar Mills] as the general
5 contractor, and as the Principal [Vickers/Nelson] failed to hire
6 a licensed asbestos abatement contractor." Not only is this
7 contrary to the facts, it is contrary to the law.

8 According to the unequivocal evidence, it was the Portland
9 Public Schools that hired Cedar Mills as the general contractor.
10 Vickers/Nelson acted as the management agent for Portland Public
11 Schools. An agent, acting within the scope of its authority,
12 disclosing its representative capacity and making contract in
13 its principle's name, is not personally liable. Porter Const.
14 Co. v Berry Et Al., 136 Or 80, 90-91 (1931); See also Wiggins v
15 Barrett & Associates, Inc. 295 Or 679, 698 (1983).

16 Vickers/Nelson's capacity as the management agent for the
17 Portland Public Schools was well established. All contracts for
18 the James John School modular classroom renovation, including
19 those with the general and asbestos abatement contractor were
20 with Portland Public Schools. The only other contracts were
21 between the Portland Public Schools' contractors and their
22 subcontractors.

23 Vickers/Nelson acted in a management capacity, subject to
24 the direct supervision of Portland Public Schools contracting
25 personnel. Vickers/Nelson received authorization of the Portland
5 Public Schools prior to communication with the James John School

1 contractors. All communication between Vickers/Nelson and the
2 contractors was done in Portland Public Schools' name.

3 The DEQ's decision to proceed against Vicker/Nelson in this
4 matter purportedly is because "they are just like Princeton
5 [Property Management]." (Exhibit 115). In September 2002,
6 Princeton received a civil penalty as a facility operator that
7 failed to hire a licensed asbestos contractor. (Exhibit 116).
8 The only similarity between Vickers/Nelson and Princeton is they
9 both use the term "management" in their name. However, the term
10 "management" provides no guidance in the application of Oregon
11 environmental laws and regulations, without regard to the
12 substance of its use.

13 The difference between Vickers/Nelson and Princeton is
14 glaring. According to Princeton's own statement, it hires
15 contractors for "construction, maintenance, painting and
16 cleaning." (Exhibit 117). Princeton contracted with the
17 contractor that removed asbestos without a license. (Exhibit
18 118). Conversely, it was Portland Public Schools, not
19 Vickers/Nelson contracted with the contractor that removed
20 asbestos in this case. Whereas Princeton exercised supervisory
21 authority over its contractors, Vickers/Nelson acted only as
22 manager pursuant to Portland Public Schools direction.

23 Portland Public Schools expressly acknowledged in the
24 drawing for the project (Exhibit 103), which was incorporated
25 into the Cedar Mills contract, that "[a]ll asbestos work will be
26 conducted by Portland Public Schools under separate contract."

1 That is consistent with the Federal Asbestos Hazard Emergency
2 Response Act (AHERA), which requires Portland Public Schools to
3 inspect, survey, report and write management plans regarding
4 asbestos present at schools. See generally 40 CFR 763. In that
5 regard it is particularly curious why the DEQ environmental law
6 specialist who drafted the Notice of Violation and Assessment of
7 Civil Penalty in this matter suggested the reason Portland
8 Public Schools did not have a survey of the modular classrooms
9 was because the modular classrooms are exempt. (Exhibit 119).

10 The DEQ investigator's response to the environmental law
11 specialist correctly states that the modular classrooms are
12 explicitly subject to AHERA (See 40 CFR 763.85; see also 40 CFR
13 763.83 (definition of "school building")) but states that
14 Portland Public Schools "opted to require their representatives
15 and contractors to ensure that no asbestos was present before
16 work was done." (Exhibit 119). This is incorrect and
17 contradicted by all the evidence including, but not limited to,
18 the Portland Public Schools e-mail of August 7, 2002 (Exhibit
19 109), the explicit provisions of Portland Public Schools project
20 drawings (Exhibit 103) and the Portland Public Schools contract
21 with Apex Environmental (Exhibit 114).

22 The most disconcerting part of the e-mail exchange between
23 the DEQ environmental law specialist and investigator, however,
24 is the statement by the specialist that "we don't want to
25 penalize the school (to make a long story short) [sic]." Given
26 the fact that this investigation took place while the Portland


1 Public Schools was undergoing an unprecedented fiscal crisis
2 that was daily front-page news, the desire of DEQ not to
3 "penalize" the school, particularly given the facts of this
4 case, appears to be based as much on politics as either law or
5 fact. Certainly, any objective application of the facts of the
6 James John School modular classroom renovation to the law would
7 conclude that Portland Public Schools operated the facility.

8 C. Conclusion

9 The James John School was at all times, including July and
10 August 2002, operated by the Portland Public Schools.
11 Vickers/Nelson, acting in the limited role of project manager is
12 not liable for the asbestos requirements imposed a facility
13 operator. The Department of Environmental Quality should be
14 directed to dismiss the violation and penalty against
15 Vickers/Nelson. It further should be directed to publish a
16 retraction its April 10, 2003 News Release on the matter.
17

18 DATED this 10th day of July, 2003.

19 DAVID P. MEYER, P.C.

20
21 
22 David P. Meyer, OSB 89092
23 Attorney for Vickers/Nelson
24 612 SW Morrison St, Ste 1300
25 Portland, OR 97205-3816
26 (503) 224-1096



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 6, 2003

CERTIFIED MAIL NO. 7001 1140 0002 3546 7342

Vickers/Nelson & Associates, Construction Program Management, Inc.
Attn: Douglas D. Nelson, Registered Agent
1420 NW Lovejoy #416
Portland, OR 97209

Re: Notice of Violation and Assessment of Civil Penalty
No. AQ/AB-NWR-02-181
Multnomah County

Mr. Foster:

Vickers/Nelson & Associates, Construction Program Management, Inc., formerly known as Vickers/Foster and Associates (Vickers), was hired by Portland Public Schools to manage a renovation project at the James John Elementary School located at 7439 North Charleston Avenue in Portland, Oregon (the Facility). Vickers hired Cedar Mill Construction Company LLC (CMC), as the general contractor for the renovation project. During the course of the renovation project CMC hired Addison Interiors, Inc. (Addison) to remove vinyl flooring from a modular classroom of the Facility.

On August 14, 2002, Dave Wall of the Department of Environmental Quality (the Department) inspected the removal of vinyl flooring from the restroom of the modular classroom at the Facility. Mr. Wall observed that Addison's employees had already removed two hundred and twenty (220) square feet of vinyl flooring from the restroom on August 13, 2002. Mr. Wall took samples of the flooring from the restroom, and laboratory analysis revealed that the vinyl flooring contained 20% chrysotile asbestos.

Mr. Wall also observed that Addison's employees carried the asbestos-containing vinyl flooring out to a dumpster through the school hallway, causing further potential for asbestos fiber exposure and contamination. Addison's removal of the asbestos-containing vinyl flooring constituted an asbestos abatement project. However, Addison is not licensed to perform asbestos abatement projects.

Oregon Revised Statute (ORS) 468A.715(1) and Oregon Administrative Rule (OAR) 340-248-0110(2) require an owner or operator of a building that contains asbestos to ensure that any contractor engaged in an asbestos abatement project in that building is licensed by the Department. Vickers acted as the operator of the Facility when it hired CMC as the general contractor, and as the principal Vickers failed to hire a licensed asbestos abatement contractor to perform an asbestos abatement project at the Facility. This is a Class I violation of Oregon's environmental laws.

EXHIBIT
DEQ-1

A
P1

Because Addison is not a licensed asbestos abatement contractor, Addison failed to properly package and label the asbestos-containing waste material (ACWM), causing the open accumulation of ACWM, which is a violation of OAR 340-248-0205(1). 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 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.

Vickers is liable for a civil penalty assessment because the company violated Oregon environmental law. In the enclosed Notice, I have assessed a civil penalty of \$7,200. In determining the amount of the penalty, I used the procedures set forth in Oregon Administrative Rule (OAR) 340-12-045. The Department's findings and civil penalty determination are attached to the Notice as Exhibit 1.

The steps Vickers must follow to request a review of the Department's allegations and determinations in this matter are set forth in Section IV of the enclosed Notice. If Vickers wishes to have a hearing on this matter, the company must specifically request a hearing in writing. Attached to the hearing request must be Vickers' Answer in which the company must admit or deny each of the facts alleged in Section II of the Notice. In Vickers' Answer, the company should also allege all affirmative claims or defenses and provide reasons why they apply in this matter. Vickers will not be allowed to raise these issues at a later time, unless the company can later show good cause for its failure. The applicable rules are enclosed for Vickers' review. Vickers needs to follow the rules to ensure that the company does not lose its opportunity to dispute the Department's findings (see OAR 340-011-0107 and OAR 137-003-0528). If the Department does not receive Vickers' request for a hearing and Answer within 20 calendar days from the date the company received the Notice, a Default Order will be entered against the company and the civil penalty will become due at that time. Vickers can fax its request for hearing and Answer to the Department at (503) 229-6762.

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

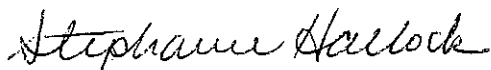
I look forward to Vickers' cooperation in complying with Oregon environmental law in the future. However, if any additional violations occur, the company may be assessed additional civil penalties.

Copies of referenced rules are enclosed. Also enclosed is a copy of the Department's internal management directive regarding civil penalty mitigation for Supplemental Environmental Projects (SEPs). If Vickers is interested in having a portion of the civil penalty fund an SEP, the company should review the enclosed SEP directive. Exceptional pollution prevention could

result in partial penalty mitigation. The Department looks particularly favorably on pollution prevention in considering penalty mitigation.

If Vickers 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: Dave Wall, Northwest Region, DEQ
Audrey O'Brien, Northwest Region, DEQ
Neil Mullane, Northwest Region, DEQ
Air Quality Division, DEQ
Oregon Department of Justice
Environmental Quality Commission
Multnomah County District Attorney

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:) NOTICE OF VIOLATION
VICKERS/NELSON & ASSOCIATES,) AND ASSESSMENT OF
CONSTRUCTION PROGRAM) CIVIL PENALTY
MANAGEMENT, INC.,) No. AQ/AB-NWR-02-181
Respondent.) MULTNOMAH COUNTY

I. AUTHORITY

This Notice of Violation and Assessment of Civil Penalty (Notice) is issued to Respondent, Vickers/Nelson & Associates, Construction Program Management, Inc., an Oregon corporation, by the Department of Environmental Quality (Department) pursuant to Oregon Revised Statutes (ORS) 468.126 through 468.140, ORS Chapter 183; and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12.

II. VIOLATION

On or about August 13, 2002, Respondent allowed an unlicensed person to perform an asbestos abatement project on a facility it operates, in violation of ORS 468A.715(1) and OAR 340-248-0110(2). Specifically, Respondent was the project manager for a renovation project at the James John Elementary School located at 7439 North Charleston Avenue in Portland, Oregon (the Facility). Respondent hired Cedar Mill Construction Company LLC. (CMC) as the general contractor for the renovation project. CMC hired Addison Interiors, Inc. (Addison) to remove asbestos-containing vinyl flooring from the boy's restroom of a modular classroom at the Facility. Addison removed two hundred and twenty (220) square feet of asbestos-containing vinyl flooring from the restroom. Addison was not licensed to perform asbestos abatement projects. According to OAR 340-012-0050(1)(u), failure to hire a licensed asbestos abatement contractor is a Class I violation, because the asbestos abatement project resulted in the potential for public exposure to asbestos or release of asbestos into the environment.

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1 III. ASSESSMENT OF CIVIL PENALTIES

2 The Director imposes a civil penalty of \$7,200 for the Violation cited in Section II. The findings
3 and determination of Respondent's civil penalty pursuant to OAR 340-012-0045 are attached and
4 incorporated as Exhibit No 1.

5 IV. OPPORTUNITY FOR CONTESTED CASE HEARING

6 Respondent has the right to have a contested case hearing before the Environmental
7 Quality Commission (Commission) or its hearings officer regarding the matters contained in this
8 Notice, provided Respondent files a written request for a hearing and an Answer within twenty
9 (20) calendar days from the date of service of this Notice. If Respondent fails to file either a
10 timely request for a hearing, a late filing will not be allowed unless the reason for the late filing
11 was beyond Respondent's reasonable control. If Respondent fails to file a timely Answer, the
12 late filing will not be allowed unless Respondent can show good cause for the late filing. (See
13 OAR 340-011-0107 and OAR 137-003-0528)

14 The request for a hearing must either specifically request a hearing or state that
15 Respondent wishes to appeal this Notice. In the written Answer, Respondent shall admit or deny
16 each allegation of fact contained in this Notice, and shall specifically state all affirmative claims
17 or defenses to the assessment of the civil penalty that Respondent may have and the reasoning in
18 support of any claims or defenses. The contested case hearing will be limited to those issues
19 raised in this Notice and in the Answer. Unless Respondent is able to show good cause:

- 20 1. Factual matters not disputed in a timely manner shall be presumed to be admitted;
- 21 2. Failure to timely raise a claim or defense will waive the ability to raise that claim
22 or defense at a later time;
- 23 3. New matters alleged in the Answer will be presumed to be denied by the
24 Department unless admitted in subsequent pleading or stipulation by the Department or
25 Commission.

26 Send the request for hearing and Answer to: Deborah Nesbit, Oregon Department of
27 Environmental Quality, 811 S.W. 6th Avenue, Portland, Oregon 97204 or via fax at (503) 229-

1 6762. Following the Department's receipt of a request for hearing and an Answer, Respondent
2 will be notified of the date, time and place of the hearing.

3 If Respondent fails to file a timely request for hearing and Answer, the Notice and Order
4 shall become a final and enforceable Order of the Environmental Quality Commission by
5 operation of law without any further action or proceeding. If the Order becomes final by
6 operation of law, the right to judicial review, if any, is outlined within ORS 183.480.

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

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

11 Failure to appear at a scheduled hearing may result in an entry of a Default Order.

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

14 V. OPPORTUNITY FOR INFORMAL DISCUSSION

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

18 VI. PAYMENT OF CIVIL PENALTY

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

24 3-6-03
25 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 major pursuant to OAR 340-012-0090(1)(d)(A), because the amount of asbestos-containing waste material (ACWM) abated was more than 160 square 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 \$6,000 for a Class I, major 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 on the same day.

"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 allowing a person other than a licensed asbestos abatement contractor to perform an asbestos abatement project. Respondent is the operator of the Facility and failed to either analyze the vinyl flooring for the presence of asbestos or to conduct an asbestos survey of the property.

"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 to make 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:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 0 + 2 + 0)] + \$0 \\ &= \$6,000 + (\$600 \times 2) + \$0 \\ &= \$6,000 + \$1,200 + \$0 \\ &= \$7,200 \end{aligned}$$

March 20, 2003

Deborah Nesbit
Oregon Department of Environmental Quality
811 S.W. 6th Avenue
Portland, OR 97204

RECEIVED
MAR 24 2003

OFFICE OF COMPLIANCE
AND ENFORCEMENT
DEPARTMENT OF ENVIRONMENTAL QUALITY

Re: Appeal of No. AQ/AB-NWR-02-181

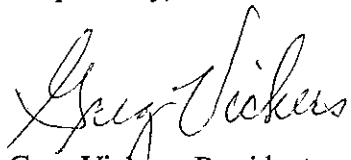
Dear Ms. Nesbit:

This is a formal notice that we are appealing the above referenced "Notice of Violation and Assessment of Civil Penalty."

As described in the attached written Answer we are disputing and denying the pertinent allegations of fact and look forward to rectifying this unfortunate event.

Please let me know, if you have any questions or require any additional information. You may contact me at (503) 709-8801, fax me at (503) 233-4909 or e-mail me at gvyva@easystreet.com.

Respectfully,



Greg Vickers, President
VICKERS/NELSON & ASSOCIATES

EXHIBIT P2 ^(A)

Appeal of No. AQ-AB-NWR-02-181

Answer

Re: Notice of Violation and Assessment of Civil Penalty
No. AQ/AB-NWR-02-181

I. Recital

In the above referenced "Notice" the following allegations of fact have been represented:

- 1) Respondent (Vickers/Nelson & Associates) allowed an unlicensed person to perform an asbestos abatement project on a facility it operates.
- 2) Respondent was the project manager for a renovation project at the James John Elementary School (the Facility).
- 3) Respondent hired Cedar Mill Construction LLC (CMC) as the general contractor for the renovation project.
- 4) CMC hired Addison Interiors, Inc. (Addison) to remove asbestos – containing vinyl flooring from the boy's restroom of the modular classroom at the Facility.
- 5) Addison removed two hundred and twenty (220) square feet of asbestos – containing vinyl flooring from the restroom.
- 6) Addison was not licensed to perform asbestos abatement projects.

II. Response to the Allegations of Fact.

Allegation of Fact 1):

Respondent did **not** allow an unlicensed person to perform an asbestos abatement project on a facility it operates.

Respondent notified the Contractor and the subcontractor (Exhibit A, 8/9/02 and 8/12/02) that Apex Environmental was testing the roof and flooring in the boy's restroom for Asbestos Containing Materials and that no work should proceed in these areas until tests results were received on 8/13/02.

On 8/13/02, after test results determined that the vinyl flooring was ACM, Respondent notified the Contractor. Contrary to the direction of the Respondent, the contractor's sub-contractor proceeded to remove the flooring and place it in a school district' dumpster. Upon being informed of these activities the Respondent faxed a notice to close site until further notice.

At no time did the Respondent encourage, direct or allow the contractor or its sub-contractor to remove the vinyl flooring. The Respondent communicated in a timely manner to CMC and Addison that the vinyl flooring was suspect material; that it was being tested for asbestos content; and no work was to be performed in that area until the test results were received and evaluated.

A secondary allegation of fact is that the Respondent operates the Facility. Our specific contractual relationship with Portland Public Schools is as its Owner Representative for renovations of portions of its school facilities. We are not responsible for facilities operations or control. Our responsibilities are limited to representing the facility owner regarding construction activities of a very specific nature.

Allegation of Fact 2):

Respondent agrees with this allegation of fact. As a point of clarification, the most common terminology is Owner's Representative.

Allegation of Fact 3):

Respondent did **not** hire Cedar Mill Construction. CMC was hired by Portland Public Schools as the result of a Public Works bidding process. Attached for confirmation is Exhibit B (CMC contract with Portland Public Schools).

Please note Division 1 Paragraph 2.7 of Exhibit A of the contract, regarding asbestos.

Allegation of Fact 4):

Respondent does not disagree with this Allegation of Fact.

Allegation of Fact 5):

Respondent does not disagree with this Allegation of Fact.

Allegation of Fact 6):

Respondent is not directly aware of Addison's qualifications to perform asbestos abatement projects.

III. Summary

- 1) Respondent did not allow unlicensed persons to perform an asbestos abatement project. Respondent repeatedly directed CMC and Addison not to perform any work in the restroom until testing and abatement were done by the Owner.
- 2) Respondent is not an operator of the Facility. This is the sole responsibility of Portland Public Schools.
- 3) Respondent did not hire Cedar Mills Construction. CMC contractual relationship is solely with Portland Public Schools.

MEMORANDUM

DATE: August 14, 2002

EXHIBIT A

TO: File, Vickers/Foster and Associates

FROM: Linda Cameron, Vickers/Foster & Associates

RE: Head Start

SUBJ: Asbestos at James John

Time line of events

- 7/22/02 Head Start request to Quote- Faxed requests to five contractors to notify walk through following day.
- 7/23/02 Walkthrough - Delivered packages to Contractors that did not attend walkthrough
- 7/24/02 Additional Information provided in field, sent to Contractors based on walkthrough.
- 7/26/02 Quotes due at 12:00pm – Verbal notification of low bid to Contractors. All bids over estimated and approved department budgets. Explained awards could not be finalized until Department heads gave approval.
- 7/26- 7/31/02 Tried to contact Head Start/ Debra Berry to gain approvals. No answer at Head Start Facilities, left voice mail.
- 7/31/02 Kerry Hampton , PPS, and Debra Berry, Head Start, provided approvals for new budget amounts and final scope.
- 8/5/02 Couriered Contracts to Cedar Mills for approval.
Contacted Susan Proppe-Tong, HS, allowed adjustment to Contract schedule to reflect Classroom completion by 8/16/02 to allow teachers in by 8/19/02 and remaining work by 8/23/02.
Received Final Documents from Hennebery and Eddy Architects
Received Trust Letter from PPS for plan review.
- 8/6/02 Received Contracts from Cedar Mills.
- 8/7/02 Sent Contracts to Brenda Caldwell

VICKERS/FOSTEI & ASSOCIATES Construction Program Management, Inc.

Informed late in day that Portable's Sheet Vinyl may have asbestos. Meet with Ann White and Chris Boyce, PPS, to discuss final scope of work. Informed them I would have Apex Environmental run tests.

- 8/8/02 Informed Deputy Clerk out for following week. VFA provided Notice to Proceed to Cedar Mills.
Submitted for plans review to change occupancy from E-1 to E-3.
- 8/9/02 Contacted Apex Environmental and set up appointment to test roof and boys restroom's sheet vinyl.
VFA provided Notice to proceed to Cedar Mills Construction via fax.
Left voice mail on Jim Anderson's cell phone instruction him that asbestos testing would be taking place on Monday on the roof and in the Boys' restroom and no work should proceed in these areas until we receive results in the morning on 8/13/02.
- 8/12/02 Delivered construction badges on site to flooring subcontractor and reiterated that situation. Subcontractor was aware that Apex was out testing and was told again not to touch the sheet vinyl until VFA received results the next day, 8/13/02.
- 8/13/02 Received voicemail from Apex stating that the Asbestos was present and the flooring would require abatement. Called back to discuss with Apex.
I contacted the Contractor immediately to inform him of the status but he informed me that his crew had already removed the flooring. I told him to stop work in the restroom and Apex would be out to assess the situation.
Called Apex and informed of situation.
When Apex arrived about an one and half hour later, the flooring contractor was still removing flooring in the restroom and they had disposed of the contaminated vinyl in the PPS 's dumpster.
Brad Kelsay, Apex, assessed the situation and informed me that the site should be closed.
Received voice mail from Contractor that stated that his subcontractor was adamant that none of sheet, mastic or backing contained asbestos. Message left on my cell after I informed him that the flooring contained asbestos.
Faxed notice to close site until further notice.
Faxed letter of events to Cedar Mills Construction.
Contacted PHC – Thiar Khan, Head Start – Susan Proppe-Tong and PPS – Don Larson and informed them of the situation.
- 8/14/02 Apex provided updates – bulk samples negatives, abatement crews to start abating hallway and restrooms. Additional air samples taken in Classrooms and hallway.
VFA and Cedar Mills met at VFA to discuss schedule and ways to insure completion of construction by 8/23/02.
Briefed - Head Start – Debra Barry, Susan Proppe-Tong, PPS – Don Larson, Pam Brown, & James John Elementary School's front office.

VICKERS/FOSTER & ASSOCIATES Construction Program Management, Inc.

8/15/02 Air samples clean. Hallway abatement completed. Apex, via email than fax, gave clearance to the hallway and classrooms for construction to commence.
VFA spoke with David Wall, DEQ about events of 8/13/02.
VFA faxed Head Start and Cedar Mills a notice to proceed with construction but access to boys' restroom and roof off limits until farther notice. Spoke with Jim Anderson via cell that area was clean and gave verbal to proceed.
Abatement continues in Boys' restroom.
Briefed the following on portable status: Head Start – Debra Barry, Susan Proppe-Tong, PPS – Don Larson, James John Elementary School's front office and PHC – Thair Khan. Portable was clean to enter except boys' restroom.

8/16/02 Cedar Mills re-enters site to complete work in classrooms only.

Cc: Don Larson, Portland Public Schools
 Chris Boyce, Portland Public Schools
 File

MEMORANDUM

EXHIBIT B

DATE: August 7, 2002

TO: Brenda Caldwell, Portland Public Schools

FROM: Doug Nelson, Vickers/Foster & Associates

Doug Nelson

RE: Head Start Renovation Project – 2002 Summer- James John Elementary School

SUBJ: Renovation Contract

I have reviewed the contract for the above mentioned project between **Cedar Mills Construction Co., LLC** and **Portland Public School District 1**. The amount of the contract is \$23,100.00 per between Cedar Mills Construction Co., LLC's attached quote and within the budget guidelines proposed for this project.

Vickers/Foster & Associates recommends that PPS execute the contract.

HEAD START
JAMES JOHN

Portland Public Schools
Small Projects (Under \$25,000) Contract

1. **Parties:** This contract is between Multnomah County School District 1J ("District") and Cedar Mill Construction Company LLC ("Contractor").
2. **Term:** This contract shall become effective on August 1, 2002 and shall be completed on August 16 for work associated with classrooms and August 23 for the remaining, unless extended by the parties in writing.
3. **Description of Work:** Contractor shall perform the work described in attached Exhibit A.
4. **Payment:** Contractor shall be paid as described in attached Exhibit A, not to exceed ~~\$20,500.00~~ ^{23,100.00} **NA** *mc*
5. **Termination:** This contract may be terminated at any time by mutual written consent of the parties, or by the District at its discretion upon five days written notice to Contractor. Contractor shall be compensated for any work performed as of the date of termination.
6. **Independent Contractor Status:** Contractor agrees and certifies that it is an independent contractor. As such Contractor agrees that Contractor will be responsible for all federal or state taxes arising from the payments under this contract and will not be eligible for any benefits Contractor might otherwise be entitled to as an employee of the District.
7. **Insurance and Indemnity:**
 - a. **General Liability:** Contractor shall provide a commercial general liability policy with minimum coverage of \$1 million per occurrence and a general aggregate and products aggregate of \$2 million. Prior to beginning work, Contractor shall submit a Certificate of Insurance as proof of such insurance, naming District as an additional insured, and providing District 30 days notice of cancellation.
 - b. **Automobile Liability:** Prior to beginning work, Contractor shall provide proof of automobile insurance with minimum coverage of \$1 million.
 - c. **Workers Compensation:** Prior to beginning work, Contractor shall provide proof of workers compensation insurance per Oregon law.
 - d. **Indemnification:** Contractor shall defend, indemnify and hold District, its officers, agents and employees, harmless from any and all liability and expense based upon or arising out of Contractor's performance of this contract.
8. **Compliance with Public Contract Law:** Contractor shall comply with the following terms and conditions required by the Public Contract Law (ORS 279.310 to 279.650), as applicable:
 - a. Payment of laborers; contributions to Industrial accident fund; liens and withholding taxes (ORS 279.312);
 - b. If the contract calls for demolition work or for lawn or landscape maintenance, the salvage or composting requirements of ORS 279.313, if feasible and cost effective;
 - c. Payment of claims by public officers; prompt payment of persons furnishing labor or materials (ORS 279.314);
 - d. Hours of labor (ORS 279.316 and 279.338); maximum hours and overtime (ORS 279.334); overtime claims (ORS 279.336); overtime requirement for local governments (ORS 279.340 and 279.342);
 - e. Environmental and natural resources regulations (ORS 279.318);
 - f. Payment for medical care and attention to employees (ORS 279.320);
 - g. If the Contract is for a "public improvement"¹:
 - i. Retainage (ORS 279.400 to 279.430 and 279.435);
 - ii. Prompt payment policy (ORS 279.435);
 - iii. Contractor's relations with subcontractors (ORS 279.445);
 - iv. Demonstration of a drug-testing program [ORS 279.312(2)];
 - i. Notice of claim (ORS 279.528);
 - j. Contractor's certification of compliance with the Oregon tax laws (ORS 305.385);
 - k. Contractor's certification of nondiscrimination in obtaining subcontractors (ORS 279.111);

¹ A "public improvement" is "projects for construction, reconstruction or major renovation on real property by or for a public agency," but does not include emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement." See ORS 279.011(8)

l. If Contractor is an employer, Contractor is a subject employer under the Oregon Workers' Compensation Law and shall comply with ORS 656.0 and shall provide Workers' Compensation coverage for all their "subject workers," as defined under ORS Chapter 656 (ORS 279.320(2));

m. Contractor's certification that all subcontractors performing work described in ORS 701.005(3) (i.e., construction work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the contract; and

9. **Bond.** If this is a contract for a public improvement and is in an amount greater than \$10,000, or as otherwise required by the District, contractor must execute and deliver a performance and payment bond for the full amount of the contract, unless waived. Performance Bond is x required/ waived (check one). Waiver approved by: _____ [signature of superintendent or designee. See District Contracting Rule 8.50.460(1)].

10. **Ownership of Work.** All work products of the Contractor which result from this contract are the exclusive property of the District.

11. **Compliance with Rules and Regulations for Operation on District Property.**

A. **Identification Tags.** After Notice to Proceed but prior to beginning work, Contractor shall obtain Portland Public Schools identification tags from District for all on-site personnel. No officer, agent, or employee of the Contractor, subcontractor, or supplier shall be permitted on District's property unless the identification tag is displayed on the person.

B. **No Smoking.** Smoking or other use of tobacco is prohibited on District's Property.

C. **No Drugs.** All schools are designated drug-free zones enforced by the Portland Police Bureau.

E. **Safety.** Prior to instituting work on District's property, Contractor, its subcontractors, and suppliers shall review the safety and security policies issued by District's Environmental Health and Safety Department and shall comply with those policies while on District's property.

F. **No Unsupervised Contact with Students.** Contractor will ensure that Contractor, any subcontractors, and their officers, agents and employees, will have no direct unsupervised contact with students while on District Property. Contractor will work with District to ensure compliance with this requirement. Contractor shall comply with and pay for any criminal record check as may be required by the District.

G. **Confidentiality.** Contractor will not disclose any information or records regarding students or their families that Contractor may learn or obtain in course and scope of Contractor's performance of this Contract.

12. **Construction; Severability; Waiver.** This agreement shall be construed pursuant to Oregon law. If any term is adjudged invalid, the validity of the remaining terms shall not be affected. The failure of the District to enforce any provision shall not constitute a waiver by the District of that or any other provision.

13. **Entire Agreement; Modification.** This contract is the entire agreement of the parties. It may only be modified in writing, signed by both parties.

CONTRACTOR

DISTRICT

By [Signature]
Name: JAMES ANDERSON
Title: OWNER
Date: 08-16-2002

[Name]
Date: _____

Contractor's Business Address:

PO BOX 23214, TIGARD, OR 97281-3214
10750 SW N. DAKOTA ST. TIGARD, OR 97223

Individual SS # or
Employer ID # 93-1262175

Check one:

Sole Proprietor _____
Partnership _____
Corporation X _____
Limited Liability Company _____
Limited Liability Partnership _____
Other: _____

SCOPE OF SERVICES

**Portland Public Schools
James John Elementary School**

Summer 2002

Exhibit A

- Project Manual
- Invitation to Quote
- Summary of Work
- Addendum #1
- Quote
- Drawing A-1

July 22, 2002

INVITATION TO QUOTE
PORTLAND PUBLIC SCHOOLS –
JAMES JOHN ELEMENTARY SCHOOL: Head Start renovation

Portland Public Schools and Vickers/Foster & Associates would like to invite you to submit a sealed quotation that will be received by Portland Public Schools, for the above referenced Project.

This project includes the following renovation to two existing classrooms and two restroom located at James John Elementary School.

- Replace classroom carpet with VCT.
- Install PPS supplied carpet tile.
- Replace existing sheet vinyl at Boys' Restroom.
- Provide enclosure around existing hot water heater.
- Modify heat shroud at existing radiators.
- Add ionization smoke detectors to classrooms and connect back to main panel.
- Add gravity feed vents at roof.
- Replace an existing lavatory.
- Replace existing facets with new mixing valve facets at restroom lavatories.
- Remove existing shelves and miscellaneous hardware.
- Install new laminate over existing counter.
- Modify existing wire plug molding to remove and add outlets.

Since the electrical portion of the work is design build. The pre-proposal conference / walkthrough will be held on July 23, 2002 at 9:00 am. Meet at the main entrance to James John Elementary School located at 7439 N Charleston.

Attached are copies of the drawings and the Project manual for your review. Portland Public School's Small Projects (Under \$25,000) Contract sample is attached.

Provide written quotation that is to include line item cost & time duration to complete facility on company letterhead. Contractor is responsible for all final project clean up. Contractor will be required to provide a performance bond to cover the amount of the Contract between Contractor and District. Quotations for this Project shall be received at 12:00 p.m., local time, Friday, July 26, 2002 at Vickers/Foster & Associates. Notice of award will be issued the same day and final project scheduling shall be negotiated with the final contract determinations.

All work related to this project must be completed by August 16, 2002.*
On behalf of Portland Public Schools, we look forward to a successful Project.

Sincerely,



Linda Cameron, Project Manager
VICKERS/FOSTER & ASSOCIATES CPM, INC.

Copy: Brenda Caldwell, Portland Public Schools
Don Larson, Portland Public Schools

*Unless noted on project scope documents

SECTION 1.0 - SUMMARY OF THE WORK

1.1 WORK COVERED BY THE CONTRACT DOCUMENTS

The General Conditions of the Contract, the Supplementary Conditions and the General Requirements (Division 1) of the Specifications apply to the Work specified in this section and in each section of the Specifications. The Contractor shall instruct each of his Subcontractors to become fully familiar with these documents.

Briefly and without force and effect on the requirements on the Contract Documents, the project and the Work of the Contract can be described in summary as follows:

INSERT DESCRIPTION

The following work will be done by the owner:

1. Items noted 'NIC' (Not In Contract)
2. Final lock cylinders and keying. (temporary locks by the contractor)

1.2 ALTERNATES

An Alternate is an amount proposed by the bidder and stated on the Bid Form for a specific work item or items that will be added to or deducted from the Base Bid amount if the Owner elects to accept the corresponding work or change in the scope of work for the products, materials, equipment, systems or installation methods as described in the Contract Documents.

The Contractor shall coordinate the work described in the Alternate including related work and modify or adjust adjacent work as required to ensure that the final product for each accepted Alternate is complete and fully integrated into the project. The Contractor shall include miscellaneous devices, appurtenances, incidental items and all labor, materials, tools, equipment, rigging, etc. as required for a complete installation whether or not described as part of the Alternate. The General Conditions, Supplementary Conditions, General Requirements and technical specification sections of the Contract Documents apply to the accepted Alternates unless specifically noted to the contrary.

The Owner reserves the right to select any or all of the Alternates up to sixty (60) calendar days after award of the contract. If the Owner so selects, the time for completion of the contract or substantial completion may be extended for those selected items only.

Alternate No. 1:

Alternate No. 2:

INSERT DESCRIPTIONS

Materials and workmanship shall be guaranteed by the Contractor for a period of one year after acceptance of the Work by the Owner as provided in A107 Article 17.02

1.8 CHANGE ORDERS

Change Orders shall be processed as provided in A107 Article 12.

1.9 DELAYS

Delays shall be addressed as provided in A107 Article 13.

SECTION 2.0 - PROJECT COORDINATION

2.1 COORDINATION

The contractor shall coordinate scheduling, submittals, sequencing of the installation of interdependent elements, utility coordination, space requirements for installation and maintenance of finished work and storage or staging areas for all trades. The Contractor shall verify that equipment furnished is compatible with the characteristics of the existing building utilities. The mechanical and electrical drawings are diagrammatic and may require special coordination between trades. The Contractor shall provide multidisciplinary coordination drawings as necessary to insure proper space and layout of various portions of the work.

Notes on various drawings are not meant to determine trade or work jurisdictions. There may be "architectural items" shown or indicated on structural, mechanical or electrical drawings. There may also be "mechanical" or "electrical" items shown on architectural drawings. The Contractor is responsible to include all mechanical or electrical items in the bid cost regardless of which drawing they are indicated on.

The Contractor shall coordinate all work with the Owner's representative to minimize conflict and insure the least inconvenience to the users and the general public. The Contractor shall designate a project coordinator for this purpose. Claims for additional time or money resulting from a lack of coordination will not be considered.

2.2 PRE-CONSTRUCTION CONFERENCE

Contractor shall notify the Owner's representative at least 48 hours prior to the desired inspection time for the following stages of work at a minimum, and at others as deemed necessary:

- Demolition
- Framing and furring
- Mechanical rough-in
- Plaster
- Painting-each coat
- Completion

2.3 PROGRESS MEETINGS

Progress meetings (jobsite meetings), at regularly scheduled intervals and at designated locations, will be conducted by the Owner's representative. The Architect/Engineer, the Contractor and appropriate Subcontractors will be required to attend. The progress meetings will cover schedule review, coordination and clarification issues, tracking of shop drawings and proposals, and other project administration issues.

When convenient, the jobsite meetings will also include review of a draft payment application, review of record drawings and pre-installation meetings prior to the commencement of certain work items.

2.4 PROJECT COORDINATION SUBMITTALS

CONSTRUCTION SCHEDULE

Contractor shall, at least two (2) days prior to the pre-construction meeting, provide a bar chart construction schedule showing all work to be performed, including start-up, finish, duration, slack time, approval dates, material ordering, delivery dates, anticipated shutdowns, partial occupancy and Owner use, completion date and other such information required to allow the Owner's monitoring of progress of the project and identifying the critical path of events required to meet the completion date.

The Contractor shall provide separate schedules for new additions and repair/alteration/remodel portions of the project. Work in continuously occupied instructional areas of the building shall be scheduled to avoid disruption to the Owner's normal operations. The Contractor shall consider shift work or off-hours operations for these areas.

All necessary service interruptions of utilities of any type or magnitude shall be scheduled in advance with the Owner's representative. Major utility shutdowns are required to be scheduled between the hours of 5:30 p.m. and 6:00 am. Scheduling of the shutdown must be through the submittal of a SHUTDOWN REQUEST at least TEN (10) calendar days prior to the scheduled shutdown. Minor utility service interruptions must be scheduled with a minimum of THREE (3) work days prior notice through the submittal of a SHUTDOWN REQUEST. A sample of the request form shall be distributed at the pre-construction conference.

A major shutdown is generally regarded as an interruption of any single or group of services or utilities serving an entire building, wing, floor, or group of spaces where the occupant's normal operation would be affected by the loss of service or utilities as a result of the shutdown.

A minor shutdown may be regarded as the interruption of a single or group of services or utilities to an area not occupied at the time of the shutdown, or when services or utilities would pose no inconvenience to occupancy activities, systems or equipment, or when affected utilities are restricted to areas occupied by the Contractor engaged in ongoing work.

HOT WORK PERMITS

Work requiring any concrete cutting or brazing, grinding, welding or soldering of metals, or any work producing gases or particulate capable of activating ionization or smoke/heat detectors, shall require three (3) work days notice and the submittal of a HOT WORK PERMIT. Failure to prepare the permit and notify the Owner's representative of work that results in a Fire Department false alarm will result in a pass-through of the false alarm fine to the Contractor. A sample of the HOT WORK PERMIT will be distributed at the Pre-construction meeting.

2.5 LAYOUT OF THE WORK

The Contractor shall survey and verify the conditions of the existing project site. The purpose of the survey is to record existing conditions prior to the construction for comparison with the Contract Documents. The Contractor shall report any conflicts to the Architect prior to the start of Work. The Architect will provide revisions to the Contract Documents or issue instructions to deal with conflicts. The Contractor shall be responsible for remedying conflicts which could have been prevented by timely reviews of existing conditions. All remedies which vary from the Contract Documents shall be approved by the Architect and the Owner's Representative.

When finished surfaces are cut so that smooth transition with new work is not possible, The Contractor shall terminate existing surface along straight line at natural line of division and make recommendation to Architect/Engineer. Where removal of partitions or walls results in adjacent spaces becoming one, The Contractor shall rework floors, walls and ceilings to smooth plane without breaks, steps, or bulkheads. Where change of plane of 1/4" or more occurs, The Contractor shall submit recommendation for providing smooth transition, for Architect's review, or request instructions from Architect. The Contractor shall trim existing doors as necessary to clear new floor finish. The Contractor shall refinish trim as required.

2.7 ASBESTOS

During the course of Work, if the Contractor observes or suspects existence of asbestos in structure or components of building, or anywhere within the Construction Site, Contractor shall immediately stop work in immediate area and notify OWNER'S Representative. The OWNER'S Representative will, under separate contract, remove or encapsulate asbestos.

PROVIDE DETAILED DESCRIPTION AND SCHEDULE IF POSSIBLE

Contractor is required to schedule -- INSERT -- work days of down time in each building for asbestos removal and coordination without penalty to OWNER for delay of the Contract for Construction.

2.8 PROGRESS CLEANING

Dirt and debris of all nature caused by the execution of the Work shall be removed from the job site at the end of each work day. The Contractor will be responsible for the disposal of all scraps and materials that are relative to this project. In continuously occupied areas where alteration work is performed, floors shall be swept with a hair broom and damp mopped or vacuumed at the end of each shift. The Owner will backcharge the contractor for any custodial services required to clean any area to allow normal use of occupied space due to the contractors failure to clean the area satisfactorily. Advance notice by the owner before performing any custodial work may not be possible and written notice will not be given.

Temporary Fire Protection and Detection: The Contractor shall provide modifications to the existing wet fire sprinkler and/or fire detection and alarm systems as required to maintain the existing fire system protection operative in all in construction areas throughout the duration of the Work. Temporary, short term shut downs which are approved by the fire marshal and the owner may be approved provided that the contractor makes appropriate arrangements. The Contractor shall coordinate shutdowns to include the fire detection system as required during Hot Work.

Temporary Construction: The Contractor shall erect fences, barricades or temporary walls and closures as necessary to protect the work, provide physical security to the property, and deter or prevent unauthorized access to construction areas.

Use of Elevators: N/A

3.2 EXISTING UTILITIES AND SERVICE INTERRUPTIONS

The Contractor shall protect active utilities, existing and evident by reasonable inspection of the site, whether shown or not on the Drawings. The Contractor shall protect, relocate or abandon utilities encountered in the work as directed by the Engineer or Architect. The Contractor shall maintain continuity of utilities services to existing buildings.

3.3 SECURING MATERIALS AND EQUIPMENT

Security: When workmen are not present in a room or area, all tools and equipment shall be locked or secured in a reasonable, safe manner to prevent children from getting access to potentially dangerous materials. The Contractor shall provide Security Services as necessary to protect stored materials and work in progress.

Safety: In accordance with generally accepted construction practices, the Contractor will be solely and completely responsible for conditions of the job site, including safety of all persons and property during the performance of the Work. This requirement will apply continuously and not be limited to working hours. The contractor shall instruct all workers and subcontractors that materials, tools and equipment can present a dangerous condition for children and are potentially an attractive nuisance. The contractor shall include security of materials and equipment in the job safety program.

The duty of the Owner's representative is to conduct construction review of the Contractor's performance and not intended to include review of the adequacy of the Contractor's safety measures in, on or near the construction site.

4.2 CONTRACTOR'S OPTIONS

For products specified only by reference standards, Contractor shall select any product meeting standards, by any manufacturer.

For product specified by naming products or manufacturers, Contractor shall:
Select from listed products or manufacturer.
Submit request for substitution for unnamed products.

4.3 SUBSTITUTION

During bidding, the Architect/Engineer will consider written request for substitutions, received at least ten days prior to bid date. Requests after that time will not be considered. See INSTRUCTIONS TO BIDDERS.

After date of Contract, the Architect may, optionally, consider normal requests from the Contractor for substitution of products in place of those specified when submitted in accord with the requirements of this section. One or more of the following conditions must also be documented:

1. The substitution must be required for compliance with final interpretation of the Code or insurance regulations.
2. The substitution must be due to the unavailability of the specified products, through no fault of the Contractor.
3. The substitution may be requested when subsequent information discloses the inability of the product to perform properly or to fit in the designated places.
4. The substitution may be requested when it is clearly seen, in the judgement of the Owner, that a substitution would be subsequently to the Owner's best interest, in terms of cost, time or other considerations.

Contractor shall submit two copies of request for substitution. Include in the request the following:

1. Complete data substantiating compliance of proposed substitution with the Contract Documents.
2. Product identification, including Manufacturer's name and address.
3. Manufacturer's literature, including Product description, performance and test data, and reference standards.
4. Samples.
5. Name and address of similar projects on which the product was used and the date of installation.

5.2 QUALITY ASSURANCE

- A. Goals: To recycle the maximum amount of material from the construction process where practical within the scope of the Project.
- B. Codes and Regulations: Contractor shall comply with Portland City Code 17.102.180 and other applicable codes and regulations.
- C. Recycling Support: Technical support for construction debris recycling is available through METRO at phone number 234-3000 and through the Bureau of Environmental Services at 823-7202. Construction Site Recycling, A Guide for Architects, Builders and Developers is available upon request from METRO.

5.3 MATERIALS

- A. Contractor shall recycle the following materials when produced as part of the Project either as demolition or as scrap from installation of new work. (Materials may be commingled when quantities do not justify separate containers):
 - 1. Masonry rubble
 - 2. Wood
 - 3. Land clearing debris
 - 4. Drywall
 - 5. Cardboard
 - 6. Metal
- B. Contractor shall recycle other materials where cost effective.

5.4 SITE COLLECTION

Contractor shall provide adequate site recycling material containers for collection and sorting by all subcontractors under this contract.

5.5 DISPOSAL

Contractor shall provide for hauling of all materials to a salvage facility that holds a permit or license to accept such material.

6.3 RECORD DRAWINGS

Contractor shall maintain a set of record prints of the Contract Drawings and Shop Drawings. Contractor shall neatly mark-up the record drawings to show actual conditions when they vary substantially from the Contract Drawings. Contractor shall mark-up the drawing most capable of showing the field condition. Contractor shall cross-reference marked-up Shop Drawings to corresponding location on Contract Drawings. Contractor shall record change order numbers and dates when they are the origin of a change. Contractor shall explicitly note concealed work or work difficult to observe after completion.

Contractor shall maintain sets of Record Specifications, Product Data and other miscellaneous submittals in a similar fashion. Maintain record photographs clearly identified where requested by the Owner's representative.

6.4 FINAL CLEANING

Contractor shall provide final cleaning to the Work prior to Final Inspection. Contractor shall clean each surface or unit of work to the condition expected of a professional commercial maintenance program. Contractor shall clean all glass surfaces, remove temporary labels, stains and foreign substances. Contractor shall vacuum carpeted and soft surfaces. Contractor shall clean equipment and fixtures to a sanitary condition. Contractor shall provide new filters for heating and ventilating equipment.

6.5 TESTING

Contractor shall performance-test all operational equipment and systems in the presence of the Owner's representative and Engineer to demonstrate compliance with the specified requirements. Testing shall be conducted under conditions specified, recommended or approved by the Owner or Engineer. Equipment shall not be accepted by Owner, and final payment shall not be made by Owner, until standard of performance is met.

6.6 TRAINING

At least thirty (30) days prior to Final Acceptance, Contractor shall schedule with the Owner's representative training session(s) as required by the Owner's personnel in operation and maintenance of the HVAC system, fire alarm system, signaling system. Contractor shall use the operation and maintenance manuals as a basis for instruction. The owner must have possession of all Operations and Maintenance manuals and written instructional materials at least two (2) weeks prior to any training session. Training sessions shall include hands on instruction for normal replacement parts including disassembly and re-assembly if necessary for routine maintenance.

FACSIMILE TRANSMITTAL

DATE: July 24, 2002

TO: Denise Shaw, Ruffin Construction – Fax: 503.774.8095
Steve Harris, Color World – Fax: 503.788.0357
Bonnie, BJ Garza – Fax: 503.493.1924
James Anderson, Cedar Mill Construction Company – Fax: 503.620.0553
Jose Ramirez, JCR Construction – Fax: 503.661.1752

FROM: Linda Cameron

REGARDING: Head Start, ADA and Special Ed 2002 Summer Modification projects
Additional information for quotes

PAGES TO FOLLOW: 1

- COMMENTS:** Please incorporate the following information into your quotes.
- James John Elementary School
- Provide a separate line item for new gravity fed vents and repair to existing.
 - Delete keynote #5 in Classroom 40.
 - Delete keynote #10 on east wall of room #40
 - Delete keynote #9 in Classroom #42
 - Existing wall mounted outlet located at NW corner of Classroom #42 to be rerouted to north wall and associated with keynote #5.
- Kelly Center
- Remove existing outlet where new door is located.
 - New insulated metal door to have U-value of .20 or better.
 - Soffit not ceiling will require painting in classrooms only. Dash lines indicate soffit area.
- Faubion Elementary School
- Option-Remove all three glazing panels at future door location. Infill wall to match existing siding's size, profile and color. Indicate in quote which option estimated.
 - Modify plug molding in Classroom 66 in order to install proposed new interior door.
 - All 18" on pull side of new interior door.
 - All closet door hardware, scheduled to be removed, shall be salvaged and returned to the District.
- Youngson
- Classroom #12 remove plug molding behind proposed carrels

CONFIDENTIALITY STATEMENT

The information contained in this transmission is legally privileged and confidential. It is intended only for the use of the addressee listed on this sheet. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this transmission is prohibited. If you have received this transmission in error, please telephone the number listed below. Thank you.

CEDAR MILL CONSTRUCTION COMPANY LLC

Meeting all phases of your construction needs

7/26/2002

PROPOSAL

Submitted to: Vickers/Foster & Associates
901 SE Oak St., Suite 204
Portland, OR 97214

Job: James John School
7439 N. Charleston
Portland, OR

Scope of Work:

Supply all necessary labor & materials to complete project at James John School as spec by Hennebery Eddy Architects, Inc. drawings dated 7-15-02 items 1-23 and items 27, 28 on key notes.

1 addendum noted.

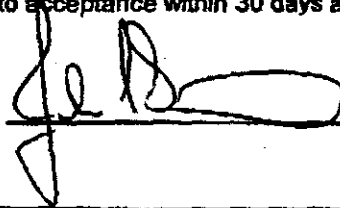
- Notes:**
1. Item 25, 26 - \$2,600.00
 2. Owner is responsible for all permits.
 3. No prevailing wages bid.

We hereby propose to furnish labor and materials - complete in accordance with the above specifications, for the sum of
\$20,500.00 TWENTY THOUSAND FIVE HUNDRED DOLLARS.

Payment to be made upon completion unless stated otherwise.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accident or delays beyond our control. This proposal subject to acceptance within 30 days and is void thereafter at the option of the undersigned. All labor and materials are warranted for a period of one year from the date of completion.

Authorized Signature



ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Date _____

ACORD CERTIFICATE OF LIABILITY INSURANCE

08/06/2002

ISSUER
MANSFIELD, INC.
 P.O. BOX 10327
 PORTLAND, OR 97296-0327
 503-222-9971 FAX: 503-221-3943

Serial # B1050

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

OF
CEDAR MILL CONSTRUCTION CO., LLC
 P.O. BOX 23214
 TIGARD, OR 97281-3214

INSURER A: ASSURANCE COMPANY OF AMERICA
 INSURER B: ASSURANCE COMPANY OF AMERICA
 INSURER C:
 INSURER D:
 INSURER E:

COVERAGES

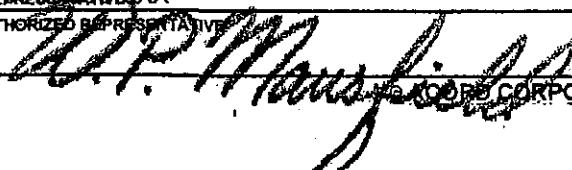
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> WA STOP GAP <input checked="" type="checkbox"/> PER PROJECT AGG GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	SCP 36730613	09/04/01	09/04/02	EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	SCP 36730613	09/04/01	09/04/02	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
GARAGE LIABILITY <input type="checkbox"/> AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
EXCESS LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$	SCP 36730613	09/04/01	09/04/02	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENTS/SPECIAL PROVISIONS
 : JAMES JOHN SCHOOL HEAD START CLASSROOM CONVERSION
 PORTLAND PUBLIC SCHOOLS 1J, MULTNOMAH COUNTY ARE INCLUDED AS ADDITIONAL INSURED WITH RESPECTS TO THE ABOVE REFERENCED POLICIES.

CERTIFICATE HOLDER ADDITIONAL INSURED; INSURER LETTER: CANCELLATION

PORTLAND PUBLIC SCHOOLS 1J
 501 N. DIXON
 PORTLAND, OR 97227

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL SEND BY MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. ~~THE POLICY IS VOID FROM THE DATE OF CANCELLATION AND NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.~~
 AUTHORIZED REPRESENTATIVE


PRODUCER Serial # B1050

MANSFIELD, INC.
 P.O. BOX 10327
 PORTLAND, OR 97296-0327
 503-222-9971 FAX: 503-221-3943

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED **CEDAR MILL CONSTRUCTION CO., LLC**
 P.O. BOX 23214
 TIGARD, OR 97281-3214

INSURER A: **ASSURANCE COMPANY OF AMERICA**
 INSURER B: **ASSURANCE COMPANY OF AMERICA**
 INSURER C:
 INSURER D:
 INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> WA STOP GAP <input checked="" type="checkbox"/> PER PROJECT AGG GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	SCP 36730613	09/04/01	09/04/02	EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	SCP 36730613	09/04/01	09/04/02	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
EXCESS LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$	SCP 36730613	09/04/01	09/04/02	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$ \$ \$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENTS/SPECIAL PROVISIONS
JAMES JOHN SCHOOL HEAD START CLASSROOM CONVERSION
 PORTLAND PUBLIC SCHOOLS 1J, MULTNOMAH COUNTY ARE INCLUDED AS ADDITIONAL INSURED WITH RESPECTS TO THE ABOVE REFERENCED POLICIES.

CERTIFICATE HOLDER **ADDITIONAL INSURED; INSURER LETTER:** **CANCELLATION**

PORTLAND PUBLIC SCHOOLS 1J
 501 N. DIXON
 PORTLAND, OR 97227

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

W.P. Mansfield

**OREGON WORKERS' COMPENSATION
CERTIFICATE OF INSURANCE**

400 High St SE
 Salem, OR 97312-1000
 Toll Free 1-800-285-8525

MAIL TO:

PORTLAND PUBLIC SCHOOL DISTRICT 1J
 501 N. DIXON ST
 PORTLAND, OR 97227

CERTIFICATE HOLDER:

PORTLAND PUBLIC SCHOOL DISTRICT
 1J
 501 N. DIXON ST
 PORTLAND, OR 97227

The policy of insurance listed below has been issued to the insured named below for the policy period indicated. The insurance afforded by the policy described herein is subject to all the terms, exclusions and conditions of such policy.

POLICY NO.	POLICY PERIOD	ISSUE DATE
905367	10/01/2001 TO 10/01/2002	08/06/2002

INSURED:

CEDAR MILL CONSTRUCTION COMPANY LLC
 PO BOX 23214
 TIGARD, OR 97281-3214

BROKER OF RECORD:**LIMITS OF LIABILITY:**

Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$100,000 each employee
Bodily Injury by Disease	\$500,000 policy limit

DESCRIPTION OF OPERATIONS/LOCATIONS/SPECIAL ITEMS:

JAMES JOHN SCHOOL HEAD START CLASSROOM CONVERSION

IMPORTANT:

The coverage described above is in effect as of the issue date of this certificate. It is subject to change at any time in the future.

This certificate is issued as a matter of information only and confers no rights to the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies above.

AUTHORIZED REPRESENTATIVE



**OREGON WORKERS' COMPENSATION
CERTIFICATE OF INSURANCE**

400 High St SE
Salem, OR 97312-1000
Toll Free 1-800-285-8525

MAIL TO:

PORTLAND PUBLIC SCHOOL DISTRICT 1J
501 N. DIXON ST
PORTLAND, OR 97227

CERTIFICATE HOLDER:

PORTLAND PUBLIC SCHOOL DISTRICT
1J
501 N. DIXON ST
PORTLAND, OR 97227

The policy of insurance listed below has been issued to the insured named below for the policy period indicated. The insurance afforded by the policy described herein is subject to all the terms, exclusions and conditions of such policy.

POLICY NO.	POLICY PERIOD	ISSUE DATE
905367	10/01/2001 TO 10/01/2002	08/06/2002

INSURED:

CEDAR MILL CONSTRUCTION COMPANY LLC
PO BOX 23214
TIGARD, OR 97281-3214

BROKER OF RECORD:

LIMITS OF LIABILITY:

Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$100,000 each employee
Bodily Injury by Disease	\$500,000 policy limit

DESCRIPTION OF OPERATIONS/LOCATIONS/SPECIAL ITEMS:

JAMES JOHN SCHOOL HEAD START CLASSROOM CONVERSION

IMPORTANT:

The coverage described above is in effect as of the issue date of this certificate. It is subject to change at any time in the future.

This certificate is issued as a matter of information only and confers no rights to the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies above.

AUTHORIZED REPRESENTATIVE



Document A312

BOND# 6129686

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Cedar Mill Construction Co., LLC
P.O. Box 23214
Tigard, OR
97281-3214

SURETY (Name and Principal Place of Business):

First National Insurance Company of America
4800 SW Meadows Rd., Ste#250
Lake Oswego, OR
97035

OWNER (Name and Address):

Portland Public Schools/Multnomah County 1J
501 N Dixon
Portland, OR
97227



CONSTRUCTION CONTRACT

Date: 08/01/02
Amount: \$23,100.00
Description (Name and Location): James John School Head Start Classroom conversion

BOND

Date (Not earlier than Construction Contract Date): 08/06/02
Amount: \$23,100.00
Modifications to this Bond: None See Page 3

CONTRACTOR AS PRINCIPAL

Company: Cedar Mill Construction Co., LLC (Corporate Seal)

Signature: *James Anderson*
Name: James Anderson
Title: Owner

SURETY

Company: First National Insurance Company of America (Corporate Seal)

Signature: *Molly K. Mansfield*
Name: Molly K. Mansfield
Title: Attorney-In-Fact

(Any additional signatures appear on page 3)

(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or Other Party):

Mansfield, Inc.
P.O. Box 10327
Portland, OR
97296-0327

Printed in cooperation with the American Institute of Architects (AIA) by Insurance Company of the West. Insurance Company of the West vouches that the language in the document conforms exactly to the language used in AIA Document A312 * PERFORMANCE BOND AND PAYMENT BOND * November 1984 ED.

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the Performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the

Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any

person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12 DEFINITIONS

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor or any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____ (Corporate Seal)

SURETY

Company: _____ (Corporate Seal)

Signature: _____
Name: _____
Title: _____
Address: _____

Signature: _____
Name: _____
Title: Attorney-In-Fact
Address: _____

4333 Brooklyn Avenue N.E.
Seattle, WA 98105

No. 4755

KNOW ALL BY THESE PRESENTS:

That FIRST NATIONAL INSURANCE COMPANY OF AMERICA, a Washington corporation, does hereby appoint
.....WILLIAM P. MANSFIELD; GEORGE A. MANSFIELD; MOLLY K. MANSFIELD; MICHAEL S. MANSFIELD; Portland, Oregon.....

its true and lawful attorney(s)-in-fact, with full authority to execute on behalf of the company fidelity and surety bonds or undertakings and other documents of a similar character issued by the company in the course of its business, and to bind FIRST NATIONAL INSURANCE COMPANY OF AMERICA thereby as fully as if such instruments had been duly executed by its regularly elected officers at its home office.

IN WITNESS WHEREOF, FIRST NATIONAL INSURANCE COMPANY OF AMERICA has executed and attested these presents

this 1st day of September, 1999

R.A. Pierson

R.A. PIERSON, SECRETARY

W. Randall Stoddard

W. RANDALL STODDARD, PRESIDENT

CERTIFICATE

Extract from the By-Laws of FIRST NATIONAL INSURANCE COMPANY OF AMERICA:

"Article V, Section 13. - FIDELITY AND SURETY BONDS ... the President, any Vice President, the Secretary, and any Assistant Vice President appointed for the purpose by the officer in charge of surety operations, shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the company in the course of its business... On any instrument making or evidencing such appointment, the signatures may be affixed by facsimile. On any instrument conferring such authority or on any bond or undertaking of the company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced; provided, however, that the seal shall not be necessary to the validity of any such instrument or undertaking."

Extract from a Resolution of the Board of Directors of
FIRST NATIONAL INSURANCE COMPANY OF AMERICA adopted July 28, 1970.

"On any certificate executed by the Secretary or an assistant secretary of the Company setting out,
(i) The provisions of Article V, Section 13 of the By-Laws, and
(ii) A copy of the power-of-attorney appointment, executed pursuant thereto, and
(iii) Certifying that said power-of-attorney appointment is in full force and effect,
the signature of the certifying officer may be by facsimile, and the seal of the Company may be a facsimile thereof."

I, R.A. Pierson, Secretary of FIRST NATIONAL INSURANCE COMPANY OF AMERICA, do hereby certify that the foregoing extracts of the By-Laws and of the Resolution of the Board of Directors of this corporation, and of a Power of Attorney issued pursuant thereto, are true and correct, and that both the By-Laws, the Resolution and the Power of Attorney are still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of said corporation

this 6th day of August, 2002



R.A. Pierson

R.A. PIERSON, SECRETARY

Document A312

BOND# 6129686

Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Cedar Mill Construction Co., LLC

P.O. Box 23214

Tigard, OR

97281

SURETY (Name and Principal Place of Business):

First National Insurance Company of America

4800 SW Meadows Rd., Ste#250

Lake Oswego, OR

97035

OWNER (Name and Address):

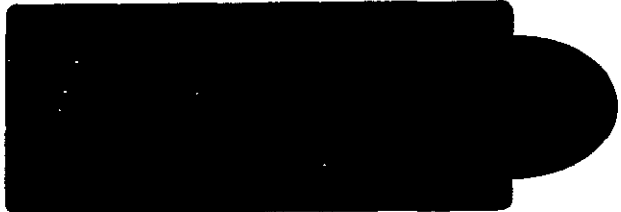
Portland Public Schools/Multnomah

County School District 1J

501 N. Dixon St.

Portland, OR

97227



CONSTRUCTION CONTRACT

Date: 08/01/02

Amount: \$23,100.00

Description (Name and Location): James John School Head Start Classroom Conversion

DND

Date (Not earlier than Construction Contract Date): 08/06/02

Amount: \$23,100.00

Modifications to this Bond:

None

See Page 3

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Cedar Mill Construction Co., LLC

SURETY

Company: (Corporate Seal)

First National Insurance Company of America

Signature:

Name: James Anderson

Title: OWNER

(Any additional signatures appear on page 6)

Signature:

Name: Molly K. Mansfield

Title: Attorney-In-Fact

(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT or BROKER:

Mansfield, Inc.

P.O. Box 10327

Portland, OR

97296-0327

OWNER'S REPRESENTATIVE (Architect, Engineer or Other Party):

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

.1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

.2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

.3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a

copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions;

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor, shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15 DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond

shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____ (Corporate Seal)

SURETY

Company: _____ (Corporate Seal)

Signature: _____

Signature: _____

Name:

Name:

Title:

Title: Attorney-In-Fact

Address:

Address:

4333 Brooklyn Avenue N.E.
Seattle, WA 98105

No. 755

KNOW ALL BY THESE PRESENTS:

That **FIRST NATIONAL INSURANCE COMPANY OF AMERICA**, a Washington corporation, does hereby appoint
*****WILLIAM P. MANSFIELD; GEORGE A. MANSFIELD; MOLLY K. MANSFIELD; MICHAEL S. MANSFIELD; Portland, Oregon*****

its true and lawful attorney(s)-in-fact, with full authority to execute on behalf of the company fidelity and surety bonds or undertakings and other documents of a similar character issued by the company in the course of its business, and to bind **FIRST NATIONAL INSURANCE COMPANY OF AMERICA** thereby as fully as if such instruments had been duly executed by its regularly elected officers at its home office.

IN WITNESS WHEREOF, **FIRST NATIONAL INSURANCE COMPANY OF AMERICA** has executed and attested these presents

this 1st day of September, 1999

R.A. Pierson
R.A. PIERSON, SECRETARY

W. Randall Stoddard
W. RANDALL STODDARD, PRESIDENT

CERTIFICATE

Extract from the By-Laws of **FIRST NATIONAL INSURANCE COMPANY OF AMERICA**:

"Article V, Section 13. - FIDELITY AND SURETY BONDS ... the President, any Vice President, the Secretary, and any Assistant Vice President appointed for the purpose by the officer in charge of surety operations, shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the company in the course of its business... On any instrument making or evidencing such appointment, the signatures may be affixed by facsimile. On any instrument conferring such authority or on any bond or undertaking of the company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced; provided, however, that the seal shall not be necessary to the validity of any such instrument or undertaking."

Extract from a Resolution of the Board of Directors of
FIRST NATIONAL INSURANCE COMPANY OF AMERICA adopted July 28, 1970.

"On any certificate executed by the Secretary or an assistant secretary of the Company setting out,
(i) The provisions of Article V, Section 13 of the By-Laws, and
(ii) A copy of the power-of-attorney appointment, executed pursuant thereto, and
(iii) Certifying that said power-of-attorney appointment is in full force and effect,
the signature of the certifying officer may be by facsimile, and the seal of the Company may be a facsimile thereof."

I, R.A. Pierson, Secretary of **FIRST NATIONAL INSURANCE COMPANY OF AMERICA**, do hereby certify that the foregoing extracts of the By-Laws and of Resolution of the Board of Directors of this corporation, and of a Power of Attorney issued pursuant thereto, are true and correct, and that both the By-Laws, the Resolution and the Power of Attorney are still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of said corporation

this 10th day of August, 2002



R.A. Pierson
R.A. PIERSON, SECRETARY



Oregon

Theodore R. Kulongoski, Governor

OFFICE OF ADMINISTRATIVE HEARINGS

Transportation Hearings Division
1905 Lana Avenue NE
Salem OR 97314
Telephone: (503) 945-5547
FAX: (503) 945-5304
TTY: 1-800-735-1232

CORRECTED NOTICE OF HEARING

Date Mailed: June 17, 2003

TO: GREG VICKERS
VICKERS/NELSON & ASSOCIATES
1420 NW LOVEJOY #416
PORTLAND OR 97209

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

**BY FIRST CLASS AND CERTIFIED MAIL.
CERTIFIED MAIL RECEIPT #7001 1940 0000 1117 3216**

RE: *In the Matter of Vickers/Nelson & Associates*
For the Department of Environmental Quality
Office of Administrative Hearings Case No. 108347
Agency Case No. AQ/AB-NWR-02-181

A hearing has been set in the above-entitled matter before the Office of Administrative Hearings.

Hearing Date: July 11, 2003 Hearing Time: 9:30 a.m.

**Location: Dept of Environmental Quality Room 6A
Check in With Receptionist on 7th Floor
811 SW 6th Ave
Portland OR**

The Office of Administrative Hearings 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 Andrea Sloan, an employee of the Office of Administrative Hearings.

A request for a reset of the hearing must be submitted in writing 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.

DAVID MEYER
ATTORNEY AT LAW
621 SW MORRISON ST STE 1300
PORTLAND OR 97205

EXHIBIT P3

**BY FIRST CLASS AND CERTIFIED MAIL.
CERTIFIED MAIL RECEIPT #7001 1940 0000 1117 3223**

If you are hearing impaired or need a language interpreter at the hearing, immediately notify the Office of Administrative Hearings at (503) 945-5547 or TDD at 1-800-735-1232. The Office of Administrative Hearings 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 Office of Administrative Hearings at (503) 945-5547 immediately if you change your address or telephone number at any time prior to a final decision in this matter.

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 Office of Administrative Hearings 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

EXHIBIT 04 ^(A)

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.*

DISTRICT USE ONLY	
CHECK BOX THAT APPLIES	CONTRACT # <u>897/12890</u>
<input type="checkbox"/> LESS THAN \$ 25,000.00	VENDOR # <u>9761</u>
<input checked="" type="checkbox"/> \$ 25,000.00 OR MORE*	
*BOARD ACTION: 1997	

PERSONAL / PROFESSIONAL SERVICES CONTRACT

For Dollar Amounts of \$2,000.00 or Greater

This agreement made and entered into as of the date of the last valid signature by and between School District No. 1, Multnomah County, Oregon, a quasi-municipal corporation of the State of Oregon (hereinafter called "DISTRICT") and **Vickers/Foster & Associates Construction Program Mgmt, Inc.** (hereinafter called "CONTRACTOR"). **RECEIVED VFA-CPM Inc. No. 9903**

TERM: The term of this agreement shall commence: 9-12-01 and continue until: 12-31-02

Recognizing the District has need of the services which CONTRACTOR is competent to provide, CONTRACTOR agrees to perform the following personal service(s):

BOXES 1,2 AND 3 MUST BE COMPLETED IN DETAIL TO VALIDATE CONTRACT

Building Project No. _____
Funding Object Code _____

1. DESCRIPTION OF SERVICES: WILL SERVICES RESULT IN DIRECT UNSUPERVISED CONTACT WITH STUDENTS? YES NO
IF YES, SEE INSTRUCTIONS FOR OBTAINING A CRIMINAL RECORDS CHECK AT THE PARAGRAPH ENTITLED "SECURITY."

Project Management Services for Facility Capital Improvement Program 2002 Construction

Project Mgmt. of an estimated \$.83 - 3.6 million in project(s) construction value

(\$1.2 - 5.2 million in project(s) budget value). See attached fee proposal dated 8/23/01.

2. AMOUNT OF CONTRACT: \$151,950.00 PAYMENT TERMS: Monthly billing based on hourly rates for hours provided. Not to exceed \$151,950.00.

3. OTHER CONDITIONS: (if no special conditions, write "None") Standard reimbursables shall be billed at cost and shall be additional to the base proposal. A contract amendment will be written at project closeout to incorporate actual reimbursable expenses. Estimated expenses will be 2-1/2% of base contract value.

This contract and any amendments to this contract will not be effective and no work shall begin until approved by the appropriate persons listed below. Both parties understand and agree to the TERMS AND CONDITIONS described below and on Page 2 of this contract.

DISTRICT	
ADMINISTRATOR <u>X Pamela J. Brown</u>	DATE <u>9/21/01</u>
GRANT AUTHORIZATION (If Applicable) <u>X</u>	DATE
OTHER AUTHORIZATION (If Applicable including IT) <u>X</u>	DATE
SENIOR MANAGEMENT LEVEL <u>X</u>	DATE
DEPUTY, CLERK OR DESIGNEE <u>X [Signature]</u>	DATE <u>10/3/01</u>
CONTACT PERSON (PRINT OR TYPE) <u>Brenda Caldwell</u>	TELEPHONE NUMBER <u>503-916-3164</u>

CONTRACTOR	
BUSINESS NAME <u>Vickers/Foster & Associates</u>	CHECK APPROPRIATE BOX: <input type="checkbox"/> Individual / Sole Proprietor <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other: _____
ADDRESS <u>907 SE Oak Street, Suite 204</u>	
CITY STATE ZIP <u>Portland OR 97214</u>	TAX ID NUMBER OR SSN <u>93-1151410</u>
AUTHORIZED SIGNATURE <u>X [Signature]</u>	DATE <u>9/20/01</u>
PRINTED NAME / TITLE <u>Doug Nelson, Principal</u>	
CONTACT PERSON (PRINT OR TYPE) <u>Doug Nelson</u>	TELEPHONE NUMBER <u>503-233-7008</u>

CHARTFIELD STRINGS TO BE CHARGED:

ACCOUNT	FUND	ORG	PROGRAM	SUB-CLS	PRJ / GRT
538500	402	5591	41500	99999	P0600

ACCOUNT	FUND	ORG	PROGRAM	SUB-CLS	PRJ / GRT

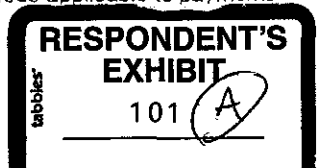
AMOUNT
\$ 151,950.00

AMOUNT
\$ _____

TERMS AND CONDITIONS FOR PERSONAL/PROFESSIONAL SERVICES CONTRACT

(Any alteration to the contract language must be reviewed by the General Counsel)

Independent Contractor Status: Contractor is an independent contractor solely responsible for the work performed under this contract. Contractor, its subcontractors and employees shall not be deemed employees of the District. Contractor shall be responsible for all federal, state and local taxes and fees applicable to payments for services under this contract.



Conflict of Interest: Contractor declares that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further declares that in the performance of contract no person having any such interest shall be employed by Contractor.

Indemnification: Contractor assumes responsibility for and agrees to defend and hold harmless the District, its officers, agents and employees from and against any and all claims, suits and actions of any nature arising out of the negligent acts or omissions of Contractor, Contractor's employees, agents and subcontractors in the performance of this contract.

Compliance with Applicable Law: Contractor agrees to comply with all federal, state and local laws applicable to the work under this contract, and all regulations and administrative rules established pursuant to those laws. Contractor specifically agrees to comply with the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.334 pertaining to payment of laborers and hours of labor. Contractor agrees to keep all student records confidential in accordance with state and federal statutes and rules governing confidentiality of student education records. Contractor agrees to comply with all federal and state laws prohibiting discrimination on the basis of race, sex, national origin, religion, age or disability.

Security: Contractor agrees to abide by all District rules and regulations while upon District property. Unsupervised access to students will require obtaining identification through School Police, which requires fingerprinting and a criminal records check as required by law. Contractor will be responsible for all costs associated with this requirement. If approved access to students is granted, all Contractor personnel shall be required to prominently display this identification while upon District property. All property issued will remain the property of District and upon termination or expiration of contract, Contractor will return identification and other property to District.

Licenses: Contractor certifies that it holds all business registration or professional occupation licenses required by law or local government ordinances to conduct the service or business.

Insurance: Contractor shall secure at its own expense and keep in effect during the term of this contract comprehensive general liability insurance with a minimum limit of \$1,000,000 per occurrence and auto liability with a minimum limit of \$1,000,000 per occurrence.

Workers' Compensation Insurance: Contractor, its subcontractors, if any, and all employees providing work, labor or materials under this contract are subject employees under the Oregon Workers' Compensation Law and shall comply with ORS 656.017 which requires them to provide workers' compensation coverage for all their subject workers. Contractor shall require proof of such workers' compensation insurance by receiving and keeping on file a certificate of insurance from each subcontractor or anyone else directly employed by either the Contractor or subcontractor.

Insurance Certification: Before Contractor commences work under this contract, Contractor shall furnish to District's Risk Management Department certificate(s) of insurance as evidence of the insurance coverage required by this contract, including workers's compensation. The certificate(s) shall provide that the insurance company will give a 30-day written notice to the District if the insurance is canceled or materially changed. Waivers of insurance may be obtained in certain circumstances from Risk Management.

Termination: This contract may be terminated prior to expiration of the agreed-upon term by mutual consent of the parties as the parties agree, or by either party upon 30 days' written notice to the other, delivered by certified mail or in person. Termination shall not affect any right, obligation or liability of Contractor or District, which accrued prior to such termination.

Ownership of Work: All work products, including intellectual property, created by the Contractor as part of Contractor's performance under this contract shall be the exclusive property of the District. District shall have no right in any pre-existing work product of Contractor provided to District by Contractor in the performance of this contract except to copy, use or re-use any such work product for District use only.

Hazardous Chemicals: Contractor shall notify District prior to using products containing hazardous chemical to which District employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon District's request, Contractor shall immediately provide Materials Safety Data Sheets, as required by OAR 437-155-025, for the products subject to this provision.

Access to Records: District's authorized representatives shall have access, upon reasonable request and during regular office hours, to the books, documents, papers and records of Contractor which are directly pertinent to this contract for the purpose of making audits, examinations, excerpts and transcripts.

Assignment: Contractor shall not assign or transfer its rights or obligations under this contract without the prior written consent of District.

Successors in Interest: The provisions of this Contract shall be binding upon and insure to the benefit of the parties and their successors and approved assigns, if any.

Attorneys' Fees: If any action at law or in equity, or an arbitration, is necessary to enforce or interpret the terms of this contract, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief which the party may be entitled.

Governing Law: The provisions of this contract shall be construed in accordance with the provisions of the laws of the state of Oregon. Any action or suit involving any question arising under this contract must be brought in the appropriate court in the state of Oregon.

THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND SUPERSEDES ALL PRIOR AGREEMENTS OR NEGOTIATIONS BETWEEN THE PARTIES. NO AMENDMENT, CONSENT OR WAIVER OF THE TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES.

July 22, 2002

INVITATION TO QUOTE
PORTLAND PUBLIC SCHOOLS –
JAMES JOHN ELEMENTARY SCHOOL: Head Start renovation

Portland Public Schools and Vickers/Foster & Associates would like to invite you to submit a sealed quotation that will be received by Portland Public Schools, for the above referenced Project.

This project includes the following renovation to two existing classrooms and two restroom located at James John Elementary School.

- Replace classroom carpet with VCT.
- Install PPS supplied carpet tile.
- Replace existing sheet vinyl at Boys' Restroom.
- Provide enclosure around existing hot water heater.
- Modify heat shroud at existing radiators.
- Add ionization smoke detectors to classrooms and connect back to main panel.
- Add gravity feed vents at roof.
- Replace an existing lavatory.
- Replace existing facets with new mixing valve facets at restroom lavatories.
- Remove existing shelves and miscellaneous hardware.
- Install new laminate over existing counter.
- Modify existing wire plug molding to remove and add outlets.

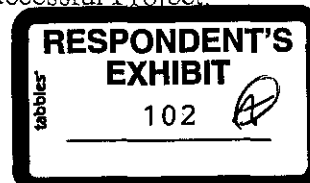
Since the electrical portion of the work is design build. The pre-proposal conference / walkthrough will be held on July 23, 2002 at 9:00 am. Meet at the main entrance to James John Elementary School located at 7439 N Charleston.

Attached are copies of the drawings and the Project manual for your review. Portland Public School's Small Projects (Under \$25,000) Contract sample is attached.

Provide written quotation that is to include line item cost & time duration to complete facility on company letterhead. Contractor is responsible for all final project clean up. Contractor will be required to provide a performance bond to cover the amount of the Contract between Contractor and District. Quotations for this Project shall be received at 12:00 p.m., local time, Friday, July 26, 2002 at Vickers/Foster & Associates. Notice of award will be issued the same day and final project scheduling shall be negotiated with the final contract determinations.

All work related to this project must be completed by August 16, 2002.*
On behalf of Portland Public Schools, we look forward to a successful Project.

Sincerely,



CM 2037

Linda Cameron, Project Manager
VICKERS/FOSTER & ASSOCIATES CPM, INC.

Copy: Brenda Caldwell, Portland Public Schools
Don Larson, Portland Public Schools

*Unless noted on project scope documents

Portland Public Sch

General Notes

1. REMOVE ALL DEBRIS AND CLEAN ALL SURFACES. IN AREAS OF WORK.
2. PAINT NEW PARTITION WALL IN GIRLS RESTROOM.
3. THE CONTRACTOR SHALL ASSUME LEAD PAINT AND VARNISH IS PRESENT THROUGHOUT THE BUILDING UNLESS NOTED OTHERWISE IN THE SURVEY DOCUMENTS. PERFORM ALL WORK IN ACCORDANCE WITH OR-OSHA (OAR CHAPTER 437 DIVISION 3, 1926.62) WHEN WORKING IN AREAS OF BUILDINGS OCCUPIED BY CHILDREN AGES 6 YEARS AND UNDER, REQUIREMENTS UNDER OAR-333-DIVISION 69 MAY ALSO APPLY.
4. ASBESTOS MATERIALS (ACM'S) ARE PRESENT IN VARIOUS LOCATIONS THROUGHOUT THE BUILDING. IT IS THE INTENT OF PORTLAND PUBLIC SCHOOLS TO ABATE ONLY MATERIALS THAT ARE AN OBSTRUCTION, PART OF DEMOLITION, OR NECESSARY TO COMPLETE THE RENOVATION. ALL ABATEMENT WORK WILL BE CONDUCTED BY PORTLAND PUBLIC SCHOOLS UNDER A SEPARATE CONTRACT. THE GENERAL CONTRACTOR AND ITS SUB-CONTRACTORS ARE REQUIRED TO FAMILIARIZE THEMSELVES WITH ASBESTOS AND ASBESTOS HAZARDS WITHIN THE BUILDING. PROVIDE HAZARD COMMUNICATION, TRAINING AND PERSONAL PROTECTION EQUIPMENT AS NECESSARY TO WORK IN OR AROUND AREAS WITH ASBESTOS MATERIALS. THE GENERAL CONTRACTOR SHALL STRICTLY ENFORCE IMPLEMENTATION OF OR-OSHA (OAR CHAPTER 437 DIVISION 3, SUBDIVISION Z 1926.1101) REQUIREMENTS DURING THE PERFORMANCE OF THE WORK UNDER THIS CONTRACT.
5. DOCUMENTS OF REFERENCE FOR INFORMATION ON THE TYPE, QUANTITY AND LOCATION OF KNOWN ACM'S ARE AS FOLLOWS: 1) PORTLAND PUBLIC SCHOOL DISTRICT'S AHERA ASBESTOS INSPECTION REPORT AND MANAGEMENT PLAN. 2) HAZARDOUS MATERIALS SURVEY/ABATEMENT DRAWINGS FOR 2002 BOND RENOVATION WORK. ALL CONTRACTORS ARE TO NOTIFY THE GENERAL CONTRACTOR IF SUSPECT ACM'S ARE UNCOVERED DURING DEMOLITION OR RENOVATION ACTIVITIES THAT ARE NOT IDENTIFIED IN THESE DOCUMENTS. COORDINATE WITH THE DISTRICT'S HAZARDOUS MATERIALS CONSULTANT AS NECESSARY TO ACCOMMODATE TESTING AND ABATEMENT WORK
6. FOR THIS PROJECT, THE GENERAL CONTRACTOR AND ITS SUB-CONTRACTORS SHALL COMPLY WITH ALL APPLICABLE OSHA REQUIREMENTS WHEN WORKING IN FRIABLE ASBESTOS CONTAMINATED AREAS. THIS INCLUDES BUT IS NOT LIMITED TO; FLOOR AND ATTIC CRAWL SPACES IF THOSE CONDITIONS EXIST IN A BUILDING. OSHA REQUIREMENTS ALSO APPLY WHEN WORKING ON OR AROUND NON-FRIABLE ACM. THIS INCLUDES BUT IS NOT LIMITED TO; ANCHORAGE THRU ACM FLOORING, ANCHORAGE OF WIRE MOLDING AND FIXTURES ONTO ACM PLASTER OR GYPSUM WALLS AND CEILING, AND IMPACTING FROM ROOFING MATERIALS

Legend

① IONIZATIC

* ELECTRIC

--- ELECTRIC



Keynotes

① PROVIDE NEW SHROUD. SEE

② INSTALL NEW

③ NEW 8' HIGH 2 TO EXISTING V BOARD EACH

④ EXISTING PLUG

⑤ NEW ELECTRIC

Ⓒ REMOVE EXIST TILE AND RUBI

Ⓓ REMOVE EXIST

James John School



PORTLAND PUBLIC SCHOOLS

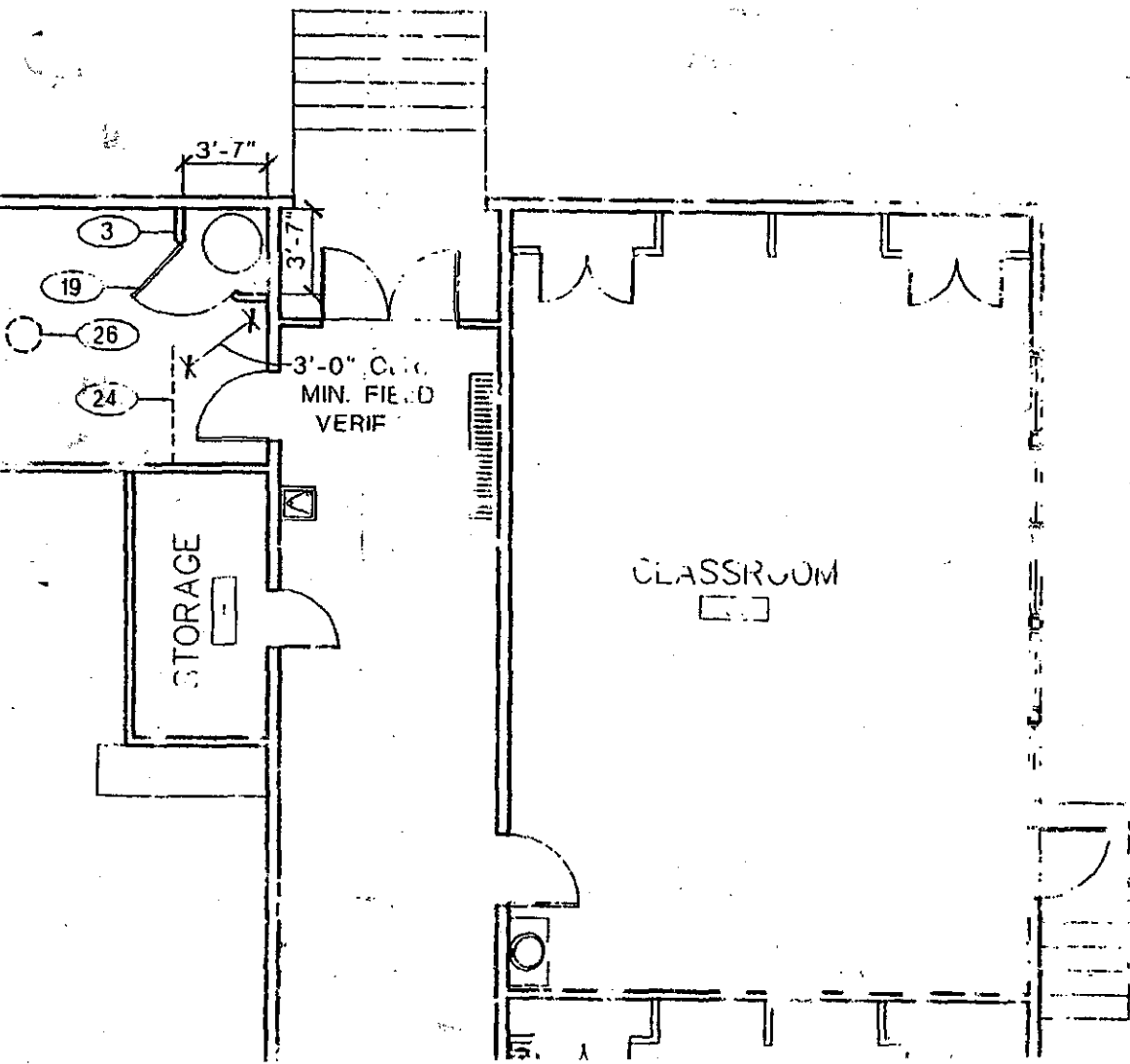
Facilities & Asset Management
 Pamela Brown, Director
 Architecture, Planning & Engineering
 Richard C. Wong, Manager

SCHOOL DISTRICT No.1
 MULTNOMAH COUNTY, OREGON

591 N. DDON ST. PORTLAND,
 OREGON 97227 916-2000

John School
 ton, Portland, OR 97203

Lead Start
 Room Conversion



Portland Public Schools
Small Projects (Under \$25,000) Contract



1. **Parties:** This contract is between Multnomah County School District 1J ("District") and Cedar Mill Construction Company LLC ("Contractor").
2. **Term:** This contract shall become effective on August 1, 2002 and shall be completed on August 16 for work associated with classrooms and August 23 for the remaining, unless extended by the parties in writing.
3. **Description of Work:** Contractor shall perform the work described in attached Exhibit A.
4. **Payment:** Contractor shall be paid as described in attached Exhibit A, not to exceed \$20,500.00. *23,100.00 NA*
5. **Termination:** This contract may be terminated at any time by mutual written consent of the parties, or by the District at its discretion upon five days written notice to Contractor. Contractor shall be compensated for any work performed as of the date of termination.
6. **Independent Contractor Status:** Contractor agrees and certifies that it is an independent contractor. As such Contractor agrees that Contractor will be responsible for all federal or state taxes arising from the payments under this contract and will not be eligible for any benefits Contractor might otherwise be entitled to as an employee of the District.
7. **Insurance and Indemnity:**
 - a. **General Liability:** Contractor shall provide a commercial general liability policy with minimum coverage of \$1 million per occurrence and a general aggregate and products aggregate of \$2 million. Prior to beginning work, Contractor shall submit a Certificate of Insurance as proof of such insurance, naming District as an additional insured, and providing District 30 days notice of cancellation.
 - b. **Automobile Liability:** Prior to beginning work, Contractor shall provide proof of automobile insurance with minimum coverage of \$1 million.
 - c. **Workers Compensation:** Prior to beginning work, Contractor shall provide proof of workers compensation insurance per Oregon law.
 - d. **Indemnification:** Contractor shall defend, indemnify and hold District, its officers, agents and employees, harmless from any and all liability and expense based upon or arising out of Contractor's performance of this contract.
8. **Compliance with Public Contract Law:** Contractor shall comply with the following terms and conditions required by the Public Contract Law (ORS 279.310 to 279.650), as applicable:
 - a. Payment of laborers; contributions to Industrial accident fund; liens and withholding taxes (ORS 279.312);
 - b. If the contract calls for demolition work or for lawn or landscape maintenance, the salvage or composting requirements of ORS 279.313, if feasible and cost effective;
 - c. Payment of claims by public officers; prompt payment of persons furnishing labor or materials (ORS 279.314);
 - d. Hours of labor (ORS 279.316 and 279.338); maximum hours and overtime (ORS 279.334); overtime claims (ORS 279.336); overtime requirement for local governments (ORS 279.340 and 279.342);
 - e. Environmental and natural resources regulations (ORS 279.318);
 - f. Payment for medical care and attention to employees (ORS 279.320);
 - g. If the Contract is for a "public improvement":
 - i. Retainage (ORS 279.400 to 279.430 and 279.435);
 - ii. Prompt payment policy (ORS 279.435);
 - iii. Contractor's relations with subcontractors (ORS 279.445);
 - iv. Demonstration of a drug-testing program [ORS 279.312(2)];
 - i. Notice of claim (ORS 279.528);
 - j. Contractor's certification of compliance with the Oregon tax laws (ORS 305.385);
 - k. Contractor's certification of nondiscrimination in obtaining subcontractors (ORS 279.111);



CM 2065

"public improvement" is "projects for construction, reconstruction or major renovation on real property by or for a public agency," but does not include emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a public improvement." See ORS 279.011(8)

Page 1 of 3 - Small Project Contract - Approved by legal counsel 7/02; any changes to text must be highlighted and will require review by General Counsel

l. If Contractor is an employer, Contractor is a subject employer under the Oregon Workers' Compensation Law and shall comply with ORS 656.017 and shall provide Workers' Compensation coverage for all their "subject workers," as defined under ORS Chapter 656 (ORS 279.320(2));

m. Contractor's certification that all subcontractors performing work described in ORS 701.005(3) (i.e., construction work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the contract; and

9. **Bond.** If this is a contract for a public improvement and is in an amount greater than \$10,000, or as otherwise required by the District, contractor must execute and deliver a performance and payment bond for the full amount of the contract, unless waived. Performance Bond is x required/ waived (check one). Waiver approved by: _____ [signature of superintendent or designee. See District Contracting Rule 8.50.460(1)].

10. **Ownership of Work.** All work products of the Contractor which result from this contract are the exclusive property of the District.

11. **Compliance with Rules and Regulations for Operation on District Property.**

A. **Identification Tags.** After Notice to Proceed but prior to beginning work, Contractor shall obtain Portland Public Schools identification tags from District for all on-site personnel. No officer, agent, or employee of the Contractor, subcontractor, or supplier shall be permitted on District's property unless the identification tag is displayed on the person.

B. **No Smoking.** Smoking or other use of tobacco is prohibited on District's Property.

C. **No Drugs.** All schools are designated drug-free zones enforced by the Portland Police Bureau.

E. **Safety.** Prior to instituting work on District's property, Contractor, its subcontractors, and suppliers shall review the safety and security policies issued by District's Environmental Health and Safety Department and shall comply with those policies while on District's property.

F. **No Unsupervised Contact with Students.** Contractor will ensure that Contractor, any subcontractors, and their officers, agents and employees, will have no direct unsupervised contact with students while on District Property. Contractor will work with District to ensure compliance with this requirement. Contractor shall comply with and pay for any criminal record check as may be required by the District.

G. **Confidentiality.** Contractor will not disclose any information or records regarding students or their families that Contractor may learn or obtain in course and scope of Contractor's performance of this Contract.

12. **Construction; Severability; Waiver.** This agreement shall be construed pursuant to Oregon law. If any term is adjudged invalid, the validity of the remaining terms shall not be affected. The failure of the District to enforce any provision shall not constitute a waiver by the District of that or any other provision.

13. **Entire Agreement; Modification.** This contract is the entire agreement of the parties. It may only be modified in writing, signed by both parties.

CONTRACTOR
By [Signature]
Name: JAMES ANDERSON
Title: OWNER
Date: 08-6-2002

DISTRICT
[Signature]
[Name] LYAN WARD
Date: 9-12-02

Contractor's Business Address:

PO Box 23214, TIGARD, OR 97281-3214

10750 SW N. DAKOTA ST. TIGARD, OR 97223

Individual SS # or
Employer ID # 93-1262175

Check one:

CM 206

ACORD CERTIFICATE OF LIABILITY INSURANCE

08/06/2002

PRODUCER
MANFIELD, INC.
 P.O. BOX 10327
 PORTLAND, OR 97296-0327
 503 9971 FAX: 503-221-3943
 JURED CEDAR MILL CONSTRUCTION CO., LLC
 P.O. BOX 23214
 TIGARD, OR 97281-3214

Serial # B1050

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURER A: ASSURANCE COMPANY OF AMERICA
 INSURER B: ASSURANCE COMPANY OF AMERICA
 INSURER C:
 INSURER D:
 INSURER E:

COVERAGES
 THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> WA STOP GAP <input checked="" type="checkbox"/> PER PROJECT AGG GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	SCP 36730613	09/04/01	09/04/02	EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	SCP 36730613	09/04/01	09/04/02	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
GA ABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
EXCESS LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$	SCP 36730613	09/04/01	09/04/02	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENTS/SPECIAL PROVISIONS
 JAMES JOHN SCHOOL HEAD START CLASSROOM CONVERSION
 PORTLAND PUBLIC SCHOOLS 1J, MULTNOMAH COUNTY ARE INCLUDED AS ADDITIONAL INSURED WITH RESPECTS TO THE ABOVE REFERENCED POLICIES.

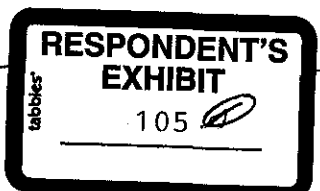
CERTIFICATE HOLDER ADDITIONAL INSURED; INSURER LETTER:

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL endeavor to MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BY MAIL REGULAR MAIL OR BY FIRST CLASS MAIL OR BY REGISTERED MAIL OR BY CERTIFIED MAIL OR BY ANY OTHER MAIL SERVICE WHICH PROVIDES FOR DELIVERY TO THE ADDRESSEE OR BY HAND DELIVERY TO THE ADDRESSEE.

PORTLAND PUBLIC SCHOOLS 1J
 501 N. DIXON
 PORTLAND, OR 97227

AUTHORIZED REPRESENTATIVE
[Signature]
 MANFIELD, INC. CORPORATION 1988



**OREGON WORKERS' COMPENSATION
CERTIFICATE OF INSURANCE**

400 High St SE
Salem, OR 97312-1000
Toll Free 1-800-285-8525

MAIL TO:

PORTLAND PUBLIC SCHOOL DISTRICT 1J
501 N. DIXON ST
PORTLAND, OR 97227

CERTIFICATE HOLDER:

PORTLAND PUBLIC SCHOOL DISTRICT
1J
501 N. DIXON ST
PORTLAND, OR 97227

The policy of insurance listed below has been issued to the insured named below for the policy period indicated. The insurance afforded by the policy described herein is subject to all the terms, exclusions and conditions of such policy.

POLICY NO.	POLICY PERIOD	ISSUE DATE
905367	10/01/2001 TO 10/01/2002	08/06/2002

INSURED:

CEDAR MILL CONSTRUCTION COMPANY LLC
PO BOX 23214
TIGARD, OR 97281-3214

BROKER OF RECORD:

LIMITS OF LIABILITY:

Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$100,000 each employee
Bodily Injury by Disease	\$500,000 policy limit

DESCRIPTION OF OPERATIONS/LOCATIONS/SPECIAL ITEMS:

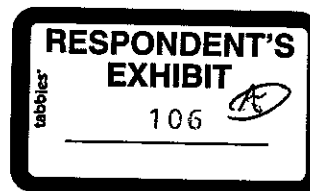
JAMES JOHN SCHOOL HEAD START CLASSROOM CONVERSION

IMPORTANT:

The coverage described above is in effect as of the issue date of this certificate. It is subject to change at any time in the future.

This certificate is issued as a matter of information only and confers no rights to the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies above.

AUTHORIZED REPRESENTATIVE



V/M 1027

Document A312

BOND# 6129686

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Cedar Mill Construction Co., LLC

P.O. Box 23214

Tigard, OR

97281-3214

SURETY (Name and Principal Place of Business):

First National Insurance Company of America

4800 SW Meadows Rd., Ste#250

Lake Oswego, OR

97035

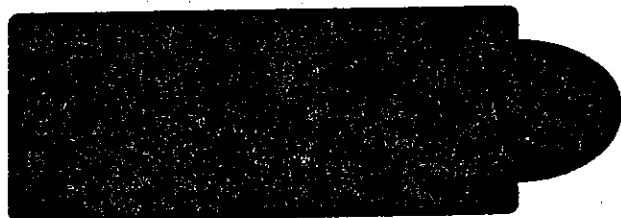
OWNER (Name and Address):

Portland Public Schools/Multnomah County 1J

501 N Dixon

Portland, OR

97227



CONSTRUCTION CONTRACT

Date: 08/01/02

Amount: \$23,100.00

Description (Name and Location): James John School Head Start Classroom conversion

BOND

Date (Not earlier than Construction Contract Date): 08/06/02

Amount: \$23,100.00

Modifications to this Bond:

None

See Page 3

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Cedar Mill Construction Co., LLC

SURETY

Company: (Corporate Seal)

First National Insurance Company of America

Signature:

Name: James Anderson

Title: OWNER

(Any additional signatures appear on page 3)

Signature:

Name: Molly K. Mansfield

Title: Attorney-In-Fact

(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT or BROKER:

Mansfield, Inc.

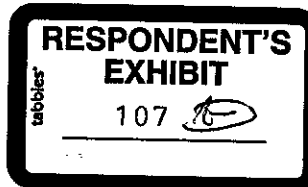
P.O. Box 10327

Portland, OR

97296-0327

OWNER'S REPRESENTATIVE (Architect, Engineer or Other Party):

Printed in cooperation with the American Institute of Architects (AIA) by Insurance Company of the West. Insurance Company of the West vouches that language in the document conforms exactly to the language used in AIA Document A312 * PERFORMANCE BOND AND PAYMENT BOND * November 1984 ED.



V/N 1029

Document A312

BOND# 6129686

Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Cedar Mill Construction Co., LLC

P.O. Box 23214

Tigard, OR

97281

SURETY (Name and Principal Place of Business):

First National Insurance Company of America

4800 SW Meadows Rd., Ste#250

Lake Oswego, OR

97035

OWNER (Name and Address):

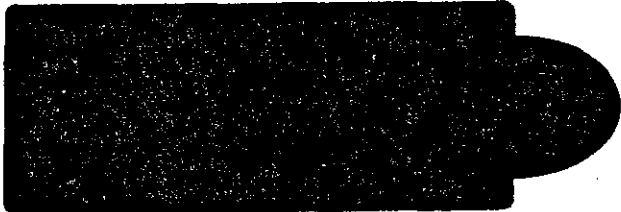
Portland Public Schools/Multnomah

County School District 1J

501 N. Dixon St.

Portland, OR

97227



CONSTRUCTION CONTRACT

Date: 08/01/02

Amount: \$23,100.00

Description (Name and Location): James John School Head Start Classroom Conversion

ND

Date (Not earlier than Construction Contract Date): 08/06/02

Amount: \$23,100.00

Modifications to this Bond:

None

See Page 3

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Cedar Mill Construction Co., LLC

SURETY

Company: (Corporate Seal)

First National Insurance Company of America

Signature:

James Anderson

Name: James Anderson

Title: OWNER

(Any additional signatures appear on page 6)

Signature:

Molly K. Mansfield

Name: Molly K. Mansfield

Title: Attorney-In-Fact

(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT or BROKER:

Mansfield, Inc.

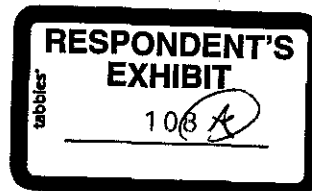
P.O. Box 10327

Portland, OR

97296-0327

OWNER'S REPRESENTATIVE (Architect, Engineer or Other Party):

Printed in cooperation with the American Institute of Architects (AIA) by Insurance Company of the West. Insurance Company of the West vouches that language in the document conforms exactly to the language used in AIA Document A312 * PERFORMANCE BOND AND PAYMENT BOND * number 1984 ED.



V/N 1033

Linda Cameron

From: Ann White [annwhite@pps.k12.or.us]
Sent: Wednesday, August 07, 2002 1:52 PM
To: Linda Cameron
Subject: Re: Specifications

Importance: High

Linda:

I just left you a VM re the sheet vinyl at J. John. CONTRACTOR CANNOT REMOVE UNTIL WE TEST FOR ASBESTOS.

I also need to know your revised scope for job to determine if we need to do a hazardous materials survey for the entire portable.

What is existing material you are removing from the counter in Rm. 42?

The District prefers Formica or Wilson Art brands, in solid colors. (Not, however, the more expensive material that has the color all the way through the laminate.) We often use Formica 920 Almond, as it is always available. If you are going to choose a color, I can give you a sample of the blue tweed carpet tile.

Thanks,
Ann, 4409

Original Message -----

From: Linda Cameron <lcvfa@easystreet.com>
To: 'Ann White' <annwhite@pps.k12.or.us>
Cc: Doug Nelson (E-mail) <dnvfa@easystreet.com>
Sent: Wednesday, August 07, 2002 1:05 PM
Subject: RE: Specifications

> Replacement sheet vinyl is required at James John's boy's restroom. The
> laminate replacement is for the entire counter in room 42. The counter top
> is in very bad shape. Due to schedule I would like to pick what is
> available, what brand is preferred?
> Thanks, Linda

> -----Original Message-----

> **From:** Ann White [mailto:annwhite@pps.k12.or.us]
> **Sent:** Wednesday, August 07, 2002 9:10 AM
> **To:** Linda Cameron
> **Cc:** randall johnston; Jerry Lively; Richard Wong; Jeanne Pace; Deborah
> Berry
> **Subject:** Re: Specifications
> **Importance:** High

> Linda:

> The District has Armstrong Excelon tile available which we will sell to
the

> contractor. The contractor can pick it up at Madison H.S. after we
receive

> a written order for the amount needed and billing information (or
chartfield

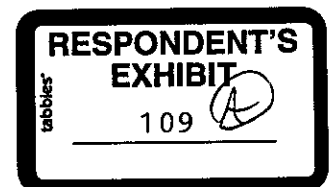
> if Headstart is purchasing directly). The color is 51858, a white tone;
45

> SF per-case. To match the other classrooms at Kelly Center, the
contractor

> will have to purchase from an outside vendor Accent colors 51903 and
51907.

> These blue and mauve tones go very well with the carpet tile.

>



4 1

> Where are you proposing to put sheet vinyl? I do not recall it in the
> projects.
> Where are you installing the plastic laminate? Are you trying to match
> existing?
>
> The 18" x 18" carpet tile is Shaw Industries "Networx" blue tweed. You
can
> see it in the existing Headstart classrooms at Kelly Center. Our Laborers
> can haul the tile to the various sites. We will need the following:
> Work request with billing information (or chartfield if Headstart is
paying
> directly for the hauling) Fax to Jerry Lively at 916-3161
> List of sites and room numbers where tile is to be delivered.
> SF of carpet tile required for each site
> Date needed at each site.
>
> I am faxing you the Networx Installation guidelines, which the installer
> must follow. The carpet tile was donated to the District and requires
> sorting (or culling) prior to or during installation to assure only good
> tile are installed in the classroom. (An occasional tile may be stained or
> sun-bleached. Discard these). The District will deliver sufficient extra
> tile to allow for culling.
>
> Base is FLEXCO 4", WF1 (Black)
> Reducer is Burke-Mercer Imperial Carpet Reducer. It must be cut down to
1/8
> inch where the carpet abuts the vinyl tile. Match base color.
>
> Hope this helps.
> Ann, 4409
>
>
>
>
> ----- Original Message -----
> From: Linda Cameron <lcvfa@easystreet.com>
> To: Ann White (E-mail) <annwhite@pps.k12.or.us>
> Cc: Doug Nelson (E-mail) <dnvfa@easystreet.com>
> Sent: Wednesday, August 07, 2002 8:42 AM
> Subject: Specifications
>
>
> > Ann,
> > I need the following information before the end of the day.
> > District standards for for VCT, Sheet Vinyl and Rubber base. Is there a
> > specification or name brand that the District prefers to use -armstrong,
> > etc.
> > Are there District standard colors?
> > When can the District drop off to site the 12'x12' carpet tile the
> District
> > agreed to supply to Head Start with? Do you have installation
instructions
> > for this item?
> > What color is this carpet tile?
> > District standard for P-lam and colors- nevamar?
> >
> > Thanks, the contractors for the Head Start and Special Ed will be
starting
> > demo later this week and want to order supplies today/ tomorrow.
> >
> > Thanks, Linda
> >
>

VICKERS/FOSTER & ASSOCIATES Construction Program Management, Inc.

August 8, 2002

James Anderson
Cedar Mills Construction Company
10750 SW North Dakota Street
Tigard, OR 97223

Re: **Notice to Proceed** - James John Elementary School

CONTRACT AMOUNT: \$23,100.00

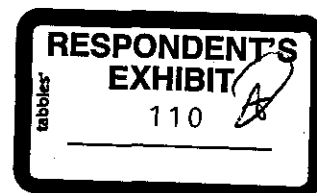
Portland Public School District has authorized Vickers/Foster & Associates CPM, Inc. as the Owners representative to issue to Cedar Mills Construction Company the following: you are hereby notified to proceed with the construction of the above referenced project.

Sincerely,
VICKERS/FOSTER & ASSOCIATES CPM, INC.



LINDA G. CAMERON
Project Management Consultant

Cc: Brenda Caldwell, PPS



CM 2033

ATTACHMENT 2

CEDAR MILL CONSTRUCTION COMPANY LLC

Meeting all phases of your construction needs

August 14, 2002

Vickers/Foster & Associates
Attn: Linda Cameron
901 SE Oak St., Suite 204
Portland, OR 97214

FAXED
8/14/02
FAXED
8/15/02
TO DEB

Re: James John Elementary School

Linda,

On Monday, August 12th we commenced with work under your direction at James John Elementary School. The scope of this contract was some carpet and vinyl flooring removal and vinyl and VCT as replacement, in addition to other work.

On Monday, August 12th you went by the job site and spoke to the foreman of the flooring contractor. At this time you handed him ID badges and informed him that environmental asbestos testing was going on and would continue through Tuesday, August 13th.

You called us on Tuesday, August 13th at approximately 12:00 pm to inform us that the flooring in the boys' restroom had tested positive for asbestos. This was the first we had heard about any asbestos or asbestos testing. We were never informed of this and had not received any site reports from this building. At this time I informed you that the flooring had been removed because when I was on site at approximately 9:00 am most of the vinyl had been removed. Due to this site observation and the progress being made at that time, I was unaware of any continuing work being done in the boys' restroom after our phone conversation.

You claim that you had duly informed the flooring contractor not to do any work in that area. We contest this statement in that why would anyone choose to remove flooring of that type and of that difficulty if there was a potential of asbestos when that work would or could be performed by an abatement contractor? This would be directing fault at a company who performs this type of work daily. We find it odd that they would continue working if given direction otherwise when blatant disregard for environmental issues could jeopardize their livelihood.

We feel there has been a lack of written and verbal information given for the conditions of the building. Any abatement issues should have been clearly documented and handled long before we were to begin our work. We feel that no one party is fully responsible for this error but feel that this situation was improperly handled. More information and notification of hazardous materials



CM 2005

CEDAR MILL CONSTRUCTION COMPANY LLC

Meeting all phases of your construction needs


should have been issued prior to us beginning any work with proper site reports as required.

Although we deal with hazardous materials and asbestos on a regular basis, the type of vinyl being removed is not typical of asbestos. Also the specification documents usually cover items which are available to test and direct concern to hidden areas.

Our subcontractor did use an unauthorized dumpster to remove their demo items. We will address this as a contractor/sub-contractor issue

Due to the lack of coordination and communication we have environmental problems and closure of the work area through the end of Thursday, August 15th with demands of completion still set for August 16th. We feel that these demands are unreasonable and an extension of time is necessary to complete the project. Mediation may be necessary if these issues cannot be resolved in a reasonable manner.

We regret having to write this type of letter and forward such information but we feel obligated and responsible to cover ourselves in a situation like this.



James Anderson
Owner

Cc: Pam Brown, PPS
Bob Enninga, PPS
Don Larson, PPS
Brenda Caldwell, PPS

CM 2006

Addison Interiors, Inc

2776 SE 84th Avenue - Portland, OR 97266
Phone: (503) 777-1383 Fax: (503) 777-4396

March 11, 2003

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

RECEIVED
MAR 12 2003

OFFICE OF COMPLIANCE
AND ENFORCEMENT
DEPARTMENT OF ENVIRONMENTAL QUALITY

Re: Notice of Violation and Assessment of Civil Penalty
No. AQ/AB-NWR-02-168
Multnomah

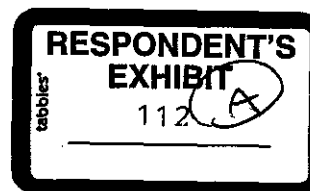
In response to your Notice of Violation and Assessment of Civil Penalty, we are requesting a hearing to appeal this notice as is provided in Section IV of the notice.

Our written answer to each allegation is as follows:

In the first paragraph of cover letter it was stated that we removed vinyl flooring from classrooms and the boy's restroom on August 13, 2002. The only vinyl we removed was in the boy's restroom at the general contractor's request. We saw no reason to tear up the vinyl flooring as the old flooring was glued down so tightly. Our plan was to lay the new flooring over the old flooring. The general contractor informed us that we needed to tear up the old flooring, so we checked with Dupont (who hired us as the subcontractor to lay the new flooring) and was told to do as the general contractor requested. Our original work order with Dupont never included anything about tearing out old flooring. When the general contractor made their request to tear out the old flooring in the boy's bathroom, no mention was made that any testing had been done for asbestos.

In the second paragraph of cover letter it was stated that our employees carried broken and damaged asbestos-containing vinyl flooring out to a dumpster through the school hallway. The janitor at the school and other laborers for the general contractor told our laborers to put the old torn out flooring in the dumpster. We normally haul out our own garbage from the jobs we do. Our employees did not know at that time the flooring they were carrying out was asbestos-containing vinyl flooring.

In the third paragraph of cover letter you state that each contractor engaged in an asbestos abatement project must be licensed by the Department. And we do follow that rule. When we are doing a project that we know contains asbestos, we hire a contractor that is licensed by the department to do the abatement. Addison Interiors was not the general contractor on this project. If we were, we would have tested for asbestos. We were the subcontractor hired by Dupont. The bathroom we were removing the flooring in was



AI 3001

located in a modular building. Because of the location, we did not suspect it would contain asbestos. Finally, the general contractor never told us that the location had been tested for asbestos. If we had known the vinyl flooring contained asbestos, we would never have torn out the old flooring.

In the fourth paragraph of cover letter, we did not properly package and label the asbestos-containing waste material because we did not know that the vinyl flooring that we tore up and threw away contained asbestos.

I hope that our answer shows that we as a subcontractor came into the middle of a project to do a small part of the overall project. We rely on the general contractor to make sure all laws concerning the project are being followed including asbestos testing and removal. We were hired by Dupont to just lay down new flooring for certain areas at James John Elementary School. When asked by the general contractor to tear up the old flooring in the boy's bathroom, we resisted as the flooring was glued down so tightly. We told the general contractor that our plan was to put the new flooring over the old flooring. The general contractor told us to tear up the old flooring in the boy's bathroom. We checked with Dupont and were told to do as the general contractor asked. At no time were we told that the flooring contained asbestos or that asbestos testing needed to be done or was done. The boy's bathroom was located in a modular building where we did not suspect that the flooring could contain asbestos. If we had known that the flooring contained asbestos, we would not have torn out the flooring as we are not licensed in asbestos abatement projects. Since our employees did not know they were dealing with asbestos-containing waste material, they took no special precautions in the disposal of the torn up flooring. Because of these facts we do not feel that we should receive a civil penalty and hope that we can resolve this matter at a contested case hearing.

Sincerely,



Diane Addison
President of Addison Interiors, Inc.

Tues. afternoon - Brad
Wida called 1:30pm and ~~Brad~~^{Brad}
say workers still there.
Brad told them to stop
and worker packed up & left.

8-15-07
Brad 503-705-0514

LEFAY / sub. may be named ~~Dupont~~

8:42am

RHINO Flooring

one working on Floor - another working on adjacent Floors in same Bldg.
4-worker at site

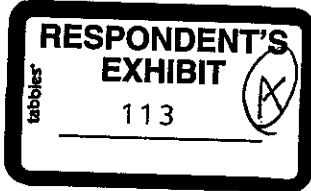
(Tues afternoon)
Jim Anderson said it was no big deal because they were using wet methods.

Jim Anderson
9:45 AM → left message
10:30 left message 503-209-4313

Didn't hear about asbestos until ~~Tues~~^{Tues} 10 am
Dupont Flooring
STEVE ADISON
503-380-7630

Told 12pm Tues. already Done w/Floor.

Says. none told anyone about asbestos until Tues. 12pm.





Apex Environmental
CCB #146557-WBF/ESB/DBE

September 17, 2002

Ms. Linda Cameron
Vickers/Foster & Associates
901 SE Oak Street
Suite 204
Portland, OR 97214

RE: James John Annex (Portable Headstart)

Dear Ms. Cameron:

Attached are invoices associated with the asbestos abatement at the James John Annex. I have assumed that you will forward the Performance Abatement and LOI invoices to the School District. We have already sent the Apex invoice directly to the school. Below is a summary of services this summer at the school associated with the roofing removal, cleanup of sheet flooring, removal of sheet flooring and replacement of subfloor.

Contractor	Clean up following G.C. impact/Monitoring	Removal of sheet flooring	Replacement of Subfloor	Roofing Removal
Apex	3,825.75	1,081.00		
LOI	2,326.40	3,349.99		507.92
PAS			934.38	
Total Costs	6,152.15	4,430.99	934.38	507.92

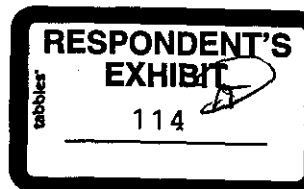
Be advised that Apex will have one more billing to the District to complete the closeout report. If you have any questions or require additional information please feel free to contact me.

Sincerely,

Tulla R. Stocker
President

Cc: Andy Fridley, Portland Public Schools

Apex Environmental Consulting Services, Inc.
PO Box 1445
Wilsonville, OR 97070
(503) 682-9737
Fax: (503) 682-0525



CM 2041



Lake Oswego Insulation Co.

Environmental Services

0425 S.W. Iowa St. - Portland OR. 97201-3625 (503) 245-6460 Fax (503) 245-4201

MEMORANDUM

9/16/02

TO: Tulla R. Stocker, Apex Environmental, Fax 503-682-0525

FROM: Ken Brien, Lake Oswego Insulation Co.

Project: FPS James John Elementary, Hallway clean up, Boy's bathroom floor abatement, Dumpster clean out, Roof removal for penetrations and Bag hauling and clean up from crawl space.

LOI Job #: 024015

RE: Cost summary for: 8/14, 8/15, 8/20, 8/21 & 8/22/02

8/14/02

Crew mobilizes to site and performs HEPA vacuuming and wet wiping of exposed surfaces of all contents in hallway.

Crew is working on overtime, Laborers Group 3 labor rate.

Kathy Critchfield	5.5 hours	\$74.56	\$410.08
Doug Morgan	4.5 hours	\$69.31	\$311.89
Joe Arnold	4.5 hours	\$69.31	\$311.89
Jesus Lopez	2.5 hours	\$69.31	\$173.27
Jose Lopez	2.5 hours	\$69.31	\$173.27
Juan Lujan	2.5 hours	\$69.31	\$173.27
Juan Martinez	2.5 hours	\$69.31	\$173.27
Isaias Cacatzum	2.5 hours	\$69.31	\$173.27

Labor Total: \$1,900.21

DEQ Notice \$412.50

Material: \$8.69

Disposal: \$5.00

Day Total \$2,326.40 \$2,326.40

8/15/02

Crew performs removal of sheet floor goods and a single layer of wood underlayment and decontamination of all surfaces in boy's bathroom. Prepare space for TEM sampling. Clean out school's dumpster.

Crew is working on overtime, Laborers Group 3 labor rate.

Kathy Critchfield	6 hours	\$74.56	\$447.36
Don Meng	5.5 hours	\$69.31	\$381.20
Jesus Lopez	5.5 hours	\$69.31	\$381.20
Jose Lopez	5.5 hours	\$69.31	\$381.20
Jose Macias	6 hours	\$69.31	\$415.86

Juan Martinez	6 hours	\$69.31	\$415.86	
Isaiah Cacatzom	5.5 hours	\$69.31	<u>\$381.20</u>	
	Labor Total:		\$2,803.88	
	Material:		\$151.91	
	Disposal:		<u>\$165.00</u>	
	Day Total		\$3,120.79	\$3,120.79

8/20/02

Shop crew on site to tear down containment at bathroom and demobilize equipment.

Crew is working on straight time, Laborers Group 3 labor rate.

Greg Randol	2 hours	\$54.80	\$109.60	
	Disposal:		<u>\$10.00</u>	
	Day Total		\$119.60	\$119.60

8/21/02

Abatement supervisor on site to perform selective removal for roof penetrations and haul bags and clean up in crawl space.

Crew is working on straight time, Laborers Group 3 labor rate.

Joe Arnold	8 hours	\$54.80	\$438.40	
	Material:		\$44.52	
	Disposal:		<u>\$25.00</u>	
	Day Total		\$507.92	\$507.92

8/22/02

Abatement supervisor mobilizes to site. Talked to contractor regarding abatement for sink in Girl's bathroom. Waited for instructions. Contractor advises that abatement is not required. Abatement supervisor off site.

Crew is working on straight time, Laborers Group 3 labor rate.

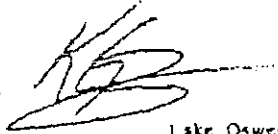
Joe Arnold	2 hours	\$54.80	\$109.60	<u>\$109.60</u>
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TOTAL DUE

\$6,184.31

You can break down costs as needed. Call with any questions. Please advise on billing address and procedures.

Ken



Lake Oswego Insulation Co.



PERFORMANCE ABATEMENT SERVICES
 13800 NE 10th Avenue, Vancouver WA 98665
 Phone: 360-574-8400 Fax: 360-574-7607

Progress Billing

Invoice Number : 012301200

PORTLAND PUBLIC SCHOOLS
 501 N. DIXON ST.
 PORTLAND, OR 97227

Invoice Date September 16, 2002	Terms Net 30
PAS Location Vancouver, WA	PAS Job Number 02-01-23-0500-9548
PAS Customer Acct. No. 02-01-23-16570	

Job Name PORTLAND SCHOOLS ANNUAL	Billing Number 1	Period 09/01/02 - 09/30/02	Customers Job Number	Purchase Order No.
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REPLACE SUBFLDOR WBOYS BATHROOM. SEE ATTACHED DOCUMENTS.

- James John

Original Contract Amount	\$	934.38
Previously Billed	\$	
This Period	\$	934.38
Total To-Date	100.000%	\$ 934.38
Sub-Total	\$	934.38
Less Previous Invoices	(\$)

TOTAL AMOUNT DUE THIS INVOICE: \$ 934.38

Remit to : PERFORMANCE ABATEMENT SERVICES
 Performance Contracting, Inc.
 P.O. Box 44237
 San Francisco, CA 94144

Trans No.	Date	Cust#	St. City-City	Job	Invoiced	Retention	Gross	Tax	Net
P 012301200	09/16/02	012316570	00000000	9548	934.38		934.38		934.38

Job File



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

September 30, 2002

CERTIFIED MAIL NO. 7001 1140 0002 3546 ³⁹⁹~~3955~~

Princeton Property Management, Inc.
Gary P. Compa, Registered Agent
520 SW Yamhill St., Suite 600
Portland, OR 97204

Re: Notice of Violation and Assessment of Civil Penalty
No. AQ/AB-NWR-02-139
Multnomah County

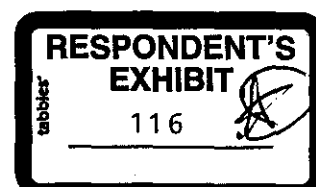
On June 17, 2002, the Department of Environmental Quality (the Department) received a complaint that there was asbestos-containing material in the parking lot and in areas where children were playing at the Bar Berry Village apartments. The apartments are located at 224 SE 188th Avenue in Portland, Oregon (the Property), and managed by Princeton Property Management, Inc. (Princeton).

Dave Wall, of the Department, inspected the Property and found that Princeton's contractor, Blue Line Builders LLC (BLB), had performed renovation work between May 28, 2002, and June 1, 2002, on thirty-seven (37) entryway ceilings in several buildings on the Property. During the work, BLB allowed popcorn ceiling debris and dust to be distributed throughout the complex. Mr. Wall took samples of the popcorn ceiling debris, and laboratory analysis revealed that the material contained 4% chrysotile asbestos.

Mr. Wall also observed another contractor, Pacific Premier Installation (PPI) in the process of removing vinyl flooring from the kitchen and bathroom of one of the apartments. The material was strewn over most of the apartment and the entry just outside of the apartment. Mr. Wall took samples of the flooring, and laboratory analysis revealed that the vinyl flooring from the kitchen contained 30% chrysotile asbestos.

Oregon Revised Statutes (ORS) 468A.715(1) and Oregon Administrative Rules (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. BLB and PPI are not licensed to perform asbestos abatement projects. Princeton's failure to hire licensed asbestos abatement contractors to perform asbestos abatement projects on buildings it operates is a Class I violation of Oregon's environmental laws.

The failure by Princeton's contractors to properly package and label the ACM resulted in the accumulation of asbestos-containing waste material (ACWM), which is a violation of OAR 340-248-0205(1). 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 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. Princeton 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.

This is not the first time Princeton has been cited with violations of asbestos laws. On December 7, 2000, the Department sent Princeton a Notice of Noncompliance (NON) concerning an incident in which Princeton hired a repair person to repair moisture-damaged asbestos-containing popcorn ceiling. The NON informed Princeton that as the authorized agent for the property owner it must avail itself of relevant information concerning the presence of building products that could contain asbestos. The NON warned Princeton that its failure to hire a licensed asbestos abatement contractor to perform an asbestos abatement project was a significant violation of Oregon's environmental laws, and a similar violation may result in formal enforcement action.

In the enclosed Notice, I have assessed a civil penalty of \$7,200. The amount of the penalty was determined using the procedures set forth in OAR 340-012-0045. The Department's findings and civil penalty determination are attached to the Notice as Exhibit 1.

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

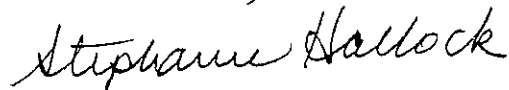
Copies of referenced rules are enclosed. Also enclosed is a copy of the Department's internal management directive regarding civil penalty mitigation for Supplemental Environmental Projects (SEPs). If Princeton is interested in having a portion of the civil penalty fund an SEP, please review the enclosed SEP directive. Exceptional pollution prevention could result in partial penalty mitigation.

If Princeton 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. Princeton's request to discuss this matter with the Department will not waive the company's right to a contested case hearing.

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

If Princeton 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: Dave Wall, Northwest Region, DEQ
Audrey O'Brien, Northwest Region, DEQ
Neil Mullane, Northwest Region, DEQ
Air Quality Division, DEQ
Oregon Department of Justice
Kathy Johnson, U.S. Environmental Protection Agency, Seattle
Environmental Quality Commission
Multnomah County District Attorney

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:	)	NOTICE OF VIOLATION
4	PRINCETON PROPERTY MANAGEMENT	)	AND ASSESSMENT OF
4	Inc.,	)	CIVIL PENALTY
5	An Oregon corporation,	)	No. AQ/AB-NWR-02-139
6	Respondent.	)	MULTNOMAH COUNTY

7 I. AUTHORITY

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

13 II. VIOLATIONS

14 1. On or about May 28, 2002, through June 17, 2002, Respondent allowed
15 unlicensed persons to perform asbestos abatement projects on a facility it operates, in violation
16 of ORS 468A.715(1) and OAR 340-248-0110(2). Specifically, Respondent hired Blue Line
17 Builders (BLB) to perform an encapsulation project on asbestos-containing popcorn ceilings at
18 the Bar Berry Village apartments, located at 224 SE 188th Avenue in Portland, Oregon (the
19 Property). Respondent also hired Pacific Northwest Floor Covering (PNFC) to remove asbestos-
20 containing vinyl flooring from the kitchen and bathroom of one of the apartments at the Property.
21 PNFC then subcontracted with Pacific Premier Installation (PPI), and PPI removed the vinyl
22 flooring. BLB, PNFC and PPI were not licensed to perform asbestos abatement projects.
23 Respondent manages the Property, and it allowed BLB, PNFC and PPI to perform asbestos
24 abatement projects on the Property. According to OAR 340-012-0050(1)(u), this is a Class I
25 violation, because the asbestos abatement project resulted in the potential for public exposure to
26 asbestos or release of asbestos into the environment.

27 /////

1 2. On or about May 28, 2002, through June 20, 2002, Respondent openly
2 accumulated asbestos-containing waste material (ACWM) in violation of OAR 340-248-0205(1).
3 Specifically, Respondent's agents performed asbestos abatement projects on asbestos-containing
4 popcorn ceilings, as well as asbestos-containing vinyl flooring, at the Property. Respondent then
5 allowed the asbestos-containing popcorn ceiling debris and vinyl flooring to openly accumulate
6 on the Property. This is a Class I violation according to OAR 340-012-0050(1)(q), because such
7 storage or accumulation of ACWM caused a potential for public exposure to asbestos or release
8 of asbestos into the environment.

9 III. ASSESSMENT OF CIVIL PENALTIES

10 The Director imposes a civil penalty of \$7,200 for Violation 1 cited in Section II. The
11 findings and determination of Respondent's civil penalty pursuant to OAR 340-012-0045 are
12 attached and incorporated as Exhibit No 1.

13 IV. OPPORTUNITY FOR CONTESTED CASE HEARING

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

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

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

27 /////

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

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

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

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

11 V. OPPORTUNITY FOR INFORMAL DISCUSSION

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

15 VI. PAYMENT OF CIVIL PENALTY

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

21
22
23 9-30-02
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 persons other than licensed asbestos abatement contractors to perform asbestos abatement projects on a facility Respondent operates, in violation of Oregon Revised Statutes (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 major pursuant to OAR 340-012-0090(1)(d)(A), because the amount of asbestos-containing waste material (ACWM) involved was more than 160 square 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 \$6,000 for a Class I, major 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 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 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 unlicensed persons to conduct asbestos abatement projects. Although Respondent was previously notified by the department by a Notice of Noncompliance dated December 7, 2002, that popcorn ceiling often contains asbestos, Respondent did not verify whether asbestos was present through an asbestos survey of the property, and allowed unlicensed contractors to perform the asbestos abatement.

"C" is Respondent's cooperativeness in correcting the violation and receives a value of -2 pursuant to OAR 340-012-0045(1)(c)(E)(i), because Respondent was cooperative and took reasonable efforts to correct the violation.

"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:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 2 + 2 + -2)] + \$0 \\ &= \$6,000 + (\$600 \times 2) + \$0 \\ &= \$6,000 + \$1,200 + \$0 \\ &= \$7,200 \end{aligned}$$

WALL Dave

From: WALL Dave
Sent: Monday, December 16, 2002 10:01 AM
To: SMITH Bryan
Cc: WALL Dave; OBRIEN Audrey
Subject: RE: Cedar Mill

John James School
7439 N Charleston Ave.
Portland, Oregon

- 1) Modular class rooms are not exempt from the surveys, but the school opted to require their representatives and contractors to ensure that no asbestos was present before work is done. This is in the District's contracts with these entities.
- 2) The AHERA survey requirements allow schools to assume the presence of asbestos and the contractual obligation to the management company and contractors is part of that.
- 3) Asbestos identification for roofing and flooring materials may not be required as part of an AHERA type survey anyway. The way EPA looks at flooring material has more to do with its condition than its asbestos content or friability.

The cost to correctly remove the 220 square feet of asbestos containing flooring at the school was approximately \$2100.00, including the DEQ notification fee. The cost is high for two major reasons. TEM analysis is required for air clearances at \$70 -\$250 per sample (they need 5) and school projects require prevailing wages which means workers get \$21-\$24 per hour including benefits. (normally workers get between \$9 & \$12 per hour.

The cost to the school to clean up the site was \$6700.00. This involve wet wiping and vacuuming the hallway that had table, chairs and books in it. The clean up was labor intensive.

I have not been able to find out the amount Addison originally charged to the school district to remove and replace the loor, but I'm sure it was a lot less than the \$2100.00 that an abatement contractor would have charged to remove it as asbestos containing material.

-----Original Message-----

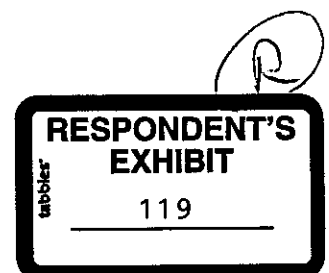
From: SMITH Bryan
Sent: Tuesday, December 10, 2002 11:59 AM
To: WALL Dave
Subject: Cedar Mill

Is there any economic benefit to cedar that we should be assessing? Your referral says "unknown," but Anne and Les have been unwilling to take "no benefit" or "unknown" for an answer lately, so can you please provide me with a reason why there was or was not any EB?

Did Cedar pay for the clean up, and if so, was the clean up cost greater than the money they saved by hiring Addison instead of a licensed contractor (for example). If they didn't pay for clean up, is there a reasonable way to figure out how much they saved.

This is a general comment that should apply to future cases, as well. I don't mean to add more work to your referrals, but sooner or later the EB issue will always come up. Thanks, Bryan.

ALSO, we talked about why the school didn't perform an asbestos survey, right? Wasn't it because the modular classroom was exempt from that requirement, and so we don't want to penalize the school (to make a long story short)?



To: **OFFICE OF COMPLIANCE AND ENFORCEMENT**
Enforcement Referral for violations of open burning, on-site sewage disposal, and AQ, WQ, SW violators who are not permittees.

Violator: Cedar Mill Construction

County: Multnomah

Program: AQ

Region: ER

Recommended Enforcement Action: CP

Attachments:

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

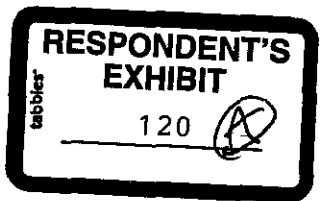
CLEARANCES: David Wall *David Wall* 8-27-02
Prepared by Date

Audrey O'Brien *Nancy Cardwell for:* 8.27.02
Manager Date

Neil Mullane *Neil Mullane* 8/29/02
Administrator Date

ENFORCEMENT SECTION USE ONLY

Case Number: AQ/AB-NWR-02-156
Review By & Date: PRICE 9/16/02
Assigned to & Date: SMITH 9/16/02
Investigation Completion Date: 8/23/02
NON Date: 8/27/02
Violation(s): Improper asbestos abatement.
Location: Portland, Multnomah Co.
Comments: _____



INVESTIGATION DETAILS:

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

Cedar Mill Construction, Registered Agent, James E. Anderson, 10750 SW North Dakota St, PO Box 23214, Tigard, Oregon 97281-3214

2. In general, what are the violations?

Dry removal of asbestos, improper storage, not hiring a licensed contractor, improper disposal, non-notification.

3. What did you observe?

During my inspection I found asbestos containing sheet flooring material in a school dumpster, asbestos containing sheet flooring that matched in the boys restroom in a classroom modular building west of the main school building, evidence that the material was removed dry and transported out a hall and over to the dumpster.

4. When did the violation(s) occur?

August 13, 2002.

5. Where did the violation(s) occur?

At the James John School located at 7439 N Charleston, Portland, Oregon.

6. Where did the violation occur on the property?

In the boys restroom in the modular classroom.

7. Why did the violation(s) occur?

Negligence.

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

OAR 340-248-0110(3), 340-248-0205(1), 340-248-0260, 340-248-0270(3), 340-248-0270(5), 340-248-0280(2).

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

Inspection report detailing my inspection and subsequent investigation, photos, a letter from Cedar Mill Construction to the management company Vickers/Foster, diagram, sample analysis, and NON's issued to violators.

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

This is a school closed for the summer. The asbestos containing material was transported from the boy's restroom through the hall and outside the building to a school dumpster causing potential exposure to the environment. Desks and other school articles were stacked in the hall next to the restroom where they could also have been contaminated.

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

Yes, I talked with James Anderson, owner of Cedar Mill Construction. Anderson said he was the general contractor on the project and he hired Addison Interiors as a subcontractor to remove and replace flooring in the modular classroom. Anderson says he did not know there was asbestos in the structure, but did receive bid documents from the school district that state all vinyl floors are suspect to contain asbestos. Anderson said Addison employees removed the floor. Anderson claims he did not talk to Vickers/Foster or Apex environmental about asbestos until August 13, 2002 after the flooring had been disturbed.

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

Cleanup was initiated and completed through the School District.

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

Yes.

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

Unknown.

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

No.

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

Suggest that Cedar Mill Construction obtain some education about identifying suspect asbestos materials.

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

Unknown.

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

During my investigation some conflicting information was given by the contractors involved Cedar Mill Construction, Addison Interiors, Inc. and by the management company Victors/Forster & Associates. Victors/Foster identified suspect asbestos material on August 9, 2002 and hired Apex Environmental to test flooring in classrooms and the boy's restroom of the modular classroom at the school. Victors/Foster claims they told Cedar Mill Construction about the testing in a phone message on August 9th and during a phone conversation with Cedar Mill Construction owner James Anderson on August 12, 2002. Both contractors deny receiving any information about asbestos in the flooring until Addison employees were told to stop work by Apex Environmental on August 13, 2002 after the flooring had already been disturbed. A letter written to Victors/Foster from James Anderson on August 14, 2002 may indicate that Cedar Mill Construction did know.

(document name)

Doug Nelson

From: Don Larson [dlarson2@pps.k12.or.us]
Sent: Friday, August 16, 2002 8:10 AM
Cc: afridley@pps.k12.or.us; Patrick Wolfe
Subject: Brenda Caldwell; Bob Enninga; Doug Nelson
RE: James John

Vickers/Foster should absorb the costs into the project if the budget can accommodate. If not it would be billed to the bond as hazardous abatement. Ultimately any cost over and above what would have been the normal anticipated cost for routine abatement should be borne by the contractor in this case. (as I understand it their mistakes made it a more costlier process than was necessary) I doubt strongly if that will happen as I hear DEQ plans to fine them to the tune of about \$10k. I will leave this to Doug and Bob to work out.

-----Original Message-----

From: Andrew Fridley [mailto:afridley@pps.k12.or.us]
Sent: Thursday, August 15, 2002 4:53 PM
To: Donald Larson; Patrick Wolfe; Chris Boyce
Subject: FW: James John

All clear at James John. Construction can continue.
Now, who pays?
Andy

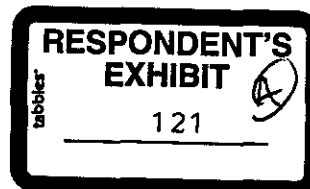
-----Original Message-----

From: Tulla Stocker [mailto:ts1018848@onemain.com]
Sent: Thursday, August 15, 2002 4:19 PM
From: Dave Wall
Cc: lcvfa@easystreet.com; afridley@pps.k12.or.us
Subject: James John

We have received verbal air results for samples collected within the classrooms and corridors of the James John Annex. Air samples were analyzed using TEM analysis by RJ Lee Group and were collected prior to the cleaning performed by LOI. We have cleared the corridors and classrooms, excluding the boy's bathroom for the continuance of the project. We have cleared these areas based upon the following:

1. All dust samples throughout the corridors and classrooms tested negative for asbestos.
2. TEM air results were well below the AHERA clearance criteria.
3. LOI thoroughly wet wiped all areas within the corridors suspected to have been impacted by the removal of the sheet flooring.

LOI will continue to abate the boy's restroom and dumpster this evening. Clearance will be received by Monday morning.



PPS
JAMES
John
18.0

SUBMIT NO ORIGINALS

DISTRICT USE ONLY

CHECK BOX THAT APPLIES

LESS THAN \$ 25,000.00

\$ 25,000.00 OR MORE*

CONTRACT # 781/11566

VENDOR # 4381

*BOARD ACTION: 1901

6-25-01

PERSONAL / PROFESSIONAL SERVICES CONTRACT

For Dollar Amounts of \$2,000.00 or Greater

Agreement made and entered into as of the date of the last valid signature by and between School District No. 1, Multnomah County, Oregon, a quasi-municipal corporation of the State of Oregon (hereinafter called "DISTRICT") and Apex Environmental Consulting Services, Inc. (hereinafter called "CONTRACTOR").

TERM: The term of this agreement shall commence: July 1, 2001 and continue until: June 30, 2003

Recognizing the District has need of the services which CONTRACTOR is competent to provide, CONTRACTOR agrees to perform the following personal service(s):

BOXES 1,2 AND 3 MUST BE COMPLETED IN DETAIL TO VALIDATE CONTRACT

1. DESCRIPTION OF SERVICES: WILL SERVICES RESULT IN DIRECT UNSUPERVISED CONTACT WITH STUDENTS? YES NO
IF YES, SEE INSTRUCTIONS FOR OBTAINING A CRIMINAL RECORDS CHECK AT THE PARAGRAPH ENTITLED "SECURITY."

See Section 2 of the attached RFP "Environmental Consulting Services" and the vendor's

proposal.

2. AMOUNT OF CONTRACT: \$100,000.00 PAYMENT TERMS: Monthly invoice

3. OTHER CONDITIONS: (if no special conditions, write "None") None

This contract and any amendments to this contract will not be effective and no work shall begin until approved by the appropriate persons listed below. Both parties understand and agree to the TERMS AND CONDITIONS described below and on Page 2 of this contract.

DISTRICT	
ADMINISTRATOR <u>X Susan Walsh</u>	DATE <u>6/27/01</u>
GRANT AUTHORIZATION (If Applicable) <u>X</u>	DATE
OTHER AUTHORIZATION (If Applicable including IT) <u>X Heidi Chauls</u>	DATE <u>6/1/01</u>
SENIOR MANAGEMENT LEVEL <u>X Pamela Q. Brown</u>	DATE <u>6/28/01</u>
DEPUTY CLERK OR DESIGNEE <u>X Lynn Ward</u>	DATE <u>8/6/01</u>
CONTACT PERSON (PRINT OR TYPE) <u>Andrew Fridley</u>	TELEPHONE NUMBER <u>916-2000</u>

CONTRACTOR			
BUSINESS NAME <u>Apex Environmental, Inc</u>		CHECK APPROPRIATE BOX: <input type="checkbox"/> Individual / Sole Proprietor <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other:	
ADDRESS <u>PO Box 1445</u>			
CITY <u>Wilsonville</u>	STATE <u>OR</u>	ZIP <u>97070</u>	TAX ID NUMBER OR SSN <u>91-1847212</u>
AUTHORIZED SIGNATURE <u>X Tulla Stocker</u>		DATE <u>6/27/01</u>	
PRINTED NAME / TITLE <u>Tulla Stocker, President</u>			
CONTACT PERSON (PRINT OR TYPE) <u>Tulla Stocker</u>		TELEPHONE NUMBER <u>503-682-9737</u>	

CHARTFIELD STRINGS TO BE CHARGED:

ACCOUNT	FUND	ORG	PROGRAM	SUB-CLS	PRJ / GRT
<u>538990</u>	<u>101</u>	<u>5506</u>	<u>25422</u>	<u>99999</u>	

AMOUNT \$ 100,000.00 5595 25411

ACCOUNT	FUND	ORG	PROGRAM	SUB-CLS	PRJ / GRT

AMOUNT \$

TERMS AND CONDITIONS FOR PERSONAL/PROFESSIONAL SERVICES CONTRACT

(Any alteration to the contract language must be reviewed by the General Counsel)

Independent Contractor Status: Contractor is an independent contractor solely responsible for the work. Contractor, its subcontractors and employees shall not be deemed employees of the District. Contractor shall state and local taxes and fees applicable to payments for services under this contract.



Conflict of Interest: Contractor declares that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further declares that in the performance of this contract no person having any such interest shall be employed by Contractor.

Indemnification: Contractor assumes responsibility for and agrees to defend and hold harmless the District, its officers, agents and employees from and against any and all claims, suits and actions of any nature arising out of the negligent acts or omissions of Contractor, Contractor's employees, agents and subcontractors in the performance of this contract.

Compliance with Applicable Law: Contractor agrees to comply with all federal, state and local laws applicable to the work under this contract, and all regulations and administrative rules established pursuant to those laws. Contractor specifically agrees to comply with the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.334 pertaining to payment of laborers and hours of labor. Contractor agrees to keep all student records confidential in accordance with state and federal statutes and rules governing confidentiality of student education records. Contractor agrees to comply with all federal and state laws prohibiting discrimination on the basis of race, sex, national origin, religion, age or disability.

Security: Contractor agrees to abide by all District rules and regulations while upon District property. Unsupervised access to students will require obtaining identification through School Police, which requires fingerprinting and a criminal records check as required by law. Contractor will be responsible for all costs associated with this requirement. If approved access to students is granted, all Contractor personnel shall be required to prominently display this identification while upon District property. All property issued will remain the property of District and upon termination or expiration of contract, Contractor will return identification and other property to District.

Licenses: Contractor certifies that it holds all business registration or professional occupation licenses required by law or local government ordinances to conduct the service or business.

Insurance: Contractor shall secure at its own expense and keep in effect during the term of this contract comprehensive general liability insurance with a minimum limit of \$1,000,000 per occurrence and auto liability with a minimum limit of \$1,000,000 per occurrence.

Workers' Compensation Insurance: Contractor, its subcontractors, if any, and all employees providing work, labor or materials under this contract are subject employees under the Oregon Workers' Compensation Law and shall comply with ORS 656.017 which requires them to provide workers' compensation coverage for all their subject workers. Contractor shall require proof of such workers' compensation insurance by receiving and keeping on file a certificate of insurance from each subcontractor or anyone else directly employed by either the Contractor or subcontractor.

Insurance Certification: Before Contractor commences work under this contract, Contractor shall furnish to District's Risk Management Department certificate(s) of insurance as evidence of the insurance coverage required by this contract, including workers's compensation. The certificate(s) shall provide that the insurance company will give a 30-day written notice to the District if the insurance is canceled or materially changed. Waivers of insurance may be obtained in certain circumstances from Risk Management.

Termination: This contract may be terminated prior to expiration of the agreed-upon term by mutual consent of the parties as the parties agree, or by either party upon 30 days' written notice to the other, delivered by certified mail or in person. Termination shall not affect any right, obligation or liability of Contractor or District, which accrued prior to such termination.

Ownership of Work: All work products, including intellectual property, created by the Contractor as part of Contractor's performance under this contract shall be the exclusive property of the District. District shall have no right in any pre-existing work product of Contractor provided to District by Contractor in the performance of this contract except to copy, use or re-use any such work product for District use only.

Hazardous Chemicals: Contractor shall notify District prior to using products containing hazardous chemical to which District employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon District's request, Contractor shall immediately provide Materials Safety Data Sheets, as required by OAR 437-155-025, for the products subject to this provision.

Access to Records: District's authorized representatives shall have access, upon reasonable request and during regular office hours, to the books, documents, papers and records of Contractor which are directly pertinent to this contract for the purpose of making audits, examinations, excerpts and transcripts.

Assignment: Contractor shall not assign or transfer its rights or obligations under this contract without the prior written consent of District.

Successors in Interest: The provisions of this Contract shall be binding upon and insure to the benefit of the parties and their successors and approved assigns, if any.

Attorneys' Fees: If any action at law or in equity, or an arbitration, is necessary to enforce or interpret the terms of this contract, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief which the party may be entitled.

Governing Law: The provisions of this contract shall be construed in accordance with the provisions of the laws of the state of Oregon. Any action or suit involving any question arising under this contract must be brought in the appropriate court in the state of Oregon.

THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND SUPERSEDES ALL PRIOR AGREEMENTS OR NEGOTIATIONS BETWEEN THE PARTIES. NO AMENDMENT, CONSENT OR WAIVER OF THE TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES.

Section 2 Service Requirements

2.1 Project Scope

2.1.1 Term of Contract

Contract shall be for a period of two (2) years beginning July 1, 2001. The District reserves the right to extend this contract at the same or adjusted escalated rate tied to the Consumer Price Index for All Urban Consumers for the city or area nearest to providers place of business for up to three (3) succeeding one (1) year contracts each covering one (1) fiscal year, not to exceed five (5) years.

2.1.2 Multiple Contract Award

The School District wishes to obtain a contract to procure Environmental Consulting Services from at least one but no more than three qualified vendors. The initial order(s) will be placed with the most responsive vendor able to complete environmental services requested. Subsequent orders may be placed after contacting all vendors who have been given awards under this RFP. Successful vendors will be asked to sign the Districts Personal Professional Services Contract form upon award.

2.1.3 Typical Work to be performed

Precise scope of work will vary on each project. Consultant services may include but are not limited to the following:

1. Review information regarding renovation and upgrade requirements in the District, prior asbestos inspection documents and other pertinent general building information to confirm total quantities of hazardous materials (specifically asbestos containing materials, lead paint and PBC's) and prioritize the removal, repair and/or isolation requirements necessary to prevent potential contamination of school buildings by such hazardous materials during construction.
2. Coordinate the sequence of required hazardous material testing activities with the sequence of construction activities at the various sites. Provide recommendations based on cost/benefit analysis and value engineering of this work to determine the most cost-effective method of handling the potential hazards and estimate the time and cost required to complete.
3. Advise the District of needed hazardous materials management requirements and coordinate all approved hazardous material management efforts with the District A/E and the Contractor during design and construction activities.
4. Review engineering and architectural documents, and contract language, proposed scope of work and provide recommendations to the District on language/specification changes or additions required in documents to best protect the District's interests.
5. Develop technical specifications and drawings, as required, for removal, repair and/or isolation of hazardous materials. Such documents are to comply with all applicable State, Federal, local laws and District standards for dealing with hazardous material removal. This information will address: structural, architectural, mechanical and historic considerations. Unit costs for these services shall be provided on Attachment A of this Request for Proposal.
6. Facilitate pre-abatement conferences with Contractor and/or the abatement contractor to clarify the scope of abatement projects. Conduct progress meetings during abatement work. Participate

in weekly construction progress meetings with the District and Contractor or during the abatement phase of the Work

7. Provide oversight as it pertains to this Work for permit compliance, job site safety, work practices, air monitoring and public relations.
8. Review quantities, specifications and cost estimates for change orders as required.
9. Collect bulk samples and air samples as required; monitor Contractor's record keeping program for removal, disposal, sampling and monitoring; monitor air sampling program for "final clearance" prior to reoccupation of the affected building spaces. Provide 24-hour turnaround on bulk samples when required by the District. Sample testing laboratories will be within the state of Oregon unless authorized by the District.
10. Provide inspection reports, deficiency lists and final clearance reports. Maintain a record from contractors or "personal" samples that OR-OSHA, DEQ or the EPA may require.
11. Provide services related to hazardous material identification, sampling, profiling & disposal.
12. Perform Indoor Air Quality (IAQ) investigations and related sampling as requested
13. Provide services related to Underground Storage Tank release investigation. Services to include determination of extent of contamination required testing, potential impact to surrounding properties, Geo-technical and Geo-physical investigations and communication with regulatory agencies.
14. Provide oversight of treatment, cleanup and disposal of contaminated soil or groundwater.

2.1.4 Additional Requirements

1. Designate a Project Representative who will act as the firm's designated representative for all contractual issues and administration. The Project Representative shall work closely with the District's Facilities and Asset Management designated contact(s), who shall direct the activities of the Project Representative and shall serve as liaison between them and the District personnel involved.
2. Communicate freely with designated District contact(s), meeting as necessary to successfully address all issues.
3. Backup staff shall provide support during the absence of either the Project Representative or the District's designated contact(s). The District reserves the right to request replacements in the event of unsatisfactory performance.
4. Maintain an office within 70 miles of Metro Portland area for the duration of any assigned project.

5. Immediately notify the District of unforeseen conditions or potential safety concerns.
6. Work closely with the District Representative keeping with requested project timelines
7. After-hours work may be required at times in some locations, to provide for the least disruption of building occupant operations.
8. Written notice of Consultant personnel changes shall be provided fifteen (15) days before the effective date.

End of Section 2

Attachment A

ENVIRONMENTAL CONSULTING SERVICE UNIT PRICE SHEET

Each Proposer shall provide compensation rates to be used in billing the District for services provided under the contract. Billing rate shall include all costs associated with the performance of the contract including sub contractor mark-up where applicable.

Positions	Unit Price/hr
Principal	45.00
Senior Environmental Engineer/Chemist	45.00
Certified Industrial Hygienist	110.00
Registered Geologist	85.00
Lead Abatement Inspector/Risk Assessor	40.00
AHERA Certified Project Designer	40.00
AHERA Certified Inspector	38.00
On-site Technician	35.00
CAD Draftsperson	40.00
Clerical Support	20.00

Laboratory Analysis	Regular Rate (3-5 days)	Rush Rate (24 hour)
Asbestos PLM Bulk Sample	11.00	15.00
Asbestos TEM Bulk Sample (Relative)	95.00	185.00
Asbestos PCM Air Sample	5.00	5.00
Asbestos TEM Air Sample	60.00	135.00
XRF Lead Paint Sample	N/A	N/A
Lead Bulk Sample	11.00	15.00
Lead Air Sample	10.00	15.00
Lead Wipe Sample	11.00	15.00

Amounts shown above include all labor, materials, equipment, travel time, postage and mileage required to perform the work.

Apex



Apex Environmental
CCB #146557

FACSIMILE TRANSMITTAL

FACSIMILE NUMBER:

DATE: 8/21/02

TO: Dave Wall

COMPANY: DEQ

NO. of Pages (including cover page): 9

FROM: Tulla R. Stocker

IF YOU DO NOT RECEIVE COMPLETE FAX PLEASE CALL: Tulla
AT (503)682-9737

COMMENTS:

Dust + Bulk samples from
James John, as requested

APEX ENVIRONMENTAL CONSULTING SERVICES, INC.
PO Box 1445
WILSONVILLE, OR 97070
(503) 682-9737

EXHIBIT A | (A)

RJ Lee Group, Inc.

AHA Accreditation No. 429 NVLAP Accreditation No. 10120R-3

350 Hochberg Road · Monroeville, PA 15146
Voice 724-325-1776 · Fax 724-733-1799

Laboratory Report

Apex Environmental Consulting Services, Inc.
P.O. Box 1445
Wilsonville, OR 97070
Attention: Ms. Tulla Stocker
Telephone: 503-682-9737

Report Date 8/14/2002
Sample Receipt Date 8/14/2002
RJ Lee Group Job No AOC208004
Client Job No. 1915.00
Authorization/P.O. No. 1915.00

Analysis: Asbestos in Bulk Samples
Method: EPA/600/R-93/116

RJLG Sample Number	Client Sample Number	Homogeneous	Asbestos Detected(%)	Non-Asbestos Fibers(%)	Non-Fibrous Materials(%)	Matrix Material	Analyst	Analysis Date
2607922.HPL Description: Tan Dust	1915.00-1	Yes	ND	1 CE, 1 SF	98 %	M	BJW	8/14/2002
2607929.HPL Description: Tan Dust	1915.00-8	Yes	ND	8 CE, 2 SF	90 %	M	BJW	8/14/2002
2607923.HPL Description: Tan Dust	1915.00-2	Yes	ND	13 CE, 2 SF	85 %	M	BJW	8/14/2002
2607924.HPL Description: Tan/White Dust	1915.00-3	Yes	ND	2 CE	98 %	M	BJW	8/14/2002
2607925.HPL Description: Tan Dust	1915.00-4	Yes	ND	5 CE, 2 SF	93 %	M	BJW	8/14/2002
2607926.HPL Description: Tan Dust	1915.00-5	Yes	ND	5 CE, 2 SF	93 %	M	BJW	8/14/2002

RJ Lee Group, Inc.

Laboratory Report (cont.)

AIHA Accreditation No. 429 NVLAP Accreditation No.
101208-3

RJ Lee Group Job No: AOC208004
Client Job No: 1915.00

RJLG Sample Number	Client Sample Number	Homogeneous	Asbestos Detected(%)	Non-Asbestos Fibers(%)	Non-Fibrous Materials(%)	Matrix Material	Analyst	Analysis Date
2607927.HPL Description: Tan Dust	1915.00-6	Yes	ND	5 CE, 1 SF	94 %	M	BJW	8/14/2002
2607928.HPL Description: Tan Dust	1915.00-7	Yes	ND	7 CE, <1 SF	93 %	M	BJW	8/14/2002
2607930.HPL Description: Tan Dust	1915.00-9	Yes	ND	8 CE, <1 SF	92 %	M	BJW	8/14/2002

RJ Lee Group, Inc.

Laboratory Report (cont.)

AIHA Accreditation No. 429 NVLAP Accreditation No. 101208-3

RJ Lee Group Job No: AOC208004

Barbara J. Woodside

Authorized Signature

Barbara J. Woodside, Microscopist

ASBESTOS

AM = Amosite
AC = Actinolite
AN = Anthophyllite
CH = Chrysotile
CR = Crocidolite
TR = Tremolite

NON-ASBESTOS

CE = Cellulose
MW = Mineral Wool
FG = Fibrous Glass
SF = Synthetic Fibers
II = Hair
W = Wollastonite
OF = Other Fibers

NON-FIBROUS MATERIALS

AM = Amphibole
B = Binder
CA = Carbonates
Cl. = Clay
F = Feldspar
G = Gypsum
HY = Hydromagnesite
M = Miscellaneous
MI = Mica
OP = Opaque
OR = Organic
P = Perlite
Q = Quartz
T = Tar
V = Vermiculite

DISCLAIMER NOTES

- "ND" indicates no asbestos was detected; the method detection limit is 1%.
- "Trace" or "<1" indicates asbestos was identified in the sample, but the concentration is less than the method quantitation limit of 1%.
- PLM coefficients of variance range from approximately 1.8 at the quantitation limit of 1% to 0.1 at high fiber concentrations.
- Samples are archived for three months following analysis and are then properly discarded.
- These results are submitted pursuant to RJ Lee Group's current terms and conditions of sale, including the company's standard warranty and limitation of liability provisions. No responsibility or liability is assumed for the manner in which these results are used or interpreted.
- This test report relates to the items tested.
- This report is not valid unless it bears the name of a NVLAP-approved signatory.
- Any reproduction of this document must include the entire document in order for the report to be valid.
- This report may not be used to claim product endorsement by NVLAP or any agency of the U.S. Government.
- Polarized-light microscopy is not consistently reliable in detecting asbestos in floor coverings and similar nonfriable organically bound materials. Quantitative transmission electron microscopy is currently the only method that can be used to determine if this material can be considered or treated as "non-asbestos-containing."

Date: 8/14/02 Time: 11:36:10 AM

From: Optical 724.733.1799 To: Tula Stocker

Vertical text on the right edge of the page, possibly a scanning artifact or document ID.

BULK SAMPLE FIELD FORM

TYPE OF ANALYSIS: PLM AOC 208004

Proj. Site # 1915.00 Date: 1/102 Inspector: BAK

Apex Client: VICKERS FOSTER / PPS

Facility/Site: JAMES JOHN

Samples delivered undamaged By: BRAD KEENEY Signature: [Signature]

Samples received undamaged By: [Signature] Signature: [Signature]

Turnaround time (check one) Rush 48 hours

24 hours 3-5 days

Analyze All Samples

Progressive Analysis (analyze to first positive for each material code and type)

Sample #	Material Code	Type	Material Description (Texture/Color)	Location
1		DUST		Rm 39 - stacked chairs
2				Hallway desk + Bookshelf
3				6 Ft from N. Exit
3				TT Room near Rest Room
4				Mail hall near Rm 38
5				Rm 38 Door window
6				Rm 36 slope above stairs
7				Rm 40 - Book shelf
8				Rm 42 - BOOKSHELF
9				Hallway near South Exit

RJ Lee Group, Inc.

AIHA Accreditation No. 429 NVLAP Accreditation No. 101208-3

350 Hochberg Road · Monroeville, PA 15146
Voice 724-325-1776 · Fax 724-733-1799

Laboratory Report

Apex Environmental Consulting Services, Inc.
P.O. Box 1445
Wilsonville, OR 97070
Attention: Ms. Tulla Stocker
Telephone: 503-682-9737

Report Date 8/13/2002
Sample Receipt Date 8/13/2002
RJ Lee Group Job No AOC208003
Client Job No. 1910/PPS
Authorization/P.O. No. 1910

Analysis: Asbestos in Bulk Samples
Method: EPA/600/R-93/116

RJLG Sample Number	Client Sample Number	Homogeneous	Asbestos Detected(%)	Non-Asbestos Fibers(%)	Non-Fibrous Materials(%)	Matrix Material	Analyst	Analysis Date
2607869.HPL	1910-01	No	25 CH	15 CE	60 %	M	BJW	8/13/2002
Description: Tan/White Linoleum With Gray Fibrous Backing/Tan Mastic								
Layer content: 98% Linoleum/Backing - 25 Chrysotile 15 Cellulose 60 NFM; 2% Mastic - 100 NFM								
2607871.HPL	1910-03	No	ND	20 CE, 6 FG, 10 SF	64 %	M	BJW	8/13/2002
Description: Tan/White Linoleum With Tan Fibrous Backing/Tan Mastic								
Layer content: 98% Linoleum/Backing - 20 Cellulose 10 Synthetic Fibers 6 Fibrous Glass 64 NFM; 2% Mastic - 100 NFM								
2607872.HPL	1910-04	No	ND	15 CE, 5 FG, 10 SF	70 %	M	BJW	8/13/2002
Description: Tan/White Linoleum With Tan Fibrous Backing/Tan Mastic								
Layer content: 97% Linoleum/Backing - 15 Cellulose 10 Synthetic Fibers 5 Fibrous Glass 70 NFM; 3% Mastic - 100 NFM								

RJ Lee Group, Inc.

Laboratory Report (cont.)

AIHA Accreditation No. 429 NVLAP Accreditation No.
101208-3

RJ Lee Group Job No: AOC208003
Client Job No: 1910/PPS

RJLG Sample Number	Client Sample Number	Homogeneous	Asbestos Detected(%)	Non-Asbestos Fibers(%)	Non-Fibrous Materials(%)	Matrix Material	Analyst	Analysis Date
2607873.HPL	1910-05	No	ND	<1 CE	100 %	M	BTW	8/13/2002
Description: Brown Baseboard/Beige Mastic								
Layer content: 97% Baseboard - 100 NFM; 3% Mastic - <1 Cellulose 100 NFM								
2607874.HPL	1910-06	No	ND	-	100 %	M	BJW	8/13/2002
Description: Brown Baseboard/Tan Mastic								
Layer content: 96% Baseboard - 100 NFM; 4% Mastic - 100 NFM								
2607875.HPL	1910-07	Yes	3 CH	17 FG	80 %	T, M	BJW	8/13/2002
Description: Black Fibrous Roofing Material With Black Tar and Silver Paint								

RJ Lee Group, Inc.

Laboratory Report (cont.)

AHIA Accreditation No. 429 NVLAP Accreditation No. 101208-3

RJ Lee Group Job No: AOC208002

Barbara J. Woodside

Authorized Signature

Barbara J. Woodside, Microscopist

ASBESTOS

- AM = Amosite
- AC = Actinolite
- AN = Anthophyllite
- CH = Chrysotile
- CR = Crocidolite
- TR = Tremolite

NON-ASBESTOS

- CE = Cellulose
- MW = Mineral Wool
- FG = Fibrous Glass
- SF = Synthetic Fibers
- H = Hair
- W = Wollastonite
- OF = Other Fibers

NON-FIBROUS MATERIALS

- AM = Amphibole
- B = Binder
- CA = Carbonates
- CL = Clay
- F = Feldspar
- G = Gypsum
- HY = Hydromagnesite
- M = Miscellaneous
- MI = Mica
- OP = Opaque
- OR = Organic
- P = Perlite
- Q = Quartz
- T = Tar
- V = Vermiculite

DISCLAIMER NOTES

- "ND" indicates no asbestos was detected; the method detection limit is 1%.
- "Trace" or "C1" indicates asbestos was identified in the sample, but the concentration is less than the method quantitation limit of 1%. PLM coefficients of variance range from approximately 1.8 at the quantitation limit of 1% to 0.1 at high fiber concentrations.
- Samples are archived for three months following analysis and are then properly discarded.
- These results are submitted pursuant to RJ Lee Group's current terms and conditions of sale, including the company's standard warranty and limitation of liability provisions. No responsibility or liability is assumed for the manner in which these results are used or interpreted.
- This test report relates to the items tested.
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- Any reproduction of this document must include the entire document in order for the report to be valid.
- This report may not be used to claim product endorsement by NVLAP or any agency of the U.S. Government.
- Polarized-light microscopy is not consistently reliable in detecting asbestos in floor coverings and similar nonfibrous organically bound materials. Quantitative transmission electron microscopy is currently the only method that can be used to determine if this material can be considered or treated as "non-asbestos-containing."

ADC208008

BULK SAMPLE FIELD FORM
 TYPE OF ANALYSIS: PLM

Proj. Site # A10 Date: 8-12-02 Inspector: JS

Apex Client: PPS

Facility/Site: James John Portapls

Samples delivered undamaged By: Tuila R. Stucker Signature: [Signature]

Samples received undamaged By: [Signature] Signature: 8/13/02 9:30am

Turnaround time (check one) Rush 48 hours
 24 hours 3-5 days

Analyze All Samples
 Progressive Analysis (analyze to first positive for each material code and type)

Sample #	Material Code	Type	Material Description (Texture/Color)	Location
1910-01	SHT	1	Geo shapes	Boys RR
-02	SHT	1	" "	" "
-03	SHT	2	Spinkled patterns	" " - patched area
-04	SHT	2	" "	" "
-05	BASE	1	BROWN	Boys RR
-06	"	1	" "	" "
-07	ROOF	1	BUR	ROOF
-08	ROOF	1	" "	" "

Apex Environmental Consulting Services, Inc.
 PO Box 1445
 Wilsonville, OR 97070
 (503)682-9737

JAMES JOHN PORTAPLS
 TUILA R. STUCKER
 P. 5

INSPECTION REPORT

AOB ASBESTOS FILE

COUNTY: Multnomah SOURCE NAME: James John School

SOURCE ADDRESS: 7439 N Charleston
Portland, Oregon

OFFICIAL (S) CONTACTED: Chris Boyce of Portland Public Schools (PPS); Linda Cameron of Vickers/Foster & Associates (VFA); Tulla Stocker and Brad Kelfay of Apex Environmental (Apex); Jim Anderson of Cedar Mill Construction (CMC); Steve Addison and Gene Butler of Addison Interiors (AI).

Source #: 27382 Inspection Date: 14-Aug-2002
Inspection #: 1 Prep Time: 15 min.
Trans Time: 15 min. Inspection Time: 45 min.
Paper Time: 1.5 hr. Performance Reqts: Improper asbestos removal.
Monitoring & reporting: No notification

Violations: Dry removal, non-licensed contractor, no notification, improper storage
Safety Equipment Used: Boots, tyvek, gloves, respirator

ADDITIONAL INFORMATION:

I received a call from Chris Boyce Environmental Coordinator for PPS about an inadvertent asbestos contamination that took place at the James John Elementary school. Boyce told me that a flooring contractor removed an asbestos-containing sheet vinyl floor from the boy's restroom in the schools modular classroom building. I told him to contact an asbestos contractor for clean up and then asked for the names of the workers and contractors at the site. The only information Boyce could give me was that Apex tested the flooring for asbestos. I asked Boyce why they didn't have this information in their AHERA survey and Boyce said he didn't know.

I called Tulla Stocker from Apex on 8/15/2 at 8:24 am. Stocker told me that they had tested the floors in the modular building at the request of VFA and that they told the flooring contractor they were there to test the floor for asbestos. Stocker told me that Linda Cameron from VFA was the project manager representing PPS on this job.

I called Linda Cameron from VFA on 8/15/02 at 8:28 am. Cameron told me that CMC was the general contractor on the job and that she didn't know who the flooring contractor was. Cameron said that she tried to call Jim Anderson from CMA on Friday 8/9/02 to let him know they suspected asbestos in some of the floors at the modular classroom but that Anderson was not there and she left a message explaining that they needed to confirm if asbestos was in the floor before CMA and the floor contractor continued the project. Cameron confirmed that samples were taken on 8/12/02 and analysis results were received by 8/13/02 confirming asbestos in the sheet vinyl material in the boy's restroom of the modular classroom.

EXHIBIT A2

Cameron also told me she told the flooring contractor on 8/12/02 not to work on the floors in the classroom building until they received results of the asbestos testing. Cameron said that on Tuesday 8/13/02 she call Anderson (CMA) and told him that the analysis of the flooring showed that it contained asbestos and that they should not work on that project until the asbestos was removed. She said Anderson told her that the floor had already been removed.

When Cameron found out that the material had been disturbed she told Anderson to stop the project.

I talked with Brad Kelfay (Apex) on 8/15/02 at 8:42 am. Kelfay went to the site to determine the extent of the contamination for clean up. When Kelfay arrived on site on 8/13/02 the flooring contractor workers were still working. Cameron called Kelfay after 1pm and Kelfay told her the workers were still there. Cameron told Kelfay to shut down the project.

Kelfay said there were 4 workers at the site and that one of them went by the name Rhino. One worker was in the boy's restroom and the others were in adjacent rooms doing floor removal. Kelfay said he talked with Anderson 8/13/02 afternoon and that Anderson made the statement that it was no big deal because the floor guy was using water so it shouldn't be a problem.

I talked with Jim Anderson, owner of CMA, on 8/15/02 at 10:40am. Anderson told me that he didn't hear about any asbestos issue until the afternoon of 8/13/02 when he was told that the flooring people removed an asbestos containing floor. Anderson denies getting a voice message from Cameron and denies talking to Cameron on 8/12/02 about the potential for asbestos being in the floor. Anderson told me he wrote a letter to that effect and faxed it to Linda Cameron, VFA on 8/14/02. Anderson faxed me a copy of this letter on 8/15/02.

I called Steve Addison owner of Addison Interiors on 8/15/02 at 1:15 pm. Addison said they were hired to remove and replace the flooring in the modular classroom by Dupont Flooring. Addison said his employees did the project. Addison claims no one talked to him or his employees about the possibility of asbestos until the afternoon of 8/13/02 when they were told to stop the project. Addison wondered why they didn't have information about any asbestos materials before the project was let.

Addison said that Linda Cameron was on site 8/12/02, but only to give them their ID badges for the job. Addison said the only thing that was said was that Cameron asked where the roof access for the building was. Addison told me that Gene Butler was his foreman on this job and that there were two other workers Gus Perez and Scott McDonald. Addison said that McDonald was the person that removed the asbestos floor.

I called Gene (Rhino) Butler on 8/15/02 at 1:29 pm. Butler told me that no one said anything about asbestos at the site until they were told to pull off the job on 8/13/02. Butler said that Cameron was at the site on 8/12/02 but that she only gave the floor workers badges and asked how to get on the roof.

Butler said that after they were pulled off the site the school janitor told him that he was informed about the possibility of asbestos at the site on 8/12/02 and that the floor was not to be worked on.

After my discussion with Butler I called Chris Boyce of PPS and asked him about their AHERA survey and if it had been given to VFA so they could give it to all the contractors for this project. Boyce is investigating the question. However, VFA and APEX did test the floor before the removal took place. I believe CMC and ADI may have ignored VFA's warning about the vinyl flooring in the classroom module.

Signature: David Wal



Date: 19-Aug-2002

ASN 1

DEQ PROC

BRYAN SMITH

JM



From DAVE WALL
For Friable 3:13pm 12-10-02
Material

For DEQ use only	
Date Received	AUG 14 2002
Amount Received	412.50
Check Number	25222
Project Number	27392

ATTENTION: This notification must be complete and received by DEQ at least 10 days before the start date of any friable asbestos abatement project and accompanied by the notification fee. (PLEASE TYPE OR PRINT CLEARLY)

PROJECT CATEGORY AND NOTIFICATION FEE

- PER DAVE WALL
- EMERGENCY (Emergency notifications require a 50% fee increase)
- A. \$35 for each project with less than 40 linear or 80 square feet of asbestos-containing material or for each residential abatement project.
- B. \$70 for projects from 40 to 259 linear feet or 80 to 159 square feet of asbestos-containing material.
- C. \$275 for projects from 260 to 1299 linear feet or 160 to 799 square feet of asbestos-containing material.
- D. \$375 for projects from 1300 to 2599 linear feet or 800 to 1599 square feet of asbestos-containing material.
- E. \$650 for projects from 2600 to 4999 linear feet or 1600 to 3499 square feet of asbestos-containing material.
- F. \$750 for projects from 5000 to 9999 linear feet or 3500 to 5999 square feet of asbestos-containing material.
- G. \$1,200 for projects from 10,000 to 25,999 linear feet or 6000 to 15,999 square feet of asbestos-containing material.
- H. \$2,000 for projects from 26,000 to 259,999 linear feet or 16,000 to 159,999 square feet of asbestos-containing material.
- I. \$2,500 for projects 260,000 linear feet or more or 160,000 square feet or more of asbestos-containing material.

1. Is this a revision to a previous notification? Yes No

2. Asbestos abatement project starting date: AUGUST 14, 2002 Completion date: AUGUST 16, 2002

3. Project site name: JAMES JOHN ELEMENTARY
 Address: 7439 N. CHARLESTON AVE PORT MULT 97203
(Street Address) (Apt #, Floor #, Bldg #) (City) (County) (ZIP)

4. Property Owner: PORTLAND PUBLIC SCH.
 Address: P.O. Box 3107 PORT OR 97208
(City) (State) (ZIP)

5. Site Contact: CHARL BOYLE Phone: 503-916-2000
 Abatement Contractor Name: LAKE OSWEGO INS CO.
 Address: 0425 SW TOWA ST PORT
(City) (State) (ZIP) Phone: 503-245-6460

6. Type of structure: WOOD-FRAMED
SINGLE STORY - PORTABLE
 DEQ license number: FSL 513

7. Present use of structure: CLASSROOMS
 Describe method of removal or encapsulation: FULL ENCLOSURE WET METHODS
NEG AIR, HEPA VAL

8. Was a survey performed? Yes No
 Who performed the survey? APEX ENVIRO.

9. Will this be a complete demolition? Yes No
 If yes, give demolition start date: N/A

10. Type of asbestos-containing material and where it is located in facility:
2570 CHRYSTLE BOY'S BATHROOM
SWEEP FLOOR GOODS CLEAN-UP IN
1 HALL & DRESSER

11. Quantity of asbestos material to be removed or encapsulated:
 Linear feet: _____ Square feet: 220

12. Days of week and hours of day to be worked:
WED & THURS - 5:30PM TO 9PM
FRIDAY - 7:30AM TO 4PM

13. Oregon Certified Supervisor on this project:
DOUG MORGAN
 Oregon Certification #: 50 9439

14. Asbestos disposal site: HILLSBORO LANDFILL
 Address: 3205 SE MINTER BR RD

15. Waste Hauler: FLANNERY'S
 Phone: 503-777-2854

16. Name of owner, operator or abatement contractor: LAKE OSWEGO INSULATION CO.

17. Signature: [Signature] Date: 8/14/02 Phone: 503-245-6460

Sign this form and mail with the fee to the DEQ Business Office, 811 SW 6th, Portland, OR 97204. Make checks payable to "DEQ".
 Revisions to notifications may be faxed to the appropriate DEQ regional office in Portland NWR (503) 229-5265, Bend OR (541) 388-8283,
 Medford WR (541) 776-6262, or Salem WR (503) 378-4196.

EXHIBIT A3

(Revised 12/01)

RECEIVED
AUG 23 2002

DEPT OF ENVIRONMENTAL QUALITY
NORTHWEST REGION

SCOPE OF SERVICES

**Portland Public Schools
James John Elementary School**

Summer 2002

Exhibit A

- Project Manual
- Invitation to Quote
- Summary of Work
- Addendum #1
- Quote
- Drawing A-1

EXHIBIT A4 ^(A)

July 22, 2002

INVITATION TO QUOTE
PORTLAND PUBLIC SCHOOLS –
JAMES JOHN ELEMENTARY SCHOOL: Head Start renovation

Portland Public Schools and Vickers/Foster & Associates would like to invite you to submit a sealed quotation that will be received by Portland Public Schools, for the above referenced Project.

This project includes the following renovation to two existing classrooms and two restroom located at James John Elementary School.

- Replace classroom carpet with VCT.
- Install PPS supplied carpet tile.
- Replace existing sheet vinyl at Boys' Restroom.
- Provide enclosure around existing hot water heater.
- Modify heat shroud at existing radiators.
- Add ionization smoke detectors to classrooms and connect back to main panel.
- Add gravity feed vents at roof.
- Replace an existing lavatory.
- Replace existing facets with new mixing valve facets at restroom lavatories.
- Remove existing shelves and miscellaneous hardware.
- Install new laminate over existing counter.
- Modify existing wire plug molding to remove and add outlets.

Since the electrical portion of the work is design build. The pre-proposal conference / walkthrough will be held on July 23, 2002 at 9:00 am. Meet at the main entrance to James John Elementary School located at 7439 N Charleston.

Attached are copies of the drawings and the Project manual for your review. Portland Public School's Small Projects (Under \$25,000) Contract sample is attached.

Provide written quotation that is to include line item cost & time duration to complete facility on company letterhead. Contractor is responsible for all final project clean up. Contractor will be required to provide a performance bond to cover the amount of the Contract between Contractor and District. Quotations for this Project shall be received at 12:00 p.m., local time, Friday, July 26, 2002 at Vickers/Foster & Associates. Notice of award will be issued the same day and final project scheduling shall be negotiated with the final contract determinations.

All work related to this project must be completed by August 16, 2002.*
On behalf of Portland Public Schools, we look forward to a successful Project.

Sincerely,



Linda Cameron, Project Manager
VICKERS/FOSTER & ASSOCIATES CPM, INC.

Copy: Brenda Caldwell, Portland Public Schools
Don Larson, Portland Public Schools

*Unless noted on project scope documents

SECTION 1.0 - SUMMARY OF THE WORK

1.1 WORK COVERED BY THE CONTRACT DOCUMENTS

The General Conditions of the Contract, the Supplementary Conditions and the General Requirements (Division 1) of the Specifications apply to the Work specified in this section and in each section of the Specifications. The Contractor shall instruct each of his Subcontractors to become fully familiar with these documents.

Briefly and without force and effect on the requirements on the Contract Documents, the project and the Work of the Contract can be described in summary as follows:

INSERT DESCRIPTION

The following work will be done by the owner:

1. Items noted 'NIC' (Not In Contract)
2. Final lock cylinders and keying. (temporary locks by the contractor)

1.2 ALTERNATES

An Alternate is an amount proposed by the bidder and stated on the Bid Form for a specific work item or items that will be added to or deducted from the Base Bid amount if the Owner elects to accept the corresponding work or change in the scope of work for the products, materials, equipment, systems or installation methods as described in the Contract Documents.

The Contractor shall coordinate the work described in the Alternate including related work and modify or adjust adjacent work as required to ensure that the final product for each accepted Alternate is complete and fully integrated into the project. The Contractor shall include miscellaneous devices, appurtenances, incidental items and all labor, materials, tools, equipment, rigging, etc. as required for a complete installation whether or not described as part of the Alternate. The General Conditions, Supplementary Conditions, General Requirements and technical specification sections of the Contract Documents apply to the accepted Alternates unless specifically noted to the contrary.

The Owner reserves the right to select any or all of the Alternates up to sixty (60) calendar days after award of the contract. If the Owner so selects, the time for completion of the contract or substantial completion may be extended for those selected items only.

Alternate No. 1:

Alternate No. 2:

INSERT DESCRIPTIONS

Alternate No. 3:

1.3 SCHEDULING OF WORK OF THIS CONTRACT

Scheduling of Work is governed by Owners Amended AIA Document A107-1997 ("A107") Article 2, which contract is included as part of these contract documents.

Remodel and alterations work in existing facility and adjacent OR otherwise occupied areas in shall be scheduled to avoid interference with normal activities in those areas. Normal hours of work shall be 7:00A.M. till 3:00 P.M. Monday thru Friday from July 22, 2002 until September 2, 2002. Should the Project require the Contractor or any Subcontractor to perform work outside these hours, arrangements shall be made with the Owner's Representative at least 48 hours prior the need to perform the work. Work scheduled prior to cessation of school in the Spring or work scheduled after school begins in the Fall must be conducted after 3:00 PM. Shift work may be conducted until 11:00 P.M. on weekdays with the exception of holidays.

1.4 ACCESS TO OTHER SPACES

Work areas, storage, staging and work activity is to be confined to the immediate areas shown on the contract documents. The Contractor shall erect fences, barricades or temporary walls and closures as necessary to protect the work, provide physical security to the property, and deter or prevent unauthorized access to construction areas. Access to other spaces required to execute the Work shall be arranged for and scheduled with the Owner's representative. The Contractor shall provide sufficient lead time for the owner to make proper arrangements for use of the space.

1.5 PREBID MEETING/MANDATORY SITE VISIT

See Division 00200 ("Instructions to Bidders"), Section 13, included as part of these contract documents.

1.6 PERMITS AND COMPLIANCE

The Contractor shall conform with all applicable State and City codes and the regulations of the National Fire Protection Association concerning construction operations and fire safety. The Contractor shall obtain and pay for permits and licenses as required. Only the building permit and plan check fees will be paid for by the Owner. The Contractor shall pay for and obtain inspections by State and local bodies as required to show compliance. No final payment shall be issued until the Contractor delivers to the Owner a Certificate of Compliance.

1.7 GUARANTEE

Materials and workmanship shall be guaranteed by the Contractor for a period of one year after acceptance of the Work by the Owner as provided in A107 Article 17.02

1.8 CHANGE ORDERS

Change Orders shall be processed as provided in A107 Article 12.

1.9 DELAYS

Delays shall be addressed as provided in A107 Article 13.

SECTION 2.0 - PROJECT COORDINATION

2.1 COORDINATION

The contractor shall coordinate scheduling, submittals, sequencing of the installation of interdependent elements, utility coordination, space requirements for installation and maintenance of finished work and storage or staging areas for all trades. The Contractor shall verify that equipment furnished is compatible with the characteristics of the existing building utilities. The mechanical and electrical drawings are diagrammatic and may require special coordination between trades. The Contractor shall provide multidisciplinary coordination drawings as necessary to insure proper space and layout of various portions of the work.

Notes on various drawings are not meant to determine trade or work jurisdictions. There may be "architectural items" shown or indicated on structural, mechanical or electrical drawings. There may also be "mechanical" or "electrical" items shown on architectural drawings. The Contractor is responsible to include all mechanical or electrical items in the bid cost regardless of which drawing they are indicated on.

The Contractor shall coordinate all work with the Owner's representative to minimize conflict and insure the least inconvenience to the users and the general public. The Contractor shall designate a project coordinator for this purpose. Claims for additional time or money resulting from a lack of coordination will not be considered.

2.2 PRE-CONSTRUCTION CONFERENCE

Head Start, ADA, Special Ed – 2002 Summer Modification Projects

DIVISION 1

At least 48 hours prior to the Commencement of Work, at a mutually agreed time arranged by the Owner's representative, the Contractor shall meet with Owner's Representative and the Architect/Engineer to cover the following agenda items:

Introduction:

Explain:

- Participant responsibilities
- Inspection procedures
- Temporary utility shutdown procedures
- Progress schedules
- Progress payment procedures
- Submittals and approvals
- Routing of correspondence
- Change order procedures
- Final inspection procedures

Review:

- Special coordination issues
- Use of the Owners' property
- Site access, traffic and parking rules
- Demolition procedures
- Special restrictions
- Wage rates and equal opportunity requirements
- Safety, fire and security
- Insurance
- Hazardous Materials

Confirm:

- Critical layout conditions
- Existing site conditions and adjacent areas
- Temporary utilities and existing facilities

Determine:

- Contractor's plan of operation
- Line of authorities
- Emergency off-hour contacts
- Safety and security plan

Architectural inspections and approvals:

Contractor shall notify the Owner's representative at least 48 hours prior to the desired inspection time for the following stages of work at a minimum, and at others as deemed necessary:

- Demolition
- Framing and furring
- Mechanical rough-in
- Plaster
- Painting—each coat
- Completion

2.3 PROGRESS MEETINGS

Progress meetings (jobsite meetings), at regularly scheduled intervals and at designated locations, will be conducted by the Owner's representative. The Architect/Engineer, the Contractor and appropriate Subcontractors will be required to attend. The progress meetings will cover schedule review, coordination and clarification issues, tracking of shop drawings and proposals, and other project administration issues.

When convenient, the jobsite meetings will also include review of a draft payment application, review of record drawings and pre-installation meetings prior to the commencement of certain work items.

2.4 PROJECT COORDINATION SUBMITTALS

CONSTRUCTION SCHEDULE

Contractor shall, at least two (2) days prior to the pre-construction meeting, provide a bar chart construction schedule showing all work to be performed, including start-up, finish, duration, slack time, approval dates, material ordering, delivery dates, anticipated shutdowns, partial occupancy and Owner use, completion date and other such information required to allow the Owner's monitoring of progress of the project and identifying the critical path of events required to meet the completion date.

The Contractor shall provide separate schedules for new additions and repair/alteration/remodel portions of the project. Work in continuously occupied instructional areas of the building shall be scheduled to avoid disruption to the Owner's normal operations. The Contractor shall consider shift work or off-hours operations for these areas.

Head Start, ADA, Special Ed – 2002 Summer Modification Projects

DIVISION 1

The Contractor shall provide the Owner with an updated schedule no less than monthly, unless there are no changes. The Contractor shall provide a written narrative of changes in sequence, manpower levels, or hours of normal work. The narrative shall explain the reason for the changes and propose one or more options to mitigate the damages caused by the delay or changes. Significant deviation from the schedule shall be immediately brought to the Owner's attention.

SUBMITTAL PROCEDURES

Submittals shall include the project name, contractor and/or supplier, subcontractor, and pertinent Contract Document references. The Contractor shall review and stamp submittals prior to submitting them to the Architect for review. The Contractor's stamp is to verify or certify that the products submitted are approved products in the contract documents and that no unauthorized substitutions have been made. The Contractor shall verify field dimensions, coordination with adjacent work, utility requirements, schedule and delivery requirements etc. as required.

The Contractor shall provide a written description or explanation of any variations or exceptions from the contract documents. Identify any product or system limitations which may be detrimental to the successful completion of the completed work. Resubmittals shall identify all changes from the prior submittal. The Contractor shall review comments or notes by the architect, engineers or owner on returned submittals; These comments are NOT an authorization to change or add to the scope of the work. If the Contractor feels that any review comments or notes constitute additional work, this must be immediately brought to the attention of the owner in writing or the Contractor waives the right to make a claim for additional costs at a later date.

The Contractor shall submit one reproducible transparency and one blue-line print or two copies of 8.5 X 11 inch materials. The Contractor shall clearly mark and identify applicable products, models, options and other data on manufacturer's standard data or catalog cuts. The Contractor shall provide supplemental data or information unique to this project. Where specified in other sections of the specifications, the Contractor shall submit manufacturer's written instructions for delivery, storage, assembly, installation, start-up, adjusting and finishing. The Contractor shall submit supporting reference data, affidavits and certifications that products meet or exceed the specified requirements.

The Contractor shall submit samples of finishes showing full range of manufacturer's standard colors, textures and patterns for the Architect's selection. Samples shall illustrate functional and aesthetic characteristics of the product.

SHUTDOWN REQUESTS

The Contractor shall protect from damage all active utilities existing and evident by reasonable inspection of the site, whether or not shown on the Drawings. The Contractor shall maintain continuity of utilities services to existing buildings or equipment.

All necessary service interruptions of utilities of any type or magnitude shall be scheduled in advance with the Owner's representative. Major utility shutdowns are required to be scheduled between the hours of 5:30 p.m. and 6:00 am. Scheduling of the shutdown must be through the submittal of a SHUTDOWN REQUEST at least TEN (10) calendar days prior to the scheduled shutdown. Minor utility service interruptions must be scheduled with a minimum of THREE (3) work days prior notice through the submittal of a SHUTDOWN REQUEST. A sample of the request form shall be distributed at the pre-construction conference.

A major shutdown is generally regarded as an interruption of any single or group of services or utilities serving an entire building, wing, floor, or group of spaces where the occupant's normal operation would be affected by the loss of service or utilities as a result of the shutdown.

A minor shutdown may be regarded as the interruption of a single or group of services or utilities to an area not occupied at the time of the shutdown, or when services or utilities would pose no inconvenience to occupancy activities, systems or equipment, or when affected utilities are restricted to areas occupied by the Contractor engaged in ongoing work.

HOT WORK PERMITS

Work requiring any concrete cutting or brazing, grinding, welding or soldering of metals, or any work producing gases or particulate capable of activating ionization or smoke/heat detectors, shall require three (3) work days notice and the submittal of a HOT WORK PERMIT. Failure to prepare the permit and notify the Owner's representative of work that results in a Fire Department false alarm will result in a pass-through of the false alarm fine to the Contractor. A sample of the HOT WORK PERMIT will be distributed at the Pre-construction meeting.

2.5 LAYOUT OF THE WORK

The Contractor shall survey and verify the conditions of the existing project site. The purpose of the survey is to record existing conditions prior to the construction for comparison with the Contract Documents. The Contractor shall report any conflicts to the Architect prior to the start of Work. The Architect will provide revisions to the Contract Documents or issue instructions to deal with conflicts. The Contractor shall be responsible for remedying conflicts which could have been prevented by timely reviews of existing conditions. All remedies which vary from the Contract Documents shall be approved by the Architect and the Owner's Representative.

2.6 CUTTING AND PATCHING

The Contractor shall do all necessary cutting and patching of existing building surfaces required for work covered by Contract. The Contractor shall patch walls, floors and ceilings, as required. Provide dust proof barriers wherever work on the existing surfaces causes dust. Scheduling of this type of work should be arranged with the Owner's representative. The Contractor shall not cut or penetrate structural portion without Owner's representative approval.

When masonry construction must be pierced, The Contractor shall furnish and install a steel pipe sleeve in the opening and grout in place neatly. The Contractor shall leave grout surface to match existing finish. Fabricate sleeve one inch in diameter larger than pipe or insulation. The Contractor shall pack between sleeve and pipe with fireproofing material and /or waterproof caulking. At penetrations of fire rated walls, partitions, ceiling, or floor construction, The Contractor shall completely seal voids with fire rated material as required to maintain assembly fire rating of penetrated element, or as required by building code.

Prior to cutting any existing work, The Contractor shall locate all concealed utilities to eliminate any possible service interruption or damage. The Contractor shall provide openings in work for penetration of mechanical and electrical work. Restore work with new products in accordance with requirements of Contract Documents. Where replacement of equipment and fixtures is specified, The Contractor shall restore existing plumbing, heating, ventilation, air conditioning, electrical and similar systems to full operational condition.

The Contractor shall refinish surfaces to match adjacent finish. For continuous surfaces, The Contractor shall refinish to nearest intersection or natural break. For assembly, The Contractor shall refinish entire unit. The Contractor shall patch with seams which are durable and as invisible as possible. Comply with specified tolerances for Work. Where possible, The Contractor shall inspect and test patched area to demonstrate integrity of seam. The Contractor shall restore exposed finishes of patched areas and where necessary extend finish restoration into retained adjoining work in manner which will eliminate evidence of patching and refinishing. The Contractor shall thoroughly clean areas and spaces where Work is performed or used as access to Work. The Contractor shall restore damaged material to original condition.

When finished surfaces are cut so that smooth transition with new work is not possible, The Contractor shall terminate existing surface along straight line at natural line of division and make recommendation to Architect/Engineer. Where removal of partitions or walls results in adjacent spaces becoming one, The Contractor shall rework floors, walls and ceilings to smooth plane without breaks, steps, or bulkheads. Where change of plane of 1/4" or more occurs, The Contractor shall submit recommendation for providing smooth transition, for Architect's review, or request instructions from Architect. The Contractor shall trim existing doors as necessary to clear new floor finish. The Contractor shall refinish trim as required.

2.7 ASBESTOS

During the course of Work, if the Contractor observes or suspects existence of asbestos in structure or components of building, or anywhere within the Construction Site, Contractor shall immediately stop work in immediate area and notify OWNER'S Representative. The OWNER'S Representative will, under separate contract, remove or encapsulate asbestos.

PROVIDE DETAILED DESCRIPTION AND SCHEDULE IF POSSIBLE

Contractor is required to schedule — INSERT — work days of down time in each building for asbestos removal and coordination without penalty to OWNER for delay of the Contract for Construction.

2.8 PROGRESS CLEANING

Dirt and debris of all nature caused by the execution of the Work shall be removed from the job site at the end of each work day. The Contractor will be responsible for the disposal of all scraps and materials that are relative to this project. In continuously occupied areas where alteration work is performed, floors shall be swept with a hair broom and damp mopped or vacuumed at the end of each shift. The Owner will backcharge the contractor for any custodial services required to clean any area to allow normal use of occupied space due to the contractors failure to clean the area satisfactorily. Advance notice by the owner before performing any custodial work may not be possible and written notice will not be given.

SECTION 3.0 - CONSTRUCTION FACILITIES AND TEMPORARY CONTROLS

VERIFY ALL TEMPORARY CONDITIONS WITH THE OWNER AND REVISE AS REQUIRED

3.1 TEMPORARY UTILITIES

Electric Power: Electricity as available from the facilities in the building will be available to the construction operation without cost to the Contractor. Temporary wiring and temporary electrical facilities required by the Contractor shall be provided at the Contractor's expense. Any temporary facilities shall be removed at the completion of the Work. Contractor shall not connect wiring to electrical facilities designated as emergency power source.

Lighting: Existing lighting in existing areas may be used for construction operations, contractor to provide supplemental lighting as required. The contractor is responsible to provide temporary lighting in new construction and major gut and remodel areas. New light fixtures in new building additions or major gut and remodel areas MAY NOT be used for construction purposes.

Heating and Ventilation: Where available and the drawings indicate that the existing central heat utilities are to be extended into new work, the contractor may utilize the owner's system as an energy source for temporary heaters. The Contractor shall exercise care to conserve energy. Owner will pay cost of energy used. The contractor is to provide temporary ventilation in all areas as required to cure materials, dissipate humidity, prevent accumulation of dust, fumes or vapors. The contractor MAY NOT use new heating or ventilation equipment to provide temporary heating or ventilation. The Contractor shall maintain a minimum ambient temperature of 50 degrees F and appropriate relative humidity levels in areas of construction unless indicated otherwise in the specifications.

Telephone Service: The Contractor may not use the Owner's telephone system. The contractor shall provide land line or cellular phone service to the project at all times there are workers present.

Water: Water as available in the building may be used without cost to the Contractor.

Sanitary Facilities: The Contractor and his crews may not use the existing building restrooms. The contractor shall provide sanitary services for workers as required by law.

Temporary Fire Protection and Detection: The Contractor shall provide modifications to the existing wet fire sprinkler and/or fire detection and alarm systems as required to maintain the existing fire system protection operative in all in construction areas throughout the duration of the Work. Temporary, short term shut downs which are approved by the fire marshal and the owner may be approved provided that the contractor makes appropriate arrangements. The Contractor shall coordinate shutdowns to include the fire detection system as required during Hot Work.

Temporary Construction: The Contractor shall erect fences, barricades or temporary walls and closures as necessary to protect the work, provide physical security to the property, and deter or prevent unauthorized access to construction areas.

Use of Elevators: N/A

3.2 EXISTING UTILITIES AND SERVICE INTERRUPTIONS

The Contractor shall protect active utilities, existing and evident by reasonable inspection of the site, whether shown or not on the Drawings. The Contractor shall protect, relocate or abandon utilities encountered in the work as directed by the Engineer or Architect. The Contractor shall maintain continuity of utilities services to existing buildings.

3.3 SECURING MATERIALS AND EQUIPMENT

Security: When workmen are not present in a room or area, all tools and equipment shall be locked or secured in a reasonable, safe manner to prevent children from getting access to potentially dangerous materials. The Contractor shall provide Security Services as necessary to protect stored materials and work in progress.

Safety: In accordance with generally accepted construction practices, the Contractor will be solely and completely responsible for conditions of the job site, including safety of all persons and property during the performance of the Work. This requirement will apply continuously and not be limited to working hours. The contractor shall instruct all workers and subcontractors that materials, tools and equipment can present a dangerous condition for children and are potentially an attractive nuisance. The contractor shall include security of materials and equipment in the job safety program.

The duty of the Owner's representative is to conduct construction review of the Contractor's performance and not intended to include review of the adequacy of the Contractor's safety measures in, on or near the construction site.

3.4 TRAFFIC CONTROL AND PARKING

Traffic control on the Site/Campus falls under the direction of the Owner or the Owner's designated representative. Traffic control includes coordination of street use for the transportation and stockpiling of construction materials. The Contractor is required to adhere to all rules and regulations pertaining to the routing of traffic, vehicle speeds, parking rules and other conditions and restrictions. Campus and City streets shall remain open to through traffic at all times, with particular priority given to the presence of normal school bus traffic and keeping access available for emergency vehicles at all times.

The availability of parking on the Site/Campus/Neighborhood is severely restricted. The Contractor's workers and Subcontractors are required to park in off-campus areas. This condition is strictly enforced.

A limited number of parking spaces for the Contractor's vehicle(s) and for construction equipment may be allocated in a designated area and strictly enforced.

3.5 NOISE CONTROL

Rotohammering, grinding, drilling or other excessively noisy operations shall be coordinated with the Owner's representative and scheduled as required to avoid conflict with normal use of other areas.

SECTION 4.0 - SUBSTITUTIONS AND PRODUCT OPTIONS

4.1 PRODUCTS LIST

Where required in a Specification section, within two weeks after date of Contract, Contractor shall submit to the Owner, five copies of a complete list of all products which are proposed for installation under that section.

For products specified under reference standards, Contractor shall include:

- Name and address of manufacturer
- Trade name and model or catalogue designation
- Manufacturer's data showing performance and test data and reference standards.

4.2 CONTRACTOR'S OPTIONS

For products specified only by reference standards, Contractor shall select any product meeting standards, by any manufacturer.

For product specified by naming products or manufacturers, Contractor shall:
Select from listed products or manufacturer.
Submit request for substitution for unnamed products.

4.3 SUBSTITUTION

During bidding, the Architect/Engineer will consider written request for substitutions, received at least ten days prior to bid date. Requests after that time will not be considered. See INSTRUCTIONS TO BIDDERS.

After date of Contract, the Architect may, optionally, consider normal requests from the Contractor for substitution of products in place of those specified when submitted in accord with the requirements of this section. One or more of the following conditions must also be documented:

1. The substitution must be required for compliance with final interpretation of the Code or insurance regulations.
2. The substitution must be due to the unavailability of the specified products, through no fault of the Contractor.
3. The substitution may be requested when subsequent information discloses the inability of the product to perform properly or to fit in the designated places.
4. The substitution may be requested when it is clearly seen, in the judgement of the Owner, that a substitution would be subsequently to the Owner's best interest, in terms of cost, time or other considerations.

Contractor shall submit two copies of request for substitution. Include in the request the following:

1. Complete data substantiating compliance of proposed substitution with the Contract Documents.
2. Product identification, including Manufacturer's name and address.
3. Manufacturer's literature, including Product description, performance and test data, and reference standards.
4. Samples.
5. Name and address of similar projects on which the product was used and the date of installation.

6. Itemized comparison of proposed substitution with product or specific method.
7. Data relating to changes, if any, in the construction schedule.
8. For requests submitted after bid date, accurate cost data on proposed substitution in comparison to the product or method specified.

In making request for substitution, Contractor represents that Contractor:

1. Has personally investigated the proposed product and determined that it is equal to or superior in all respects to that specified.
2. Will provide the same guarantee for substitution as for specified product.
3. Will coordinate installation of accepted substitution into work, making such changes as may be required for work to be complete in all respects.
4. Waives all claims for additional costs related to substitution which subsequently become apparent.
5. Has determined that cost data is complete and includes all related costs under the Contract, but excludes costs under separate contracts and Owner redesign, including consultant fees.

SECTION 5 – SALVAGE AND RECYCLING

5.1 SUBMITTALS

- A. Construction Debris Recycling Plan: Prior to start of work and within 30 days of contract award, Contractor shall submit a list of demolition and construction materials that will be recycled. Contractor shall list which materials will be sorted on site and which materials will be commingled. Contractor shall list the salvage facility where each material will be delivered.
- B. Delivery Tickets: At completion of Project, Contractor shall provide legible copies of the salvage facility delivery tickets for each load of recycled construction debris. Each ticket will show weight or yardage, date, type of material and salvage facility name. Contractor shall submit a summary sheet with total quantities for each separated material recycled and total quantity of commingled material recycled for each Project site.
- C. Recycling Report Form: Contractor shall submit one copy of the City of Portland Commercial Recycling Plan Form for each site within 30 days of contract award. Contractor shall submit one copy to the Project Manager for the project.

5.2 QUALITY ASSURANCE

- A. Goals: To recycle the maximum amount of material from the construction process where practical within the scope of the Project.
- B. Codes and Regulations: Contractor shall comply with Portland City Code 17.102.180 and other applicable codes and regulations.
- C. Recycling Support: Technical support for construction debris recycling is available through METRO at phone number 234-3000 and through the Bureau of Environmental Services at 823-7202. Construction Site Recycling, A Guide for Architects, Builders and Developers is available upon request from METRO.

5.3 MATERIALS

- A. Contractor shall recycle the following materials when produced as part of the Project either as demolition or as scrap from installation of new work. (Materials may be commingled when quantities do not justify separate containers):
 - 1. Masonry rubble
 - 2. Wood
 - 3. Land clearing debris
 - 4. Drywall
 - 5. Cardboard
 - 6. Metal
- B. Contractor shall recycle other materials where cost effective.

5.4 SITE COLLECTION

Contractor shall provide adequate site recycling material containers for collection and sorting by all subcontractors under this contract.

5.5 DISPOSAL

Contractor shall provide for hauling of all materials to a salvage facility that holds a permit or license to accept such material.

SECTION 6 - CONTRACT CLOSEOUT

6.1 DESCRIPTION OF REQUIREMENTS

Contract Closeout is the term used to describe certain collective project requirements indicating completion of the Work that are to be fulfilled near the end of the Contract Time in the preparation for Final Acceptance and occupancy of the Work by the Owner, as well as final payment to the Contractor and the normal termination of the Contract.

Special requirements for individual units of work may be included in the appropriate sections of Division 2 through 16 of the Specifications.

6.2 CLOSEOUT PROCEDURES

Contractor shall submit specific warranties, workmanship/maintenance bonds, maintenance agreements, final certifications, test and balance reports or logs, and similar documents. Contractor shall deliver tools, spare parts, extra stock of material and similar physical items to Owner. Contractor shall complete start-up and testing of systems, Performance Periods, and instruction of Owner's operating and maintenance personnel. Contractor shall discontinue or change over and remove temporary facilities and services from Project Site, along with construction tools and facilities mock-ups and similar elements. Contractor shall complete final cleanup requirements, including touch-up painting of blemished surfaces. Contractor shall test fire and life safety systems in presence of Owner's Representative, Architect and City officials. Contractor shall obtain Certificates of Occupancy. Contractor shall submit copy of Contractor's Punchlist to Architect, clearly stating that building is ready for review with exception of items noted in Contractor's Punchlist.

Contractor shall submit written certification that the Work has been completed in accordance with the Contract Documents and is ready for Final Inspection. Contractor shall assemble and provide all required closeout submittals as described in this section to the Architect/Engineer and Owner and as required by other governing authorities. Contractor shall provide City of Portland Occupancy Permit.

Contractor shall submit final Application for Payment identifying total adjusted Contract Sum, previous payments and the sum remaining due.

6.3 RECORD DRAWINGS

Contractor shall maintain a set of record prints of the Contract Drawings and Shop Drawings. Contractor shall neatly mark-up the record drawings to show actual conditions when they vary substantially from the Contract Drawings. Contractor shall mark-up the drawing most capable of showing the field condition. Contractor shall cross-reference marked-up Shop Drawings to corresponding location on Contract Drawings. Contractor shall record change order numbers and dates when they are the origin of a change. Contractor shall explicitly note concealed work or work difficult to observe after completion.

Contractor shall maintain sets of Record Specifications, Product Data and other miscellaneous submittals in a similar fashion. Maintain record photographs clearly identified where requested by the Owner's representative.

6.4 FINAL CLEANING

Contractor shall provide final cleaning to the Work prior to Final Inspection. Contractor shall clean each surface or unit of work to the condition expected of a professional commercial maintenance program. Contractor shall clean all glass surfaces, remove temporary labels, stains and foreign substances. Contractor shall vacuum carpeted and soft surfaces. Contractor shall clean equipment and fixtures to a sanitary condition. Contractor shall provide new filters for heating and ventilating equipment.

6.5 TESTING

Contractor shall performance-test all operational equipment and systems in the presence of the Owner's representative and Engineer to demonstrate compliance with the specified requirements. Testing shall be conducted under conditions specified, recommended or approved by the Owner or Engineer. Equipment shall not be accepted by Owner, and final payment shall not be made by Owner, until standard of performance is met.

6.6 TRAINING

At least thirty (30) days prior to Final Acceptance, Contractor shall schedule with the Owner's representative training session(s) as required by the Owner's personnel in operation and maintenance of the HVAC system, fire alarm system, signaling system. Contractor shall use the operation and maintenance manuals as a basis for instruction. The owner must have possession of all Operations and Maintenance manuals and written instructional materials at least two (2) weeks prior to any training session. Training sessions shall include hands on instruction for normal replacement parts including disassembly and re-assembly if necessary for routine maintenance.

6.7 OPERATION AND MAINTENANCE DATA

Contractor shall provide three (4) sets of O&M data in 3-ring binders on an 8-1/2" x 11" format. Binder shall have durable plastic covers with printed title "OPERATION AND MAINTENANCE MANUAL, -- Name of project--". Subdivide the binder with permanent dividers and clear plastic tabs clearly marking each separate section. The binders shall include the following sections as a minimum:

Table of Contents

Phone list of consultants, manufacturers, installers, subcontractors and suppliers

Manufacturer's printed data, by specification section

Record and Shop Drawings

Schematic Diagrams of Systems

Valve Tag Index

Warranties and Bonds

6.8 SPARE PARTS AND MAINTENANCE MATERIALS

Contractor shall provide products, spare parts, maintenance and extra materials in quantities specified individual Specification sections.

END OF THIS SECTION

CEDAR MILL CONSTRUCTION COMPANY U.C.

Meeting all phases of your construction needs

August 14, 2002

Vickers/Foster & Associates
Attn: Linda Cameron
901 SE Oak St., Suite 204
Portland, OR 97214

FAXED
8/14/02 11:41 AM
FAXED
8/15/02 7:05 AM
TO DES

Re: James John Elementary School

Linda,

On Monday, August 12th we commenced with work under your direction at James John Elementary School. The scope of this contract was some carpet and vinyl flooring removal and vinyl and VCT as replacement, in addition to other work.

On Monday, August 12th you went by the job site and spoke to the foreman of the flooring contractor. At this time you handed him ID badges and informed him that environmental asbestos testing was going on and would continue through Tuesday, August 13th.

You called us on Tuesday, August 13th at approximately 12:00 pm to inform us that the flooring in the boys' restroom had tested positive for asbestos. This was the first we had heard about any asbestos or asbestos testing. We were never informed of this and had not received any site reports from this building. At this time I informed you that the flooring had been removed because when I was on site at approximately 9:00 am most of the vinyl had been removed. Due to this site observation and the progress being made at that time, I was unaware of any continuing work being done in the boys' restroom after our phone conversation.

You claim that you had duly informed the flooring contractor not to do any work in that area. We contest this statement in that why would anyone choose to remove flooring of that type and of that difficulty if there was a potential of asbestos when that work would or could be performed by an abatement contractor? This would be directing fault at a company who performs this type of work daily. We find it odd that they would continue working if given direction otherwise when blatant disregard for environmental issues could jeopardize their livelihood.

We feel there has been a lack of written and verbal information given for the conditions of the building. Any abatement issues should have been clearly documented and handled long before we were to begin our work. We feel that no one party is fully responsible for this error but feel that this situation was improperly handled. More information and notification of hazardous materials

CEDAR MILL CONSTRUCTION COMPANY LLC

Meeting all phases of your construction needs

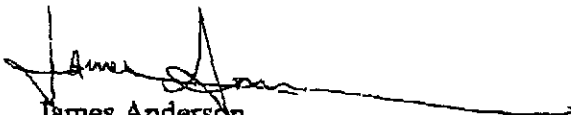
should have been issued prior to us beginning any work with proper site reports as required.

Although we deal with hazardous materials and asbestos on a regular basis, the type of vinyl being removed is not typical of asbestos. Also the specification documents usually cover items which are available to test and direct concern to hidden areas.

Our subcontractor did use an unauthorized dumpster to remove their demo items. We will address this as a contractor/sub-contractor issue

Due to the lack of coordination and communication we have environmental problems and closure of the work area through the end of Thursday, August 15th with demands of completion still set for August 16th. We feel that these demands are unreasonable and an extension of time is necessary to complete the project. Mediation may be necessary if these issues cannot be resolved in a reasonable manner.

We regret having to write this type of letter and forward such information but we feel obligated and responsible to cover ourselves in a situation like this.



James Anderson
Owner

Cc: Pam Brown, PPS
Bob Enninga, PPS
Don Larson, PPS
Brenda Caldwell, PPS



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality
Northwest Region Portland Office
Air Quality Program
2020 SW 4th Avenue, Suite 400
Portland, OR 97201-4987
(503) 229-5554
FAX (503) 229-5265
TTY (503) 229-5471

October 23, 2002

VICKERS/FOSTER AND ASSOCIATES
ATTN PRESTON L FOSTER
901 SE OAK #204
PORTLAND OR 97214

RECEIVED
OCT 25 2002

OFFICE OF COMPLIANCE
AND ENFORCEMENT
DEPARTMENT OF ENVIRONMENTAL QUALITY

RE: NOTICE OF NONCOMPLIANCE
NWR-ASB-02-088
MULTNOMAH COUNTY

referencing

Dear Mr. Foster:

On August 14, 2002 I inspected the modular classroom at the James John School located at 7439 N Charleston Avenue in Portland, Oregon. During my inspection I found that Addison Interiors Inc. (AII) subcontracted with Cedar Mill Construction (CMC) to remove the vinyl floors from the modular classroom at the James John School. AII's employees removed vinyl material from classrooms and the boy's restroom. Analysis of the vinyl in the boy's restroom confirmed that the material contained asbestos. The asbestos material was then carried out to a school dumpster through the adjacent hallway potentially causing an asbestos fiber exposure and contamination.

AMP
~~AMS~~
BWS
~~BKN~~
DML
JMC
JKH
JMR
JRB
LAC
~~LEP~~
LJC
LMS
SMG

Asbestos-containing materials pose a significant health threat to the public and the environment. The DEQ developed rules that are in place to prevent such exposures. One of those rules requires that a survey be done by a qualified inspector for the presence of asbestos. In this case the asbestos containing material was identified as suspect by Vickers/Foster and Associates (VFA) and sampled on August 12, 2002. VFA was hired by Portland Public Schools to manage this project. Results from that test were received on August 13, 2002.

DEQ rules require that all friable asbestos materials be removed by an Oregon licensed contractor. AII is not licensed to remove asbestos. When AII's employees removed asbestos containing flooring at the James John School they caused a potential exposure and committed violations of the DEQ asbestos regulations. VFA violated the asbestos rules when they did not hire an Oregon licensed asbestos contractor to remove flooring from the modular class room. The specific violations are listed below:

Class of violation is meant to weigh the severity of the violation. A class I violation is the most severe and a class III violation is the least severe.

EXHIBIT A ⁶ ^(P)

Class I violations:

OAR 340-012-050(1) (s) Conducting an asbestos abatement without a license.

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.

OAR 340-012-050(1) (q) Storage or accumulation of friable asbestos material or asbestos-containing waste material which caused a potential for public exposure to asbestos or release of asbestos into the environment.

OAR 340-248-0205(1) No person may openly accumulate friable asbestos containing material or asbestos containing waste material.

OAR 340-012-050(1) (p) Violation of a work practice requirement for asbestos abatement projects which causes a potential for public exposure to asbestos or release of asbestos into the environment.

OAR 340-248-0270(3) Remove all asbestos-containing materials before any activity begins that would break up, dislodge, or disturb the materials or preclude access to the materials for subsequent removal.

OAR 340-248-0270(5) Asbestos-containing materials must be adequately wetted when they are being removed.

OAR 340-248-0280(2) All asbestos-containing materials shall be adequately wetted to ensure they remain wet until delivered to an authorized landfill, and:

(b) Packaged in leak-tight containers such as two plastic bags each with a minimum thickness of 6 mil., or fiber or metal drum.

Class II Violation

OAR 340-012-050(2) (j) Failure to provide notification of an asbestos abatement project.

OAR 340-248-0260 Except as provided in OAR 340-248-0250 written notification of any asbestos abatement project must be provided to the Department on a form prepared by and available from the Department, accompanied by the appropriate fee.

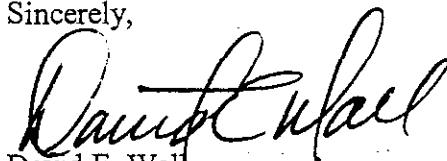
Asbestos was used in over 3000 building products including vinyl asbestos tile and sheet vinyl materials likely to be found in buildings erected prior to 1990. Asbestos can cause lung cancer, asbestosis, and other respiratory diseases. Contractors that perform remodeling and companies that manage remodeling projects need to know if any materials to be handled contain asbestos to protect their employees, clients and the public from potential exposure to asbestos fibers. EPA, OSHA, and DEQ require surveys to determine the presence of asbestos before renovation or demolition.

In the future VFA needs to make sure a survey has been done before allowing subcontractors to start projects. In order to avoid similar violations DEQ recommends that you have at least one employee trained to recognize asbestos hazards. To that end I have enclosed a list of training providers for your information and use.

These are Class I and II violations and are considered to be serious violations of Oregon environmental law. Therefore we are referring these violations 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.

I have also enclosed copies of our rules, guidance and fact sheets, and a list of licensed asbestos contractors. You can also find these items on our website at www.deq.state.or.us and look under the heading "Air Quality". If you have any questions on this matter, or if you wish to discuss a future project please contact me at (503) 229-5364 or (800) 452-4011 ext. 5364.

Sincerely,



David E. Wall
Asbestos Control Analyst

DEW: d
Enclosure

cc: Office of Compliance and Enforcement, DEQ
Oregon OSHA, Region 1
LRAPA, Tom Freeman

School District No. 1

SUBM. NO ORIGINALS

DISTRICT USE ONLY

PERSONAL / PROFESSIONAL SERVICES CONTRACT

For Dollar Amounts of \$2,000.00 or Greater

CHECK BOX THAT APPLIES

LESS THAN \$ 25,000.00

\$ 25,000.00 OR MORE*

*BOARD ACTION: 1997

CONTRACT #

VENDOR #

897/12890
976

This agreement made and entered into as of the date of the last valid signature by and between School District No. 1, Multnomah County, Oregon, a quasi-municipal corporation of the State of Oregon (hereinafter called "DISTRICT") and Vickers/Foster & Associates Construction Program Mgmt, Inc. (hereinafter called "CONTRACTOR").

RECEIVED

VEA-CPM Inc. No. 9903

TERM: The term of this agreement shall commence: 9-12-01 and continue until: 12-31-02

Recognizing the District has need of the services which CONTRACTOR is competent to provide, CONTRACTOR agrees to perform the following personal service(s):

BOXES 1,2 AND 3 MUST BE COMPLETED IN DETAIL TO VALIDATE CONTRACT

Building Project No. _____

Funding Object Code _____

1. DESCRIPTION OF SERVICES: WILL SERVICES RESULT IN DIRECT UNSUPERVISED CONTACT WITH STUDENTS? YES NO
IF YES, SEE INSTRUCTIONS FOR OBTAINING A CRIMINAL RECORDS CHECK AT THE PARAGRAPH ENTITLED "SECURITY."

Project Management Services for Facility Capital Improvement Program 2002 Construction

Project Mgmt. of an estimated \$.83 - 3.6 million in project(s) construction value

(\$1.2 - 5.2 million in project(s) budget value). See attached fee proposal dated 8/23/01.

2. AMOUNT OF CONTRACT: \$151,950.00 PAYMENT TERMS: Monthly billing based on hourly rates
for hours provided. Not to exceed \$151,950.00.

3. OTHER CONDITIONS: (if no special conditions, write "None") Standard reimbursables shall be billed at cost and shall be additional to the base proposal. A contract amendment will be written at project closeout to incorporate actual reimbursable expenses. Estimated expenses will be 2-1/2% of base contract value.

This contract and any amendments to this contract will not be effective and no work shall begin until approved by the appropriate persons listed below. Both parties understand and agree to the TERMS AND CONDITIONS described below and on Page 2 of this contract.

DISTRICT	
ADMINISTRATOR X <u>Pamela J. Brown</u>	DATE <u>9/21/01</u>
GRANT AUTHORIZATION (If Applicable) X	DATE
OTHER AUTHORIZATION (If Applicable including IT) X	DATE
SENIOR MANAGEMENT LEVEL X	DATE
DEPUTY, CLERK OR DESIGNEE X <u>Brenda Caldwell</u>	DATE <u>10/3/01</u>
CONTACT PERSON (PRINT OR TYPE) Brenda Caldwell	TELEPHONE NUMBER 503-916-3164

CONTRACTOR	
BUSINESS NAME Vickers/Foster & Associates	CHECK APPROPRIATE BOX: <input type="checkbox"/> Individual / Sole Proprietor <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other:
ADDRESS 907 SE Oak Street, Suite 204	TAX ID NUMBER OR SSN 93-1151410
CITY STATE ZIP Portland OR 97214	DATE <u>9/20/01</u>
AUTHORIZED SIGNATURE X <u>Doug Nelson</u>	DATE
PRINTED NAME / TITLE Doug Nelson, Principal	TELEPHONE NUMBER 503-233-7008
CONTACT PERSON (PRINT OR TYPE) Doug Nelson	

CHARFIELD STRINGS TO BE CHARGED:

ACCOUNT	FUND	ORG	PROGRAM	SUB-CLS	PRJ / GRT
538500	402	5591	41500	99999	P0600

ACCOUNT	FUND	ORG	PROGRAM	SUB-CLS	PRJ / GRT

AMOUNT
\$ 151,950.00

AMOUNT
\$

TERMS AND CONDITIONS FOR PERSONAL/PROFESSIONAL SERVICES CONTRACT

(Any alteration to the contract language must be reviewed by the General Counsel)

Independent Contractor Status: Contractor is an independent contractor solely responsible for the work performed under this contract. Contractor, its subcontractors and employees shall not be deemed employees of the District. Contractor shall be responsible for all federal, state and local taxes and fees applicable to payments for services under this contract.

EXHIBIT A
10-5430

Conflict of Interest: Contractor declares that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further declares that in the performance of contract no person having any such interest shall be employed by Contractor.

Indemnification: Contractor assumes responsibility for and agrees to defend and hold harmless the District, its officers, agents and employees from and against any and all claims, suits and actions of any nature arising out of the negligent acts or omissions of Contractor, Contractor's employees, agents and subcontractors in the performance of this contract.

Compliance with Applicable Law: Contractor agrees to comply with all federal, state and local laws applicable to the work under this contract, and all regulations and administrative rules established pursuant to those laws. Contractor specifically agrees to comply with the provisions of ORS 279.312, 279.314, 279.316, 279.320 and 279.334 pertaining to payment of laborers and hours of labor. Contractor agrees to keep all student records confidential in accordance with state and federal statutes and rules governing confidentiality of student education records. Contractor agrees to comply with all federal and state laws prohibiting discrimination on the basis of race, sex, national origin, religion, age or disability.

Security: Contractor agrees to abide by all District rules and regulations while upon District property. Unsupervised access to students will require obtaining identification through School Police, which requires fingerprinting and a criminal records check as required by law. Contractor will be responsible for all costs associated with this requirement. If approved access to students is granted, all Contractor personnel shall be required to prominently display this identification while upon District property. All property issued will remain the property of District and upon termination or expiration of contract, Contractor will return identification and other property to District.

Licenses: Contractor certifies that it holds all business registration or professional occupation licenses required by law or local government ordinances to conduct the service or business.

Insurance: Contractor shall secure at its own expense and keep in effect during the term of this contract comprehensive general liability insurance with a minimum limit of \$1,000,000 per occurrence and auto liability with a minimum limit of \$1,000,000 per occurrence.

Workers' Compensation Insurance: Contractor, its subcontractors, if any, and all employees providing work, labor or materials under this contract are subject employees under the Oregon Workers' Compensation Law and shall comply with ORS 656.017 which requires them to provide workers' compensation coverage for all their subject workers. Contractor shall require proof of such workers' compensation insurance by receiving and keeping on file a certificate of insurance from each subcontractor or anyone else directly employed by either the Contractor or subcontractor.

Insurance Certification: Before Contractor commences work under this contract, Contractor shall furnish to District's Risk Management Department certificate(s) of insurance as evidence of the insurance coverage required by this contract, including workers' compensation. The certificate(s) shall provide that the insurance company will give a 30-day written notice to the District if the insurance is canceled or materially changed. Waivers of insurance may be obtained in certain circumstances from Risk Management.

Termination: This contract may be terminated prior to expiration of the agreed-upon term by mutual consent of the parties as the parties agree, or by either party upon 30 days' written notice to the other, delivered by certified mail or in person. Termination shall not affect any right, obligation or liability of Contractor or District, which accrued prior to such termination.

Ownership of Work: All work products, including intellectual property, created by the Contractor as part of Contractor's performance under this contract shall be the exclusive property of the District. District shall have no right in any pre-existing work product of Contractor provided to District by Contractor in the performance of this contract except to copy, use or re-use any such work product for District use only.

Hazardous Chemicals: Contractor shall notify District prior to using products containing hazardous chemical to which District employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon District's request, Contractor shall immediately provide Materials Safety Data Sheets, as required by OAR 437-155-025, for the products subject to this provision.

Access to Records: District's authorized representatives shall have access, upon reasonable request and during regular office hours, to the books, documents, papers and records of Contractor which are directly pertinent to this contract for the purpose of making audits, examinations, excerpts and transcripts.

Assignment: Contractor shall not assign or transfer its rights or obligations under this contract without the prior written consent of District.

Successors in Interest: The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns, if any.

Attorneys' Fees: If any action at law or in equity, or an arbitration, is necessary to enforce or interpret the terms of this contract, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief which the party may be entitled.

Governing Law: The provisions of this contract shall be construed in accordance with the provisions of the laws of the state of Oregon. Any action or suit involving any question arising under this contract must be brought in the appropriate court in the state of Oregon.

THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND SUPERSEDES ALL PRIOR AGREEMENTS OR NEGOTIATIONS BETWEEN THE PARTIES. NO AMENDMENT, CONSENT OR WAIVER OF THE TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES.

PORTLAND PUBLIC SCHOOLS STANDARD PUBLIC CONTRACT PROVISIONS

The following Standard Public Contract provisions are made a part of the Contract between Portland Public Schools ("District") and Vickers/Foster & Associates (Contractor") by reference.

PAYMENT OF LABORERS (ORS 279.312, 279.314)

A. Contractor shall, to the extent as may be required by Oregon law:

(1) Make payment promptly, as due, to all persons supplying to such Contractor labor or material for the prosecution of the Work provided for this Contract;

(2) Pay all contributions or amounts due the Industrial Accident Fund by Contractor or subcontractors, if permitted, incurred in the performance of this Contract;

(3) Not permit any lien or claim to be filed or prosecuted against District on account of any labor or material furnished; and

(4) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

B. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to it by any person in connection with this Contract as such claim becomes due, District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of such Contract.

C. The payment of a claim in this manner shall not relieve the Contractor or the Contractor's surety, if any, from obligation with respect to any unpaid claims.

HOURS OF LABOR (279.316, 279.334)

For those employees of Contractor covered or subject to Oregon employment laws:

A. Persons employed under this Contract shall receive at least time and a half pay for work performed on the legal holidays specified in ORS 279.334(1)(a)(C)(ii) to (vii) and for all overtime worked in excess of 40 hours in any one week, except for individuals who are excluded under ORS 653.010 to 653.261 or under 29 USC 201 to 209 from receiving overtime.

B. Except as provided above, no person shall be employed for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where District absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279.051, the laborer shall be paid at least time and a half pay:

(1) for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(2) for all overtime in excess of ten hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; or

(3) for work performed on Saturday and on any legal holidays specified in ORS 279.334.

For those employees of Contractor that are

covered or subject to Oregon employment laws, Contractor must, pursuant to ORS 279.316(1)(b), give notice to employees who perform work on this Contract, either at the time of hire or before commencement of work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

PAYMENT FOR MEDICAL CARE AND PROVIDING WORKERS' COMPENSATION (ORS 279.320)

To the extent any of Contractor's employees are covered by the Oregon employment laws, Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation, furnishing medical, Surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, of all sums which Contractor agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

To the extent any of Contractor's employees are covered by the Oregon employment laws, Contractor, its subcontractors, if any, and all employers working under this contract, are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.

TIME LIMITATION ON CLAIM FOR OVERTIME (ORS 279.336)

To the extent any of Contractor's employees are covered by the Oregon employment laws, such covered worker employed by Contractor shall be foreclosed from the right to collect for any overtime under this Contract unless a claim for payment is filed with Contractor within 90 days from the completion of the Contract, providing Contractor has:

A. Caused a circular clearly printed in blackface pica type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed on the Work, and

B. Maintained such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

SUBCONTRACTORS AND ASSIGNMENT

Except as set forth in Contractor's proposal or otherwise in this Contract, no subcontract shall be made by Contractor with any other party for furnishing any of the work or services herein contracted without obtaining the prior written consent of District, which District may

PORTLAND PUBLIC SCHOOLS STANDARD PUBLIC CONTRACT PROMISIONS

withhold without cause. In addition to any other provisions District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by the following sections of this Contract as if the subcontractor were Contractor: Independent Contractor Status; Other Contractors; Payment for Medical Care and Providing Workers' Compensation; Hours of Labor, Time Limitation of Claim for Overtime; Insurance; Indemnity and Hold Harmless; Records; Attorney's Fees; Compliance with Laws. District's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

This Contract is not assignable by Contractor, either whole or in part, unless Contractor has obtained the prior written consent of District.

District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any enforceable benefit or right, whether directly, indirectly, or otherwise, to third persons.

COMPLIANCE WITH LAWS

Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations on nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, or disability.

Contractor's services shall comply with laws, codes, regulations, and applicable requirements imposed by governmental authorities having jurisdiction over the Contract services.

RE/CPM

Robert Enninga. Consultant Program Management



Portland Public Schools Facilities and Asset Management Office
Mailing Address: PO Box 3107, Portland, OR 97208-3107. USA
Phone/Voice Mail: 503.591-4236; Fax: 503.916-3161
E-mail: RECPCM@aol.com

August 21, 2001

Mr. Greg Vickers, President
Vickers/Foster & Associates CPM, Inc.
901 SE Oak St., Suite #204
Portland, OR 97214

RE: Portland Public Schools Facility Capital Improvement (Bond) Program 2002 construction projects.

Dear Greg:

In response to the recent selection of Vickers/Foster & Associates CPM, Inc., to provide project management services for Portland Public Schools, please provide your proposal for the provision of project management services for Portland Public Schools Facility Capital Improvement (Bond) Program 2002 construction projects.

Following is a preliminary list of 2002 projects and primary scope of work elements that Vickers/Foster & Associates may be asked to manage. This list is subject to change:

- Whitaker MS –Work scope (if any) to be determined.
- Ceiling access panels –multiple facilities/contracts.
- ADA/safety –multiple facilities/contracts.
- Hazardous materials abatement -multiple facilities/contracts.
- Fire Alarm evaluation (Phase 1) –multiple facilities.
- Miscellaneous support projects.

Base proposal: A *not-to-exceed fee* for the management of an estimated \$.83 – 3.6 million in project(s) construction value (\$1.2 – 5.2 million in project(s) budget value). Standard reimbursable expenses shall be billed at cost, and shall be additional to the base proposal. Billings against said not-to-exceed fee shall be monthly, and shall note at least the following:

- Monthly services total, and
- Per-project cost breakout (for cost center attribution).
- Standard monthly reimbursables additional to monthly services fee.

Time and Materials: For capital projects as assigned, and miscellaneous program assistance as requested, provide a compensation sheet consistent with your RFQ submission showing hourly project staff billing rates and noting at least the following (as applicable):

- Principal
- Senior Project Manager
- Project Manager
- Construction Manager / Project Assistant
- Clerical / Administrative Support

I wish to submit your contract proposal for approval by the Portland Public Schools Board at their September, 2001 meeting. To facilitate this, *please submit your proposal to me on or before 9:00 AM Friday, August 24, 2001*. Copies should be sent to Ms. Brenda Caldwell at Portland Public Schools, and to me, at the address and Fax number listed on this letterhead.

Sincerely,

Robert E. Enninga

Principal
RE/CPM

Cc: Ms. Pamela Brown
Ms. Brenda Caldwell

STANDARD SCOPE of SERVICES to be OFFERED

The Scope of Services described below is to be considered the *standard of services* to be offered by your firm for projects assigned. Individual project status, size, scope, and completion schedule will of course determine the applicability and appropriateness of individual items of service scope.

Design Phase

- Prepare a project schedule for review and approval by the Owner.
- Assist the Owner in selection of the Architect / Engineers.
- Assist the Owner in selection of other consultants as required.
- Assist the Owner in obtaining land use approvals from Governing Agencies.
- Coordinate preparation and execution of agreements between the Owner and consultants.
- Provide recommendations to the Owner regarding cost and schedule impacts.
- Provide recommendation to the Owner regarding type of construction delivery method and contract appropriate for the project.
- Assist the Owner in clarifying roles and responsibilities of consultants and contractors.
- Coordinate services of Architect, Engineers and consultants.
- Recommend options to balance budget if design exceeds the budget.
- Assist the Architect in submission of plans to Governing Agencies for conditional use approval, design review and building permits.
- Present project status reports to Owner's management team.
- Attend project design meetings.
- Assist Owner's staff to understand drawings and specifications.
- Review cost estimates prepared by consultant or contractor.
- Monitor status of drawings and specifications to confirm that Architect and Engineers stay on schedule.
- Assist the Owner and Architect to review project with potential bidders.
- Assist the Owner and Architect to develop a quality assurance program for the construction phase.
- Assist the Owner and Architect to identify and order long lead items.
- Coordinate value engineering and constructibility reviews.

Bid and Award Phase

- Contact qualified contractors to inform them of the project.
- Coordinate or assist the Owner with appropriate bid advertisements.
- Conduct pre-bid conference.
- Assist the Owner to receive and review bids.
- Prepare a bid tabulation.
- Prepare a recommendation regarding bid award and present to Owner.
- Prepare a notice of award.
- Prepare a notice to proceed.
- Coordinate the execution of construction agreements.
- Assist the Owner to confirm insurance and bond documents are received.

Construction Phase

- Conduct weekly construction meetings, record and distribute minutes of meetings.
- Prepare and distribute information management system for the construction phase.
- Facilitate resolution of issues that may impact budget or schedule.
- Process change orders for Owners approval.
- Develop procedures to coordinate inspections by Architect, Engineers, Owner, special inspectors and building officials.
- Manage submittal review process to meet schedule objectives.
- Maintain comprehensive project documentation on behalf of the Owner.
- Monitor progress of construction activities in comparison with the contractor's construction schedule.
- Require contractor to prepare recovery schedule if construction falls behind schedule.
- Assist the Owner to administer terms and conditions of the construction agreement.
- Prepare project status reports and present to Owner.
- Provide options and recommended solutions regarding issues in the construction phase to the Owner.
- Document and distribute Owner decisions to the project team.
- Process payment applications and billings from contractor and consultants.
- Assist the Architect to prepare the punch list.
- Assist the Architect to prepare the Substantial Completion Certificate.

Close Out Phase

- Coordinate project close out phase.
- Obtain record drawings and transmit to Owner.
- Coordinate building systems training of Owners staff. Typical staff training includes the fire alarm system, mechanical and electrical systems.
- Coordinate receipt of occupancy permits.
- Assist the Owner with move in.
- Transmit appropriate files to the Owner.
- Assist in resolution of cost issues between the Owner and Contractor(s).
- Assist the Owner to establish and implement procedures for the warranty period.
- Assist the Architect to prepare Final Completion Certificate.
- Approximately 60 days prior to expiration of the Contractor's warranty(s), facilitate and participate in, a project warranty walk-thru and warranty conference including a representative of the Owner, Architect/Engineer and Contractor.

—end—

Linda Cameron

From: Ann White [annwhite@pps.k12.or.us]
Sent: Wednesday, August 07, 2002 1:52 PM
To: Linda Cameron
Subject: Re: Specifications

Importance: High

Linda:

I just left you a VM re the sheet vinyl at J. John. CONTRACTOR CANNOT REMOVE UNTIL WE TEST FOR ASBESTOS.

I also need to know your revised scope for job to determine if we need to do a hazardous materials survey for the entire portable.

What is existing material you are removing from the counter in Rm. 42?

The District prefers Formica or Wilson Art brands, in solid colors. (Not, however, the more expensive material that has the color all the way through the laminate.) We often use Formica 920 Almond, as it is always available. If you are going to choose a color, I can give you a sample of the blue tweed carpet tile.

Thanks,
Ann, 4409

Original Message -----

From: Linda Cameron <lcvfa@easystreet.com>
To: 'Ann White' <annwhite@pps.k12.or.us>
Cc: Doug Nelson (E-mail) <dnvfa@easystreet.com>
Sent: Wednesday, August 07, 2002 1:05 PM
Subject: RE: Specifications

> Replacement sheet vinyl is required at James John's boy's restroom. The
> laminate replacement is for the entire counter in room 42. The counter top
> is in very bad shape. Due to schedule I would like to pick what is
> available, what brand is preferred?
> Thanks, Linda

> -----Original Message-----

> **From:** Ann White [mailto:annwhite@pps.k12.or.us]
> **Sent:** Wednesday, August 07, 2002 9:10 AM
> **To:** Linda Cameron
> **Cc:** randall johnston; Jerry Lively; Richard Wong; Jeanne Pace; Deborah
> Berry
> **Subject:** Re: Specifications
> **Importance:** High

> Linda:

> The District has Armstrong Excelon tile available which we will sell to
the
> contractor. The contractor can pick it up at Madison H.S. after we
receive

> a written order for the amount needed and billing information (or
chartfield
> if Headstart is purchasing directly). The color is 51858, a white tone;
45

> SF per case. To match the other classrooms at Kelly Center, the
contractor

will have to purchase from an outside vendor Accent colors 51903 and
507.

> These blue and mauve tones go very well with the carpet tile.

>

R
EXHIBIT A9

> Where are you proposing to put sheet vinyl? I do not recall it in the
> projects.
> Where are you installing the plastic laminate? Are you trying to match
> existing?
>
> The 18" x 18" carpet tile is Shaw Industries "Networx" blue tweed. You
can
> see it in the existing Headstart classrooms at Kelly Center. Our Laborers
> can haul the tile to the various sites. We will need the following:
> Work request with billing information (or chartfield if Headstart is
paying
> directly for the hauling) Fax to Jerry Lively at 916-3161
> List of sites and room numbers where tile is to be delivered.
> SF of carpet tile required for each site
> Date needed at each site.
>
> I am faxing you the Networx Installation guidelines, which the installer
> must follow. The carpet tile was donated to the District and requires
> sorting (or culling) prior to or during installation to assure only good
> tile are installed in the classroom. (An occasional tile may be stained or
> sun-bleached. Discard these). The District will deliver sufficient extra
> tile to allow for culling.
>
> Base is FLEXCO 4", WF1 (Black)
> Reducer is Burke-Mercer Imperial Carpet Reducer. It must be cut down to
1/8
> inch where the carpet abuts the vinyl tile. Match base color.
>
> Hope this helps.
> Ann, 4409
>
>
>
>

----- Original Message -----

> From: Linda Cameron <lcvfa@easystreet.com>
> To: Ann White (E-mail) <annwhite@pps.k12.or.us>
> Cc: Doug Nelson (E-mail) <dnvfa@easystreet.com>
> Sent: Wednesday, August 07, 2002 8:42 AM
> Subject: Specifications
>
>

> > Ann,
> > I need the following information before the end of the day.
> > District standards for for VCT, Sheet Vinyl and Rubber base. Is there a
> > specification or name brand that the District prefers to use -armstrong,
> > etc.
> > Are there District standard colors?
> > When can the District drop off to site the 12'x12' carpet tile the
> District
> > agreed to supply to Head Start with? Do you have installation
instructions
> > for this item?
> > What color is this carpet tile?
> > District standard for P-lam and colors- nevamar?
> >
> > Thanks, the contractors for the Head Start and Special Ed will be
starting
> > demo later this week and want to order supplies today/ tomorrow.
> >
> > Thanks, Linda
> >

Linda Cameron

From: Ann White [annwhite@pps.k12.or.us]
Sent: Friday, August 09, 2002 1:54 PM
To: Linda Cameron
Subject: Re: W.O. for carpet tile haul

Importance: High

Linda:

Yes, per Susan's request, Faubion is getting the carpet tile today. Crafts will deliver the other schools shortly after. The sooner we receive the request the better, as our crafts are very short-handed and this is crunch time for a lot of projects.

I'll get back to you re the sheet vinyl.

Ann

----- Original Message -----

From: Linda Cameron <lcvfa@easystreet.com>
To: 'Ann White' <annwhite@pps.k12.or.us>
Cc: Doug Nelson (E-mail) <dnvfa@easystreet.com>
Sent: Friday, August 09, 2002 1:26 PM
Subject: RE: W.O. for carpet tile haul

> I need to confirm that the carpet tile will be delivered by the end of today

> Friday 8/9/02. I have Contractors ready to install the carpet tomorrow morning starting at 9:00am.

> Also what is the District standard color and brand for sheet vinyl? Per

> conversation yesterday, the boys' restroom at James John's portable is to receive new sheet vinyl. Tulla from Apex Environmental will be testing the room on Monday for Asbestos. I want to give the Contractor the heads up so he can order all his materials by Monday. Thanks, Linda

>
>
> -----Original Message-----

> **From:** Ann White [mailto:annwhite@pps.k12.or.us]
> **Sent:** Thursday, August 08, 2002 12:51 PM
> **To:** Deborah Berry; Jeanne Pace; Susan Proppe Tong; Allyson Yoshiwara
> **Cc:** Linda Cameron
> **Subject:** W.O. for carpet tile haul

> The following work orders have been written to haul carpet tile to the 3

> Headstart new sites:

> 28270 --Faubion

> 28275--James John

> 28276--Kelly Center

> Estimate: Approx. \$217 per site.

> Chartfield provided by Susan P.T.

> Ann

>

>

VICKERS/FOSTER & ASSOCIATES Construction Program Management, Inc.

August 8, 2002


James Anderson
Cedar Mills Construction Company
10750 SW North Dakota Street
Tigard, OR 97223

Re: **Notice to Proceed** - James John Elementary School

CONTRACT AMOUNT: \$23,100.00

Portland Public School District has authorized Vickers/Foster & Associates CPM, Inc. as the Owners representative to issue to Cedar Mills Construction Company the following: you are hereby notified to proceed with the construction of the above referenced project.

Sincerely,
VICKERS/FOSTER & ASSOCIATES CPM, INC.



LINDA G. CAMERON
Project Management Consultant

Cc: Brenda Caldwell, PPS

EXHIBIT A11

LETTER OF TRANSMITTAL

Attn: Brian Smith
 Company: DEQ
 Address: _____

Date: 4/15/03 Job No: 01045
 Phone: _____
 Re: Portland Public Schools – Head Start
James John Elementary School

We are sending you Attached Transmitted via _____
 Under separate cover via _____ the following items:

Copies	Date or No.	Description
1		Memo and Letters regarding Asbestos at James John
1		Signed copy of contract

These are transmitted as checked below:

- For Approval Approved as Submitted Submit _____ Copies for Distribution
 For Your Use Approved as Noted Return _____ Corrected Prints
 As Requested Returned for Corrections Other _____
 For Your Review For Bids Due _____

Remarks:

Thank You,

Signed: Greg Vickers *GV*

If enclosures are not as noted, kindly notify us at once.

EXHIBIT A11

MEMORANDUM

DATE: August 14, 2002

TO: Debra Berry, Head Start,

FROM: Linda Cameron, Vickers/Foster & Associates

RE: Head Start

SUBJ: Asbestos at James John

I spoke with Debra Berry to update her on the situation at James John. I explained that the District was concerned that the sheet vinyl may contain asbestos. I was informed of this on late Wednesday and I contacted Apex on Friday 8/9/02 to schedule testing for Monday 8/12/02 morning. The Contractor was not going to commence work on site till Monday, 8/12/02. I also had contacted the Contractor to inform him not to touch the boys' restroom until I received results on Tuesday morning. If the sheet did contain asbestos than the District would have this abated. If asbestos was not present than the Contractor could proceed with their work. On Monday I stopped by the site to deliver construction tags and reiterate the situation to the subcontractor. He was aware that Apex was out testing and was told again not to touch the sheet vinyl until further notice. On Tuesday, I received a call from Apex stating that the Asbestos was present and the flooring would require abatement. I contacted the Contractor immediately to inform him of the status but he informed me that his people had already removed the flooring. I told him to stop work in the restroom and Apex would be out to assess the situation. When Apex arrived about one and half hours later, the flooring contractor was still removing flooring in the room and they had disposed of the contaminated vinyl in the PPS 's dumpster. After discussing the situation with Apex, I shut the site down until it could be determined the extent of contamination. I briefed Debra that bulk sample have been returned with a negative testing for asbestos, air sample were taken today (8/14/02) and results are expected back tomorrow morning, 8/15/02. The asbestos abatement company will be abating the main hallway and restroom starting tonight. The hallway is expected to be clean by end of the day Thursday and the restroom will follow. If negative, the Contractor will be allowed to re-enter the site to complete to required work in the classrooms. VFA had met with the Cedar Mills today to create a schedule that will maintain the previous completion dates. Classroom work by this Friday except for ionization detectors, plastic laminate, and radiator shrouds which will be completed the following week but will not impact the ability for the teachers to start moving into the space on August 19,2002. The remaining work will be completed by August 23, 2002.

I also updated her on the status of Kelly Center and Faubion Elementary School. Both facilities will have rooms ready for the teacher to move in by August 19, 2002. Faubion's exterior doors

CEDAR MILL CONSTRUCTION COMPANY LLC

Meeting all phases of your construction needs

August 14, 2002

Vickers/Foster & Associates
Attn: Linda Cameron
901 SE Oak St., Suite 204
Portland, OR 97214

FAXED
8/14 10:58

Re: James John Elementary School

Linda,

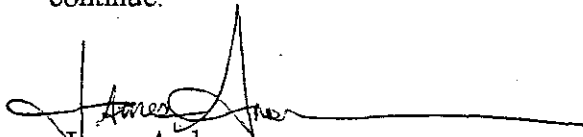
We were asked by your firm to bid a job for the Portland Public School District on Friday, July 26th for the James John Elementary Head Start Classroom. This project was to be bid with the agreement of completion August 16th. In doing so a "Notice of Award," as stated in the bid documents, was to be issued on the following weekday, July 29th.

On Wednesday, August 7th, we were notified by phone from Vickers/Foster to proceed and that contracts would follow. On Friday, August 9th we received via facsimile the formal "Notice to Proceed" which was dated August 8th. Upon receipt of this, we requested an extension of time due to the delay of the Notice to Proceed. We were given additional time in some areas, but were denied additional time in the main areas.

As an act of good faith to meet the schedule, Cedar Mill requested permits on August 9th and proceeded with work August 12th without the proper building permits in place, nor a signed contract. As of Tuesday, August 13th, we still do not have a permit on site nor a fully executed contract and thus cannot complete the work by our contracted completion date of August 16th.

At this time, no further work will be done until a fully executed contract is received and the proper permits are on site at which time work will commence with a 7-10 weekday work schedule for completion.

We are sorry about this delay but we need the appropriate documents in order to continue.


James Anderson
Owner

Cc: Pam Brown, PPS
Bob Enninga, PPS
Don Larson, PPS
Brenda Caldwell, PPS

EXHIBIT

A12

VICKERS/FOSTLER & ASSOCIATES Construction Program Management, Inc.

may take long to install. If installation extends into the following week, the contractor will tent the area but this should not pose any interference with the teachers' ability to set up their rooms. I also told her that I have been in constant contact with Susan Proppe-Tong and have been keeping her a breast of the schedule and situations.

Cc: Pam Brown, Portland Public Schools
Robert Enninga, RE/CPM
File

BROADCAST REPORT

TIME : 08/13/2002 22:20
 NAME : CEDAR MILL CONSTR
 FAX : 5036200553
 TEL : 5036200552

PAGE(S)

02

DATE	TIME	FAX NO./NAME	DURATION	PAGE(S)	RESULT	COMMENT
08/13	22:18	5032334909	41	02	OK	ECM
08/13	22:20	5039163161	42	02	OK	ECM

BUSY: BUSY/NO RESPONSE
 NG : POOR LINE CONDITION
 CV : COVERPAGE

CA/OR Klamath Workgroup
June 2, 2004
Oregon DEQ
811 SW Sixth Avenue
Portland Oregon

Confirmed Attendance as of May 28, 2004

Baggett, Art, Chair, California State Water Resources Control Board
Bettenberg, Bill, Deputy Director, Office of Policy Analysis, Dept of Interior
Byler, Tom, Natural Resources Policy Advisor, Governor's Office of Oregon
Carlton, Gary, California SWRCB
Dale, Alan (Chip), ODFW
Elicker, Roy, Deputy Director, ODFW
Engbring, John, Supervisor USFWS Klamath Office
Filippini, Mark, EPA Region 10, TMDL Project Manager
Gannett, Marshall, Senior Hydrologist USGS State Water Resources Portland office
Karas, Christine, Deputy Area Manager, Klamath Basin Area Office
Kiger, Luana, Special Assistant to the State Conservationist NRCS
Klamt, Robert, CA North Coast Regional Water Brd, Sr Land/Water Use Analyst
Koch, Don, California Fish and Game, Regional Manager North Coast Region
Kuhlman, Catherine, CA North Coast Regional Water Board
Marbut, Reed, Water Resources Department, Intergovernmental Officer
Mattice, Mike, BLM Assistant State Director for Resources in Portland
McInnis, Rod, Regional Administrator for the Southwest Regional Office, NOAA Fisheries
Nichols, Dick, Oregon DEQ, Water Quality, Bend Office
Raby, Jon, GLM Chief, Klamath Resource Area
Rea, Maria, Senior Policy Advisor to the Director, Water Division, U.S. EPA Region 9
Sabo, Dave, Area Manager, Klamath Basin Irrigation Project, US BOR
Schroeder, Holly, Water Quality Administrator, Oregon Dept Environmental Quality
Shively, Rip, Station Chief for KFalls Biological Resources Office USGS
Ward, Phil, Acting Director, Oregon Water Resources Department
Van't Hof, David, Sustainability Advisor, Governor's Office of Oregon
Whitman, Richard, AIC Natural Resources, Oregon Dept of Justice
John Dan's Deputy Regional Director BOR Mid Pacific Region

Possible:

Shimamoto, Karen from USFS

In addition, the Committee called for action by the Legislature and DEQ to ensure that the Committee's recommendations and vision for the program are achieved.

- Legislative action:

- maintain the State's current share of program funding (i.e., General Fund);
- allow for collection of an annual permit fee and ensure timely permit renewal (right now, fees are only collected every five years if permits are renewed on time);
- allow for an annual fee increase not to exceed 3% to help cover indirect costs (such as the rising cost of employee benefits).

- DEQ action:

- demonstrate strong leadership to achieve permitting and wastewater program commitments;
- track and report on program implementation progress, and provide greater accountability to the Legislature, the businesses, and the people of Oregon;
- establish and report annually on a small number of explicit accountability measures, as well as progress toward implementation of the watershed approach.

For DEQ's budget, the Committee's recommendations translate to five new positions phased in over two biennia, an increase in general funds, and a modest fee increase. To that end, we are including a request in our 2005-07 agency budget to retain four positions we would otherwise lose and add 1.25 new positions, funded 40% by general fund and 60% by fees. We have also proposed a legislative concept that would add statutory authority for DEQ to structure its work around a watershed approach, and streamline some of the mechanics of issuing permits that are currently restricted by statute. As I meet with key legislators and other stakeholders over the next six months, this package will be one of my top priorities. At the same time, Blue Ribbon Committee members will be working with their constituencies to further educate them on the merits of this refocused wastewater permitting approach.

Governor Commends DEQ's Clean Air Partners Program

Each year, approximately 300 cars in the Portland area fail DEQ's vehicle emission tests and never return to be re-tested. Those cars are either parked and abandoned or being driven illegally, adding to air pollution. To assist the owners of these cars (some of whom presumably can't afford repairs), DEQ started working two years ago on a program to provide financial assistance to low-income drivers for repairing their vehicle emissions systems. In May, Governor Kulongoski praised what's now known as DEQ's "Clean Air Partners" program – a partnership between DEQ, the United Way of the Columbia-Willamette and the Ron Tonkin Family of Dealerships. The program funds reasonable repairs for low-income drivers through driver donations collected at Portland-area DEQ Clean Air Stations. People who qualify for the program pay only \$50 for repairs.

Since collections began last fall, drivers have voluntarily donated nearly \$4,000, and over 20 qualified applicants now await repairs to their vehicles under the program. DEQ approves applications for drivers who prove low-income status and have road-worthy cars that can be fixed. United Way uses the donated funds to pay Ron Tonkin for the repairs at cost, and the low-income drivers pay \$50 for labor associated with the repair. Nina DeConcini, DEQ Communications and Outreach Manager, and Ted Kotsakis, DEQ Vehicle Inspection Program Manager, are the architects of this innovative program, which supports DEQ's Strategic Direction to deliver excellence and outstanding customer service, as well as to help protect air quality. We'll show a short video on the program at your meeting.

New Online Mailing Service Will Benefit Customers and Save Money and Paper

In early June, DEQ launched a new online information subscription and mailing service to improve customer service and reduce costs. Until recently, DEQ maintained over 450 mailing lists to keep people informed about our rulemaking activities, public meetings, permitting work and various other issues. Most of the people on these lists had asked to receive specific information on a regular basis, and DEQ consistently sent out hundred of pieces of mail each day in accordance with their requests. Often, people received duplicate notices because their addresses appeared in more than one form in our mailing lists, and correcting these duplications was a time-consuming regular maintenance task for DEQ staff. People complained about having to call DEQ to be removed from or added to our mailing lists, and we recognized the need for a better system.

Last fall, we started working on an electronic mailing system that would send information via e-mail (thereby eliminating duplicate notices; e-mail addresses are inherently unique) and allow our customers to subscribe to mailing lists on the web instead of having to call DEQ. Early this year, we consolidated our mailing lists from over 450 to nearly 250, and trained staff to use the new system. We estimate that over 18,000 customers will opt to receive notices via e-mail rather than hard-copy, saving DEQ \$25,000 or more per year in postage, paper and processing, plus additional savings in staff time required for copying and stuffing envelopes. In early June, we sent a letter to our mailing list subscribers explaining the change and telling them how to sign up. Over the next six months, we will be tracking actual savings and customer feedback on the new system to quantify improvements.

Settlement Signed to Relicense the Round Butte/Pelton Hydro-Electric Complex

This week, DEQ joined federal, state, local and non-governmental entities in signing a settlement agreement to relicense the Round Butte/Pelton hydro-electric complex on the Deschutes River. Portland General Electric and the Warm Springs Indian Tribe applied for the license in June 2001 from the Federal Energy Regulatory Commission (FERC) to continue to operate the set of three hydro-electric facilities on the Deschutes near Madras. In June 2002, DEQ issued a Section 401 water quality certification for the application, and since then, we have worked with the government agencies and stakeholders involved to create the settlement agreement, which addresses all issues associated with the new license.

The agreement includes conditions set by DEQ's original 401 certification for the complex. In addition, it will require installation of a selective withdrawal system on Round Butte Dam which will improve water quality within and downstream of the project and may help juvenile fish migration. Although the dams are equipped with fish ladders and other mechanisms to allow fish passage, the slack water behind the upper dam has prevented migrating smolts from finding their way downstream through the upper reservoir. The selective withdrawal system should create enough velocity at the surface to give the small fish a sense of direction. Selective withdrawal also provides a means for pulling water off at various levels within the reservoir as opposed to single outlet currently at the dam, which will help maintain temperature and dissolved oxygen standards downstream. Construction work has already begun on the withdrawal structure, and when FERC acts to issue the license, PGE and the Tribes will begin working on the other conditions required by the agreement.

Update on Efforts to Relocate the DEQ Laboratory

As you know, we have been working with the Department of Administrative Services (DAS) and the Oregon Public Health Laboratory (PHL) over the past two years to relocate the DEQ and PHL

in a combined facility. In April, I reported to you that the DAS had reopened their search for a building to house the new facility, after a due-diligence review of their top choice revealed easement problems. Last week, DAS finalized a sales agreement on an alternate new, vacant building in Hillsboro with enough space to house DEQ's 75 lab staff and PHL's 75 staff. Over the next three months, DAS will conduct a due-diligence review on the property. In November, DAS plans to ask the legislative Emergency Board for approval to issue the remaining \$26 million in bonds for construction. Our ultimate goal is to move the two labs into the new facility in late 2006 or early 2007.

ECOS-EPA Alignment Workgroup Co-Chairs Meet in Denver on July 13-14

Earlier this week, I traveled to Denver to meet with my fellow co-chairs of the ECOS-EPA Alignment Workgroup¹. Since last fall, the group has been working to better align the strategic planning processes of the states and EPA, with a goal of delivering federal funds in a coordinated way to achieve the most environmental gain for states and regions. Other workgroup co-chairs include Steve Owens, Director of the Arizona Department of Environmental Quality; David Ziegele, from EPA's Office of the Chief Financial Officer; and Dona DeLeon, from EPA's Office of Congressional and Intergovernmental Relations. Our July meeting focused on progress to date related to eight state-EPA pilots nationwide that are testing new ways of aligning state and federal funding priorities, as well as other initiatives by non-pilot states. We also talked about next steps for the workgroup, which I will report to you on at your July 15 meeting.

Willamette River Cleanup Authority Plans First Meeting

Last year, the Oregon legislature passed Senate Bill 751, related to the contaminated sediments in Portland Harbor and creating the Willamette River Cleanup Authority (WRCA). The Authority, chaired by Governor Ted Kulongoski, includes state Representatives Dan Doyle and Betsy Johnson, and state Senators Rick Metsger and Jason Atkinson. The purpose of the WRCA is to receive reports from DEQ, EPA and potentially responsible parties about the ongoing Remedial Investigation and Feasibility Study process, and to make recommendations to the Oregon legislature about the amount of bonds needed to pay for implementation of all or part of the in-water cleanup plan formalized in the Record of Decision for Portland Harbor.

The first meeting of the WRCA is currently being planned for July 23 at the City of Portland Water Pollution Control Laboratory. The meeting will provide information on the ecological and economic importance of Portland Harbor, a status report on the Superfund cleanup and an opportunity for public testimony. Dick Pedersen, DEQ's Northwest Region Administrator, is in the lead in working with the Governor's office on the activities of the WRCA.

¹ The Environmental Council of the States (ECOS) a national non-profit, non-partisan association of state environmental directors that works to improve coordination between states and the EPA. I serve as ECOS Secretary-Treasurer, and am a member of the ECOS Planning Committee, Cross Media Committee and Environmental Compliance Committee. The ECOS-EPA Alignment Workgroup operates under the Planning Committee.

Attachment A

Oregon Communities who received EPA Cleanup and Assessment Grants

In June, five Oregon communities received environmental cleanup and assessment grants totaling \$900,000 from the U.S. EPA as part of the agency's national brownfields redevelopment initiative. Brownfields are properties where expansion, redevelopment or reuse may be complicated by the presence or potential presence of a contaminant, pollutant or hazardous substance. The five projects include:

- **City of Astoria, brownfields assessment grant (\$200,000).** Grant funds will be used to complete an environmental risk assessment and feasibility study at a five-acre former gasification plant located on the city's industrial waterfront. The city will use additional funds to create a master plan focused on redevelopment possibilities for the site.
- **Coastal Range Food Bank Inc., brownfields cleanup grant (\$100,000).** The Coastal Range Food Bank, which serves rural, mountainous communities in western Oregon around the Benton/Lincoln County town of Blodgett, will work with DEQ to clean up petroleum contamination at an abandoned property formerly used as a gas station and country store. The food bank hopes to redevelop the site into its new home and food distribution center. Grant funds will pay for the removal of two substandard underground storage tanks and associated piping, excavation of about 100 tons of petroleum-contaminated soil, and installation of groundwater monitoring wells.
- **City of Gresham, brownfields assessment grant (\$200,000).** The city will use hazardous substance grant funds to inventory more than 100 potential Brownfield sites, primarily in the Rockwood-West Gresham area. Following the inventory, the city will convene public forums, conduct a two-phase environmental assessment at high-ranking sites, develop a remediation plan for one site, and develop an overall redevelopment marketing plan.
- **Klamath County, brownfields cleanup grant (\$200,000).** The county will use hazardous substance funds to clean up soil and groundwater contaminated with dioxin, pentachlorophenol, asbestos and petroleum at the site of the former Chiloquin Lumber Mill, which has been vacant since it closed in 1988. Cleanup contractors working with DEQ oversight will remove large volumes of contaminated soil and wood waste, which are leaching contaminants into the Sprague River and groundwater. Cleanup crews will remove asbestos from the one remaining building on the site as it is demolished. Once cleaned up, the site will provide community greenspace.
- **Portland Development Commission, brownfields cleanup grant (\$200,000).** The city of Portland will use the grant to collect and dispose of asbestos-contaminated building debris found on the 2.7-acre Parcel 1 of the Riverplace project in the South Waterfront Redevelopment Area. The city is targeting the former steam plant waterfront property for 210 residential condominiums, a restaurant and parking facilities.

Attachment B

Members of the Blue Ribbon Committee on Wastewater Permitting

Bob Austin

City of Estacada
(League of Cities)
P.O. Box 958
Estacada, Oregon 97023

Ed Butts

Stettler Supply Company
1810 Lana Avenue, NE
Salem, OR 97303

Michael Campbell

Stoel Rives, LLP
900 SW 5th Avenue
Suite 2600
Portland, OR 97204

Jon Chandler

Legislative Advocates
1249 Commercial St., SE
Salem, OR 97302

Cheryl Koshuta

Port of Portland
121 NW Everett Street
Portland, OR 97208

John Ledger

Associated Oregon Industries
1149 Court Street, NE
Salem, OR 97301

Karen Lewotsky

Oregon Environmental Council
520 SW Sixth Avenue, #940
Portland, OR 97204

Charles Logue

Clean Water Services (ACWA)
155 N 1st Ave., Suite 270
Hillsboro, OR 97124

Galen May

Golden N.W. Aluminum
(Associated Oregon Industries)
3313 N. 2nd St.
Dalles, OR 97058

Attachment C

**Photos of the potential new DEQ/Public Health Lab Building
located at 3150 NW 229th Avenue in Hillsboro Oregon**



Clean Air Partners Pilot (CAP)

Questions & Answers about the "CAP" Pilot Program

This Q & A answers questions about the Clean Air Partners (CAP) pilot program – a partnership between Oregon DEQ, United Way and Ron Tonkin Family of Dealerships. The pilot program seeks to offer low-income customers another option to offset the cost of repairing their vehicle to pass DEQ's Vehicle Emissions Test. Donations are collected by VIP, delivered to United Way and then distributed to Tonkin to fix the vehicle at a reduced rate. Drivers who qualify are served on a first come first served basis and are only charged a total of \$50.00 for the repairs.

Is this really DEQ-VIP's role? How does it benefit air quality?

There are two reasons to initiate a pilot project like CAP. First, it strengthens DEQ's service record and increases our ability to help Oregonians in need while maintaining an efficient, low-cost program like VIP.

Also, the impact towards reducing on-road pollution could be very significant depending on the success of the program. It is estimated that up to 300 low-income drivers are unable to afford minor repairs to their vehicles to pass the emissions test each year. We aren't sure what happens to these vehicles. It is possible they get trip permits, or get sold out of the boundary, or perhaps they are driven illegally or simply parked unused.

If every customer gave just a quarter to the fund we could help every single one of those drivers while dramatically and measurably improving air quality. We would also potentially improve a lot of people's lives.

How long will this pilot program last?

Ideally, CAP will grow from a pilot program to a permanent program with several partners. However, we'll likely give the program at least until Fall 2004 and then measure results.

How can I contribute to CAP?

A collection box is located at each counter where you pay your testing fee. In addition, envelopes are available that you may take with you. Your contribution may be tax deductible and the detachable flap on the CAP envelope can serve as your receipt.

Why can't I include my contribution with my DEQ and DMV fees?

It is illegal for the State to combine a charitable contribution with service fees.

DEQ and DMV fees are separate but can be included on the same check or cash payment. DEQ charges a \$21.00 fee to issue a *Certificate of Compliance* if your vehicle passes the emissions test. DMV fees will vary based on the make and model year of your vehicle.

What is United Way's role in CAP?

The State of Oregon cannot legally accept and manage charitable donations. However, by using the State recognized charity clearinghouse (in this case United Way) it is possible because all funds are transferring through an impartial third party.

All funds collected and sent to United Way are strictly dedicated to our CAP pilot program.

All funds collected cannot be used for any other charitable effort.

Why is Ron Tonkin the only repair facility participating?

The CAP program is a fledgling pilot-program. DEQ approached several repair facilities over the course of several months and Tonkin was willing and able to step forward and participate in the pilot project. It is hoped that if the pilot is successful the program can expand to other repair facilities including smaller facilities from DEQ's Recognized Auto Repair Shops program.

What vehicles are considered repairable?

Eligible vehicles are those that fail the *Enhanced Test*, qualify for an *Enhanced Waiver* and then fail the *Basic Test*. "Repairable" vehicles will be determined by the VIP Technical Center staff. Generally, they will be looking for relatively minor repairs to the emissions control system on otherwise sound vehicles.

How do I apply for the CAP program?

Remember, to qualify for the *Enhanced Waiver* you must prove low-income status and fail the *Enhanced Test*. If your vehicle then fails the *Basic Test* you may qualify CAP.

If your vehicle fails the *Basic Test* the Technical Center staff will invite you to submit an



State of Oregon
Department of
Environmental
Quality

Air Quality
Vehicle Inspection
1240 SE 12th Avenue
Portland, OR 97214
Phone: (503) 229-5680
(800) 452-4011
Fax: (503) 229-5850
Contact: William Knight
www.deq.state.or.us

application for the CAP program if it is determined that you are likely to qualify.

You will then be required to bring your vehicle to the Technical Center and have the vehicle inspected to determine if it is feasible and appropriate to repair. If the vehicle is found to meet the requirements of the CAP program you will be issued a certificate and directed to the appropriate Tonkin service center.

If my vehicle qualifies for CAP, what do I need to pay?

Tonkin will perform the necessary repairs at cost and charge the CAP fund. Tonkin will charge qualified CAP customers a flat fee of \$50.00 in order to cover estimated labor costs.

Tonkin must repair the vehicle so it can pass the emissions test. Take your repaired vehicle to the DEQ Clean Air Station for a retest and receive a

Certificate of Compliance if the vehicle passes. Your DMV fees must be paid in full and will vary.

For more information

Additional information can be found on DEQ's website at:

www.deq.state.or.us

If you have additional questions or concerns about the Clean Air Partners pilot program please contact:

***William Knight**
VIP Communications
Office of Communications & Outreach
(503) 229-5680*

*VIP Technical Center
(503) 731-3050*



BONARD Andrea*Agenda Item D*

From: HALLOCK Stephanie [Stephanie.Hallock@state.or.us]
Sent: Thursday, July 15, 2004 8:16 AM
To: BONARD Andrea
Subject: FW: Budget/legislative info for 7/15 EQC

Here it is.

-----Original Message-----

From: AUNAN Lauri
Sent: Monday, July 12, 2004 5:53 PM
To: LynnHampton@ctuir.com; kenneth.williamson@orst.edu; didim@mindspring.com; mark@reevekearns.com
Cc: HALLOCK Stephanie; BONARD Andrea; AUNAN Lauri
Subject: Budget/legislative info for 7/15 EQC

I am looking forward to our July 15 Commission discussion about DEQ's budget request, legislative concepts and approach to General Fund reduction options. Attached for that discussion are:

- 1) One-page spreadsheet listing "policy packages" for which we will request the Governor's and Legislature's approval. Policy packages are required to request additional resources, or to reauthorize resources that were approved for a limited time.
- 2) Two-page summary of DEQ's legislative concepts.
- 3) One-page background information about General Funds in DEQ's budget. We will discuss the approach the agency should use for General Fund reduction options.

If you have any questions, please call me at 503-229-5327
Lauri Aunan
Office of Budget and Legislation

7/15/2004

2005-07 Agency Request Budget Policy Package List

Title	Funding	FTE	Short Description
General Fund			
Restore and Enhance Wastewater Program	\$340,000 GF / Fee Increase ~4-7%	Continue 4 existing staff, add 2.5 staff in mid-2006	Continues 4 existing staff and adds staff to reduce wastewater permit backlog; issue permits by watershed; improve compliance & inspections; implement streamlining and accountability efforts.
Clean and Healthy Willamette River Basin	\$885,000 GF	4.5 new staff	Adds 3.5 staff to carry out the Willamette River clean water plan (TMDL) by helping businesses and cities reduce pollution from their operations, stormwater runoff and mercury. Adds one staff to develop streamlined compliance procedures and assistance for small communities along the Willamette; and ensure that DEQ's innovative approaches (e.g. Clean Water Services permit) meet the tough legal review they will get from EPA and third parties.
Clean Up Willamette Basin Orphan Sites	\$200,000 GF	...	Funds \$7 million bond issuance to clean up Willamette Basin contaminated orphan sites, including industrial lands and abandoned mines.
Laboratory Rent increase	\$800,000 shift saved GF debt service	...	Costs for program laboratory work will increase after the Lab relocates from existing space at PSU. Without this funding, programs will have to reduce existing work to pay for increased costs.
Fees			
Federal Clean Air Permits Restoration	20% fee increase	Continue 4 existing staff	Maintain essential service level in the Title V federal clean air permit program.
Continue Staff for Vehicle Inspection Program	existing \$21 fee	Continue 36 existing staff	Maintain Vehicle Inspection Program
Maintain Underground Storage Tank Program	existing fee (reinstates \$85/tank fee)	Continue 5 existing staff	Funds federally required work to prevent leaks and contamination from gasoline storage tanks; allows DEQ to continue to seek delegation to implement the federal tanks law in Oregon.
Federal Fund			
Drinking Water Protection	federal grant	Continue 3 existing staff	Help communities protect public drinking water supplies.
Coastal beach bacteria monitoring	federal grant	Continue 1 existing staff	Monitor Oregon's coastal beaches for bacteria pollution.
Environmental Information Exchange Network	federal grant	Continue 2 existing staff	Allows completion of project to simplify and improve environmental reporting required by the federal EPA.
Homeland Security - Terrorism Response	federal grant	Continue 1 existing staff	Funds chemist and specialized equipment to assist DEQ, the Public Health Laboratory, Oregon State Police, and local responders to plan, train, and implement Oregon's response to chemical terrorism events.
Clean Water SRF - Bond Debt Service	Federal as Other	...	Bond sales. Proceeds used as match for federal grants. Funds low interest loans to local governments for wastewater treatment improvements.

DEQ's 2005 Legislative Concepts
July 12, 2004

DEQ is discussing these legislative concepts with interested and affected parties. DEQ's goal is to work with interested and affected parties to reach agreement before the 2005 Legislative Session. For more information, contact Lauri Aunan, 503-229-5327.

1. Effective Wastewater Program: Recommendations from DEQ's Blue Ribbon Wastewater Committee

DEQ formed this committee to comprehensively review the state's wastewater program and make recommendations for improving program effectiveness. As a result of their work, DEQ has submitted a legislative concept that would accomplish several things, including:

- Promote the use of a watershed approach in DEQ's wastewater permitting program
- Allow General Permits to be issued as an Order by DEQ rather than through rulemaking
- Establish authority for the EQC to increase wastewater permit fees a maximum of 3% per year as needed to help address inflationary costs.

2. Changes to the Toxics Use Reduction Law

The 1989 Oregon Legislature passed a law (ORS 465.003 to .037) requiring users of large amounts of toxic substances to develop plans on how to reduce that use. The Toxics Use Reduction law was updated by the 1997 Legislature after DEQ reviewed it with stakeholders. During the 2003 legislative session, DEQ committed to again review the law. We have taken public input through meetings and the web, and have had a series of meetings with our hazardous waste stakeholder work group.

Based on this input, DEQ proposes to update the Toxic Use Reduction law by better matching Oregon's law to reporting already required under federal law; recognizing an environmental management system as a replacement for a toxics use reduction plan; and moving to web-based reporting of what actions companies have taken to reduce their use of toxics, which will be valuable information for other businesses and DEQ's technical assistance staff as they work to reduce the use of toxics and the generation of hazardous waste.

3. Title V Federal Air Quality Permit Fees

Title V of the federal Clean Air Act regulates air emissions from large industrial sources through permits. DEQ carries out this program in Oregon. Federal law requires states to establish Title V fees sufficient to fully fund the cost of the permitting program. In Oregon the Title V fee schedule is authorized by ORS 468A.315 and fees may be adjusted each year for inflation based on the Consumer Price Index (CPI). Since the early 1990s when the Oregon Title V program began, DEQ has funded Title V without a fee increase above the CPI, but actual costs are now more than revenue generated by CPI increases, requiring use of balances to keep the program at the same level. We are working with stakeholders to explore a fee increase above the CPI to maintain the Title V program.

4. Placeholder: Ratification of Fees (*bill should be introduced by DAS*)

Oregon Revised Statute 291.055 provides that any new state agency fees or fee increases adopted after July 1 of any odd-numbered year "are rescinded on July 1 of the next following odd-

numbered year, or on adjournment sine die of the regular session of the Legislative Assembly meeting in that year, whichever is later, unless otherwise authorized by enabling legislation setting forth the approved fees.”

The Department of Administrative Services typically introduces fee ratification legislation. This is a placeholder to ensure that any fees adopted by the Environmental Quality Commission during 2004 that fall under this statute and are not already authorized in statute, are addressed in a legislative concept.

Fees that may be covered include:

- Clean Water Act §401 fees for dredge and fill certification
- Small municipal separate storm sewer systems (MS4) fees
- Septic system (“onsite” wastewater treatment) fees

5. Maintain Underground Storage Tank Assistance and Oversight

In the late 1980s, the U.S. Congress and Oregon passed laws to respond to leaking underground gasoline storage tanks that were contaminating land and water. The laws required tanks to be upgraded and maintained to prevent leaks. The Oregon law also set a “per tank” fee to pay for DEQ’s tanks work. The 2001 Legislature modified the law and set the annual per-tank fee at \$85 until December 31, 2005, when the fee is repealed. The law directed DEQ to gain program delegation from EPA. DEQ and fee payers agreed to the fee and the repeal, and agreed to discuss the tanks program and fee prior to the 2005 legislative session. A legislative change is needed to continue the tanks fee so that DEQ can continue federally required work to prevent leaks and contamination, and seek delegation to implement the federal law in Oregon. DEQ has been working closely with fee payers on this concept.

6. Revise statutory loan terms for Clean Water State Revolving Fund

The Clean Water State Revolving Fund uses proceeds from bond sales as a match for federal grants, and funds low-interest loans to local governments for wastewater treatment improvements.

This concept changes the Clean Water State Revolving Fund statute to redefine the maximum term for repayment of loans from “any period not to exceed 20 years” to “not later than 20 years after project completion.” The statute does not currently allow for the most favorable loan terms as intended under EPA’s regulations. The change will add approximately 2-5 years to the loan repayment term for wastewater treatment plant construction projects, making loan terms consistent with EPA’s expectations and more favorable for borrowers.

July 12, 2004

Background – General Fund Reduction Options Discussion

State agencies must develop options to reduce State General Funds by 10%. The list must be finalized in August and submitted as part of the Agency Request Budget (due September 1).

Where is General Fund in DEQ's Budget?

DEQ's Total Operating Budget is approximately \$171 million. Of that, about \$21.5 million is General Fund.

- \$16 million GF for Water Quality work
- \$ 4 million GF for Air Quality work
- \$ 1 million GF for Hazardous Waste work
- \$ 500,000 GF for Economic Revitalization work

A 10% reduction in General Funds would be \$2.15 million.

"Subprograms" are areas of DEQ program work. The lists below indicate subprograms that are partially supported by General Funds. Note that many of our subprograms have no General Fund support.

Air Quality Subprograms

ACDP Permits – GF
Title V Permits – No GF
Point Source Non-Permitted – GF
Area, Mobile, Other – GF
Asbestos – No GF
Gasoline Programs – No GF
Vehicle Inspection – No GF

Land Quality Subprograms

Solid Waste – No GF
Hazardous Waste - GF
Cleanup – No GF
Spills – No GF
Tanks – No GF
Umatilla Weapons Disposal – No GF

Water Quality Subprograms

Wastewater permitting – GF
Oregon Plan – GF
TMDL Development – GF
Ambient Monitoring – GF
Program support – GF
Data Management – GF
Standards – GF
Groundwater protection – GF
401 dredge and fill – GF
Clean Water State Revolving Fund admin. – No GF
Drinking water assessments – No GF
Septic system permitting – No GF

State of Oregon
Department of Environmental Quality

Memorandum

Date: June 24, 2004
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Agenda Item E. Rule Adoption: Oregon Title V Operating Permit Program Fee Increase. July 15, 2004 EQC Meeting

Department Recommendation The Department recommends that the Environmental Quality Commission adopt the proposed rules, described in Attachment A that would increase Title V fees by 2%, the Consumer Price Index.

Background and Need for Rulemaking The federal Clean Air Act Amendments require states to develop a Title V program. Title V is a comprehensive operating permit program for major industrial sources of air pollution—the highest emitters of regulated air pollutants in the state. The Department fulfilled this requirement by developing the Oregon Title V Operating Permit Program, receiving full approval from the U.S. Environmental Protection Agency (EPA) in 1993.

To receive ongoing program approval from EPA, the Clean Air Act requires states to fully fund their Title V programs with fees paid by Title V sources. Oregon statutes establish Title V fees and authorize the Environmental Quality Commission to increase those fees by the Consumer Price Index (CPI), annually, if needed, to fully fund the program. The CPI increased 2% since 2004, the last time Title V fees were increased, which is the increase requested in this rulemaking.

The Department has determined that a CPI increase to Title V fees is needed to adequately fund existing Title V staff for Fiscal Year 2005 (July 1, 2004 to June 30, 2005), which includes increased personal service costs, specifically, increased health care costs and retirement contributions.

Effect of Rule Title V sources are the largest air pollutant sources in Oregon representing a wide diversity of industries from fiberglass manufacturing, wood and paper products to power generation. It is estimated that there will be 130 Title V sources in Fiscal Year 2005. The proposed rule increases Title V fees by 2%, as shown in Attachment B, with invoices reflecting the increase to be mailed in August, 2004. As an example, Base Fees and Emission Fees (the most common fees) for a cabinet products facility with emissions of 100 tons-per-year would increase \$135. The same fees for a 700 tons-per-year timber products source would increase \$573. A listing of all fees is shown on Attachment B and more examples of the effect of this proposed rule are shown in Attachment E.

Agenda Item E, Rule Adoption: Oregon Title V Fee Increase
Page 2 of 2

Commission Authority The Commission has authority to take this action under Oregon Revised Statutes 468.065 (Title V permits and fees), 468A.040 (Title V permits) and 468A.315(D) (Annual increase of Title V fees by Consumer Price Index).

Stakeholder Involvement An advisory committee was not convened to develop the proposed rules because no policy issues were identified; however, the proposed rule was presented to Title V industry representatives in February, and May, 2004. A mailing on the proposal and information about the public hearing was distributed to Title V businesses and interested parties in March, 2004.

Public Comment The public comment period was held March 10, 2004 through April 19, 2004, and the public hearing was on April 15, 2004 in Portland, Oregon. No public comment—oral or written—was received during the public comment period, and no one from the public attended the hearing.

Key Issues No key issues were identified during the rulemaking.

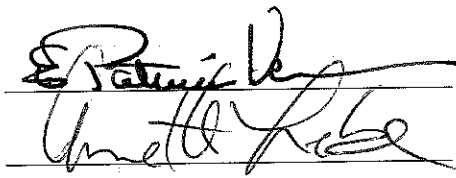
Attachments

- A. Proposed Rule Revisions
- B. Proposed Title V Fee Increase
- C. Presiding Officer's Report on Public Hearing
- D. Relationship to Federal Requirements
- E. Need and Fiscal and Economic Impact
- F. Land Use Evaluation

Approved:

Section:

Division:



Report Prepared By: Kathleen Craig

Phone: 503-229-6833

Attachment A

Oregon Department of Environmental Quality Proposed Rule Change: Oregon Title V Operating Permit Program Fee Increase

Proposed Rule Revisions

340-220-0030

Annual Base Fee

The Department will assess an annual base fee of ~~\$3163,178~~ for each source subject to the Oregon Title V Operating Permit program. The fee covers the period from November 15 of the current calendar year to November 14 of the following year.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2580; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01

340-220-0040

Emission Fee

(1) The Department will assess an emission fee of ~~\$36.30~~ \$37.03 per ton to each source subject to the Oregon Title V Operating Permit Program.

(2) The emission fee will be applied to emissions from the previous calendar year based on the elections made according to OAR 340-220-0190.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2590; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01

340-220-0050

Specific Activity Fees

The Department will assess specific activity fees for an Oregon Title V Operating Permit program source as follows:

(1) Existing Source Permit Revisions:

(a) Administrative* -- ~~\$312318~~;

(b) Simple -- ~~\$1,2471,272~~;

(c) Moderate -- ~~\$9,3499,536~~;

(d) Complex -- ~~\$18,69919,073~~;

(2) Ambient Air Monitoring Review -- ~~\$2,4932,543~~.

*includes revisions specified in OAR 340-218-0150(1)(a) through (g). Other revisions specified in OAR 340-218-0150 are subject to simple, moderate or complex revision fees.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2600; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01

Attachment B

Oregon Department of Environmental Quality
Proposed Rule Change:
Oregon Title V Operating Permit Program Fee Increase

Proposed Title V Fee Increases

<u>Fee</u>	<u>Current Fee</u>	<u>Proposed Increase</u>	<u>New Fee</u>
Annual Base Fees	\$ 3,116	\$ 62	\$ 3,178
Emission Fees	\$36.30/ton	\$0.73/ton	\$37.03/ton
Special Activity Fees			
<i>Administrative</i>	\$ 312	\$ 6	\$ 318
<i>Simple Modification</i>	\$ 1,247	\$ 25	\$ 1,272
<i>Moderate Modification</i>	\$ 9,349	\$187	\$ 9,536
<i>Complex Modification</i>	\$18,699	\$374	\$19,073
<i>Ambient Air Monitoring</i>	\$ 2,493	\$ 50	\$ 2,543

Attachment C

Oregon Department of Environmental Quality
Proposed Rule Change:
Oregon Title V Operating Permit Program Fee Increase

Presiding Officer's Report on Public Hearing

April 20, 2004

To: Environmental Quality Commission

From: Michelle Butler, Presiding Officer

Subject: Rulemaking Hearing
Proposed Oregon Title V Consumer Price Index Fee Increase
April 15, 2004, 3:00 p.m, DEQ headquarters, 811 S.W. Sixth Avenue,
Portland, Oregon

Michelle Butler, Presiding Officer, convened the rulemaking hearing on the proposed rulemaking, on April 15, 2004, beginning at 3:00 p.m. and ending at 3:30 p.m. No one from the public attended the hearing, and no written comments were submitted during the public comment period which ended on April 19, 2004.

Attachment D

Oregon Department of Environmental Quality
Proposed Rule Change:
Oregon Title V Operating Permit Program Fee Increase

Relationship to Federal Requirements

Answers to the following questions identify how the proposed rulemaking relates to federal requirements and potential justification for differing from federal requirements. The questions are required by OAR 340-011-0029.

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

Yes. The Title V portion of the federal Clean Air Act and EPA rules (40 CFR Part 70) requires Title V fees to fully pay for the cost of the Title V program. Federal law allows fees to be increased annually to keep pace with inflation. Federal law also specifies which sources must obtain Title V permits. This rulemaking does not differ from federal requirements.

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

Not Applicable

3. Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?

Yes. The federal fee requirement assures that sources subject to Title V pay for the permitting program instead of the general public.

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

Not Applicable

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

Not Applicable

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

Not Applicable

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

Not Applicable

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

Not Applicable

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

Not Applicable

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

Not Applicable

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

Not Applicable

Attachment E

Oregon Department of Environmental Quality
Proposed Rule Change:
Oregon Title V Operating Permit Program Fee Increase

Need And Fiscal And Economic Impact

Title of Proposed Rulemaking:	Oregon Title V Operating Permit Program Fee Increase
Need for the Rule	<p>This proposed rule amendment is necessary to cover increases to health care costs and other factors that affect personal service costs for all state employees, for existing staff supporting the Title V program for fiscal year (FY) 2005 (July 1, 2004 – June 30, 2005). To respond to the increases, the Department is proposing to increase Title V fees 2%, which represents a Consumer Price Index (CPI) adjustment from FY 2004, when Program fees were last increased. Oregon statute provides for fee increases according to the CPI in order to maintain the Program as approved. The proposed rule will ensure that the Department has adequate funding to administer and implement the Program, a necessary requirement for EPA program approval.</p>
Documents Relied Upon for Rulemaking	<p>Documents relied upon to provide the basis for this proposal include:</p> <ol style="list-style-type: none">1) 2003-2005 Biennium Legislatively Approved Budget2) Fiscal Year 2005 Projected Title V Revenue3) Department of Administrative Services Consumer Price Index Projections (December, 2003)4) Federal Clean Air Act Amendments of 19905) Oregon Statutes (ORS 468.065, ORS 468A.040, and ORS 468A.315) <p>Copies of these documents may be reviewed at the Department of Environmental Quality's office at 811 S.W. 6th Avenue, Portland, Oregon.</p>
Fiscal and Economic Impact	
Overview	<p>The Title V Program applies to small and large businesses with emissions large enough to trigger Title V thresholds. The Department received full program approval from the U.S. Environmental Protection Agency (EPA) in 1993, which delegated program authority from EPA to the Department. Oregon statute provides for assessing an annual Base Fee, Emission Fees (per ton) and annual fee increases according to the Consumer Price Index (CPI) in order to maintain the Program as approved.</p>
General public	<p>The general public is not expected to be affected except for the possibility that fees are passed through, which may result in a modest increase in costs for products or services from Title V sources.</p>

Small Business	Typically, the Title V program covers larger businesses, but applicability is dependent on potential emission levels rather than business size, so some smaller businesses, such as fiberglass reinforced plastic manufacturers, and smaller wood product and cabinet surface coating operations, are subject to the Program because their potential emissions are high enough to trigger Title V thresholds. The annual increase to the smallest Title V business, at 100 tons per year, would be \$135, for both Base fees and Emission fees.
Large Business	The Oregon Title V Operating Permit Program covers the highest emitters of regulated air pollutants in the state. Approximately 65 percent of Title V businesses emit between 100 to 1000 tons of regulated pollutants per year. The proposed increase for all businesses subject to Title V (small or large) is \$66 increase to Base fees, and \$0.73/ton increase to Emission Fees.
Local Government	Currently, Coos County and Metro are the local government agencies that are required to have a Title V operating permit. With a 2% increase, Coos County would pay projected annual fees of \$10,024 for FY 2005, an increase of \$196 over current fees; Metro would pay \$5,181 for FY 2005, an increase of \$102 over current fees. These projections assume emissions are the same in comparative years.
Other State Entities	Oregon State University and Oregon Health Sciences University are currently the only state entities required to have Title V Operating Permits. Oregon State University would pay projected annual fees of \$10,634 in FY 2005, an increase of \$208 over current fees. For FY 2005, Oregon Health Sciences University would pay annual fees of \$21,770, an increase of \$427 over current fees. These projections assume emissions are the same in comparative years.
DEQ	The Department of Environmental Quality will not incur any additional costs nor will any personnel adjustments be required to implement this proposed rulemaking.
Other agencies	No other agencies will be affected by this proposed rulemaking.
Assumptions	Estimated revenue forecasts and expenditures are based on the assumption that all facilities subject to the Program have been identified, and that facility emissions will remain at the same level as in previous years. The Department projects 128 sources will be subject to Title V permitting and fee requirements in FY 2005.
Housing Costs	The Department has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.
Administrative Rule Advisory Committee	An advisory committee was not convened to develop the proposed rules because no policy issues were identified. The proposed rule was presented to Title V industry representatives in February, 2004. A mailing on the rule and information about the April 15, 2004 public hearing was distributed to Title V businesses and interested parties in March, 2004.

Prepared by: Kathleen Craig
Printed name June 24, 2004
Date

Approved by DEQ Budget Office: Lauri Aunan
Printed name March 11, 2004
Date

Attachment F

Oregon Department of Environmental Quality Proposed Rule Change: Oregon Title V Operating Permit Program Fee Increase

Land Use Evaluation

1. Explain the purpose of the proposed rules.

This proposed rule amendment is necessary to fund projected health cost increases for staff supporting the Program for fiscal year (FY) 2005 (July 1, 2004 – June 30, 2005). To respond to the increases, the Department is proposing to increase Title V fees 2%, which represents a Consumer Price Index (CPI) adjustment from FY 2004, when Program fees were last increased. Oregon statute provides for fee increases according to the CPI in order to maintain the Program as approved. The proposed rule will ensure that the Department has adequate funding to administer and implement the Program, a necessary requirement for EPA program approval.

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

Yes No

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

The proposal amends Oregon Administrative Rules for Oregon Title V Operating Permit Fees (see Attachment A for proposed rule language). The Oregon Title V program regulates air emissions from major industrial businesses.

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

Yes No (if no, explain):

The proposed rules would be implemented through the Department's existing stationary source permitting program. An approved Land Use Compatibility Statement is required from local government before an air permit is issued.

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

Not applicable

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

Not Applicable

Minutes are not final until approved by the Commission.

Oregon Environmental Quality Commission Minutes of the Three Hundredth and Eighteenth Meeting

**May 20-21, 2004
Regular Meeting¹**

On Wednesday May 19, 2004, the Commission toured the Umatilla Chemical Agent Disposal Facility from 1:00 p.m. to 4:30 p.m. for an on-site inspection of the Department of Environmental Quality's (DEQ) Chemical Demilitarization Program. At approximately 5:30 p.m., the Commission met with local, state, national and tribal officials at the Oxford Suites Hotel, located at 1050 North First Street in Hermiston. At 6:45 p.m., the Commission joined DEQ staff for dinner at the El Cazador, located at 1240 North First Street in Hermiston.

Thursday, May 20, 2004

The following Commissioners were present for the regular meeting, which was held in the Great Hall of the Hermiston Community Center, located at 415 South Highway 395 in Hermiston.

Mark Reeve, Chair
Lynn Hampton, Vice Chair
Deirdre Malarkey, Member
Ken Williamson, Member

At 8:00 a.m., prior to the regular meeting, the Commission held an executive session to consult with counsel concerning legal rights and duties regarding current and potential litigation against the DEQ. The executive session was held pursuant to ORS 192.660(1)(h). At approximately 9:00 a.m., Chair Reeve called the regular meeting to order and introduced Commission members, DEQ Director Stephanie Hallock, Assistant Attorney General Larry Knudsen, and Commission Assistant Mikell O'Mealy. Agenda items were taken in the following order.

A. Approval of Minutes

Commissioner Malarkey moved that the Commission approve draft minutes of the April 8-9, 2004, EQC meeting. Commissioner Hampton seconded the motion and it passed with four "yes" votes.

B. Rule Adoption: Water Quality Standards, Including Toxic Pollutants Criteria

Holly Schroeder, DEQ Water Quality Division Administrator, Bob Baumgartner, DEQ Surface Water Manager, and Martin Fitzpatrick, DEQ Water Quality Standards Specialist, proposed rule amendments to update Oregon's water quality criteria for toxic pollutants. Ms. Schroeder stated that the rules were designed to support DEQ's strategic direction to protect human health and the environment from toxics, and to satisfy the federal Clean Water Act requirement to periodically review and update water quality criteria with the latest scientific information. Mr. Baumgartner explained that the proposed criteria included recent U.S. Environmental Protection Agency recommendations and would provide a framework for the state's efforts to control water pollution by articulating goals and benchmarks for water quality. Mr.

¹ Staff reports and written material submitted at the meeting are made part of the record and available from DEQ, Office of the Director, 811 SW Sixth Avenue, Portland, Oregon 97204; phone: (503) 229-5990.

Fitzpatrick described the proposed changes in detail and summarized public comment received on the rules.

Commissioners discussed a number of key issues related to the proposed rule, including the fish consumption rate used to derive the human health criteria for toxics, expression of the aquatic life metals criteria, and expectations for receiving federal approval for the proposed revisions to the toxics criteria. Commissioner Hampton expressed concern about the fish consumption rate used in the proposed rules and its potential impact on tribes and rural Oregonians who eat larger than average quantities of fish. Commissioner Hampton and Chair Reeve encouraged the Department to seek resources for a more accurate evaluation of fish consumption rates in Oregon.

After discussing these and other issues, Commissioner Malarkey moved that the Commission adopt the revised rules as proposed and corrected by the Department. Commissioner Williamson seconded the motion and it passed with four “yes” votes. Director Hallock commended Mr. Fitzpatrick, Mr. Baumgartner and Ms. Schroeder for their work on these challenging rules.

C. Action Item: Dilution Rule Waiver Modification – City of Ashland Wastewater Treatment Facility

Holly Schroeder, DEQ Water Quality Division Administrator, and Jon Gasik, DEQ Western Region Water Quality Engineer, asked the Commission to approve the City of Ashland’s request to modify its dilution rule waiver in order to renew the City’s wastewater discharge permit. Mr. Gasik explained that the City of Ashland wastewater treatment facility serves a population of over 20,000 and discharges to Ashland Creek approximately ¼ mile upstream of the confluence with Bear Creek. The proposed modification would extend the dilution rule waiver through the summer months and eliminate the requirement to enhance stream flows. Mr. Gasik summarized recent environmental studies and technical analyses that showed that water quality standards would be protected in Ashland and Bear Creeks without application of the dilution rule requirements. The Commission discussed the proposed change with Mr. Gasik and Ms. Schroeder.

After consideration, Commissioner Williamson moved that the Commission approve the City of Ashland’s request to modify its dilution rule waiver, and approve the findings proposed in Attachment A of the Department’s staff report. Commissioner Malarkey seconded the motion and it passed with four “yes” votes.

D. Action Item: Air Toxics Science Advisory Committee

Andy Ginsburg, DEQ Air Quality Division Administrator, and Bruce Hope, DEQ Air Quality Specialist, recommended that the Commission concur with the Director’s nomination of seven individuals to serve on the Department’s new Air Toxics Science Advisory Committee. Mr. Ginsburg explained that in October 2003, the Commission adopted rules to create Oregon’s first state Air Toxics Program. The program was designed to target urban-area air toxic emissions from mobile and various small pollution sources and to complement the industrial focus of the federal program that DEQ has implemented since 1990. The state program takes a community-based approach by creating a framework for adopting concentration limits for certain pollutants, identifying high-risk areas of the state, and implementing local emission reduction plans. Mr. Hope explained that the Committee will provide DEQ with scientific and technical advice on developing the air toxics program in Oregon. The seven nominees included Dr. Catherine Neumann from Oregon State University, Dr. Bill Lambert from the Center for Research on Occupational and Environmental Toxicology at the Oregon Health and Sciences University (OHSU), Dr. Brian Patterson from a Secor (a Tualatin consulting firm), Candice Hatch from Bridgewater Group (a Portland consulting firm), Dr. Patricia Toccalino from the Oregon Graduate Institute at OHSU, Dr. Kent Norville from Air Sciences, Inc. (a Portland consulting firm), and Natalia Kreitzer from the Southwest Clean Air Agency in Vancouver, Washington.

After discussion, Commissioner Hampton moved that the Commission concur with the Director’s nominees for the Air Toxics Science Advisory Committee. Commissioner Malarkey seconded the motion and it passed with four “yes” votes.

E. Rule Adoption: Proposed Noise Rules for Wind Energy Facilities

Mike Grainey, Director of the Oregon Office of Energy, presented proposed changes to state noise control regulations, designed to streamline the application of noise standards to wind energy facilities and make the rules easier to administer. Mr. Grainey explained that wind and other forms of renewable energy can reduce the amount of pollution that otherwise would occur by using fossil-fueled power plants. The special characteristics of wind energy facilities were not taken into account when state noise control rules were adopted in 1974, however. As a result, complying with the rules is more complicated and costly for wind energy facilities than for other industrial sources and competing types of electric generating facilities. Mr. Grainey stated that the proposed rules would maintain protections for noise sensitive areas without unnecessarily constraining the development of renewable energy sources. He summarized public comments on the rules and discussed changes with Commissioners.

After discussion, Commissioner Mark Reeve suggested amending the proposed rules to add the word "property" to Oregon Administrative Rule 340-035-0035(1)(b)(B)(iii)(III) as follows:

(III) The noise levels from a wind energy facility may increase the ambient statistical noise levels L10 and L50 by more than 10 dBA if the person who owns the noise sensitive property executes a legally effective easement or real property covenant that benefits the property on which the wind energy facility is located.

Commissioner Malarkey moved that the Commission adopted the revised rules as proposed and amended by the Chair. Commissioner Hampton seconded the motion and it passed with four "yes" votes.

F. Informational Item: Preparing for the Start of Agent Operations at the Umatilla Chemical Agent Disposal Facility

The Commission heard briefings from Don Barclay, Site Project Manager for the U.S. Army, and Doug Hamrick, Project General Manager for Washington Demilitarization Company, on site activities in preparation for beginning chemical agent operations at the Umatilla Chemical Agent Disposal Facility (UMCDF). Mike Parker, Director of the Army's Chemical Materials Agency, briefed the Commission on the Army Headquarters' review and approval process and its status. Mark Evans, President of Washington Demilitarization Company, and Lieutenant Colonel Doc Holliday, Depot Commander, spoke briefly about the anticipated start of chemical agent operations at UMCDF this summer. Commissioners discussed key permit requirements with the presenters.

G. Informational Item: Update on the Umatilla Chemical Agent Disposal Facility

Dennis Murphey, DEQ Chemical Demilitarization Program Administrator, gave the Commission a general update on the status of the UMCDF and the Department's work with the permittees to prepare for the start of agent operations.

I. Informational Item: Approval Process for Start of Agent Operations at the Umatilla Chemical Agent Disposal Facility

Dennis Murphey and Sue Oliver, DEQ Senior Hazardous Waste Specialist, gave an overview of the Commission's approval process for authorizing the start of agent operations at the UMCDF.

H. Action Item: Umatilla Chemical Agent Disposal Facility Permit Modification for Carbon Filters

Dennis Murphey and Sue Oliver presented the Department's recommendation that the Commission approve the Class 3 Permit Modification Request (UMCDF-03-041-PFS(3)) to change the point of compliance for incinerator emissions at the UMCDF. Mr. Murphey explained that the permittees had requested the proposed change in September 2003 to modify the UMCDF Hazardous Waste Storage and Treatment permit. If approved, the modification would establish compliance with permit limits using the air pollutant levels as measured after the carbon filter system, the final stage of the UMCDF incinerator pollution abatement systems. As originally issued, the UMCDF permit required that emissions compliance be determined before flue gases passed through the carbon filters. Ms. Oliver described the proposed permit changes in detail and discussed options with the Commissioners.

After discussion and consideration, Commissioner Williamson moved that the Commission approve the proposed permit modification as presented in Attachment A of the staff report, and approve the draft order provided in Attachment B of the staff report. Commissioner Malarkey seconded the motion and it passed with four "yes" votes. Chair Reeve acknowledged Ms. Oliver's efforts on this long and important project. Other Commissioners agreed and expressed their appreciation.

At approximately 5:15 p.m., Chair Reeve adjourned the regular meeting for the day. At 5:45 p.m., the Commission had dinner with DEQ staff at Fontaine's, located at 845 North First Street in Hermiston.

At 7:00 p.m., the Commission held a public hearing at the Hermiston Community Center to take comments on the proposed start of chemical agent operations at the UMCDF. Before taking testimony, Chair Reeve asked Sue Oliver, DEQ Senior Hazardous Waste Specialist, to explain the process for taking comment on the proposed start of chemical agent operations. Ms. Oliver explained that the Department opened the public comment period on May 4, 2004, and issued a compliance assessment summarizing the permit requirements for starting agent operations at the facility. She stated that twenty-eight of the permit requirements remained undone at the time of the hearing. Ms. Oliver encouraged audience members to submit comments to the Department before the close of the public comment period on June 7, 2004.

Approximately 200 people attended the hearing and the following people testified.

- Evelyn Jensen, a legislative aide for State Representative Bob Jensen, expressed support for the safe incineration of chemical weapons and her belief that DEQ had done its job in ensuring safety.
- James Wenzl, representing his family who lives in Hermiston, expressed support for incinerating the weapons to remove the hazardous chemical agents to leave a positive legacy for his children.
- Julia Holland agreed with Mr. Wenzl's testimony.
- Meg Capps, Umatilla County Emergency Response Manager, described her community's efforts to prepare for a potential emergency and expressed her support for starting the destruction of chemical weapons as soon as possible.
- Bill Howard, from the Umatilla-Morrow County CSEPP program, explained his community's plans for responding to the unlikely event of a chemical emergency and expressed his support for starting the destruction of chemical weapons as soon as possible.
- Dennis D. Doherty, Umatilla County Commissioner, expressed his support for starting agent operations as soon as possible.
- Tiah Estabrook, Hermiston community member with three small children, asked that chemical agent operations begin in September when children are back in school, because the schools are prepared to respond in the event of an emergency and ensure the children's safety.
- Elaine Benton agreed with Mr. Wenzl's testimony.
- Stephanie Johansen, a past resident of Hermiston, expressed support for starting agent operations to reduce the risk of continued storage.
- Armand Minthorn, member of the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation, read a Board resolution in support of the start of agent operations when the Army has proven compliance with all requirements of the DEQ hazardous waste storage and treatment permit.
- Deb Stockman, Hermiston resident, expressed support for starting agent operations on behalf of herself and her family.
- Randall Kowalke, Hermiston resident, expressed support for starting agent operations.
- Susan A. Ash, expressed agreement with Ms. Stockman and Mr. Wenzl.
- Frank Harkenrider, expressed his support for starting agent operations as soon as possible.
- George Hash, Umatilla Mayor, expressed his support for incineration because the Army and community are ready and because it is the safest way to reduce the risk posed by the chemical weapons.
- Vikki Born, an employee of Washington Demilitarization Company, speaking as a Hermiston resident, expressed support for the start of chemical agent destruction on behalf of her husband and children.
- Harmon Springer, Hermiston resident and member of the Hermiston City Council, expressed his support for the destruction of the chemical agents as soon as possible.

- David Wallick, Hermiston resident, presented comments from his seven year old son in support of destroying the chemical agents.
- Kathy Siron, Hermiston resident, expressed support for starting chemical agent operations as soon as possible to reduce the risk of storage and make her community safe.
- Guy M. Lovelace, Hermiston resident, expressed concerns on behalf of his family about the risk of continued storage of chemical weapons at the Umatilla Depot, and confidence in the incineration facility and its operators to safely destroy the weapons.
- Karyn J. Jones, representing GASP, the Oregon Wildlife Federation, the Sierra Club and plaintiffs in the GASP lawsuit, expressed opposition to incineration of chemical weapons, and support for a decision by the Commission to deny approval for the start of chemical agent operations and to revoke the permit for the UMCDF.
- Stuart Dick, third generation Eastern Oregonian, expressed a number of concerns relating to the UMCDF permit and current plans for destroying chemical weapons and monitoring emissions at the facility.
- Susan L. Jones, Hermiston resident, teacher, and member of the GASP Board, expressed concern about dioxins and the health of the people in the community, and opposed incineration of chemical weapons.
- J.R. Wilkinson, GASP researcher, expressed concern about a number of UMCDF permit requirements and urged the Commission to revoke the permit and consider whether incineration is the right approach.
- Rusty Brewer, Hermiston resident, expressed his support for incineration and his desire to see chemical agent destruction begin soon.
- T.J. Rodriguez, fourth generation Oregonian, expressed support for starting the destruction of chemical weapons at the UMCDF as soon as possible.

Chair Reeve thanked the people who testified and the audience members who attended to hear the testimony. He asked people to continue to send written comments to the Department before the June 7, 2004, close of the public comment period, and stated that the Commission was currently scheduled to make a decision on starting chemical agent operations at the UMCDF at their July 15-16, 2004 meeting.

Friday, May 21, 2004

The Commission reconvened at the Hermiston Community Center on Friday morning, and Chair Reeve called the meeting to order at approximately 9:00 a.m. Agenda items were taken as follows.

J. Director's Dialogue

Stephanie Hallock, DEQ Director, discussed current events and issues involving the Department and the state with Commissioners.

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

Helen Lottridge, DEQ Management Services Division Administrator, and Maggie Vandehey, DEQ Tax Credit Program Coordinator, presented recommendations on 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. Ms. Lottridge explained that 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 (such as wood chippers) were made eligible for the program. Ms. Vandehey gave an overview of the Department's recommendations on tax credit requests, including approval of seventeen tax credit applications, denial of application number 6260, correction of tax credit certificate number 6562, and revocation of certificate numbers 4312, 4515, 10073 and 10083.

After discussion, Commissioner Malarkey moved that the Commission approve the seventeen tax credit applications recommended for approval by the Department. Commissioner Hampton seconded the motion and it passed with four "yes" votes.

Commissioner Hampton moved that the Commission deny application number 6260 as recommended by the Department. Commissioner Williamson seconded the motion and it passed with four "yes" votes.

Commissioner Williamson moved that the Commission correct certificate number 6562 as recommended by the Department. Commissioner Hampton seconded the motion and it passed with four "yes" votes.

Commissioner Malarkey moved that the Commission revoke certificate numbers 4312, 4515, 10073 and 10083 as recommended by the Department. Commissioner Hampton seconded the motion and it passed with four "yes" votes.

Ms. Vandehey presented a tax expenditure liability report and explained the potential impact of the Commission's tax credit certifications on future state revenues. Ms. Vandehey also presented the Department's certified wood chipper tax credit report.

Andy Ginsburg, DEQ Air Quality Division Administrator, presented the results of a DEQ survey of people who had recently received a wood chipper tax credit. The survey was designed to determine the effectiveness of the credit as an incentive for reducing open burning and protecting air quality. Mr. Ginsburg reported that based on survey results, the credit was an effective tool in reducing air pollution. Chair Reeve thanked Mr. Ginsburg and the Department for conducting the study.

L. Temporary Rule Adoption: To Address Inconsistencies between the Pollution Control Facilities Tax Credit Law and Rules

Helen Lottridge and Maggie Vandehey proposed a temporary rule to address inconsistencies between the pollution control facilities tax credit statutes and rules relating to filing deadlines. Ms. Lottridge stated that the tax credit statutes changed in 2001 to shorten the application filing time from two years to one year after construction of a facility is substantially completed. DEQ rules stated that an application must be filed within two years of completion. Ms. Vandehey explained that the proposed temporary rule would eliminate this inconsistency immediately, and if adopted, the DEQ would begin formal rulemaking to make the change permanent.

After consideration, Commissioner Hampton moved that the Commission adopt the proposed temporary rule and authorize the Director to sign the Statement of Need and Justification on the Commission's behalf. Commissioner Malarkey seconded the motion and it passed with four "yes" votes.

M. Informational Item: DEQ's 2005-2007 Budget Request

Director Hallock gave the Commission an overview of DEQ's 2005-2007 budget request and solicited policy guidance from Commissioners on key budget issues and priorities. Paul Siebert, from the Oregon Legislative Fiscal Office, briefed the Commission on statewide budget issues and the budget climate predicted for the 2005 legislative session. Commissioners discussed budget planning with Director Hallock and Mr. Siebert, and asked for a second briefing on DEQ's budget development at the July 15-16, 2004 Commission meeting. Director Hallock stated that the Department would prepare for the July briefing and ask the Chair to approve DEQ's 2005-2007 budget request in August on the Commission's behalf.

Public Forum

At approximately 11:45 a.m., Chair Reeve invited members of the audience to provide general comments to the Commission. The following person provided testimony.

Armand Minthorn, member of the Confederated Tribes of the Umatilla Indian Reservation Board of Trustees, read a statement from the Board in opposition to the Commission's decision to approve new water quality toxics standards for Oregon. He expressed particular concern about the 17.5 grams per day fish consumption rate used to derive the human health criteria for toxics, and the effect of the decision on the health of Oregon's most sensitive populations and the general public. Mr. Minthorn made a number of

specific requests to the Commission regarding the decision, and discussed the Board of Trustees' concerns with Commissioners and Director Hallock. Chair Reeve thanked Mr. Minthorn for his comments and stated that the Commission would respond to the Board's requests as quickly as possible.

N. Informational Item: Update on Performance Partnership Agreement with EPA

Helen Lottridge, DEQ Management Services Division Administrator, briefed the Commission on the development of DEQ's 2004-2006 Performance Partnership Agreement and Grant (PPA/PPG). Ms. Lottridge explained that DEQ was negotiating a PPA/PPG with the U.S. Environmental Protection Agency (EPA) for State Fiscal Years 2005 and 2006 to serve as the work plan for many of the federal grants that support DEQ's air quality, water quality and hazardous waste programs. The agreement, which will be finalized in June, describes how DEQ and EPA will work together to protect Oregon's environment. Commissioners discussed the agreement with Ms. Lottridge and Director Hallock.

O. Commissioners' Reports

Commissioners gave no reports.

Chair Reeve adjourned the meeting at approximately 12:30 p.m. and the Commission held a working lunch with DEQ staff to discuss scheduling of upcoming Commission activities.

Date: June 24, 2004
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Agenda Item G, Action Item: Tax Credit Consideration
July 16, 2004 EQC Meeting

Proposed Action Approve or deny Far West Fibers, Inc.'s request for an extension of time to file a Pollution Control Facilities Tax Credit application.

Key Issues Far West Fibers, Inc. requested that the Environmental Quality Commission (EQC, Commission.) grant an extension of time to file an application in its letter dated March 29, 2004 (Attachment A - Exhibit A.)

Prior to the rule changes made by the Commission at the May 21, 2004 EQC meeting, the Department of Environmental Quality's (DEQ, Department) rule was inconsistent with state law with regard to timelines for filing deadlines. Having relied solely on the Department's rule without reference to the statute, the application, or other program resources, Far West Fibers Inc. mistakenly thought they had two years after completing construction of their material recovery facility to file a Pollution Control Facilities Tax Credit application rather than the one-year provided by state law.

EQC Action Alternatives ORS 469.165 provides, "The commission may grant an extension of time to file an application for circumstances beyond the control of the applicant¹ that would make a timely filing unreasonable."

The EQC may either

- Approve the request, in which case the Department would review the application and submit its report to the Commission at a future, regularly scheduled EQC meeting for action, or
- Deny the request, in which case the applicant may seek judicial review of the Commission's findings according to ORS 468.110 and ORS 183.484.

Department Recommendation The Department recommends the Commission approve the request for an extension of time to file an application.

¹ "Circumstances Beyond the Control of the Applicant" means facts, conditions and circumstances which the applicant's due care and diligence would not have avoided. [OAR 340-016-0010(2)]

Attachments

- A. Request for Extension
 - Exhibit A – Letter Requesting Extension
 - Exhibit B – Application Excerpt
 - Exhibit C – Application Instructions Excerpt

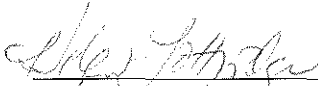
Available Upon Request


ORS 468.150 to 468.190; OAR 340-016-0005 to 340-016-0080; ORS 468.110; and ORS 183.484

Approved:

Section:

Division:





Report Prepared By: Maggie Vandehey
Phone: 503-229-6878

Attachment A Request for Extension

Background

The dates when construction of a pollution control facility commenced and completed help determine the appropriate filing period. The applicant began constructing their material recovery facility in January of 2002 and completed its construction in October of 2002 (Exhibit B.)

State law [ORS 468.165(6)] provides that an applicant must file an application within one year from the construction completion date to be eligible for the pollution control facilities tax credit. Though the application documents, Fact Sheets, and all program documents reflected the one-year filing period, the Department rule (OAR 340-016-0055) provided the two-year filing period that was inconsistent with the 2001 law.

On January 29, 2004, the company brought its application to the Department for filing. The Department informed the applicant that the one-year filing period had passed and that only one-half of the filing-fee would be refundable if the Commission were to reject the application. The company chose not to file the application at that time. On March 29, 2004, the company provided the application again with the request for an extension of time to file the application as shown in Exhibit A. Far West Fibers did not submit the application fee required by ORS 468.165(4); therefore, the company has not filed the application.

Far West Fibers used the 04/01/02 version of the Material Recovery Pollution Control Facility Tax Credit Application. Exhibit C is an excerpt of that version of the application instructions that shows the one-year filing period.

Provision for Filing Period and Extension of Time to File an Application

ORS 468.165

(6) The application shall be submitted after construction of the facility is substantially completed and the facility is placed in service and **within one year** after construction of the facility is substantially completed. Failure to file a timely application shall make the facility ineligible for tax credit certification. An application may not be considered filed until it is complete and ready for processing. **The commission may grant an extension of time to file**

an application for circumstances beyond the control of the applicant² that would make a timely filing unreasonable. However, the period for filing an application may not be extended to a date beyond December 31, 2008. (Emphasis Added.)

OAR 340-016-0055 Application Procedures

Any Oregon taxpayer may apply for the certification of a pollution control facility to take relief from their Oregon tax liability. The applicant and the facility shall be eligible under ORS 307.405, ORS 315.304, and ORS 468.150 to 468.190. The applicant shall submit the application to the Department on the application form provided by the Department.

(2) Application for Final Certification. The applicant shall submit all information, exhibits and substantiating documents requested on the application for final certification. The Department shall reject the application for final certification if the applicant fails to submit the application:

- (a) After the construction of the facility is substantially complete and the facility is placed in service;
- (b) **Within two years** after construction of the facility is substantially completed; and
- (c) **On or before December 31, 2003.** [Emphasis Added]

² "Circumstances Beyond the Control of the Applicant" means facts, conditions and circumstances which the applicant's due care and diligence would not have avoided. [OAR 340-016-0010(2)]

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ROSEBURG, OREGON 97470
(541) 673-5528

March 29, 2004

CERTIFIED MAIL RETURN RECEIPT REQUESTED
7002 2410 0005 3218 2827

Maggie VanDehey
Oregon Department of Environmental Quality
Tax Credit Program
811 SW Sixth Avenue
Portland, OR 97204-1390

Re: Far West Fibers, Inc.

Dear Ms. VanDehey:

Enclosed are two copies of the Pollution Control Facility Tax Credit Application for Far West Fibers, Inc. (Far West).

Pursuant to OAR 340-016-0055(6), please consider this letter a formal request that the Oregon Department of Environmental Quality Commission (ODEQ) grant an extension of time to file this application based on "circumstances beyond the control of the applicant that would make filing a timely application unreasonable." The circumstances beyond the control of Far West relates to its reliance on outdated Oregon Administrative Rules, specifically OAR 340-016-0055(2)(c) which provided for filing the Tax Credit Application within *two* years after construction of a facility is substantially complete and the facility is placed in service. Please note, Far West tendered the original application to ODEQ on January 29, 2004 which would fall within the two year limitation period since the facility was completed January 30, 2002.

We do understand that ORS 468.165(6) was amended in the 2001 legislative session to change the *two years* to *one year*. However, based on our client's reliance on the outdated Administrative Rule, we believe that our client has a strong position for an equitable estoppel claim. (Please see *Pilgrim Turkey Packers, Inc. v. Dept. of Rev., Portland Adventist Hospital v. Dept. of Rev.*)

We understand that you will present Far West's Tax Credit Application at the next ODEQ commission meeting, and we therefore request the opportunity to present Far West's

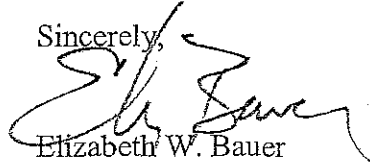
WATKINSON LAIRD RUBENSTEIN BALDWIN & BURGESS, P.C.

March 29, 2004

Page 2

position at this meeting to the commission. Please let us know the scheduled date and time. If you have any questions or need more information, please do not hesitate to call.

Sincerely,



Elizabeth W. Bauer

EWB:hlr

Enclosures

c: Rick Paul, Far West Fibers, Inc. (w/o enc.)
John Drew, Far West Fibers, Inc. (w/o enc.)
J. William Neuner, CPA (w/o enc.)

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13. Please provide the following dates relating to the construction or purchase of the claimed facility.

	Phase One	Phase two
Started	<u>January 2002</u>	October 2002
Completed	<u>January 30, 2002</u>	October 2002
Beginning of Operations	<u>January 29, 2002</u>	October 2002

14. Check only one

Principal Purpose of the claimed facility is to comply with a regulation or permit conditions imposed by DEQ, EPA or a regional air pollution authority. Please provide the statute, rule, order or permit number. Attach a copy of the permit or order.

Sole Purpose of the claimed facility is to exclusively provide pollution control. The facility was installed Voluntarily.

15. Is the applicant in compliance with DEQ and EPA Regulations?

Not applicable Yes No

If no, explain and attach any relevant documentation:

16. DEQ permits issued to the applicant at the location of the claimed facility:

There are no permits from DEQ.

Type	Number	Date Issued

17. Does this facility replace a previously certified "pollution control facility" or does it address the same waste stream addressed by a previously certified "pollution control facility?"

Yes No

If yes, attach copy of certificate. Provide an explanation of why you think this facility qualifies.

18. Has the claimed facility or any portion of the facility been certified by DEQ or as an Energy Conservation Facility by the Oregon Department of Energy or is such an application pending?

Yes No

If yes, attach certification and explain.

Filing your application

If you are concerned with completing your Oregon tax return by your tax-year end then allow plenty of time for the Department to review your application. There is an average of 3 months from the time you submit the application until the Commission takes action on it, although some applications may take much longer.

If the application reviewer needs additional information they will send you a written request listing what is needed within 60 days of the application filing date. The applicant, in turn, is allowed another 60 days to provide the additional information. Once the reviewer's questions have been answered then your application will be scheduled for action on the next available EQC meeting agenda.

The tax credit regulations state the application must be filed

- After you have completed installation of the claimed investment and have begun using it to prevent or control nonpoint source pollution; and
- Within two years of the **completion** date if installation of the claimed investment was completed on or before December 31, 2001. Within one year of the **completion** date if installation of the claimed investment was completed on or after January 1, 2002.

Definition of completion:

OAR 340-016-0010 (12): "Substantial completion" means the completion of the erection, installation, modification, or construction of all elements of the claimed facility, which are essential to perform its purpose.

Please submit an application that is complete and ready to process at least 120 days before one of the dates below. This will provide staff adequate time to develop its recommendation and for the EQC to review the recommendation. DEQ will present tax credits to the EQC on the following dates:

March 8, 2002
June 7, 2002
September 17, 2002
December 13, 2002



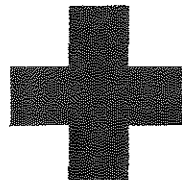
Chemical Stockpile Emergency Preparedness Program (CSEPP)

A snapshot of Oregon activities from January 1 through June 4, 2004

Provided for:

Environmental Quality Commission

June 4, 2004



**American
Red Cross**

JANUARY 2004

- **January 13** – CSEPP managers met with local hospital administration to discuss options for hospital responder compensation. Requirements will be submitted to CSEPP no later than February 6 for consideration.
- **January 14** – FEMA and Congressional announcement of an additional \$3.0 million award for Phase 2 of evacuation infrastructure project.
- **January 14&15** – Michael Parker, Director, Chemical Materials Agency and Craig Campbell, Senior Policy Advisor for Oregon Governor Ted Kulongoski visit Umatilla site. Their itinerary included meetings with local elected officials, the Confederated Tribes and Oregon Department of Environmental Quality; attendance at the Oregon CSEPP Governing Board and Citizen Advisory Commission meetings; and tours of the Depot Operations Center, Umatilla Chemical Agent Disposal Facility, Joint Information Center and Umatilla County Emergency Operations Center.
- **January 15** – 450 MHz Advisory Board meets. Agenda includes: Channel layout spreadsheet, coverage, installation of radios/consoles, system maintenance plan, and schedule of events (MOU, installation, consoles, training, system turnover).
- **January 16** – State of Oregon receives FY 04 budget award in Smartlink.
- **January 20** – Umatilla County CSEPP Planner Shawn Halsey accepts position as Umatilla County Communications Coordinator.
- **January 22** – Members of the Hermiston Fire Department began a nine-week situational Spanish course. Course curriculum focused on terms and common phrases that will be useful in emergency situations. The class was sponsored by CSEPP and taught by Maria Duron, Hispanic community liaison for CSEPP.
- **January 26** – Umatilla County Commissioners sign an MOA with NOAA for a new transmitter at the Pendleton National Weather Service station. The new transmitter will broadcast the same signal as received in the Immediate Response and Protective Action Zones. This will let the Umatilla County EOC monitor Tone Alert Radio broadcasts and allows installation of Tone Alert Radios in homes and agency offices of CSEPP responders and emergency management staff in Pendleton.
- **January 27** – Army begins public opinion survey to determine what the public knows about chemical weapons storage and disposal activities at the Umatilla Chemical Depot. 400 citizens near the Depot will be surveyed by phone over the next two weeks.



Hermiston Fire and Rescue personnel play Simon Says during situational Spanish classes taught by CSEPP Hispanic Liaison, Maria Duron.

On-going projects

- 450 MHz Radio Project Team – *January Accomplishments*: Completed Motorola R-56 work. Transitioned live traffic on the first hops of microwave. Continued development of the Advisory Board and the User Group. *February Goals*: Complete turn up and commissioning of the microwave “ring”. Complete antenna troubleshooting work at Gleason and Golgotha. Begin Motorola system optimization. Begin mobile installations. Continued progress on Advisory Board structure and governance. See January 15 for details on 450 Advisory Board activities.
- IRIS Project – Responder training continues. A committee is working on the best bar-code technology. Using a bar-code system and a scanner attached to a laptop, responders will be able to track how long someone has been on the scene and how long they have been in their personal protective equipment.
- Tone Alert Radio deliveries – 90
- Public Education
 - Media campaign ads – “In the Time it Takes...”
 - Out reach events / presentations – 3 presentations, 40 people attending
 - www.csepp.net page hits – 11,372

FEBRUARY 2004

- **February 2** – SSI 450 MHz Quality Assurance team is on site this week to perform inspections.

- **February 5** – Wireless Internet (WiFi) dedication celebrations were held in Boardman and Hermiston. The ceremonies included demonstrations of the Incident Response Information System (IRIS), which will provide real-time information to first responders in the field. Using the wireless system, CSEPP responders would be able to get data transferred to durable handheld computers that are waterproof, shock resistant and have a 30-hour battery life. The WiFi network also will allow officials to monitor traffic flows through cameras mounted along evacuation routes and track emergency personnel.



CSEPP responders will soon be able to use new Recon Ruggedized handheld computers with GPS tracking to receive



Congressman Greg Walden and Hermiston Police Chief Dan Coulombe check out the information that will be available to responders.

- **February 11** – Umatilla County CSEPP Planner and Logistics Officer meet with Confederated Tribes Emergency Manager and Wildhorse Casino management to plan for reception center.
- **February 12** – 450 MHz Advisory Board meets. Agenda includes: MOUs, training, installation of radios/consoles, plan and policy, clarification of “operational” requirement, “jerk and run” radio option, and By-Laws final draft.
- **February 18** – Oregon CSEPP Governing Board passed the following resolution. RESOLVED: That the Governing Board endorses start-up of actual agent disposal operations as soon as (1) the 450 MHz tactical communications system is constructed, tested, operational and training is completed as defined by the 450 MHz Advisory Board, and (2) necessary approvals are obtained from the Oregon Environmental Quality Commission and the Federal oversight group.
- **Feb 23 – 27** – American Red Cross logistics team of six staff and volunteers spent the week in the Hermiston / Pendleton area building team capacity and renewing facility agreements.
- **February 24** – Planning begins on project to analysis the seismic ability of over pressurized facilities.
- **February 26** – Additional supplies have been received for issuance at over pressurized schools including first aid kits, blood borne pathogens kits, flashlights, additional blankets, tool kits and audio visual equipment.

On-going projects

- 450 MHz Radio Project Team – *February Accomplishments*: Completed the turn up and commissioning of the microwave “ring”. Completed Motorola link audits, testing, and connections to the microwave system. Began Motorola system optimization. Completed antenna troubleshooting work at Gleason and Golgotha. Continued development of the Advisory Board and the User Group. Completed initial training of the Communications Coordinator.
- Tone Alert Radio deliveries – 92
- IRIS Project – Responder training and work on the bar-code technology continues. Antenna testing continues to select the best product for installation on tactical vehicles. IRIS/WiFi emphasis is on preparing for the April 24 exercise. Currently testing secure Recon software. Final WiFi install is in process at the Pilot decon station site. The Steering Committee is convening next week to decide on where to go with Phase II. There are seven persons in the group. They will establish priorities for the coming year.

- Public Education

- Media campaign ads – “Kids at Schools, a Mom’s perspective”
- Out reach events / presentations – 12 presentations, 1,560 people attending
- www.csepp.net page hits – 9,732

MARCH 2004

- **March** – First of four CSEPP decontamination trailers sent for retrofit. Trailers were originally purchased in 1997. Fire chiefs will travel to Salem on March 22 to inspect the trailer. Two additional trailers will be sent for retrofit after the annual CSEPP exercise in May. Fourth trailer will be held until \$30,000 funding is available.
- **March 2** – Additional radios installed in school (Echo school district and OCDC) buses for the management of bus traffic during a CSEPP event when the buses are enroute of picking up or delivering students.
- **March 4** – Community Responder Coordination Committee (CRCC) decides to change focus of April 24 drill from a medical / field decontamination exercise to an IRIS communications exercise.
- **March 8** -- Hermiston Fire and Emergency Services District board is briefed on the planned expansion of the Hermiston Safety Center. The facility, located in the IRZ, houses Hermiston Fire, the Hermiston Police Department, Hermiston Dispatch Center, and is the location of the Incident Command System Operations center in a CSEPP response. The existing area utilized for the CSEPP Operations center is not pressurized. CSEPP will partner with the City in the funding / over pressurization of the new Hermiston Emergency Response Operations Site (HEROS) portion of the building.
- **March 8** – Oregon Department of Transportation Port of Entry Facility over pressurization equipment declared operational. This is the 26th over pressurization facility to come on line.
- **March 9 - 11** – Craig Conklin (FEMA HQ) and Dennis Legel (Army HQ) visit the Umatilla CSEPP Community.
- **March 10** – The Oregon CSEPP Governing Board received a briefing from IEM on the “Recommendations for Increased Protection of Zones at the Umatilla CSEPP Site” Report dated February 23, 2004. Two main tasks were identified for analysis 1) estimation of baseline risk of fatalities (for the public) associated with accidental exposure in each CSEPP zone taking into account existing protective actions and enhancements, and 2) evaluation of a “balanced approach” response strategy for the 14 Oregon CSEPP zones. The Board decided to continue meeting monthly through July 2004 (the projected demil start month). They will reevaluate the frequency of their meetings at that time.
- **March 11 – 12** – 82 people (65 students) from three states participated in an American Red Cross rendezvous organized by Tony Scheibe, CSEPP American Red Cross Disaster Planner. Sixteen basic to intermediate classes were conducted.
- **March 17** – Web EOC training was conducted for CSEPP jurisdictions and agencies.
- **March 17** – The Echo School District receives first of two evacuation buses purchased with CSEPP grant. The buses will seat 65 and 60 students respectively.
- **March 18** – Umatilla County hires Ray Denny as the Umatilla County CSEPP Planner. He will begin his duties on April 1.
- **March 22** – American Red Cross reports having 100% of required equipment in place to support an evacuation in a westerly direction.
- **March 22** – 450 MHz system equipment was moved from long-term storage at Depot and re-inventoried. Began issuing mobile radios to first responder department, Morrow County Sheriff.



Umatilla Public Information Group gets a lesson on monitoring and munitions transportation from Depot Chemical Operations crew.

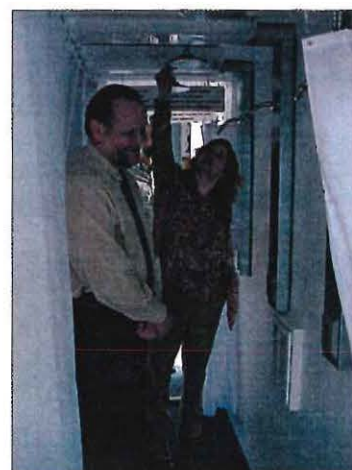
- **March 22 – 25** -- Kim McGuire from the Little Rock Democrat-Gazette visited the Umatilla site. Ms. McGuire is working with a partner, Austin Gelders on a series of articles that she expects to run in the Democrat-Gazette in June. Ms. McGuire was in Utah last week. Ms. Gelders visited Anniston last week. They expect to either visit or contact all of the other sites with the exception of Indiana. She also expects to visit CMA HQ in April.
- **March 25** – Work is complete on the Highland Hills Elementary Flat-Panel project. This is the fourth over-pressurization facility to be up-graded to this new technology. Other facilities with this technology include the Hermiston Junior Academy, Irrigon Elementary and Umatilla High School.

On-going projects

- 450 MHz Radio Project Team – *March Accomplishments:* Began mobile radio installations, System optimization begun, Complete installation of the microwave network management terminal, User training begun. *April Goals:* Complete transition plan, Begin training program, Complete microwave training, Continue radio installations
- Tone Alert Radio deliveries – 35
- Public Education
 - Media campaign ads – “Know your EAS Radio Stations”
 - Out reach events / presentations – 17 presentations, 2,377 people attending
 - www.csepp.net page hits – 11,443

APRIL 2004

- **April 1** – Twenty two community volunteers completed a two-day Joint Information Center training and drill hosted by CSEPP.
- **April 13** – The first of four Oregon decon trailers retrofit is complete. Trailer modifications address weatherization issues, increase efficiency and double the capacity of each site. Cost of retrofits for four trailers will be \$255,000. Work was performed by Trailer Works, Independence Oregon.
- **April 14** – The Oregon Department of Human Services (ODHS) congratulated the Oregon CSEPP Governing Board on the security of the new IRIS system. ODHS hired a technology firm to travel to Eastern Oregon and attempt to “hack into” all local health alert networks in the area, to include the new IRIS / WiFi systems. The company was unable to gain access.
- **April 24** – Pre-exercise first responder drill to focus on IRIS capabilities and new bar code scanning capabilities.
- **April 26 – 27** – FEMA hosts Cooperative Agreement (CA) tools training for region / state / county CSEPP staffs at Camp Murray in Washington State.



Grant Higginson, State Health Officer and Janet Hlavaty-LaPosa, FEMA check out the newly retrofitted Hoppner decon Trailer.

On-going projects

- Public Education
 - Media campaign ads – “Before Plastic and Duct Tape”
 - Out reach events / presentations – 15 presentations, 1,368 people attending
 - www.csepp.net page hits – 7,853
- Tone Alert Radio deliveries – 35

Shelter in place: Know the first four things to do!

There's the test siren—let's run through our shelter-in-place drill!

Okay, I'll go get the plastic and duct tape...

Whoa! There are four steps to sheltering-in-place before we seal up our safe room.

THE FIRST FOUR STEPS TO SHELTER IN PLACE—
 1—Go inside 2—Shut windows and doors 3—Shut off heating and cooling 4—Listen to your tone alert radio

Call us! If you have questions about sheltering-in-place for a chemical emergency, or how to prepare for other emergencies, call CSEPP today. In Oregon, call 877-367-2737. In Washington, it's 800-841-7983. Or at www.csepp.net.

CHEMICAL STOCKPILE EMERGENCY PREPAREDNESS PROGRAM

MAY 2004

- **May 5** – Nearly 11,000 people participate in 2004 Annual CSEPP Exercise.

Fourteen of fifteen performance measures passed. No major trouble areas were identified. All items noted were characterized as “minor tweaks” that are quickly solvable.

Community strengths noted included: use of the Incident Command System, local school participation and support of Educational Service District, responder tracking innovations, expanded use of Video Teleconferencing capabilities, volunteer participation, cutting edge use of the World Wide Web as a tool for public information and internal coordination, communication enhancements like the IRIS / WiFi and expanded participation and play of the American Red Cross.

Challenges noted included: on-post / off-post communication and coordination, traffic control point implementing procedures, and radio communications with St. Anthony Hospital. The final report is expected by the end of June.



- **May 6** – Umatilla County Commissioners approve purchase of additional 350 Tone Alert Radios.
- **May 10 – 14** – Motorola acceptance testing for 450 MHz project.
- **May 12** – Umatilla County Logistics Officer, Bill Howard met with the Director of Hermiston Day Care Center to discuss additional facility needs for enhanced shelter in place capabilities. This facility occupancy is 60 children and 12 staff. Also discussed was training for Day Care staff that operates early morning day care programs as several over pressurized schools.
- **May 13** – The Community Response Coordination Committee (CRCC) discussed ways to continue to improve local response capabilities through improvements to the Bi-County Response plan. Pendleton Fire Chief (and CSEPP Incident Commander) John Fowler agreed to put together a ‘single team concept’ proposal that would strengthen the existing Incident Command structure.

- **May 17** – FEMA fiscal personnel from Washington DC are in Hermiston to conduct an informational review of the federal budgeting process used for CSEPP. This informational session was requested by Morrow County and the State of Oregon.
- **May 18** – Local, state and FEMA HQ fiscal staff conduct a line-by-line review of the CSEPP Life Cycle Cost Estimates (LCCE) through the year 2020.
- **May 17–21 and May 24 – 29** -- 450 MHz project Quality Assurance contractor, SSI conducts system signal strength and coverage.
- **May 19** – Umatilla County Commissioners receive briefing and request for adoption of a proposed Recirculation Air Filter program from Umatilla County CSEPP staff. Anticipated cost of the proposed project is \$511,000. Staff projects a 12 month implementation requirement. Following deliberation, the Board of Commissioners vote NOT to move forward with the proposal.

- **May 20** – Environmental Quality Commission holds meeting in Hermiston to accept public comment on the Umatilla Chemical Agent Disposal Facility.
- **May 20 – 24** – Eight hundred fourteen residents in the emergency planning zones participated in a telephone survey. The survey was part of the on-going efforts of the Umatilla Public Information Group to measure the specific knowledge of protective actions and the level of preparedness of residents in the unlikely event of a chemical emergency at the Umatilla Chemical Depot.

CR Dynamics of Baltimore performed the data collection. Raw data will be sent to Innovative Emergency Management for categorization of verbatim responses and analysis. Preliminary reports will be available in mid-June.

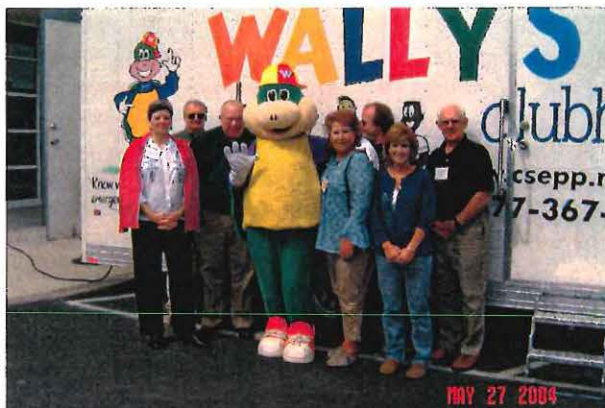


Approximately 150 people attend Environmental Quality Commission public hearing in Hermiston.

- **May 25 – 27**— Six Public Information Officers from CSEPP counties in Alabama visit Umatilla. They learned how the Umatilla Public Information Group uses survey data to identify target and develop out reach tactics for special populations such as schools, the elderly, Hispanic and businesses.

They observed a CSEPP drill at a Head Start facility, observed a joint OutReach Office / CSEPP presentation in a classroom, toured a variety of over pressurized facilities, learned about incorporation of the Incident Command System into local response, and received a “hands on” demonstration of the “Cyber” Joint Information System developed by the Umatilla Public Information Group.

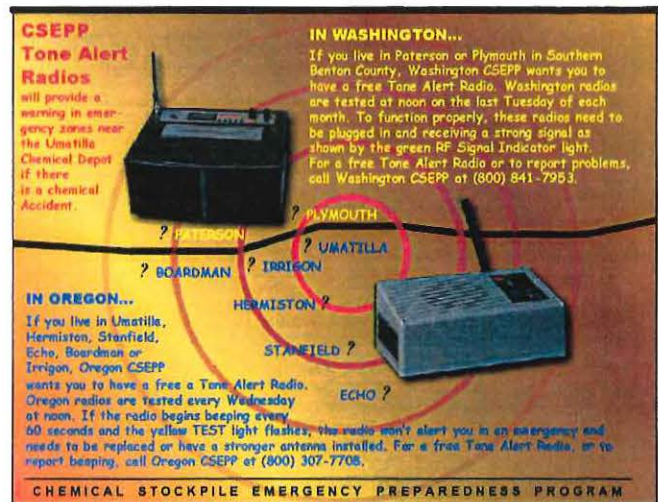
- **May 25** – Umatilla CSEPP staff and American Red Cross Disaster Planner meet with Confederated Tribes to continue reception center planning.



Wally greets Alabama PIOs and invites them to tour his Club House.

On-going projects

- Tone Alert Radio deliveries – 71
- Morrow County Special Needs Survey -- follow-up home visits continue to be made by Morrow County PIO and Hispanic Community Liaison. To-date, three residents, in Irrigon, have been identified as requiring additional help in the event of a chemical accident. Modifications have been suggested and will not require a lot of money to accommodate. Such things as weather stripping, pre-cut plastic with a special device to assist wheelchair bound individuals in putting it up, particularly in high places (i.e.: ceiling fan in bathroom) and possibly a ceiling mount air purification system are some proposed fixes for these residents.
- Public Education
 - Media campaign ads – “Tone Alert Radios”
- Evacuation Infrastructure Project – Evacuation planning meetings are held monthly and attended by representatives from Morrow & Umatilla Counties, FEMA, ODOT, City of Hermiston, OEM, IRZ Technologies and SCM Consultants. Design status, project schedule, budget, and key interface issues are addressed at every meeting.



Currently, this committee is working on Phase II of the project – Elm Avenue. The Elm Avenue corridor design has begun, with review of the ODOT signage and drawings completed. The committee works closely with ODOT to ensure efforts aren't duplicated and work is not completed by one project only to be torn up to accommodate needs of another. Closed Circuit TV (CCTV) cameras have been installed at the following locations:

- 4th & US 395, 11th & Highland,
- Main & US 395
- US 730 & US 395
- Elm & US 395
- Theatre Lane & US 395
- Punkin Center & US 395
- Highland & US 395

Wiring for these cameras is being pulled into the Hermiston Safety Center. Training on use of the camera system will commence after the majority of cameras are plugged into the server.

JUNE 2004

- **June 1** – CSEPP staff and engineers begin process of moving Mobile Shelter Unit from Simplot location to new location at 4th and Highland in Hermiston.
- **June 2** – Official migration to operational use of 450 MHz system begins. Umatilla County Dispatch begins use of 450 MHz system for dispatching of Pendleton Police Department. Installation is complete on all mobile radios (184 units) for CSEPP response agencies. 181 (of 250) portable radios have been issued to date.



Oregon CSEPP Update

Presented to the

Environmental Quality Commission

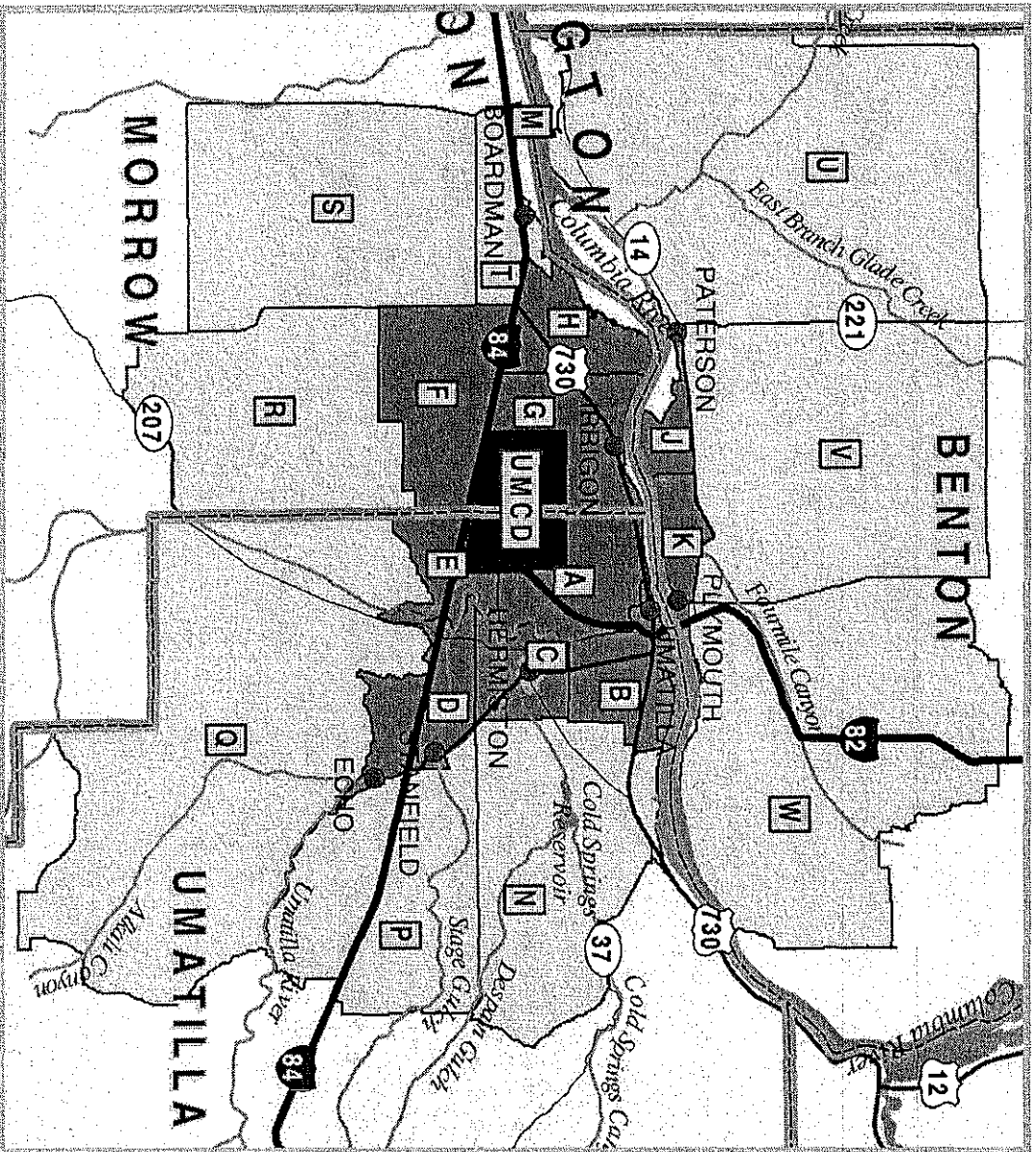
by

Beverlee Venell

Director

Oregon Office of Homeland Security

Umatilla CSEPP Community



Background

- **Unique partnership between federal, state, tribal and local jurisdictions with a common goal**
- **CSEPP is designed to protect the public outside the boundaries of the depot (“off-post”)**
- **Who is involved? – 2 states, 3 counties, 8 cities, CTUIR, and approximately 35K citizens**
- **ORS 401– local government is responsible for implementing emergency services systems**
- **Governance – CSEPP Governing Board oversees projects on a collaborative basis**
- **Oregon CSEPP began in 1989 and to date approximately \$85 million has been awarded to provide “adequate” protection for the public**

Where Are We Now in Oregon?

On January 30, 2004, FEMA published a Report to Congress on the Chemical Stockpile Emergency Preparedness Program (CSEPP).

On page 36, under FY 2003 Program Status, is the following statement:

"As of October 2003, Oregon CSEPP achieved compliance in 11 of 12 programmatic benchmarks."

What Are The Accomplishments?

- **Functioning alert and notification system for Immediate Response Zone (IRZ): sirens, highway advisory radio, tone alert radios, message reader boards, Emergency Alert System**
- **Automated data processing system connecting Emergency Operations Centers - EOCs including: Umatilla Chemical Depot (UMCD), and the state**
- **Annual exercise program consistent with approved federal policy that demonstrates the strength of our emergency preparedness program**
- **An off-post medical program prepared and able to respond to a chemical stockpile incident**
- **Training program with certification requirements to maintain the proficiency of our first responders**
- **State-of-the-art EOCs at UMCD, Umatilla and Morrow Counties**

What Are The Accomplishments?

continued

- **Automated Incident Command System-based, bi-county emergency response plan that is regularly updated by responders/managers**
- **Protective action strategy program with guidance for each jurisdiction (Shelter-in-Place) and over-pressurization of local schools and Head Start facilities**
- **Nationally recognized public outreach/education program (includes Hispanic and special needs emphasis)**
- **Functioning communications system for the IRZ and between EOCs (450 MHz tactical radio system completed in July '04)**

(Note: Oregon is now in full "benchmark" compliance for programmatic performance with FEMA/Army).

What Just Happened?

ERP: July 1, 2004

The Governor's 20-member Executive Review Panel met on July 1, 2004, in Hermiston at the request of Governor Kulongoski to:

"... further assess and evaluate whether an adequate emergency preparedness program exists."

"... then submit a brief report regarding the panel's collective assessment on the status..."

The ERP Agreed...

- **The permit requirement for “adequate” has been met and our task at-hand today is to further evaluate emergency progress made which increases our ability to protect those citizens in the IRZ communities (the ERP last met on August 21, 2003)**
- **May 5, 2004, Annual CSEPP Exercise demonstrated the strength of our community emergency preparedness program (14 of 15 performance measures passed)**

The ERP Agreed...

continued

- **450 MHz tactical radio system is operational, initial training completed, and the system acceptance has been signed off**
- **Community evacuation project is progressing on schedule; commitment of approx. \$3M federal funds still needed to complete Phase III; pending risk assessment**
- **Response capabilities continue to improve (i.e. IRIS/WiFi, retrofit of decon trailers, CAD project ongoing, moving to WebPuff for hazard analysis)**
- **On-going public media campaign/outreach efforts continue to increase our public preparedness knowledge, while an increase in Hispanic outreach and special population emphasis supports local CSEPP objectives**

The ERP Agreed...

continued

Our Biggest Challenge Ahead:

Availability of federal funding to support current and future justified community program requirements; this while we move into what is termed the "sustainment" phase of CSEPP.

The ERP Agreed...

continued

In conclusion, after reviewing CSEPP progress over the last 11 months, the ERP supports the position that emergency response capabilities have improved measurably, and there are no outstanding CSEPP issues of such consequence as to justify a delay of chemical agent destruction at UMCDF.

However, commitment of full federal funding for justifiable requirements is still necessary for Oregon CSEPP sustainment as they continue to work towards the ultimate goal of maximum protection for the Umatilla CSEPP Community.

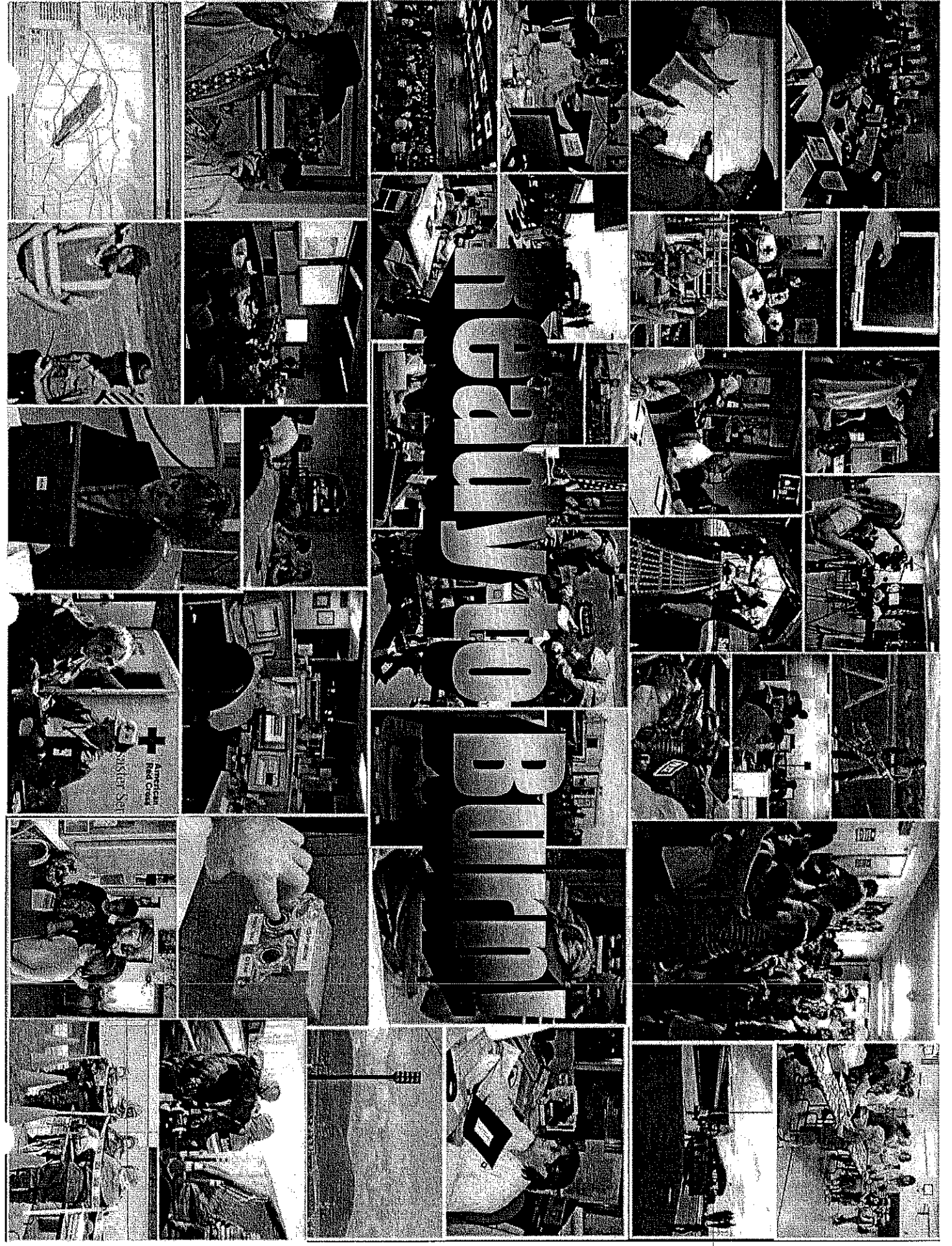
What's Left to Achieve Near Term?

- **Completion of the community evacuation project (resources still required for Phase III)**
- **Finalization of the CSEPP recovery plan**
- **Installation of additional sirens and message reader boards**
- **Continue to plan and establish reception centers to handle evacuating citizens**
- **Continue to update the bi-county emergency response plan and complete annexes**
- **Transition to a web-based software platform within the EOCs**

Summary Statement

- **CSEPP's mission is to protect the health and safety of the public by enhancing emergency preparedness on the part of our participating communities; thus, our work in OR/WA is directly applicable to the work of our nation's homeland security efforts.**
- **Finally, the increased capability of our local officials to protect the public and respond to natural and man-made disasters will remain a program legacy long after the chemical stockpile has been destroyed and CSEPP has ended.**

Questions?



NEW TO BIRTH

Item I



US ARMY CHEMICAL MATERIALS AGENCY

Umatilla Chemical Agent Disposal Facility Start of Agent Operations Status

Presented to:
Oregon Environmental Quality Commission

Presented by:
Don Barclay, UMCDF Site Project Manager
Doug Hamrick, WDC Project General Manager

16 July 2004





US ARMY CHEMICAL MATERIALS AGENCY

**Project is ready to begin and
sustain safe operations**



US ARMY CHEMICAL MATERIALS AGENCY

- Safety
 - 1,072,000 man-hours have been worked since last lost workday case
 - The last lost time accident was 26 Sep 03
 - Recordable Incident Rate
 - Twelve months (Jun 03 - Jun 04) = 1.55

- Brine Reduction Area Performance Test
 - Completed 15 Jul 04
 - Data to be delivered 23 Jul 04



US ARMY CHEMICAL MATERIALS AGENCY

- Furnaces
 - Liquid Incinerator (LIC) 1 Surrogate Trial Burn process complete
 - Deactivation Furnace System Surrogate Trial Burn process complete
 - Metal Parts Furnace Surrogate Trial Burn Report under review
 - LIC 2 Surrogate Trial Burn underway
- Remaining activities



US ARMY CHEMICAL MATERIALS AGENCY

- A journey beginning 3 years ago... integrating plant, people, and procedures...integrating multiple stakeholders
- Foundation is
 - Comprehensive performance criteria
 - Critical self evaluation
 - Demonstrated performance
 - Open and inclusive communication
 - Continuous improvement goals

**Process integrity must
be maintained**



- Agent Operations approach
 - Slow and deliberate ramp up
 - Stop if anything unexpected
 - Verification of system response prior to next step
 - Evaluation of personnel performance
 - Focused oversight
 - Continuous performance sustainment approach



US ARMY CHEMICAL MATERIALS AGENCY

- Designed an effective readiness evaluation process
- Demonstrated the project is ready to start
- Maintain the process to ensure sustained safe operations and closure

State of Oregon

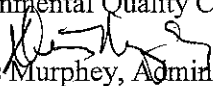
Department of Environmental Quality

Memorandum

DEQ Item No. 04-1126 (92.01)

DATE: July 16, 2004

TO: Environmental Quality Commission

FROM:  Dennis Murphey, Administrator
Chemical Demilitarization Program

SUBJECT: Planned process for the August 13, 2004 special meeting in Hermiston regarding the start of operations at the Umatilla Chemical Agent Disposal Facility
Environmental Quality Commission Meeting, July 16, 2004 – Agenda Item J

On Friday, August 13, 2004 (11:00 am) you are scheduled to hold a special meeting in Hermiston regarding the start of chemical agent operations at the Umatilla Chemical Agent Disposal Facility (UMCDF). The Department is preparing written materials for your review prior to the August meeting and anticipates sending the meeting material to you via overnight mail on July 30. The material will include logistical information regarding the meeting in Hermiston, in addition to a Staff Report with the Department's recommendation. An outline of the planned meeting process and the Staff Report for the "Decision on the Start of Chemical Agent Operations at the Umatilla Chemical Agent Disposal Facility" is presented below for your information and discussion.

Planned Process for the August 13, 2004 Meeting in Hermiston:

Introductory remarks by Director Hallock
Introductory remarks by Chairman Reeve
Department presentation of Staff Report (see outline below)
Commission questions and discussion
Commission decision through roll call vote

Planned Staff Report Outline

- **Department Recommendation**
- **Background**
[The background information will be brief and related specifically to the process that added the requirement to the UMCDF hazardous waste permit that the Commission provide written approval prior to the start of chemical agent operations.]
- **Public Comment Opportunities**
[Summary of the public comment process and oral and written comments received]
- **Key Issues**
[There will be only one key issue listed: "Has UMCDF satisfied the requirements of its environmental permits that are prerequisite to the start of chemical agent operations?"]
- **Action Alternatives**
[There are essentially only two possible alternatives: authorize the start of chemical agent operations or take no action.]
- **Rationale and Next Steps**

- **Attachments to the Staff Report**

- I. Draft "Findings and Conclusions of the Commission and Order" in the Matter of the Start of Chemical Agent Operations at the Umatilla Chemical Agent Disposal Facility, Hazardous Waste Storage and Treatment Permit No. ORQ 000 009 431 [for the Chair's signature]
- II. Draft letter from the Commission to the UMCDF Permittees transmitting the Commission's Order and providing written approval for the start of chemical agent operations [Chair's signature]
- III. Summary of Public Comments and Department Response
- IV. Final Compliance Assessment for the Start of Chemical Agent Operations, Oregon DEQ, July 26, 2004. The Compliance Assessment will include:

Executive Summary

1.0 Introduction

2.0 Description of UMCDF

3.0 Compliance Review and Assessment

3.1 Conditions of the UMCDF Hazardous Waste Storage and Treatment Permit

3.2 Conditional Department Approvals

3.3 Requirements of Other Environmental Permits

3.4 UMCDF Compliance History

4.0 Public Comments

5.0 Conclusion

Appendices

- A "Requirements for Commencement of Unit and Facility Operations"
(Attachment 6 of the UMCDF hazardous waste permit)
- B Request for Comments and Notice of Public Hearing
(public notice sent out prior to the May 20 hearing in Hermiston)
- C Status of Applicable Requirements
(the "checklist")
- D Summary of Department Enforcement Actions
(a summary of each Notice of Noncompliance issued to UMCDF and the final disposition or current status, whichever is applicable)
- E Public Comments
(copies of all written comments received and a transcript of the public hearing held on May 20, 2004)
- F Index of Related Documents
(a listing of documents with information that the Department relied upon to make their recommendation)



State of Oregon
Department of
Environmental
Quality

**Umatilla Chemical Demilitarization Program
Status Update
Environmental Quality Commission
July 16, 2004
(Agenda Item J)**

Umatilla Chemical Demilitarization Program

Surrogate Trial Burn and Shakedown Status

Liquid Incinerator 1 (LIC1)

The Department approved the LIC1 surrogate trial burn report on June 7, 2004. The permit modification request to establish agent operating parameters for the LIC1 based upon the results of the surrogate trial burn is currently under review and must be approved prior to the initial start of chemical agent operations.

Deactivation Furnace System (DFS)

The Department approved the DFS surrogate trial burn report on July 7, 2004. The subsequent permit modification request to establish agent operating parameters for the DFS based upon the results of the surrogate trial burn is currently under review and must be approved prior to the initial start of chemical agent operations.

Metal Parts Furnace (MPF)

The MPF surrogate trial burn was completed on February 1, 2004 and UMCDF submitted the trial burn report to the Department on June 17, 2004. Approval of the surrogate trial burn report for the MPF is not required prior to the initial start of chemical agent operations.

Liquid Incinerator 2 (LIC2)

UMCDF plans to conduct the STB for the LIC2 in the second half of July 2004. Approval of the surrogate trial burn report for the LIC2 is not required prior to the initial start of chemical agent operations.

Brine Reduction Area (BRA)

UMCDF began the BRA performance test on July 12, 2004. The Department expects to receive the BRA performance test preliminary results by July 23, 2004. Results of the performance test are required prior to the initial start of chemical agent operations.

Permit Modification Requests (PMRs):

PMRs Recently Approved

- BRA Performance Test Plan – May 28, 2004
- Annual Contingency Plan Update – June 22, 2004

Significant PMRs Under Review

- DFS Proposed Operating Parameters *
- LIC1 Proposed Operating Parameters*
- MPF Discharge Airlock Monitoring During Secondary Waste Processing *
- Carbon Filter Dry Out Confirmation*
- LIC1 GB Agent Trial Burn Plan
- DFS GB Rocket Agent Trial Burn Plan
- Processing EONCs (Enhanced Onsite Containers) Containing Leaking GB Munitions in the Container Handling Building Unpack Area

[Asterisked PMRs must be approved prior to the initial start of chemical agent operations.]

Agent Operations Authorization Process/Time Frame

UMCDF and the Army are nearing completion of all activities that must precede the EQC's decision to issue a written authorization for the start of chemical agent operations at UMCDF.

Subsequent to the close of the public comment period on June 7, 2004, the Department is reviewing all comments received and preparing a staff report for the EQC with an updated version of the compliance assessment and a recommendation regarding the start of chemical agent operations. The final compliance assessment will address all regulatory requirements that must precede the EQC's decision.

If all necessary actions by UMCDF and the Army can be concluded in sufficient time, the Department will submit its staff report to the EQC on July 30, 2004 and the EQC will be able to make a decision on authorizing the start of agent operations at its special meeting in Hermiston on August 13, 2004.

Other Topics of interest

Umatilla Chemical Depot

On July 7, 2004 a Notice of Non-compliance was issued to the Umatilla Chemical Depot (UMCD). During an annual Comprehensive Environmental Inspection of UMCD conducted by the Department and the U.S. Environmental Protection Agency on June 22, 2004, two violations were identified: 1) an exceedance of the maximum accumulation period for storage of a universal waste (fluorescent light tubes containing mercury) was noted, and 2) two Department staff were denied access into K-Block due to problems associated with implementation of security measures at UMCD.

CSEPP/ERP

The Executive Review Panel (ERP) met on July 1, 2004 to review the results of the CSEPP exercise, the status of the 450 MHz radio system, and other aspects of the local emergency preparedness program. The 20-member ERP consists of a member of the Governor's staff, the DEQ Director, a member of the EQC, several other senior state agency officials, a representative of the Confederated Tribes of the Umatilla Indian Reservation, mayors of local cities, Morrow and Umatilla County commissioners, and local first responders. The ERP will prepare a brief report to the Governor that provides their assessment of the local emergency preparedness

program to protect nearby residents in the event of an off-site release of chemical weapons agent from the Umatilla Chemical Depot.

In 2003 the ERP had heard concerns from local first responders regarding completion of the 450 MHz tactical radio system. At this time, remaining issues related to the 450 MHz radio system being fully operational prior to the start of chemical agent operations at UMCDF include installation of two additional base stations at the Hermiston Safety Center, performance of a communications exercise to test the system, and finalizing Phase I of the radio programming, distribution, and installation. All of these activities are expected to be completed by the end of July 2004 and testimonials from the local first responders regarding early evaluations of the 450 MHz system were very positive at the ERP meeting.

The consensus conclusion of the ERP was that, after reviewing current CSEPP progress over the last 11 months, the ERP supports the position that emergency response capabilities have improved measurably, and now there are no outstanding CSEPP issues of such consequence to delay the start of chemical agent destruction at UMCDF. However, commitment of full federal funding for justifiable requirements is still necessary for Oregon CSEPP sustainment which will continue to work towards the ultimate goal of maximum protection for the Umatilla CSEPP community.

TOCDF Milestone

As of June 18, 2004, the Tooele Chemical Agent Disposal Facility has processed 50% of the total stockpile (GB, VX, mustard) of chemical agents in storage at the Deseret Chemical Depot. The facility has also destroyed nearly 50% of the VX inventory.

ANCDF Update

The Alabama Dept of Environmental Management (ADEM) informed the Department of an issue related to the Anniston Chemical Agent Disposal Facility's Deactivation Furnace System GB Agent Trial Burn Report. ADEM is requiring ANCDF to repeat the gelled rocket destruction and removal efficiency (DRE) test for GB agent because ANCDF made a change in test methods without ADEM's prior approval: ADEM approved the collection of four 1-hour Depot Area Air Monitoring System (DAAMS) tubes for GB analysis and ANCDF collected a single DAAMS tube over a four-hour period. ANCDF is expected to conduct the re-test some time during the week of July 12. Until the re-test is conducted and the final agent trial burn report is approved by ADEM, ANCDF will not be able to process gelled rockets.

Agent Monitoring at Blue Grass, Kentucky

The Army's Chemical Materials Agency (CMA) intends to use a three-step process to determine the appropriate perimeter chemical agent monitoring system to be installed at the Blue Grass Army Depot (there is no perimeter monitoring system at present): 1) conduct a workshop in August 2004 regarding current agent monitoring technologies, 2) solicit proposals from monitoring technology vendors worldwide in search of a possible "better mousetrap," and 3) evaluate any promising technologies identified in step 2 at the Dugway Proving Grounds using actual chemical agent. Representatives of the CMA have reported that \$2 million approved by the Senate Appropriations Committee for the Blue Grass Army Depot would be used for the technology testing program at Dugway Proving Grounds and other evaluations in

support of monitoring technology selection for Blue Grass if that funding is included in the FY05 federal budget.

Kentucky U.S. Senator Jim Bunning has been pressing the Army to provide an enhanced chemical agent monitoring system at the Blue Grass Army Depot. Based upon the CMA's briefing of Senator Bunning's staff, it does not appear that Senator Bunning is pressing CMA to utilize a specific monitoring technology at Blue Grass (e.g. the FTIR technology that some organizations have been advocating as better than CMA's present monitoring systems). CMA intends to evaluate whether there is a better near-real-time chemical agent monitoring technology that could be utilized at Blue Grass.

State of Oregon
Department of Environmental Quality

Memorandum

Date: June 24, 2004
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Agenda Item K, Rule Adoption
NPDES Storm Water Program: Permit Fees for Small Municipal Separate Storm
Sewer Systems (MS4s) and General Permit Fees,
July 16, 2004 EQC Meeting

Department Recommendation The Department recommends that the Environmental Quality Commission (Commission) amend rules for storm water permits and for all general permits as presented in Attachment A. These proposed rule changes address separate, unrelated types of permits but are combined in this rulemaking for efficiency.

Background and Need for Rulemaking *Small Municipal Separate Storm Sewer Systems (MS4) permit fees, OAR 340-045-0075*
Polluted storm water runoff is often transported to municipal separate storm sewer systems (MS4s) and ultimately discharged into streams and lakes without treatment. EPA's National Pollutant Discharge Elimination System (NPDES) storm water program requires operators of MS4s to implement storm water management programs to reduce the quantity of pollutants that storm water picks up and carries into storm sewer systems during storm events. EPA promulgated rules establishing "Phase I" of the storm water program in 1990, requiring operators of medium and large MS4s, generally those serving populations of 100,000 or greater, to obtain NPDES permits for storm water management programs. "Phase II" rules promulgated in 1995 extended coverage to small MS4s located in urbanized areas with populations under 100,000 and to other small MS4s designated by the state. DEQ has identified 18 small MS4s required by federal Phase II regulations to have NPDES permits.

Phase II requires operators of small MS4s to obtain NPDES permits to operate programs to reduce the discharge of pollutants to the "maximum extent practicable" (MEP). Implementation of the MEP standard will typically require the development and implementation of best management practices (BMPs) and achievement of measurable goals to satisfy six minimum control measures (i.e., public education and outreach, public involvement, illicit discharge detection and elimination, pre-construction and construction runoff controls, and pollution prevention).

In 2003, the Department proposed a general NPDES permit to cover the 18

Phase II MS4s. Before a general permit could be adopted, the U.S. 9th Circuit Court of Appeals ruled that individual storm water management plans for each MS4 required notice and public comment. In response, the Department decided to require Phase II permittees to submit a completed application form, storm water management plan, and a Land Use Compatibility Statement with findings of compliance with state land use goals in advance of permit issuance and to issue individual permits for the small MS4s. These NPDES permits are expected to be issued later this year. (See page 2 of Attachment E for the list of communities.)

This rulemaking requests that the Commission adopt a new individual permit fee category for Phase II MS4 permits, establishing the same fees that are assessed for all general permits for storm water discharges. Phase II MS4s have been expecting to pay a fee at the general permit level. With the decision to move to an individual permit, no other appropriate fee category exists and the fees for the individual permit category used for Phase I MS4s are substantially higher (i.e., total new permit fees are \$9010 for the minor industrial source category vs. \$670 for the proposed individual Phase II MS4 permits; see Attachment E for detailed fee comparisons). Because the Department's workload is not significantly different than the original general permit approach and a comprehensive review of water quality permitting fees is expected to follow the recommendations of the Blue Ribbon Committee on wastewater permitting, the Department decided to use the general permit fee amounts for these new individual permits.

In addition to fees, proposed amendments for storm water permitting rules add definitions and clarify when storm water permits are required.

General permit fees, OAR 340-045-0070(1)(c)

Under agreements with the Department, other governmental agencies help implement general permits issued by the Department, including collection of the Department's permit fees. For example, cities and counties may register and inspect developers under the storm water construction general permit. Each agreement specifies which services the government "agent" and Department will provide and how fees will be shared.

Local and state government agents augment Department resources and often administer general permits more efficiently, particularly when the permits regulate activities also regulated by local ordinances. For example, many local governments operate erosion and sediment control and building permit programs in conjunction with the Department's general permit regulating storm water discharges from construction activities. Local governments can often cut costs by providing one-stop permitting and comprehensive

inspections and technical assistance. Also, they may have additional funding that covers some of their costs for implementing the general permits. As a result, local governments may not need their full share of the Department's general permit fee to cover their costs nor want to require full payment.

Several local governments have advised the Department that more agencies would administer general permits if allowed to collect lower fees tailored to their costs. The proposed amendment to OAR 340-045-0070(1)(c) will authorize the Department to lower the general permits fees established in OAR 340-045-0075 in agreements with other governmental entities and allow those agents to collect the fees for the Department and retain a portion for their services. Supporting more equitable fees will encourage efficient local administration and one-stop permitting and improve customer service. More importantly, partnering with local governments and other agencies will extend our collective resources to better protect water quality.

Effect of Rule

The proposed amendments will:

- Add definitions for "MS4s" and "storm water" consistent with federal rules (OAR 340-045-0010),
- Clarify that an NPDES permit is needed for certain storm water discharges (OAR 340-045-0015),
- Establish permit fees for individual NPDES permits for small MS4s (OAR 340-045-0075),
- Authorize the Department to reduce general permit fees in agreements with local agents (OAR 340-045-0070),
- Correct a typographical error in the fee schedule for domestic sewage treatment plant permits (OAR 340-045-0075), and
- Edit the rules for clarity.

Commission Authority

The Commission has authority to take this action under ORS 468.020, 468.065, 468B.020, 468B.035, 454.625, and 454.745.

Stakeholder Involvement

Following the 9th Circuit decision, the Department notified the affected small MS4 municipalities and operators of the intent to shift from general to individual permits and to propose the same fees used for general fees. Given the additional notice required for storm water management plans, individual permits for these sources will be less burdensome than a general permit. None of the municipalities or operators commented on the proposed shift to individual permits or fees.

The Department consulted with local governments regarding the general permit fee changes. The Department did not convene an advisory committee for this rulemaking.

Public Comment A public comment period occurred from February 20 through March 26, 2004, and included a public hearing in Salem. The only comment received is discussed in Key Issues below and Attachment B.

Key Issues The commenter asserted that this rulemaking exceeds the scope of the Department's State Agency Coordination (SAC) rules that assure compliance with Oregon State Land Use laws and requires SAC rule amendments. The Department has determined that because this rulemaking merely clarifies and implements an existing permitting program that has already been addressed in the SAC, new SAC rules are not required. The comment and Department response are summarized in Attachment B.

Next Steps After adoption, the rules will become effective upon filing with the Secretary of State, and the Department will begin implementing the amendments.

Attachments

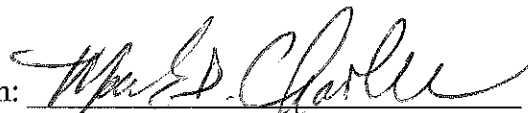
- A. Proposed Rule Revisions
- B. Summary of Public Comments and Agency Responses
- C. Presiding Officer's Report on Public Hearings
- D. Relationship to Federal Requirements Questions
- E. Statement of Need and Fiscal and Economic Impact
- F. Land Use Evaluation Statement

Available Upon Request


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

Approved:

Surface Water Management Section:


Mark D. Charles, Manager

Water Quality Division:


Holly S. Schroeder, Administrator

DEPARTMENT OF ENVIRONMENTAL QUALITY
PROPOSED RULE CHANGES TO OAR CHAPTER 340, DIVISION 45
(Strikeout indicates deleted text; underline indicates proposed revisions)

340-045-0010

Definitions

As used in ~~these rules~~ this division unless otherwise required by context:

- (1) "Commission" means the Environmental Quality Commission or the Commission's authorized designee.
- (2) "Department" means Department of Environmental Quality.
- (3) "Director" means the Director of the Department of Environmental Quality or the Director's authorized designee.
- (4) "Discharge or Disposal" means the placement of wastes into public waters, on land, or otherwise into the environment in a manner that ~~does affects~~ or may tend to affect the quality of public waters.
- (5) "Disposal System" means a system for disposing of wastes, ~~either~~ by surface or underground methods, and includes sewerage systems, treatment works, disposal wells, and other systems but excludes ~~on-site~~ onsite sewage disposal systems regulated ~~through the requirements of~~ under OAR 340-071-0160, 340-071-0162, ~~and or~~ and ORS 454.655; and systems ~~which that~~ recirculate without discharge.
- (6) "Federal Act" means Public Law 92-500, known as the Federal Water Pollution Control Act Amendments of 1972, and ~~aets amendatory~~ amendments, thereof or supplemental thereto.
- (7) "General Permit" means a permit issued to a category of qualifying sources pursuant to OAR 340-045-0033; in lieu of individual permits ~~being issued to each for every~~ source.
- (8) "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.
- (9) "Municipal Separate Storm Sewer" means a conveyance or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutter, ditches, manmade channels, or storm drains that is owned or operated by a state, city, county, district, association, or other public body; is designed or used for collecting or conveying storm water; and is not a combined sewer or part of a Publicly Owned Treatment Works as defined in 40 CFR §122.2.
- (10) "Municipal Separate Storm Sewer System or MS4" means all municipal separate storm sewers that are defined as "large," "medium," or "small" municipal separate storm sewer systems in 40 CFR §122.26(b).
- ~~(9)~~(11) "NPDES Permit" means a waste discharge permit issued in accordance with ~~requirements and procedures of~~ the National Pollutant Discharge Elimination System authorized by the Federal Act and ~~of~~ OAR chapter 340, division 045.
- ~~(10)~~(12) "Navigable Waters" means all navigable waters of the United States and their tributaries; interstate waters; and intrastate lakes, rivers, and streams which that are used by interstate travelers for recreation or other purposes or from which fish or shellfish are taken

and sold in interstate commerce or ~~which~~that are ~~utilized~~used for industrial purposes by industries in interstate commerce.

~~(11)~~(13) "Permit Action" means the issuance, modification, renewal, or revocation by the Department of a permit.

~~(12)~~(14) "Person" means the United States and agencies thereof, ~~any~~ state, ~~any~~ individual, public or private corporation, political subdivision, governmental agency, municipality, copartnership, association, firm, trust, estate, or any other legal entity ~~whatever~~.

~~(13)~~(15) "Point Source" means any discernible, confined, ~~and~~ discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(14)~~(16) "Pollutant" means dredged spoil,₁ solid waste,₂ incinerator residue,₃ sewage,₄ garbage,₅ sewerage sludge,₆ munitions,₇ chemical wastes,₈ biological materials,₉ radioactive materials,₁₀ heat,₁₁ wrecked or discarded equipment,₁₂ rock,₁₃ sand,₁₄ cellar dirt,₁₅ and industrial, municipal, and agricultural waste discharged into water.

~~(15)~~(17) "Pretreatment" means the waste treatment ~~which~~that might take place prior to discharging to a sewerage system including, but not limited to, pH adjustment, oil and grease removal, screening, and detoxification.

~~(16)~~(18) "Process Wastewater" means wastewater contaminated by industrial processes but not including non-contact cooling water or storm runoff.

~~(17)~~(19) "Public Waters" or "Waters of the State" ~~include~~means lakes, bays, ponds, impounding reservoirs, 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~~that do not combine or effect a junction with natural surface or underground waters) ~~which~~that are wholly or partially within or bordering the state or within its jurisdiction.

~~(18)~~(20) "Regional Administrator" means the Regional Administrator of Region X of the U.S. Environmental Protection Agency.

~~(19)~~(21) "Septage" means the liquid and solid material pumped from a septic tank, holding tank, cesspool, or similar domestic sewage treatment system.

~~(20)~~(22) "Septage Alkaline Stabilization Facility" means a facility ~~which~~that actively mixes alkaline material with raw septage to increase and maintain pH at 12 in the resultant mixture for sufficient time to achieve chemical stabilization.

~~(21)~~(23) "Sewage" means ~~the~~ water-carried human or animal waste from residences, buildings, industrial establishments, or other places, together with such groundwater infiltration and surface water as may be present. The mixture of sewage ~~as above defined~~ with wastes or industrial wastes, ~~as defined in sections (8) and (23) of this rule, shall~~ is also be considered "sewage" ~~within the meaning of these rules~~.

~~(22)~~(24) "Sewerage System" means pipelines or conduits, pumping stations, ~~and~~ force mains, and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.

~~(23)~~(25) "State" means the State of Oregon.

~~(26)~~ "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

~~(24)~~(27) _____ "Toxic Waste" means any waste ~~which~~that will cause or can reasonably be expected to cause a hazard to fish or other aquatic life or to human or animal life in the environment.

~~(25)~~(28) _____ "Treatment" or "Waste Treatment" means the alteration of the quality of wastewater by physical, chemical, or biological means or a combination thereof ~~such that~~ reduces the tendency of said~~the~~ wastes to ~~cause any degradation~~degrade in water quality or other environmental conditions ~~is reduced~~.

~~(26)~~(29) _____ "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive, or other substances ~~which~~that will or may cause ~~pollution~~ or tend to cause pollution of any waters of the state.

~~(27)~~(30) _____ "WPCF Permit" means a Water Pollution Control Facilities permit to construct and operate a disposal system with no discharge to navigable waters. A WPCF permit is issued by the Director in accordance with the procedures of ~~OAR chapter 340, division 45~~this division or OAR 340-071-0162.

Stat. Auth.: ~~ORS 454.626~~ORS 454.625, ~~ORS 454.780~~ORS 454.745, ORS 468.020 & ORS 468B.020, and 468B.035

Stats. Implemented: ~~ORS 468.005-065~~, & ~~ORS 468B.0015~~, 468B.035, and 468B.050

Hist.: DEQ 53(Temp), f. & ef. 6-21-73 thru 10-18-73; DEQ 58, f. 9-21-73, ef. 10-25-73; DEQ 113, f. & ef. 5-10-76; DEQ 22-1981, f. & ef. 9-2-81; DEQ 30-1992, f. & cert. ef. 12-18-92; DEQ 27-1994, f. 11-15-94, cert. ef. 4-1-95; DEQ 15-2000, f. & cert. ef. 10-11-00

340-045-0015

Permit Required

- (1) Without first obtaining a permit from the Director, ~~no~~ may not:
 - (a) Discharge any wastes into the waters of the state from any industrial or commercial establishment or activity or any disposal system;
 - (b) Construct, install, modify, or operate any disposal system or part thereof or any extension or addition thereto;
 - (c) Increase in volume or strength any wastes in excess of the ~~permissive-discharges~~ specified-authorized under an existing permit;
 - (d) Construct, install, operate, or conduct any industrial, commercial, or other establishment or activity or any extension or modification thereof or addition thereto; if the operation or conduct ~~of which~~ would cause an increase in the discharge of wastes into the waters of the state or ~~which~~ would otherwise unlawfully alter the physical, chemical, or biological properties of any waters of the state ~~in any manner not already lawfully~~ authorized;
 - (e) Construct or use any new outlet for the discharge of any wastes into the waters of the state.

- (2) Without first obtaining an NPDES permit, ~~no~~ no person ~~shall~~ may not discharge into navigable waters pollutants from a point source into navigable waters or storm water subject to permit requirements in 40 CFR §122.26 or §122.33, including storm water from large, medium, and regulated small municipal separate storm sewer systems and storm water associated with industrial or construction activity.
- (3) ~~Any person who has a~~ A valid NPDES permit ~~shall be considered to be in compliance with~~ satisfies the requirements of section (1) of this rule. ~~No additional permit for the discharge is required.~~
- (4) ~~Although not exempted from complying with all applicable laws, rules, and regulations regarding water pollution,~~ A persons discharging wastes into a sewerage system ~~are~~ is specifically ~~exempted from requirements not required~~ to obtain a WPCF or NPDES permit ~~if,~~ provided the owner of such sewerage system has a valid WPCF or NPDES permit. The person discharging must comply with all other applicable laws, rules, and regulations regarding water pollution. ~~In such cases, the~~
 - (a) ~~The owner of such a sewerage system assumes ultimate responsibility~~ is responsible for controlling and treating the wastes ~~which he~~ the owner allows to be discharged into ~~said~~ the system. ~~Notwithstanding the responsibility of the owner of such sewerage systems,~~
 - (b) Each user of the sewerage system shall must comply with applicable toxic and pretreatment standards and the recording, reporting, monitoring, entry, inspection, and sampling requirements of the Commission and the Federal Act and ~~federal~~ regulations and guidelines issued pursuant thereto.
- (5) ~~Each person who is required by sections (1) and (2) of this rule to obtain a permit shall~~ must:
 - (a) ~~Make prompt~~ Promptly application apply to the Department ~~therefor~~ for the permit;
 - (b) ~~Fulfill each and every~~ all terms and conditions of ~~any~~ the permit issued ~~to such person~~;
 - (c) Comply with applicable federal and state requirements, effluent standards, and limitations including, but not limited to, those contained in or promulgated pursuant to Sections 204, 301, 302, 304, 306, 307, 402, and 403 of the Federal Act, and applicable federal and state water quality standards; and
 - (d) Comply with the Department's requirements for recording, reporting, monitoring, entry, inspection, and sampling, and make no false statements, representations, or certifications in any form, notice, report, or document required ~~thereby~~.

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

Stats. Implemented: ORS 468.065, & ORS 468B.015, 468B.035, and 468B.050

Hist.: DEQ 53(Temp), f. & ef. 6-21-73 thru 10-18-73; DEQ 58, f. 9-21-73, ef. 10-25-73; DEQ 113, f. & ef. 5-10-76

340-045-0070

Permit Fees

- (1) All persons required to have a ~~Water Pollution Control Facilities Permit WPCF~~ or NPDES ~~Waste Discharge P~~ permit ~~shall be~~ is subject to a three-part fee consisting of ~~a the applicable~~ uniform non-refundable filing fee, ~~an~~ application processing fee, and ~~an~~ annual compliance determination fee ~~which are obtained from in~~ OAR 340-045-0075.
 - (a) The amount equal to the filing fee, application processing fee, and the first year's annual compliance determination fee shall ~~must~~ be submitted ~~as a required part of~~ with any application for a new NPDES or WPCF permit.
 - (b) The amount equal to the filing fee and application processing fee, if applicable, shall ~~must~~ be submitted ~~as a required part of~~ with any application for renewal or modification of a NPDES or WPCF permit.
 - (c) When a governmental entity has an agreement with the department to assist with implementation of a general permit, the department may in that agreement lower the general permit fees established in OAR 340-045-0075 and allow the governmental entity to collect the fee for the department and retain a portion of the fee for its services.
- (2) The applicable annual compliance determination fee, ~~as listed in OAR 340-045-0075(7);~~ must be paid for each year a disposal system is in operation or during which a discharge to public waters occurs.
 - (a) The fee period shall ~~corresponds~~ with the state's fiscal year (July 1 through June 30) and shall ~~must~~ be paid annually during the month of July ~~by the date specified by the Department.~~
 - (b) Any annual compliance determination fee submitted as part of an application for a new NPDES or WPCF permit shall ~~apply~~ applies to the fiscal year the permitted facility is put into operation.
 - (c) For the first year's fee period a facility is placed into operation, the full annual compliance determination fee shall ~~apply~~ applies if the facility is placed into operation on or before May 1. No annual compliance determination fee applies for that initial year if the facility is placed into operation. ~~Any new facility placed into operation after May 1, shall not owe a compliance determination fee until the following July.~~
 - (d) The Director may alter the due date for the annual compliance determination fee upon receipt of a justifiable request from a permittee. The Commission may reduce or suspend the annual compliance determination fee ~~in the event of a proven~~ if a hardship is demonstrated.
- (3) A filing fee and application processing fee are not required for M ~~modifications of an~~ existing, unexpired permits if the Department initiates the modification and determines which are instituted by the Department due to changing conditions or standards, receipts of additional information or any other reason pursuant to applicable statutes and do not require refiling or review of the modification does not require refiling or Department review of an application, or plans, or and specifications shall not require submission of the filing fee or the application processing fee.
- (4) Upon ~~After~~ the Department accepting an application for filing, the filing fee ~~shall be~~ is non-refundable.

- (5) The application processing fee submitted with an application may be refunded in whole or in part ~~when submitted with an application if the Department determines that either of the following conditions exist:~~
- (a) ~~The Department determines that a~~ NoA permit will be ~~is not~~ not required; or
 - (b) ~~The Department determines that the wrong application has been~~ was filed.
- (6) All fees ~~shall~~ must be made payable to the Department of Environmental Quality or the Department's agent.
- (7) ~~The fee schedule for on-site sewage disposal systems, including those that require WPCF permit, is found in OAR chapter 340, division 071.~~
- (8) ~~The fee schedule in OAR 340-045-0075 for permits administered by the Oregon Department of Agriculture is applicable until superseded by a fee schedule established by the Oregon Department of Agriculture.~~

Stat. Auth.: ~~ORS 454.626, ORS 454.780 & ORS 454.625, 454.745, 468.020, and 468.065,~~
468B.020, 468B.035

Stats. Implemented: ~~ORS 454.745, and 468.065(2), 468B.015, 468B.035, and 468B.050~~

Hist.: DEQ 113, f. & ef. 5-10-76; DEQ 129, f. & ef. 3-16-77; DEQ 31-1979, f. & ef. 10-1-79;
DEQ 18-1981, f. & ef. 7-13-81; DEQ 12-1983, f. & ef. 6-2-83; DEQ 27-1994, f. & cert. ef. 11-15-94; DEQ 2-2002, f. & cert. ef. 2-12-02

340-045-0075

Permit Fee Schedule

- (1) The fee schedule for ~~on-site~~ onsite sewage disposal systems permits, including those ~~requiring WPCF permits~~, is found in OAR chapter 340, division 071.
- (2) For permits administered by the Oregon Department of Agriculture, the following fees are applicable until superseded by a fee schedule established by the Oregon Department of Agriculture:
- (a) WPCF General Permits #800 for Confined Animal Feeding Operations Filing Fee -- \$50
 - (b) Other General Permits:
 - (A) Filing Fee -- \$50
 - (B) New Applications -- \$235
 - (C) Permit Renewals -- \$35
 - (D) Annual Compliance Determination Fee -- \$275
 - (c) Individual Permits:
 - (A) Filing Fee -- \$50
 - (B) New Applications -- \$6,280
 - (C) Permit Renewals (including request for effluent limit modifications) -- \$3,140
 - (D) Permit Renewals (without request for effluent limit modifications) -- \$1,416
 - (E) Permit Modifications (involving increase in effluent limit modifications) -- \$3,140
 - (F) Permit Modifications (not involving an increase in effluent limitations) -- \$500
 - (G) Annual Compliance Determination Fee for dairies and other confined feeding operations -- \$705

- (H) Annual Compliance Determination Fee for facilities not elsewhere classified with disposal of process wastewater -- \$1,885
 - (I) Annual Compliance Determination Fee for facilities not elsewhere classified that dispose of non-process wastewater (i.e., small cooling water discharges, boiler blowdown, filter backwash, log ponds, etc.) -- \$1,180
 - (d) Annual Compliance Determination Fee for facilities that dispose of wastewater only by evaporation from watertight ponds or basins -- \$705
- (3) The Department ~~shall take~~ must consider the following ~~criteria~~ qualifying factors into ~~consideration when determining the classifying a facility classification for determining applicable fees purposes.~~ (Note: ~~These factors are only for determining the appropriate fee. A different process is used to determine a facility's~~ Different classifications for NPDES-permitted facilities under the NPDES program when used for reporting on NPDES-permitted facilities to the federal Environmental Protection Agency.)
- (a) *Major industries:*
 - (A) Discharges large biochemical oxygen demand loads; or
 - (B) Is a large metals facility; or
 - (C) Has significant toxic discharges; or
 - (D) Has a treatment system that will have a significant adverse impact on the receiving stream if not operated properly; or
 - (E) Any other industry ~~which~~ that the Department determines needs special regulatory control.
 - (b) *Major domestic:*
 - (A) ~~Serves~~ serving more than 10,000 people; or
 - (B) ~~Serves~~ serving industries that can have a significant impact on the treatment system.
 - (c) *Minor domestic (see OAR 340-045-0075(7)(a) for descriptions of domestic categories):*
 - (A) ~~Does~~ is not meet major domestic qualifying factors; or
 - (B) ~~Is a~~ Are ~~facility~~ ies in categories Da ~~and~~ or Db and discharges to surface waters; or
 - (C) ~~Is a~~ Are ~~facility~~ ies in categories E ~~and~~ or F that ~~does~~ do not discharge to surface waters and ~~are~~ is under a Water Pollution Control Facilities permit.
- (4) **Filing Fee.** Unless waived by this rule, a filing fee of \$60 ~~shall~~ must accompany any application for issuance, renewal, modification, or transfer of an NPDES permit or WPCF permit, including registration for a General Permit pursuant to OAR 340-045-0033 and request for a Special Permit pursuant to OAR 340-014-0050. This fee is non-refundable and is in addition to any other applicable application processing fee or annual compliance determination fee ~~which might be imposed.~~ The following filing fees are waived for the following facilities:
- (a) Small gold mining suction dredges that qualify for General Permit 700, and ~~with~~ have an intake hose diameter of four inches or less;
 - (b) Small gold mining operations that qualify for General Permit 600, and can process no more than five cubic yards of material per day.

(5) **Application Processing Fee.** Unless waived by this rule, ~~an~~ the applicable application processing fee ~~shall in this section must~~ be submitted with each application. The amount of the fee ~~shall depend is~~ based on the type of facility and the required action as follows:

- (a) *New Applications:*
 - (A) Major industries -- \$37,680
 - (B) Minor industries -- \$7,535
 - (C) Major domestic -- \$24,000
 - (D) Minor domestic:
 - (i) Categories Da, Db -- \$4,800
 - (ii) Category E -- \$2,400
 - (iii) Category F -- \$600
 - (iv) Agricultural -- \$7,535
 - (E) NPDES Phase II Small MS4 Permit -- \$280
- (b) *Permit Renewals (including request for effluent limit modification):*
 - (A) Major industries -- \$18,840
 - (B) Minor industries -- \$3,765
 - (C) Major domestic -- \$12,000
 - (D) Minor domestic:
 - (i) Categories Da, Db -- \$2,400
 - (ii) Category E -- \$1,200
 - (E) Agricultural -- \$3,765
- (c) *Permit Renewals (without request for effluent limit modification):*
 - (A) Major industries -- \$9,420
 - (B) Minor industries -- \$1,415
 - (C) Major domestic -- \$6,000
 - (D) Minor domestic:
 - (i) Categories Da, Db -- \$900
 - (ii) Category E -- \$600
 - (iii) Category F -- \$240
 - (E) Agricultural -- \$1,415
 - (F) NPDES Phase II Small MS4 Permit -- \$40
- (d) *Permit Modifications (involving increase in effluent limitations):*
 - (A) Major industries -- \$18,840
 - (B) Minor industries -- \$3,765
 - (C) Major domestic -- \$12,000
 - (D) Minor domestic:
 - (i) Categories Da, Db -- \$2,400
 - (ii) Category E -- \$1,200
 - (E) Agricultural -- \$3,765
- (e) *Permit Modifications (not involving an increase in effluent limits):* All categories -- \$600.
- (f) *Special WPCF Permits issued pursuant to OAR 340-045-0061* -- \$300.
- (g) *Modifications of septage alkaline stabilization facilities permits* -- \$240.

(h) *New General Permits by permit number:*

(A) 100, 200, 400, 500, 600 (over 1,500 cubic yards per year), 900, 1000, 1400-A -- \$95

(B) 300, 1300, 1400-B, 1500, 1600 -- \$185

(C) All other 1200, 1700 -- \$280;

(D) Others not elsewhere specified -- \$280

(E) ~~In addition, the following fees shall be added~~ are required in addition to the fees in paragraphs (5)(h)(A) through (D) of this rule subsection when the listed activities are a required part of for the application review process:

(i) Disposal system plan review -- \$375

(ii) Site inspection and evaluation -- \$940

(i) *Renewal of General Permits as listed in subsection (2)(h) of this rule -- \$40.*

(j) *Application processing fees described in subsections (2)(h) and (i) of this rule are waived for specific categories as follows the following facilities:*

(A) Small gold mining operations that qualify for General Permit 600; and can process no more than five cubic yards of material per day, ~~or more than five cubic yards of material per day but or~~ less than 1,500 cubic yards of material per year.

(B) Small gold mining suction dredges that qualify for General Permit 700.

(6) **Technical Activities Fee.** All permittees shall must pay a fee for NPDES and WPCF permit-related technical activities. A fee will be charged for initial submittal of engineering plans and specifications. Fees will not be charged for revisions and resubmittals of engineering plans and specifications and/or for facilities plans, design studies, reports, change orders, or inspections. The fee is as follows:

(a) New or substantially modified sewage treatment facility -- \$5,520

(b) Minor sewage treatment facility modifications and pump stations -- \$600

(c) Pressure sewer system; or major sewer collection system expansion -- \$420

(d) Minor sewer collection system expansion or modification -- \$120

(e) New or substantially modified water pollution control facilities utilizing using alkaline agents to stabilize septage -- \$600.

(7) **Annual Compliance Determination Fee Schedule.** Unless waived by this rule, annual compliance determination fees are as follows:

(a) *Domestic Waste Sources -- Annual compliance determination fee is based on dry weather design flow, population served by facility, type of facility, and applicable special fees as follows:*

(A) Category A1: Sewage Disposal -- 50 MGD or more -- \$50,890

(B) Category A2: Sewage Disposal -- At least 25 MGD but less than 50 MGD -- \$29,410

(C) Category A3: Sewage Disposal -- At least 10 MGD but less than ~~50~~ 25 MGD -- \$13,220

(D) Category Ba: Sewage Disposal -- At least 5 MGD but less than 10 MGD -- \$8,040

(E) Category Bb: Sewage Disposal -- At least 5 MGD but less than 10 MGD -- Systems where treatment occurs in lagoons that discharge to surface waters -- \$3,680

(F) Category C1a: Sewage Disposal -- At least 2 MGD but less than 5 MGD -- \$5,010

- (G) Category C1b: Sewage Disposal -- At least 2 MGD but less than 5 MGD -- Systems where treatment occurs in lagoons that discharge to surface waters -- \$2,190
 - (H) Category C2a: Sewage Disposal -- At least 1 MGD but less than 2 MGD -- \$3,010
 - (I) Category C2b: Sewage Disposal -- At least 1 MGD but less than 2 MGD -- Systems where treatment occurs in lagoons that discharge to surface waters -- \$1,270
 - (J) Category Da: Sewage Disposal -- Less than 1 MGD, and not otherwise categorized under category E -- \$1,145
 - (K) Category Db: Sewage Disposal -- Less than 1 MGD -- Systems where treatment occurs in lagoons that discharge to surface waters that are not otherwise categorized under Category E -- \$750
 - (L) Category E: Sewage Disposal systems where treatment is limited to lagoons that do not discharge to surface waters -- \$720
 - (M) Category F: Septage alkaline stabilization facilities -- \$240
 - (N) Category G: Sources determined by the Department to administer a pretreatment program pursuant to federal pre-treatment program regulations (40 CFR, Part 403; January 28, 1981) ~~shall~~must pay an additional \$1,200 per year plus \$400 for each significant industrial user specified in their annual report for the previous year.
 - (O) Category H: Population Based Fee -- All permittees ~~shall~~must pay an annual fee computed as follows: population served by the facility multiplied by a rate of 0.09645.
- (b) *Industrial, Commercial and Agricultural Sources (For multiple sources on one application select only the ~~onesource~~ with highest fee.) as follows:*
- (A) Major pulp, paper, paperboard, hardboard, and other fiber pulping industry -- \$11,300
 - (B) Major sugar beet processing, potato and other vegetable processing, and fruit processing industry -- \$11,300
 - (C) Seafood Processing Industry:
 - (i) Bottom fish, crab, ~~and~~/or oyster processing -- \$1,270
 - (ii) Shrimp processing -- \$1,270
 - (iii) Salmon ~~and~~/or tuna processing -- \$2,260
 - (iv) Surimi processing -- \$2,260
 - (D) Electroplating industry (excludes facilities that do anodizing only):
 - (i) Rectifier output capacity of 15,000 amps; or more -- \$11,300
 - (ii) Rectifier output capacity of less than 15,000 amps but more than 5000 amps -- \$5,650
 - (E) Primary Aluminum Smelting -- \$11,300
 - (F) Primary smelting ~~and~~/or refining of non-ferrous metals ~~utilizing~~using sand chlorination separation facilities -- \$11,300
 - (G) Primary smelting ~~and~~/or refining of ferrous and non-ferrous metals not elsewhere classified above -- \$5,650
 - (H) Alkalies, chlorine, pesticide, or fertilizer manufacturing with discharge of process waste waters -- \$11,300

- (I) Petroleum refineries with a capacity in excess of 15,000 barrels per day discharging process wastewater -- \$11,300
- (J) Cooling water discharges in excess of 20,000 BTU/sec -- \$5,650
- (K) Milk products processing industry that processes in excess of 250,000 pounds of milk per day -- \$11,300
- (L) Major mining operations (over 500,000 cubic yards per year) -- \$11,300
- (M) Minor mining and/or processing operations:
 - (i) Medium (100,000 to 500,000 cubic yards per year) mechanical processing -- \$3,765
 - (ii) Medium using froth flotation -- \$5,650
 - (iii) Medium using chemical leaching -- \$7,535
 - (iv) Small (less than 100,000 cubic yards per year) mechanical processing -- \$940
 - (v) Small using froth flotation -- \$1,880
 - (vi) Small using chemical leaching -- \$3,765
- (N) All facilities not elsewhere classified with disposal of process wastewater -- \$2,260
- (O) All facilities not elsewhere classified that dispose of non-process wastewater (i.e. e.g., small cooling water discharges, boiler blowdown, filter backwash, log ponds, etc.) -- \$1,415
- (P) Dairies and other confined feeding operations on individual permits -- \$845
- (Q) All facilities that dispose of wastewater only by evaporation from watertight ponds or basins -- \$845
- (R) General permits, as listed under paragraphs (5)(h)(A) through (D) of this rule -- \$330, except as follows:
 - (i) 1400-A -- \$185
 - (ii) Annual compliance determination fees are waived for gold mining activities that qualify for assigned to General Permits Categories 600 and 700.
- (c) Storm Water: NPDES Phase II Small MS4 permit -- \$330

Stat. Auth.: ~~ORS 468.020, & ORS 468.065(2)~~ 468B.020, and 468B.035

Stats. Implemented: ORS 468.065, 468B.015, 468B.035, and 468B.050 & ~~ORS 468.065~~

Hist.: DEQ 113, f. & ef. 5-10-76; DEQ 129, f. & ef. 3-16-77; DEQ 31-1979, f. & ef. 10-1-79; DEQ 18-1981, f. & ef. 7-13-81; DEQ 12-1983, f. & ef. 6-2-83; DEQ 9-1987, f. & ef. 6-3-87; DEQ 18-1990, f. & cert. ef. 6-7-90; DEQ 10-1991, f. & cert. ef. 7-1-91; DEQ 9-1992, f. & cert. ef. 6-5-92; DEQ 10-1992, f. & cert. ef. 6-9-92; DEQ 30-1992, f. & cert. ef. 12-18-92; DEQ 20-1994, f. & cert. ef. 10-7-94; DEQ 4-1998, f. & cert. ef. 3-30-98; Administrative correction 10-22-98; DEQ 15-2000, f. & cert. ef. 10-11-00; DEQ 2-2002, f. & cert. ef. 2-12-02

Summary of Public Comment and Agency Response

Title of Rulemaking: NPDES Storm Water Program: Permit Fees for Small MS4s and Rule Clarifications

Prepared by: James E. Billings

Date: June 14, 2004

Comment period The public comment period opened on February 20, 2004, and closed at 5 p.m. on March 26, 2004. DEQ held a public hearing on March 23, 2004, 2 p.m., at DEQ's Salem office. One person attended the hearing but did not give oral or written testimony. One person submitted written comment during the comment period.

Organization of comments and responses A summary of the comment received, the Department's response, and the name of the commenter are provided below.

Summary of Comments and Agency Responses

Comment

The proposed Land Use Evaluation Statement (LUES) for this rulemaking does not comply with state land use laws, ORS 197.180, and implementing rules. Specifically,

- The LUES wrongly asserts that the Phase II MS4 NPDES permits are included in the NPDES program covered by DEQ's state agency coordination (SAC) procedures for assuring compliance with state land use goals and compatibility with local comprehensive land use plans. Those procedures require NPDES permit applicants to obtain a land use compatibility statement signed by the local land use authority before DEQ issues the permits.
- Phase II MS4 NPDES permits are a new program, postdating the SAC, and require different land use reviews than other NPDES permits. DEQ cannot rely on reviews of MS4 permits for compatibility with comprehensive land use plans (the procedure for other NPDES permits) because MS4 permits require municipalities to change land use plans and regulations to address specific measures to control stormwater runoff to rivers and streams.
- To comply with state land use laws and regulations, ORS 190.180 and OAR 660-031-0020(3)(b) and (d), DEQ must review each MS4 permit for compliance with statewide planning goals (vs. reliance on local authority reviews for compatibility with land use plans).

Agency Response

DEQ disagrees with the commenter's characterization (for purposes of ORS 197.180 and the rules implementing that statute) of this rulemaking action and the underlying NPDES permits. DEQ believes that the LUES correctly characterizes these rules as merely clarifying and implementing an existing permitting program that has already been addressed in the department's SAC rules. New SAC rules are not required and goal findings for new or renewed NPDES permits are required only as provided in those existing rules.

DEQ complies with ORS 197.180 by following the procedures set out in OAR 340-018-0070, subsection III(2) of the Land Conservation and Development Commission (LCDC)-approved SAC program, and OAR 660-030-0075(2). DEQ prepared the LUES included in the public notice package for this rulemaking in accordance with these provisions.

The NPDES permit program has been identified as a program affecting land use. The proposed amendments are minor changes to that permit program, adding a new fee category for Phase II MS4 permits and clarifying existing rules for MS4 permits. The amendments do not change the nature of the program or have any material affect on how the program relates to land use issues. Thus, DEQ has concluded that the existing SAC procedures are adequate for these rule amendments.

Rules adopted by the EQC and LCDC specify that NPDES permits are class B permits and that, except in specific situations, DEQ must determine whether a new (or significantly modified) permit is compatible with local plans and regulations and complies with the statewide land use planning goals by obtaining a Land Use Compatibility Statement (LUCS) from the applicable local government. The Oregon courts and Land Use Board of Appeals have determined that this procedure complies with ORS 197.180 and the applicable administrative rules.

No change was made in response to this comment.

Commenter		
Name	Address	Date on comments
James J. Nicita, Attorney, representing Ms. Elizabeth Callison and himself	James J. Nicita, Attorney at Law 230 S. 11 th St., #317 Klamath Falls, Oregon 97601 Telephone: 541-578-9467 Email: jim_nicita@hotmail.com	March 26, 2004

State of Oregon
Department of Environmental Quality

Memorandum

Date: May 4, 2004

To: Environmental Quality Commission

From: Raghu Namburi

Subject: Presiding Officer's Report for Rulemaking Hearing
Title of Proposal: Permit Fees for Small MS4s and Rule Clarifications
Hearing Date and Time: March 23, 2004, 2 p.m.
Hearing Location: DEQ-Salem Office, 750 Front Street, NE, Salem

The Department convened the rulemaking hearing on the proposal referenced above at 2 p.m. and closed it at 2:30 p.m. Attendees were asked to sign the registration form if they wished to present comments.

One person attended the hearing; the person did not testify orally or provide written comments.

Before taking comments, Mr. Jim Billings briefly explained the rulemaking proposal and procedures for the hearing.

The registration sheet is filed with the rulemaking records.

DEPARTMENT OF ENVIRONMENTAL QUALITY

NPDES Storm Water Program: Permit Fees for Small MS4s and Rule Clarifications

Relationship to Federal Requirements

Answers to the following questions identify how the proposed rulemaking relates to federal requirements and potential justification for differing from federal requirements. The questions are required by OAR 340-011-0029.

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

Federal requirements do not apply directly to the permitting fee changes proposed in this rulemaking. The proposed rule changes primarily address state fees for individual small MS4 NPDES permits and for general permits. These state permits satisfy federal requirements for managing wastewater, but no federal requirements apply to the proposed fee changes.

The new definitions proposed for MS4s and storm water are consistent with federal definitions.

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

N/A

3. **Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?**

N/A

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

The new definitions and other clarifications proposed in this rulemaking may improve the ability of regulated communities to comply with state and federal storm water requirements.

Allowing DEQ to reduce general permit fees in agreements with governmental entities helping administer those permits may encourage more streamlined local implementation of those permits and related wastewater management programs.

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

No

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

No

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

Yes. The proposed fee categories for individual MS4 permits are consistent with the level of effort required for those permits compared to other permits. Proposed fee changes for general permits allow local governments implementing general permits to collect lower fees more appropriate for their implementation.

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

No

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

No

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

N/A

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

No

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT
This form accompanies a Notice of Proposed Rulemaking

Title of Proposed Rulemaking: NPDES Storm Water Program: Permit Fees for Small Municipal Separate Storm Water Systems (MS4s) and General Permit Fees

Need for the Rule(s) The Oregon Department of Environmental Quality (DEQ) is proposing rule changes for the NPDES storm water and general permit programs.

Small MS4 NPDES permit fees:

DEQ is proposing new fees for small municipal separate storm sewer systems (MS4s) requiring NPDES permits (OAR 340-045-0075). The Department will issue this new type of permit to small municipalities (those located in urbanized areas with populations under 100,000) to comply with recent federal NPDES Phase II storm water regulations. (Phase I addressed medium and large municipalities.) DEQ originally proposed to issue a new general permit for small MS4s, but following a 9th Circuit Court ruling in 2003, decided to issue individual permits instead. The proposed new fees for individual MS4 permits are needed to allow DEQ to charge the same fees as it would for a general permit. Otherwise, the existing, much higher individual NPDES permit fees would apply. DEQ is also proposing definitions for "MS4" and "storm water" consistent with federal regulations (OAR 340-045-0010).

General permit fees:

DEQ is proposing changes that will allow DEQ to reduce general permit fees in agreements with agents assisting DEQ in implementing general permits (OAR 340-045-0070). The flexibility will support fees that match implementation costs and encourage more efficient, local implementation of general permits.

Other rule changes:

DEQ is proposing changes to clarify that a NPDES permit is needed for certain storm water discharges (OAR 340-045-0015), correct a typographical error in OAR 340-045-0075, and edit the rules being revised for clarity.

Documents Relied Upon for Rulemaking 40 CFR Part 122

Fiscal and Economic Impact

Overview

NPDES small MS4 permit fees:

The NPDES Phase II Small MS4 permit is a new category of individual permits that DEQ will soon propose to issue for small MS4s to comply with new Phase II federal storm water regulations. No individual permit fee category fits these permits. DEQ is proposing to establish a new individual MS4 permit fee category with fees that are the same as those DEQ would charge for a general permit. These fees are significantly lower than the existing

individual permit fees that DEQ uses for Phase I MS4 permits for medium and large municipalities (see Table 1) and are more appropriate than the higher fees because DEQ will use a template permit to streamline small MS4 permitting.

Fee	Proposed Small Phase II MS4 Fees	Medium/Large Phase I MS4 Fees (Minor Industry)
New Permit Fees		
Filing fee	\$ 60	\$ 60
New permit application processing fee	\$280	\$ 7,535
Annual compliance determination fee	\$330	\$1,415
Total new permit fees	\$670	\$9,010
Permit renewal (simple)	\$ 40	\$1,415
Permit modification (if needed) (simple)	\$600	\$600

The following municipalities will require small MS4 NPDES permits for their storm water discharges: cities of Bend, Corvallis, Philomath, Springfield, Medford, Ashland, Central Point, Phoenix, Talent, Troutdale, Wood Village, Keizer, and Turner and to the counties of Benton, Lane, Jackson, Polk, and Marion for discharges inside the urbanized areas as defined in the 2000 U.S. Census. Rogue Valley Sewer Services has applied as small MS4 operator for Jackson county and cities of Central Point, Phoenix, and Talent. DEQ may designate additional municipalities if they trigger the federal population threshold or their MS4s contribute to water quality concerns.

The proposed permit fees will be new costs for these municipalities because the small MS4 is a new permit to comply with new federal storm water regulations. Most of the municipalities paid these fees in 2003, when DEQ assumed a general permit would be issued and began processing permit applications.

NPDES general permit fees:

DEQ enters agreements allowing other governmental agencies to assist DEQ in implementing general permits, including collection of DEQ's permit fees. Each agreement specifies the services the agent and DEQ will provide and how fees will be shared. To date, DEQ has agreements with eleven agencies: Oregon Department of Geology and Mineral Industries, Estacada, Eugene, Hermiston, Lake Oswego, Myrtle Creek, Portland, Roseburg, Troutdale, Clackamas County, and Clean Water Services (incorporated Washington County within the district).

Local agents augment DEQ's permitting resources and often administer general permits more efficiently, particularly when permits regulate activities also covered by local programs. For example, many local governments operate erosion and sediment control programs for construction activities in conjunction with DEQ's NPDES 1200-C general permit for storm

water discharges from construction activities. Local governments can often cut costs by providing one-stop permitting and comprehensive inspections and technical assistance. In addition, they may have local funding that covers some of their costs for implementing the general permits. As a result, local governments may not need their full share of the Department's general permit fee to cover their costs nor want to require full payment.

The proposed amendment will authorize DEQ to lower the general permit fees in agreements with agents to more closely match agents' implementation costs. DEQ expects more equitable fees will encourage efficient local administration of permits and one-stop permitting and improve customer service. More importantly, partnering with local governments and other agencies will extend our collective resources to better protect water quality.

Other rule changes:

DEQ does not expect any fiscal or economic impacts from the other rule changes proposed.

- | | |
|-------------------------|---|
| General public | <p>NPDES small MS4 permit fees: DEQ anticipates no significant fiscal or economic impact to general public from the proposed small MS4 permit fees. Municipalities may pass these new fees on to the public through higher fees or taxes, but any resulting increases will be insignificant.</p> <p>NPDES general permit fees: DEQ anticipates no significant fiscal or economic impact to the general public from allowing DEQ to reduce general permit fees in agreements with local agents to more closely match their implementation costs. The general public may benefit from efficiencies gained by local implementation of general permits and one-stop permitting.</p> |
| Small Business | <p>NPDES small MS4 permit fees: No significant fiscal or economic impact. See discussion for General Public above.</p> <p>NPDES general permit fees: No significant fiscal or economic impact. See discussion for General Public above.</p> |
| Large Business | <p>NPDES small MS4 permit fees: No significant fiscal or economic impact. See discussion for General Public above.</p> <p>NPDES general permit fees: No significant fiscal or economic impact. See discussion for General Public above.</p> |
| Local Government | <p>NPDES small MS4 permit fees: The small MS4 permit fees are new fees for the municipalities required to obtain this permit. The 18 municipalities currently affected and permit fees are described in the Overview above. Otherwise no significant impacts are anticipated. See discussion for General Public above.</p> <p>NPDES general permit fees: DEQ anticipates no negative fiscal or economic impact to local governments from allowing DEQ to reduce general permit fees in agreements with local agents to more closely match their implementation costs. Local governments may benefit by more efficiently integrating the administration of local programs and related DEQ general permits.</p> |
| State Agencies | <p>NPDES small MS4 permit fees: No significant fiscal or economic impact. See discussion for General Public above.</p> |

NPDES general permit fees: No significant fiscal or economic impact. For impacts on agencies serving as DEQ agents in administering general permits, see discussion for Local Government above. For all state agencies, see discussion for General Public above.

DEQ

NPDES small MS4 permit fees: DEQ expects no internal impact from the proposed fees for the small MS4 permits. DEQ will use the proposed fees to cover permitting costs and will use a template permit to minimize those costs.

NPDES general permit fees: DEQ expects the additional flexibility for establishing general permit fees will encourage more local governments to enter agreements with DEQ to implement general permits. If this occurs, the associated permitting workload and fee revenue will shift from DEQ to local governments. The loss of revenue will not be significant for DEQ because general permit fee revenue often does not cover all of DEQ's permitting costs. General permit fee revenue is typically sufficient to cover costs for local agents because they integrate general permit and related local program implementation.

Other agencies

NPDES small MS4 permit fees: No significant fiscal or economic impact. See discussion for General Public above.

NPDES general permit fees: No significant fiscal or economic impact. See discussion for General Public above.

Assumptions

No additional assumptions were used for this analysis.

Housing Costs

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

Administrative Rule Advisory Committee

DEQ consulted stakeholders representing the small municipalities and MS4 operators regarding the proposed MS4 permit fees and consulted local governments and agents regarding the general permit fee amendments. DEQ did not convene an advisory committee for this rulemaking.

DEPARTMENT OF ENVIRONMENTAL QUALITY
NPDES Storm Water Program: Permit Fees for Small MS4s and Rule Clarifications
Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The Oregon Department of Environmental Quality (DEQ) proposes to amend rules to implement National Pollutant Discharge Elimination System (NPDES) individual permits for small municipal separate storm sewer systems (MS4s). This new type of permit is issued to small municipalities to comply with recent federal NPDES Phase II Storm Water regulations. Proposed changes will establish a new category of permit fees for these permits, OAR 340-045-0075, and add definitions to distinguish sizes of MS4s and define "storm water" consistent with federal rules, OAR 340-045-0010.

DEQ also proposes to amend rules governing general permits. The proposed changes will allow DEQ to reduce fees for general permits in agreements with agents assisting DEQ with permit implementation, OAR 340-045-0070.

Proposed changes will also clarify permit requirements for storm water discharges, OAR 340-045-0015; correct a typographical error in OAR 340-045-0075; and edit the rules being revised for clarity.

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

Yes No

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

NPDES permitting activities, as identified in OAR 340-018-0030(5)(e).

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

Yes No (if no, explain):

A land use compatibility statement signed by the local land use authority is required from applicants prior to authorizing discharges under NPDES permits.

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

N/A

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

N/A

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

Water Quality Division
Division

Revised by Jim Billings 6/3/04

Intergovernmental Coordinator

State of Oregon
Department of Environmental Quality

Memorandum

Date: June 7, 2004
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Agenda Item L, Informational Item: Board of Forestry's Water Protection and Riparian Function Rule development status report
July 16, 2004 EQC Meeting

Purpose of Item The purpose of this informational item is to present a status report on the rulemaking and other activities of the Oregon Department of Forestry (ODF) under the Oregon Forest Practices Act in conjunction with the *Forest Practices Act Sufficiency Analysis* completed in October 2002. The Sufficiency Analysis was a collaborative, three year joint effort by the Department of Environmental Quality (DEQ) and ODF to determine the effectiveness of the Forest Practices Act in achieving and maintaining water quality criteria for temperature, sediment, turbidity, aquatic habitat and biocriteria (i.e., aquatic diversity). This item builds on the Commission's forest practices discussion at the February 6, 2004 meeting, and is in preparation for a joint meeting between the Commission and the Board of Forestry (BOF) on October 21, 2004 in Tillamook.

Background Pursuant to a 1998 Memorandum of Agreement between ODF and DEQ, the Sufficiency Analysis identified a series of recommendations to improve the effectiveness of the Forest Practice Act in achieving and maintaining water quality standards on Oregon State and private forest lands. The BOF unanimously accepted the report, and encouraged ODF to incorporate its recommendations through appropriate means, including rulemaking.

The Sufficiency Analysis identified twelve recommendations that included improvements to the implementing rules or guidance of the Forest Practices Act and other recommendations under the Oregon Plan for Salmon and Watersheds (e.g.; active placement of large wood in streams to create fish habitat). Attachment A provides an executive summary of the Analysis and lists the recommendations on pages 8 through 10. ODF has completed rulemaking for some of the recommendations, has initiated rule development for many others, and has held a series of stakeholder meetings across the state on draft rule language. DEQ has actively participated in this rule development process, including attending many of the stakeholder and BOF meetings.

In addition to the Sufficiency Analysis, ODF has drawn from two stakeholder

evaluations of the Forest Practices Act (i.e., the Forest Practices Advisory Committee, or FPAC, and the Eastside Riparian Functions Advisory Committee). Finally, the Independent Multidisciplinary Science Team (IMST) conducted an independent evaluation of the riparian protections of the Forest Practices Act and came to many of the same conclusions as those reached by the Sufficiency Analysis and the FPAC.

The BOF is currently considering sixteen rule concepts and two statewide initiatives that are based on recommendations from the Sufficiency Analysis, the advisory committees and the IMST, as well as additional recommendations from ODFW, DEQ and stakeholders. ODF proposed that the BOF implement some recommendations as voluntary measures rather than incorporating them into their rules. The reason for addressing some of the recommendations through voluntary means rather than through rule relates to a Forest Practices Act statute (ORS 527.714) requiring the Board of Forestry to make certain findings before adopting rules. One of the findings is that unless changes are made, water quality degradation has occurred or will occur. ODF is advocating for the use of voluntary measures where it cannot document that such degradation has or will occur. One purpose of voluntary measures is to generate more definitive information in the future. Voluntary measures under the Oregon Plan have been very successful in achieving improved road maintenance and fish passage provisions on forestland. Attachment B summarizes the status of recommendations and actions to date.

At the February 2004 Commission meeting, Ted Lorensen, ODF Stewardship Division Assistant State Forester, Mike Llewelyn, DEQ Water Quality Division Administrator, and Mark Charles, Program Policy and Project Assistance Section Manager, presented a status report on the BOF Water Protection and Riparian Function rule development and other activities.

Since that time, ODF presented recommendations to the BOF on rule concepts and voluntary measures relating to small non-fish bearing streams, large wood placement, and habitat above human caused fish barriers (see Attachment B for a summary of the recommendations and draft rule concepts). DEQ testified at an April 2004 BOF meeting in support of ODF's recommendations to implement these protections in rule form. During the meeting, the BOF also received fifteen testimonies that were not in support of ODF's recommendations. Four members from the FPAC, Dan Newton, Bill Arsenault, Gary Springer, and Blake Rowe, told the BOF that they no longer supported the FPAC recommendation to provide additional protection on small non-fish bearing streams. See Attachment C for the list of FPAC members, and Attachment D for the list of commenters from April BOF meeting.

The BOF approved five of the draft rule concepts to go forward as potential rule requirements, and directed ODF to revise the proposed rules to address concerns expressed during the public comment period. In addition, ODF will conduct

economic and scientific analyses as required by ORS 527.714, and present their findings along with the revised rules to the BOF for consideration at their October 22, 2004 meeting. The BOF also encouraged further cooperation between DEQ and ODF on water quality issues related to the proposed rules. The concepts identified as potential rule-based requirements are summarized below.

- Clarify the policy statement that outlines the goals of the Forest Practices Act water protection rules
- Provide habitat above human caused fish barriers
- Provide wood for debris flows
- Revise the large wood placement rule and active management basal areas (size and number of trees)
- Increase basal area for medium and small fish bearing streams in Western Oregon

Five concepts were approved as voluntary measures with the intent that they will be implemented under the Oregon Plan.

- Treat medium and large non-fish bearing streams as same size fish bearing streams
- Provide protection for channel migration zones
- Limit harvesting of riparian management areas to 40 percent
- Limit harvesting to the outer half of the riparian management area
- Retain the largest trees within riparian management area

The BOF deferred action on one concept for added protection on small non-fish streams and directed ODF to develop a work plan to address policy issues underlying the concept.

- Increase protection on small non-fish bearing streams for Western Oregon

The BOF determined that four remaining concepts require further monitoring and/or discussion prior to being considered as either rule changes or voluntary measures. No rulemaking will occur on these four concepts during the current round of Water Protection and Riparian Function rulemaking process.

- Increase protection on small non-fish bearing streams for Eastern Oregon
- Revise desired future condition for Eastern Oregon
- Revise basal area retention for Eastern Oregon
- Provide harvesting alternatives for Eastern Oregon

The BOF directed changes to ODF's guidance documents and training to address a concept related to thinning dense stands within riparian management areas. Thus, rule development will not be required for this concept. A statewide initiative on monitoring small non-fish bearing streams has been placed high on ODF's monitoring priority list, and will only require minor rulemaking to remove obsolete references in the rule. ODF has decided to not address another statewide initiative to create incentives for fish habitat at this time.

The five concepts now proposed as rule changes would add riparian and water quality protections to the current Forest Practices rules. DEQ is in support of the proposed rules in their current form. We will continue to work with ODF through the rulemaking process to complete scientific and economic analyses on the proposed changes as required by ORS 527.714.

DEQ comments on the other concepts are summarized in Attachment B. There are some areas where DEQ would prefer a rulemaking to the voluntary approach being pursued by ODF and BOF. However, DEQ acknowledges restrictions placed on ODF by 527.714 and supports moving ahead with the proposed rule package. DEQ will continue to work with ODF to prioritize monitoring projects and to obtain funding for additional monitoring in order to resolve areas of data needs.

Next Steps

The following actions are scheduled before final rule adoption by the BOF, now planned for April 2005.

- ODF will review comments received by the BOF and address issues on the concepts moving forward as rules. ODF plans to present revised rule proposals to the BOF on July 23, 2004.
- The BOF and the Environmental Quality Commission will conduct a field tour and have a joint discussion on water quality standards and the Forest Practices Act on October 21, 2004.
- ODF will complete scientific and economic analyses on the concepts moving forward as rules as required by ORS 527.714, and present their findings to the BOF at their October 22, 2004 meeting. ODF is expected to request approval to initiate formal rulemaking on the five concepts at that time.
- The rulemaking process will include formal public comment and hearing processes.

**EQC
Involvement**

The Board of Forestry is required by statute to consult with the Environmental Quality Commission in adoption of practices and other rules to address nonpoint source discharges of pollutants resulting from forest operations on forestlands. DEQ staff will keep the Commission informed on the progress of BOF rulemaking activities throughout the year. The Commission may initiate procedures to petition the Board of Forestry to review the Forest Practices Act rules and best management practices under ORS 527.765 at any point if the Commission feels that the rules and practices are inadequate to protect water quality standards.

The Board of Forestry and Environmental Quality Commission plan to hold a joint meeting on October 21, with a half day field trip followed by a formal discussion on key topics, including:

- water quality standards and protection of non-fish bearing streams,
- statutory directions and restrictions under which the BOF and

- Commission operate (ORS 527.714 and ORS 527.765), and guidance and direction for DEQ and ODF cooperation on water quality standards and forest practices rules.

The primary purpose of the joint meeting is to discuss the BOF's responsibility for meeting water quality standards through implementation of the Forest Practices Act, as well as the statutory limitation on the BOF's ability to revise forest practice standards. The Board's statutory requirements prohibit rule changes unless ODF determines that specific problems are likely if forest practices continue to be conducted under existing regulations. In evaluating available monitoring and research, ODF must consider its applicability to Oregon and to different areas within Oregon where natural conditions may vary significantly. DEQ uses a more precautionary approach to establish water quality standards and to determine compliance in order to ensure that desirable water quality is attained and beneficial uses are protected. This difference in approach can lead to a perception of conflict, and requires a better understanding of the statutory requirements of both agencies.

By engaging the Commission and BOF in this discussion, DEQ and ODF's objective is to achieve a greater understanding of the processes followed by the two agencies and the challenges associated with them.

Attachments

- A. DEQ/ODF Sufficiency Analysis Executive Summary
- B. Summary table of Sufficiency Analysis recommendations and corresponding Oregon Forest Practices Act rule concepts
- C. List of FPAC members
- D. List of commenters on "Draft Rule Language for Water Protection and Riparian Functions" (Agenda Item 11), April 23, 2004 Board of Forestry Meeting

Approved:

Section:



Division:



Report Prepared By: Koto Kishida
Phone: (503) 229-6381

EXECUTIVE SUMMARY

Background

In recent years, increased attention has been given to the development of Total Maximum Daily Loads (TMDLs) and the listing of 303(d) water quality limited streams¹ in the state of Oregon under the Clean Water Act. This has presented new opportunities for the Oregon Department of Forestry (ODF) and the Department of Environmental Quality (DEQ) to move forward together to address water quality issues on non-federal forestlands. To adequately address these issues, the ODF and DEQ have agreed through an April 1998 Memorandum of Understanding (MOU) to jointly evaluate the sufficiency of the Forest Practices Act (FPA) to protect water quality. The MOU outlines five specific water quality parameters that will be addressed: temperature, sedimentation, turbidity, aquatic habitat modification, and bio-criteria.

The purpose of this sufficiency analysis, as described the MOU (Appendix D) is to determine:

- (a) The adequacy of the FPA pursuant to ORS 527.765 in the achievement and maintenance of water quality standards, with due consideration to regional and local variation in effects;
- (b) If forest practices contribute to identified water quality problems in listed water quality limited streams; and
- (c) If so, to determine whether existing forest practice rules provide sufficient control to assure that water quality standards will be met so that waters can be removed from the 303(d) list.

Consistent with the MOU, water quality parameters not specifically addressed in the sufficiency analysis “are generally not attributable to forest management practices as regulated by the EPA.” Given the lack of any significant information on “other” parameters that might be influenced by current practices since the drafting of the MOU, the ODF and DEQ have agreed that an evaluation of parameters beyond those specifically listed in the MOU is not warranted at the time of this evaluation. The intent of the MOU and the focus of this report is on those parameters where it is known that forest practices have in some cases caused documented changes in water quality conditions.

The overall goal of the water protection rules as stated in Oregon Administrative Rules (OAR 629-635-0100 (7)) is to provide resource protection during operations adjacent to and within streams, lakes, wetlands and riparian management areas so that, while continuing to grow and harvest trees, the protection goals for fish, wildlife, and water quality are met.

- (a) The protection goal for water quality (as prescribed in ORS 527.765) is to ensure through the described forest practices that, to the maximum extent practicable, non-point source discharges of pollutants² resulting from forest operations do not impair the achievement and maintenance of the water quality standards.

¹ Water quality limited streams are those waters included on the 303(d) list maintained by the DEQ. These are waterbodies currently identified as not meeting water quality standards (see Appendix E).

² Non-point source discharges are those originating from diffuse sources across the landscape and cannot be traced to a single point or discrete activity.

(b) The protection goal for fish is to establish and retain vegetation consistent with the vegetation retention objectives described in OAR 629-640-0000 (streams), OAR 629-645-0000 (significant wetlands), and OAR 629-650-0000 (lakes) that will maintain water quality and provide aquatic habitat components and functions such as shade, large woody debris, and nutrients.” OAR 629-635-0100 (7)

State policy on water pollution control for state and private forestlands originates from the Environmental Quality Commission (EQC) and applicable administrative statutes:

“To protect, maintain and improve the quality of the waters of the state for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, municipal, recreational and other legitimate beneficial uses.” [ORS 468B.015(2)]

“Implementation of any limitations or controls applying to nonpoint source discharges or pollutants resulting from forest operations are subject to ORS 527.765 and 527.770.” [ORS 468B.110 (2)]

Consistent with these statutes, the FPA is Oregon’s water quality standard compliance mechanism with respect to forest operations on state and private forestlands:

“The State Board of Forestry shall establish best management practices and other rules applying to forest practices as necessary to insure that to the maximum extent practicable nonpoint source discharges of pollutants resulting from forest operations on forestlands do not impair the achievement and maintenance of water quality standards established by the Environmental Quality Commission for the waters of the state. Such best management practices shall consist of forest practices rules adopted to prevent or reduce pollution of waters of the state. Factors to be considered by the board in establishing best management practices shall include, where applicable, but not be limited to:

- (a) Beneficial uses of waters potentially impacted;
- (b) The effects of past forest practices on beneficial uses of water;
- (c) Appropriate practices employed by other forest managers;
- (d) Technical, economic and institutional feasibility; and
- (e) Natural variations in geomorphology and hydrology.” [ORS 527.765 (1)]

“A forest operator conducting, or in good faith proposing to conduct, operations in accordance with best management practices currently in effect shall not be considered in violation of any water quality standards.” [ORS 527.770]

These Oregon administrative rules are designed to achieve water quality goals consistent with the relevant statutes, ORS 468B.015(2), 468B.110 (2), 527.765, and 527.770 cited above. It is in this regulatory and policy context that applicable water quality standards and the FPA are implemented to address water quality protection for waters of the state.

Most of the parameters addressed in this sufficiency analysis are inter-related, and forest management activities often have the potential to affect more than one parameter at the same

time. For example, habitat can be modified with changes in sedimentation and turbidity, and sedimentation can influence stream temperature by altering channel dimensions and subsurface hydrology, thus affecting the net heat load to the stream. It is logical to take a holistic approach and consider water quality conditions as a result of all the parameters interacting collectively rather than attempting to consider each parameter wholly independent of the others. Accordingly, this report takes a broad approach to examining the sufficiency of the FPA and considers the multiple factors and functions by evaluating water quality standards primarily through the FPA rule objectives.

Given the consistency between the FPA and state water quality statutes and their respective administrative rules, achieving FPA goals, as articulated in the administrative rules, will ensure achieving and maintaining water quality goals and water quality standards to the maximum extent practicable. This sufficiency analysis will therefore consider the adequacy of the rules in achieving the objectives and goals of the FPA. If current practices are meeting FPA objectives and goals, state water quality standards will be met as well. If the ODF and DEQ find FPA objectives and goals are not being met, the BOF will create or modify statewide or regional rules, or design other effective measures to address the water quality impairment.

In analyzing natural resource data and attempting to draw specific cause-and-effect conclusions between human activities and natural resource conditions, the quality and/or quantity of data necessary for a high level of scientific certainty is often not available. This effort at evaluating the sufficiency of the FPA is no exception. Available data pertinent to direct cause-and-effect linkages between the FPA and quantitative water quality conditions is very limited.

There are at least two general points of view regarding such scientific uncertainty. One is to assert that since it cannot be determined with certainty that a set of practices *is* achieving a given water quality standard, a conservative approach should be taken and the rules changed to provide a higher level of protection in case a significant risk does, in fact, exist. Another view is to assert that since it cannot be determined with certainty that a set of practices *is not* achieving a given water quality standard, there is no reason for a change in practices until further monitoring and/or research can prove that a significant risk does, in fact, exist. Both points of view are valid when scientific findings are uncertain, and values and beliefs play a large role in how these points of views utilize limited scientific information.

One task of the ODF and DEQ sufficiency analysis is to present and analyze all of the applicable science and information. Following the completion of this analysis, the Board of Forestry will consider the recommendations in light of the relevant social, economic, and environmental context of the FPA. The goal of this approach is to utilize the recommendations so that outcomes are consistent with both the scientific information and the existing socio-economic framework of the FPA.

Social, Economic, and Environmental Framework

For the report recommendations to be acted upon following its completion, a review of the legal and policy setting, Oregon's forest land base, and forest ecosystem dynamics will need to be considered by the Board of Forestry in reviewing the adequacy of the FPA in meeting water

quality standards “to the maximum extent practicable” as defined by state statute. Appendix A provides this review and describes the overall context in which the FPA operates. There are different environmental, social, and economic implications, depending on the interpretation of “maximum extent practicable,” and these implications should be considered for this evaluation to result in an outcome that does not create unintended negative consequences for resource protection. For example, increased forestry regulations in Washington state, combined with development pressures, are partly responsible for ten-times the area of forestlands being converted to other land uses as compared to Oregon over the last decade. While these increased regulations may have resulted in some increase in resource protection for forestlands at a site-specific level, it may have been at the cost of losing an area of land (400,000 acres) to other uses that may not provide as high a level of resource protection as forestlands. Taking into account the social, economic, and environmental aspects in evaluating FPA-sufficiency early on can help to avoid this type of unintended negative consequence, while also ensuring that statutory obligations are met.

Current Scientific Knowledge

Appendix B is a review and summary of the current scientific findings and monitoring results relevant to specific forest practice issues directly related to achieving water quality goals. Each of the water quality parameters that are the subjects of this report are linked to specific forest practice issues that address those parameters. The forest practice issues reviewed here include stream temperature, large wood, forest roads, landslides, and fish passage. The technical information included in this section of the report is used as the basis of the evaluations and recommendations developed in the remainder of this report, and they are referenced accordingly.

Description of Pollution Control Mechanisms

Appendix C describes the current pollution control mechanisms implemented to meet or exceed current water quality standards. These mechanisms include both the FPA and Oregon Plan voluntary measures. They are organized under the same forest practice issues outlined in Appendix B.

Evaluation

The following conclusions apply to all applicable standards (temperature, sedimentation, turbidity, aquatic habitat modification, and bio-criteria).

Site-Specific Evaluation

Current protection requirements may be inadequate in the following areas:

- Standards for some medium and small Type F streams in western Oregon may result in short-term temperature increases at the site level. However, the significance and scope of this increase is uncertain, and it may be offset at the landscape scale by other factors. Relevant to

the habitat modification standard and criteria, large wood potential for some of these streams are less than what was assumed under the 1994 rules.

- Standards for some small Type N streams may result in short-term temperature increases at the site level that may be transferred downstream (this may impact water temperature and cold-water refugia) to fish-bearing streams. The significance and scale of this change is uncertain, and it may be offset at the landscape scale. Relevant to the habitat modification standard and criteria, large wood potential delivered by debris torrents (typically in areas of very steep topography) along these streams may be less than optimal.

For large Type F streams, shade levels appear to be adequate, and large wood outputs for these streams is consistent with that assumed under the 1994 rules.

With the exception of the issue of wet-weather hauling and steep-slope ground skidding and those areas noted above, the FPA appears to be adequate when implemented successfully.

Holistic Evaluation

Over time and space the forested landscape changes. Disturbance is an important process for maintaining productivity and resetting the environment, but it can also have a number of impacts to water quality parameters. Human activities can alter the frequency and magnitude of disturbance relative to historical patterns. While some human activities, like timber harvesting, may be more frequent than historical rates of disturbance, harvesting may also be less intense of a disturbance as compared to, for example, historical wildfire. Other impacts, like fire suppression, may reduce the frequency of disturbance, but result in somewhat more intense disturbances when fires do occur. The frequency and intensity of the event can influence vegetative and other disturbance recovery. Human activities to reduce adverse effects, therefore, need to be evaluated against historical patterns of disturbance.

The current distribution of forest stand age classes, the levels of tree stocking in managed plantations, and fire suppression have resulted in well-stocked, dense, closed canopy conifer stands across a larger portion of the forested landscape than has historically occurred. Thus the current rules and practices likely result in an increased level of shade at a landscape scale. At a site-specific scale, however, some level of risk exists along some streams, as noted in the next section. The significance of this risk in terms of influencing stream temperatures at a watershed (or sub-basin) scale is uncertain.

More arguably, higher conifer stocking levels across the landscape in upland and riparian areas may result in an increased potential for large wood delivery. The likelihood of such additional stocking resulting in increased large wood production is dependent upon the harvest levels, retained trees, natural mortality and other disturbance events. Until the sizes of riparian trees increase through normal growth volume may be limited, even though the number of trees may be relatively high. Nonetheless, current practices are likely sufficient at a landscape scale.

Temperature

The following is an evaluation of the temperature standard by specific stream types and sizes:

Medium and small Type F streams: Current research and monitoring results show that current RMA prescriptions for western Oregon may result in short-term temperature increases on some Type F streams; however the significance of the potential temperature increases at a watershed (or sub-basin) scale is uncertain.

Small Type N streams: Current research and monitoring results show current practices may result in short-term (two to three years) temperature increases on some Type N streams. The significance of potential temperature increases on Type N streams to downstream fish-bearing streams and at a watershed (or sub-basin) scale is uncertain.

All other streams: Influences on stream temperatures from shade levels resulting from specific BMP prescriptions for the other stream category types have not been assessed due to a lack of relevant data. However, in light of the data and findings specific to medium and small Type F streams, and given the higher level of vegetation retention on large Type F streams, it is likely that the standard is being met on large Type F streams.

Sedimentation Standard

The intent of the sedimentation standard as it applies to the FPA is to minimize soil and debris entering waters of the state. (OAR 629-30-000(3)) With the exception of wet-weather road use, complying with the road construction and maintenance rules currently in place is likely to result in meeting water quality standards. The rule and guidance recommendations described in the next section of this report will work towards ensuring the goals of the FPA and water quality standards are being met.

Turbidity Standard

Given the lack of quantitative data to specifically address the turbidity numeric standard, the turbidity standard is evaluated qualitatively. The intent of the turbidity standard, as it applies to the FPA, is to minimize soil and debris entering waters of the state. (OAR 629-30-000(3)). Both the FPA and water quality standards are being met when unfiltered surface runoff from road construction is entering applicable waters of the state and there is a visible difference in the turbidity of the stream above and below the point of delivery of the runoff for less than a two- or four-hour duration (depending on the stream grade and with all practicable erosion controls in place). When unfiltered surface runoff from general road use is minimized, and/or if all applicable BMPs have been applied, both the FPA and water quality standards are being met as well.

With the exception of wet-weather road use, complying with the road construction and maintenance rules and guidance currently in place is likely to result in meeting water quality standards. The rule recommendations will help improve compliance and implementation of the FPA to ensure the goals of the FPA and thus water quality standards are being met. Specific to

wet-weather hauling, construction and maintenance standards should be developed for roads at risk for sediment delivery. Prohibiting hauling during periods of wet weather on road systems that have not been constructed with specific standards for surface materials, drainage systems, or other alternatives (paving, increased numbers of cross drains, sediment barriers, settling basins, etc.) will also minimize delivery of sediment streams.

Habitat Modification Standard

The FPA standard as it relates to habitat modification is “to grow and retain vegetation [along fish-bearing streams] so that, over time, average conditions across the landscape become similar to those of mature streamside stands;” and “to have sufficient streamside vegetation [along non fish-bearing streams] to support functions and processes that are important to downstream fish use waters and domestic water use.”(OAR 629-640-0000)

The following is an evaluation of the habitat modification standard described above by specific stream types and sizes:

Medium and small Type F streams: Monitoring data indicates the assumptions used to determine basal area targets for small and medium streams in western Oregon may not be consistent with what the RMAs are capable of growing along these streams. The data also shows that 60 percent of harvest operations occurring along fish-bearing streams do not result in management within the RMAs. There is a reasonable possibility that, under the current rules, some of these streams are not likely to result in the “desired future condition” in a timely manner, as described in the goals of the FPA.

Small Type N streams: There is increasing scientific evidence that small non-fish-bearing streams prone to debris flows provide an important source of large wood for downstream fish habitat. While these streams are providing some level of functional large wood inputs and shade production under the current rules, the rules were not specifically designed to retain significant sources of large wood and shade in these areas. There is a reasonable possibility that, under the current rules, some of these streams are not likely to adequately support functions and processes important to downstream fish use waters, as described in the goals of the FPA.

All other streams: Influences on habitat modification resulting from specific best management practices for the other stream category types have not been assessed since they were considered a lower priority. However, given the higher level of vegetation retention on large Type F streams, and in light of the data and findings specific to medium and small Type F streams, it is likely the standard is being met on these streams.

Fish passage blockages: Since 1994, the FPA has required juvenile fish passage be provided on all fish-bearing streams. Current monitoring information does not indicate Forest Practices policies need to be significantly changed on how to install fish-passable stream crossings. With few exceptions, it appears when the guidelines are implemented correctly, the success rate is high for creating conditions believed to provide a high likelihood of fish passage.

Biocriteria Standard

This standard is consistent with multiple FPA purposes and goals that refer to the sound management of soil, air, water, fish and wildlife resources, while at the same time ensuring the continuous growing and harvesting of forest tree species. Given the general nature of this standard and the lack of specific criteria to use in evaluating this standard, biocriteria cannot be explicitly evaluated at this time. It is reasonable to assume that, given the inter-related nature of the temperature, sediment, turbidity and habitat modification parameters relative to biocriteria, to the extent these other parameters are being met, the biocriteria standard is likely to be met as well.

Recommendations

The FPA goals and objectives, as well as most of the state water quality standards and criteria being evaluated in this analysis (temperature and turbidity being the exceptions), are qualitative in nature. Thus, conclusions regarding the effectiveness of the rules in meeting the goals and objectives are qualitative as well. Available data relevant to those quantitative water quality standards (i.e. temperature and turbidity) is inadequate to draw specific and comprehensive conclusions about the adequacy of current practices; therefore, the evaluation of these criteria is also qualitative.

Data in many areas is lacking and, in many cases, not comprehensive. In light of this, any policy decisions made when this report is completed will depend upon professional judgement consistent with available scientific information. As the Board of Forestry considers these recommendations, social and economic factors, along with the scientific evidence on the adequacy of current practices presented here, will be considered as well.

The following recommendations are offered to highlight general areas where current practices could be improved upon to better meet the FPA goals and objectives and, in turn, provide greater likelihood of meeting water quality standards.

Recommendation #1: The RMA basal area retention standards should be revised, where appropriate, to be consistent with achieving characteristics of mature forest conditions in a timely manner; and to ensure that RMAs are providing desirable amounts of large wood and shade over space and time.

Recommendation #2: Revise current practices so desirable amounts of large wood are available along small stream channels that can deliver debris torrents to Type F streams. Ensure that adequate shade is maintained or rapidly recovered for riparian areas along small perennial Type N streams with the potential to impact downstream Type F waters.

Recommendation #3: Provide additional large wood to streams by actively placing the wood in areas where it will provide the greatest benefits to salmonids.

- Recommendation #4:** Reduce the delivery of fine sediment to streams by installing cross drains to keep drainage waters from eroding slopes. This will allow filtering of sediments and infiltration of drainage water into undisturbed forest soils. Cross drains should not be confused with stream crossing culverts. Cross drains take water from the road surface and ditch and route it under/across the road, discharging the water downslope from the road.
- Recommendation #5:** Develop specific standards for roads that will be actively used during the wet season. This would include a requirement for durable surfacing of roads in locations where fine sediment can enter streams. This would also include ceasing to haul if roads have not been constructed with effective surface materials, drainage systems, or other alternatives (paving, increased numbers of cross drains, sediment barriers, settling basins, etc.) that minimizes delivery of sediment into streams.
- Recommendation #6:** Develop specific guidance describing how roads in critical locations would be reviewed to reduce road length, and determining when, despite the relocation, the road location would pose unacceptable risk to resources and not be approved.
- Recommendation #7:** Construct stream crossings that adequately pass large wood and gravel downstream, and provide other means for passage of large wood and sediment at those crossings that restrict passage. The transport mechanisms for large wood and gravel should include both stream storm flows and channelized debris flows. This would reduce the risk of debris backing up behind the structure, potentially resulting in catastrophic sediment delivery caused by washouts.
- Recommendation #8:** Develop specific steep-slope, ground-based, yarding practices, or add a prior approval requirement for ground skidding in high-erosion hazard locations.
- Recommendation #9:** Manage locations most prone to landslides (high-risk sites) with techniques that minimize impacts to soil and water resources. To achieve this objective, best management practices to protect landslide-prone terrain currently in guidance should be incorporated into the forest practice rules, while developing a better case history for evaluating the effectiveness of those practices. These standard practices are designed to minimize ground alteration/disturbance on high-risk sites from logging practices.
- Recommendation #10:** Provide for riparian functions along stream reaches above impassable stream crossing structures that have a high probability of recolonization by salmonids once the structure is replaced/improved. If an upstream reach has the capacity to be a fish-bearing stream, but is currently a non-fish-bearing stream because a stream crossing structure cannot pass fish,

the forest practices rules should be amended so the upstream reach is classified as a fish-bearing stream.

Recommendation #11: Facilitate the identification, prioritization, and restoration of existing culverts that currently do not pass fish. Culvert replacement should be accelerated above what is currently being done, specifically for family forestland owners who often do not have adequate resources to address this issue in a timely manner.

Recommendation #12: Provide a more effective and efficient means of classifying streams for “fish use.” Revise the forest practice rule definition of Type F and Type N streams using a physical habitat approach to classify fish-use and non-use streams.

Compliance and Effectiveness Monitoring

The goal of the ODF forest practices monitoring program is to evaluate the effectiveness of the forest practice rules. Monitoring results are used to guide future management practices through the rule revision process. The goal includes a commitment to address specific Oregon Plan issues. The forest practices monitoring strategy is currently being revised. The key areas identified for improvement include:

- Building understanding, acceptance and support for the monitoring strategy.
- Using random sample design to select all sites. This has been used for two current projects.
- Combining monitoring efforts at each site to increase efficiency (i.e. compliance monitoring and riparian function at the same site)
- Increasing coordination with other Oregon Plan monitoring efforts, most notably DEQ and ODF&W.
- Addressing issues at a watershed scale.
- Improving communication of project status and results, both internally and externally using newsletters and project publications.

The following are specific recommendations for future monitoring:

1. Maintain a riparian monitoring program that continues to monitor the effectiveness of riparian prescriptions and riparian functions to ensure water quality goals are achieved in the future.
2. Monitor improvement of forest roads at a landscape level, looking specifically at implementation of the road hazard and risk reduction project.
3. Evaluate the need for further road compliance and effectiveness monitoring following the completion of the BMP compliance monitoring project relating to road BMPs. Also evaluate the progress and effectiveness of current voluntary efforts under the Oregon Plan to upgrade existing culverts that do not pass fish.

4. Monitoring of watershed-scale effects relative to current practices along small Type N streams should be a priority to help narrow the current level of uncertainty.

The following are remaining issues identified in this report that may warrant future examination as additional information is available:

- Is the occurrence of blowdown having an effect on meeting the goal of achieving “over time, average conditions across the landscape become similar to those of mature forest conditions” in RMAs?
- Are current forest practices meeting the water quality standard with respect to cold-water refugia? (This analysis will not be possible until the DEQ develops the specific guidance necessary to identify cold-water refugia on the ground that can be evaluated against the standard.)
- What effect, if any, are current practices along small non-fish-bearing streams having on downstream sediment regimes?

The Board of Forestry is currently deliberating the recommendations introduced by the Forest Practices Advisory Committee (FPAC) in September 2000. The process of implementing changes to current BMPs will occur over the next few years and is likely to consist of both regulatory and non-regulatory measures. The ODF monitoring program is also beginning a new series of effectiveness monitoring projects to evaluate BMP sufficiency in protecting riparian functions and water quality. There may also be some issues with water quality parameters that are not specifically addressed in this report that could have an unknown potential for current practices to cause changes in water quality conditions. In these cases, the DEQ will coordinate with the ODF and its monitoring program to address these parameters as concerns are identified and documented. Specific details of future monitoring efforts will be determined once the FPAC recommendations are developed further and implemented. ODF’s monitoring strategy will continue to be developed at that time.

Sufficiency Analysis Recommendations	Draft Rule Concepts	ODF Recommendation	Board of Forestry Decision	DEQ Comments
1- revise basal area (size and number of trees) targets / achieve mature forest conditions and provide large wood and shade	8- basal area increase for small and medium fish-bearing streams (west)	Rule change	Continue on regulatory path 10/03	support rule change
	14- basal area targets (east)	No rule change - insufficient science	Not proceed approved 3/04	neutral
	10- no harvest within 1/2 riparian management area (RMA) (west)	Non-regulatory - insufficient science	Voluntary path approved 9/03	prefer rule, encourage monitoring
	11- retain largest trees within RMA (west)	Non-regulatory - insufficient science	Voluntary path approved 9/03	prefer rule, encourage monitoring
	9- limit harvesting within RMA to 40% (west)	Non-regulatory - insufficient science	Voluntary path approved 9/03	prefer rule, encourage monitoring
2- revise to provide adequate large wood and shade in small streams including small non fish-bearing with potential to impact downstream fish-bearing waters	4- Wood from debris flows and landslides	Rule change	Continue on regulatory path 9/03	support rule change
	12- small non fish-bearing streams (west)	Rule change	Deferred decision 4/04	support rule change
	16- small non fish-bearing streams (east)	No rule change - insufficient science	Not proceed approved 4/04	prefer rule, encourage monitoring
	18- small non fish-bearing stream monitoring	(Rule change) - house cleaning, remove obsolete references	Continue on regulatory path 7/03	support rule change
3- provide additional large wood to streams by actively placing wood to benefit salmonids	7- Large wood placement (also increase active management basal area target)	Rule change	Continue on regulatory path 4/04	support rule change for west side neutral on east side
	17- Fish habitat incentives	Non-regulatory - statewide initiative	Not required	initiative language uncertain
10- provide riparian functions along stream reaches above impassable culverts that are likely to be recolonized by salmonids after structures are removed or improved	3- provide habitat above human caused fish barriers	Rule change	Continue on regulatory path 4/04	support rule change
11- facilitate the identification, prioritization, and restoration of existing culverts that currently do not pass fish	NA	No rule change (Training package developed and available for use, work with ODFW)	N/A	neutral
12- revise the FPA rule definition of fish-bearing and non fish-bearing streams by using physical habitat approach to classify fish use and no fish streams	3- provide habitat above human caused fish barriers (also addresses SA recommendation #10)	Rule change	Continue on regulatory path 4/04	support rule change
Other	1- clarify water protection rules policy statement	Rule change	Continue on regulatory path 7/03	prefer to include TMDL language
	2- treat medium and large non fish-bearing streams as same size fish-bearing streams	Non-regulatory - insufficient science	Voluntary path approved 3/04	prefer rule, encourage monitoring
	5- channel migration zones	Non-regulatory - insufficient science	Voluntary path approved 9/03	prefer rule, encourage monitoring
	6- treat dense stands within RMA	Guidance on rules	Address through guidance	guidance language uncertain
	13- revision of desired future condition (east)	No rule change - insufficient science	Further policy discussion approved 3/04	support no rule change
	15- provide harvesting alternatives (east)	No rule change - insufficient science	Not proceed approved 3/04	support no rule change

Rule package	Voluntary measures
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Agenda Item L, Informational Item: Oregon Forest Practices Act rulemaking status
July 16, 2004 EQC Meeting
Attachment C: List of FPAC members

The Forest Practices Advisory Committee on Salmon and Watersheds are:

Ron Cease, Chair, Hatfield School of Government, Portland State University
Geoff Pampush, Oregon Trout
* Dan Newton, Oregon Forest Industries Council
Paul Ketcham, Portland Audubon Society
* Gary Springer, Oregon Small Woodlands Association
* Bill Arsenault, Oregon Small Woodlands Association
Bill Street, Labor/ Machinist Union
Liz Hamilton, Northwest Sportsfishing Industry Association
* Blake Rowe, Oregon Forest Industries Council
Sue Cameron, Oregon Counties
Tom Hiron, Associated Oregon Loggers
Mary Scurlock, Pacific Rivers Council

* FPAC Members who testified at BOF Meeting on April 23, 2004. They no longer support the FPAC recommendation to provide additional protection on small non-fish bearing streams.

Agenda Item L, Informational Item: Oregon Forest Practices Act rulemaking status
July 16, 2004 EQC Meeting

Attachment D: List of commenters from April 23, 2004 Board of Forestry Meeting

Agenda Item 11, *Draft Rule Language for Water Protection and Riparian Function*


Gary Springer, Starker Forests and FPAC member
Blake Rowe, Longview Fibre Co, and FPAC member
Dan Newton, Roseburg Forest Products and FPAC member
Bill Arsenault, Committee for Family Forestlands and FPAC member
Rex Storm, Associated Oregon Loggers
Jake Gibbs, Lone Rock Timber Co.
Dr. Benjamin Stout, Albany
John Wooley, JOMAK Environmental, Inc.
Wayne Giesy, Philomath
Mike Gaudern, Oregon Small Woodlands Association
Dr. Michael Newton
Joel Nelson, Plum Creek Timber Co.
Todd Payne, Seneca Jones Timber Co.
Scott Starkey, Douglas Timber Operators (testimony prepared by Robert Ragon,
Executive Director)
Helen Franklin, Lawfinders

State of Oregon
Department of Environmental Quality

Memorandum

Date: June 24, 2004

To: Environmental Quality Commission

From: Mikell O'Mealy, Assistant to the Commission 

Subject: Agenda Item M, Discussion Item: Preparing for the Director's Performance Evaluation, July 15, 2004 EQC Meeting

In January 2002, the Environmental Quality Commission (EQC, Commission) adopted a formal process for evaluating the DEQ Director's performance each biennium (see Attachment A), and in December 2002, the Commission completed their first appraisal (see Attachment B). The process proved extremely valuable in soliciting input from DEQ managers and our various stakeholders and customers, and in documenting the Commission's conclusions about the Director's effectiveness. At the recent May 2004 meeting in Hermiston, the Commission approved a schedule for conducting a second performance evaluation this fall, in accordance with the Commission's biennial appraisal schedule. At the July 16 meeting, the Commission may take the following steps to prepare for the evaluation:

- Review and if necessary revise and adopt criteria for the fall 2004 evaluation (see criteria used for the 2002 evaluation, in Attachment A, pages 2 through 5).
- Appoint a subcommittee of the Commission (2 members) to prepare for the evaluation.
- Ask the Director to prepare a written self-evaluation of performance, to be provided to the Commission before the September 9-10 EQC meeting.

The Commission would then officially begin the evaluation process at the September meeting and conclude in December, as outlined below.

September 9-10 EQC meeting – *Begin the performance evaluation process*

- Review the Director's self-evaluation in an executive session, absent the Director.
- Follow the review of the Director's self-evaluation with executive session with the Director.

Late September – *Solicit input from internal and external sources*

- Through the Commission's Assistant, solicit and compile input from appropriate sources concerning the Director's performance, including Governors advisors, stakeholder representatives, other government agency leaders, DEQ Executive Management Team members and DEQ managers. Attachment C provides a list of people the Commission solicited input from in 2002.

Late October – early November – *Consider input and evaluate individually*

- Review and provide due consideration to input received within the overall performance appraisal process.
- Commissioners complete individual evaluations of the Director using the adopted criteria.
- Commissioners submit individual evaluations to the Chair for compilation.

December 9-10 EQC meeting – *Conclude the evaluation and communicate results*

- Hold an executive session without the Director to discuss individual Commissioner evaluations and develop a final Commission evaluation.
- Hold an executive session with the Director to discuss the results.
- Following this meeting, prepare a public release of the performance evaluation in summary form. The Chair reviews with the Director before release.

Thank you for your attention to this process. If you have suggestions or questions at any point, please contact me at (503) 229-5301.

Attachments

- A. Performance Evaluation Process and Criteria, adopted January 2002
- B. Summary Report of the Performance Evaluation of the DEQ Director, signed January 2003
- C. People from whom the Commission solicited input during the 2002 performance evaluation process

Environmental Quality Commission

**Performance Evaluation
Director, Department of Environmental Quality**

Approved January 25, 2002

- I. Purpose
- II. Process
- III. Performance Measures and Evaluation Form

I. Purpose

The Environmental Quality Commission (Commission) is responsible under ORS 468.045 for directing the performance of the Director of the Department of Environmental Quality (DEQ). The Commission exercises part of its responsibility by performing a performance evaluation of the Director. Such evaluation is intended to increase and improve communications both within the Department and the broad spectrum of outside agencies, governments, and private parties with whom the Director interacts. The evaluation further allows the Commission to review goals, establish criteria, provide commendations, and broadly recognize the work of the Director.

II. Process

1. The Commission shall evaluate the performance of the DEQ Director on at least a biennial basis. Normally, the process will require an eight-week period.
2. The Commission may solicit and review information concerning the performance of the Director from any source.
3. Immediately before an evaluation, the Commission shall:
 - a. Appoint a subcommittee of the Commission to prepare for and schedule the evaluation.
 - b. Review and adopt criteria for the evaluation.
4. In keeping with the Commission-adopted criteria, the Director shall provide the Commission with a written self-evaluation.
5. The Commission shall review the Director's self-evaluation in Executive Session, absent the Director.
6. The Commission shall follow the review of the Director's self-evaluation with an Executive Session with the Director.
7. The Commission shall accept and compile all input from appropriate sources and provide due consideration within the overall performance review process.
8. The Commissioners shall then complete their own individual evaluations of the Director using adopted criteria.
9. The Commissioners' evaluations shall be submitted to the Commission Chair for compilation. Evaluations and compilations shall be kept confidential to the extent allowed under Oregon law.
10. Based upon all input and the individual evaluations and their compilations, an executive session will be held with the Director to review results.
11. The evaluation will become a basis for all aspects of employment.
12. The Commission will prepare a public release of the performance evaluation in summary form. Before such release, the Commission Chair will review such document with the Director.

III. Performance Measures and Evaluation Form

Commissioner Name _____

Performance Period: _____

Mid-Rating Period: _____

Performance Measures

Performance Ratings (Circle one number)

<p>1. POLICY AND DIRECTIVES Director will give clear direction to staff to ensure implementation of Commission policy in a timely manner. Include evidence from DEQ activities, processes and actions underway or completed during the past review period. Director ensures, through subordinates, that staff field decisions are based on existing statutes, goals, executive orders, Commission rules and Department policies.</p> <p>COMMENTS</p>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Outstanding</td> <td style="text-align: right; padding: 2px;">5</td> </tr> <tr> <td style="padding: 2px;">Exceeds expectations</td> <td style="text-align: right; padding: 2px;">4</td> </tr> <tr> <td style="padding: 2px;">Fully meets expectations</td> <td style="text-align: right; padding: 2px;">3</td> </tr> <tr> <td style="padding: 2px;">Needs improvement</td> <td style="text-align: right; padding: 2px;">2</td> </tr> <tr> <td style="padding: 2px;">Unsatisfactory</td> <td style="text-align: right; padding: 2px;">1</td> </tr> <tr> <td style="padding: 2px;">Not Rated</td> <td style="text-align: right; padding: 2px;">N</td> </tr> </table> <hr style="border: 0.5px solid black;"/> <p style="padding: 5px;">Weight¹ _____%</p>	Outstanding	5	Exceeds expectations	4	Fully meets expectations	3	Needs improvement	2	Unsatisfactory	1	Not Rated	N
Outstanding	5												
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<p>2. SERVICES AND RELATIONS Director ensures effective services to and relations with the Commission. Upon confirmation, all new Commissioners receive up-to-date Department goals and applicable enabling, operational and regulatory statutes and rules; a handbook including Commission and staff names, mailing, fax and email addresses, telephone numbers; and business cards. Per diem/mileage forms will be provided at each meeting to be submitted together for payment. Any required tax information will be provided on a timely basis. Commission/staff disagreements will be openly discussed with resolution/outcome reflected in meeting minutes. Meeting materials will be provided to all Commission members for review in a timely manner. Any written communication to the Commission from work groups and/or advisory committees will be included in agenda packets. Clerical and other necessary support services will be available.</p> <p>COMMENTS</p>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Outstanding</td> <td style="text-align: right; padding: 2px;">5</td> </tr> <tr> <td style="padding: 2px;">Exceeds expectations</td> <td style="text-align: right; padding: 2px;">4</td> </tr> <tr> <td style="padding: 2px;">Fully meets expectations</td> <td style="text-align: right; padding: 2px;">3</td> </tr> <tr> <td style="padding: 2px;">Needs improvement</td> <td style="text-align: right; padding: 2px;">2</td> </tr> <tr> <td style="padding: 2px;">Unsatisfactory</td> <td style="text-align: right; padding: 2px;">1</td> </tr> <tr> <td style="padding: 2px;">Not Rated</td> <td style="text-align: right; padding: 2px;">N</td> </tr> </table> <hr style="border: 0.5px solid black;"/> <p style="padding: 5px;">Weight _____%</p>	Outstanding	5	Exceeds expectations	4	Fully meets expectations	3	Needs improvement	2	Unsatisfactory	1	Not Rated	N
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¹ Assign a weight between 0 and 100 percent to each of the ten Performance Measures so that the combined total of all ten weights is 100 percent.

<p>3. COMMUNICATION Clearly and effectively communicates issues, ideas, resources and/or information in a timely manner. Emphasis will be placed on collaborative processes and high-quality, informative materials including applicable analyses, documents, surveys and reports to facilitate a range of policy implications for discussion. The Commission will be kept informed so as not to be surprised by significant issues.</p> <p>COMMENTS</p>	<table border="0"> <tr> <td>Outstanding</td> <td>5</td> </tr> <tr> <td>Exceeds expectations</td> <td>4</td> </tr> <tr> <td>Fully meets expectations</td> <td>3</td> </tr> <tr> <td>Needs improvement</td> <td>2</td> </tr> <tr> <td>Unsatisfactory</td> <td>1</td> </tr> <tr> <td>Not Rated</td> <td>N</td> </tr> </table> <hr/> <p>Weight _____%</p>	Outstanding	5	Exceeds expectations	4	Fully meets expectations	3	Needs improvement	2	Unsatisfactory	1	Not Rated	N
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<p>4. INTER/INTRA GOVERNMENTAL RELATIONSHIPS Effectively represents the agency and the State within the state, federal and local government organizational structures.</p> <p>COMMENTS</p>	<table border="0"> <tr> <td>Outstanding</td> <td>5</td> </tr> <tr> <td>Exceeds expectations</td> <td>4</td> </tr> <tr> <td>Fully meets expectations</td> <td>3</td> </tr> <tr> <td>Needs improvement</td> <td>2</td> </tr> <tr> <td>Unsatisfactory</td> <td>1</td> </tr> <tr> <td>Not Rated</td> <td>N</td> </tr> </table> <hr/> <p>Weight _____%</p>	Outstanding	5	Exceeds expectations	4	Fully meets expectations	3	Needs improvement	2	Unsatisfactory	1	Not Rated	N
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<p>5. IMPLEMENTATION OF STRATEGIC PLAN Progress toward accomplishing priorities, objectives and strategies as approved by Commission.</p> <p>COMMENTS</p>	<table border="0"> <tr> <td>Outstanding</td> <td>5</td> </tr> <tr> <td>Exceeds expectations</td> <td>4</td> </tr> <tr> <td>Fully meets expectations</td> <td>3</td> </tr> <tr> <td>Needs improvement</td> <td>2</td> </tr> <tr> <td>Unsatisfactory</td> <td>1</td> </tr> <tr> <td>Not Rated</td> <td>N</td> </tr> </table> <hr/> <p>Weight _____%</p>	Outstanding	5	Exceeds expectations	4	Fully meets expectations	3	Needs improvement	2	Unsatisfactory	1	Not Rated	N
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<p>6. PROBLEM SOLVING Identifies challenges, opportunities and problems clearly and aids DEQ in the analysis of possible actions or responses as necessary.</p> <p>COMMENTS</p>	<table border="0"> <tr> <td>Outstanding</td> <td>5</td> </tr> <tr> <td>Exceeds expectations</td> <td>4</td> </tr> <tr> <td>Fully meets expectations</td> <td>3</td> </tr> <tr> <td>Needs improvement</td> <td>2</td> </tr> <tr> <td>Unsatisfactory</td> <td>1</td> </tr> <tr> <td>Not Rated</td> <td>N</td> </tr> </table> <hr/> <p>Weight _____%</p>	Outstanding	5	Exceeds expectations	4	Fully meets expectations	3	Needs improvement	2	Unsatisfactory	1	Not Rated	N
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<p>7. RECRUITMENT/RETENTION/DIVERSITY Appoint(s), re-appoints, assigns and reassigns as necessary all subordinate offices and employees of the department, clearly prescribes their duties and fixes their compensation, subject to State Personnel Relations Law ORS 179.090. Department personnel are to be highly qualified and responsive to DEQ's entire customer base, including EQC.</p> <p>COMMENTS</p>	<table border="0"> <tr><td>Outstanding</td><td>5</td></tr> <tr><td>Exceeds expectations</td><td>4</td></tr> <tr><td>Fully meets expectations</td><td>3</td></tr> <tr><td>Needs improvement</td><td>2</td></tr> <tr><td>Unsatisfactory</td><td>1</td></tr> <tr><td>Not Rated</td><td>N</td></tr> </table> <hr/> <p>Weight _____%</p>	Outstanding	5	Exceeds expectations	4	Fully meets expectations	3	Needs improvement	2	Unsatisfactory	1	Not Rated	N
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<p>8. DECISION-MAKING Director's decisions and actions reflect a high level of understanding of Oregon state government and the political environment in which the agency must function.</p> <p>COMMENTS</p>	<table border="0"> <tr><td>Outstanding</td><td>5</td></tr> <tr><td>Exceeds expectations</td><td>4</td></tr> <tr><td>Fully meets expectations</td><td>3</td></tr> <tr><td>Needs improvement</td><td>2</td></tr> <tr><td>Unsatisfactory</td><td>1</td></tr> <tr><td>Not Rated</td><td>N</td></tr> </table> <hr/> <p>Weight _____%</p>	Outstanding	5	Exceeds expectations	4	Fully meets expectations	3	Needs improvement	2	Unsatisfactory	1	Not Rated	N
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<p>9. COMMISSION EFFECTIVENESS In order to assist the Commission in being as effective as possible, the Director will provide information monthly that is relevant to DEQ issues. Such information may include explanation of the State's interest when amending and adopting goals, rules, policies and/or guidelines. The Director also will communicate opportunities within State government for training and educational experiences to enhance high-quality board service.</p> <p>COMMENTS</p>	<table border="0"> <tr><td>Outstanding</td><td>5</td></tr> <tr><td>Exceeds expectations</td><td>4</td></tr> <tr><td>Fully meets expectations</td><td>3</td></tr> <tr><td>Needs improvement</td><td>2</td></tr> <tr><td>Unsatisfactory</td><td>1</td></tr> <tr><td>Not Rated</td><td>N</td></tr> </table> <hr/> <p>Weight _____%</p>	Outstanding	5	Exceeds expectations	4	Fully meets expectations	3	Needs improvement	2	Unsatisfactory	1	Not Rated	N
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<p>10. RESULTS Responses and actions are productive; results are appropriate and positive, timely, consistent, and of high quality.</p> <p>COMMENTS</p>	<table border="0"> <tr><td>Outstanding</td><td>5</td></tr> <tr><td>Exceeds expectations</td><td>4</td></tr> <tr><td>Fully meets expectations</td><td>3</td></tr> <tr><td>Needs improvement</td><td>2</td></tr> <tr><td>Unsatisfactory</td><td>1</td></tr> <tr><td>Not Rated</td><td>N</td></tr> </table> <hr/> <p>Weight _____%</p>	Outstanding	5	Exceeds expectations	4	Fully meets expectations	3	Needs improvement	2	Unsatisfactory	1	Not Rated	N
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11. OVERALL PERFORMANCE

Multiply the number circled in each section by the weight given² and add the totals from each of the 10 measures to find the overall rating.

COMMENTS

Overall Rating _____

- Outstanding 5
- Exceeds expectations 4
- Fully meets expectations 3
- Needs improvement 2
- Unsatisfactory 1

Date of Approval: _____

Mark Reeve, Chair
Environmental Quality Commission

² Example: If “Fully meets expectations” was given a 20% rating for one performance measure, multiply 3 by 0.20 to get a 0.80 rating for that measure. Add ratings from each of the 10 measure to get the overall rating.

Definitions

Performance Ratings:

<i>Outstanding</i>	Performance at this level far surpasses expected performance and is among the top 10% of state agency managers
<i>Exceeds Expectation</i>	Performance at this level meets expectations and in some cases exceeds expectations
<i>Fully Meets Expectations</i>	Performance at this level meets expectations
<i>Improvement Needed</i>	Performance at this level is partially met but requires some improvement
<i>Unsatisfactory</i>	Performance at this level is unacceptable and requires a development plan

Skills Listing:

Leadership

- Establishes a high-performance climate by using techniques of coaching, leadership and mentoring.
- Increases a group's energy and creative potential.
- Maintains group cohesiveness and cooperation.
- Demonstrates working knowledge of staffing, compensation, performance management and employee relations processes.
- Demonstrates high ethical standards and fiscal accountability in managing public resources.

Strategic Thinking

- Recognizes the environmental context in which the organization operates.
- Understands current and future problems and challenges faced by the organization.
- Demonstrates ability to apply strategic objectives to departmental operations.

Communications

- Speaks clearly and expresses self well in groups and in conversations with individuals.
- Demonstrates strong listening and writing skills, including grammar, organization and structure.
- Shares appropriate information on a timely basis.

Teamwork

- Works cooperatively.
- Contributes to the team by supporting and encouraging team members.
- Supports consensus decision-making by the team.

Customer or Constituent Service/Focus

- Identifies customers.
- Anticipates and understands customer needs.
- Acts to meet customer needs.
- Continues to search for ways to increase customer satisfaction.

Personal Responsibility/Accountability

- Inspires self and others to set and maintain high standards of excellence.
- Works with high energy, focus and persistence.

Definitions

(Groupings by performance/goal results and supporting skills/behavioral traits.)

1. Outstanding

Performance/Goal Results

- ❑ Significantly exceeds goals.
- ❑ Always produces more than required.
- ❑ Project plans and actions serve as a model for effective staff and resource activities.
- ❑ Provides exceptional presentations that inform and educate.
- ❑ Resolves controversial and complex decisions.
- ❑ Implements creative solutions to long-standing or especially troublesome problems.

Supporting Skills

- ❑ Serves as a model for working productively.
- ❑ Always performs special assignments and projects or unanticipated activities and completes them ahead of deadlines.
- ❑ Works with an unusually high degree of energy, focus and persistence.
- ❑ Produces work at the highest level of accuracy.
- ❑ Works independently with broad direction and little, or no, follow-up.
- ❑ Develops highest quality products or services.
- ❑ Gives life to the agency.
- ❑ Motivates employees to exceed departmental goals while focusing on organization wide issues.
- ❑ Frequently helps others within DEQ, even when it is “not in the job description.”
- ❑ Can always be relied upon to serve as the source of accurate information.
- ❑ Serves as a leader in team discussions, yet does not monopolize team discussions.
- ❑ Contributes constructive ideas and suggestions that have major impact.
- ❑ Significantly improves work area by leading collaboration and cooperation.
- ❑ Always assists coworkers in completing assignments, with the only goal of improving organization effectiveness.
- ❑ Displays exceptional skill at organizing and responding to complex project issues.
- ❑ Serves as a model for outstanding customer service.
- ❑ Is highly respected by peers and colleagues

2. Exceeds Expectations

Performance/Goal Results

- Often exceeds goals.
- Frequently produces more than required
- Handles controversial or complex decisions.

Supporting Skills

- Self-motivated and sets high productivity levels.
- Anticipates developments or delays and makes adjustments.
- Goes the extra mile to ensure that goals and objectives are met.
- Serves as a facilitator in ensuring clear and effective communication among involved parties.
- Meets targets, timetables and deadlines, and is often prepared ahead of schedule.
- Frequently handles difficult pressure situations and distractions.
- Motivates employees to exceed departmental goals and objectives.
- Can always be counted on to add something new or innovative to each project.
- Exhibits excellent oral and written communication to all levels of staff.
- Frequently performs special assignments and projects or unanticipated activities and appears to be positively challenged by them.
- Puts success of team above own interests.
- Takes great initiative to ensure that customer needs are exceeded.
- Serves as the ideal standard for collaboration and cooperation.
- Consistently analyzes all problems and crafts workable, creative solutions.
- Views problems as an opportunity to use new technology or implement better methods.

3. Fully Meets Expectations

Performance/Goal Results

- Meets all goals.
- Completes all regularly assigned duties.
- Performs all assignments regardless of distractions or pressure situations.
- Completes work with acceptable level of accuracy and professionalism.
- Is prompt and prepared for meetings and other scheduled events.
- Responds quickly and appropriately to unanticipated delays or developments.

Supporting Skills

- Recognizes and analyzes complex problems and takes action or recommends effective, creative solutions.
- Adjusts priorities as needed.
- Provides follow-up directives and continually communicates a shared vision.
- Recognizes, responds, and supports employees with changing conditions.
- Assists other management in communicating difficult issues.
- Develops project plans that are creative and innovative and makes good use of staff and organization resources.
- Actively participates in group discussions.
- Contributes constructive activities and suggestions that are implemented.
- Frequently helps others achieve their goals through support and/or assistance.
- Recognizes and analyzes problems and takes appropriate action.
- Researches and efficiently prepares products and activities at acceptable standards.
- Handles routine pressure situations and distractions of the job while maintaining normal workload.
- Demonstrates reliable and predictable attendance and/or punctuality.
- Rarely is gone due to unscheduled absences.
- Meets targets, timetables and deadlines.
- Works quickly and strives to increase productivity.
- Is prompt and prepared for meetings and other scheduled events.
- Responds to routine developments appropriately.
- Motivates employees to meet departmental goals and objectives.
- Provides direction to employees by clearly communicating a shared vision.
- Is flexible when dealing with changing conditions.
- Helps the team accomplish its goals.
- Assesses individuals' strengths and weaknesses and suggests methods for improvement.
- Proactively changes and communicates progress to all.
- Successfully manages project team activities.
- Follows policies, procedures and regulations.
- Ensures customer satisfaction through consistent or special effort in response to customer need.
- Provides requested assistance and information to others in a prompt and courteous manner.
- Works to enable understanding and obtains clarification when needed.

(continued)

- ❑ Responds appropriately to questions.
- ❑ Demonstrates good presentation skills.
- ❑ Participates in team discussions.
- ❑ Performs special assignments and projects or unanticipated activities.
- ❑ Contributes ideas and suggestions.
- ❑ Volunteers to serve for special projects
- ❑ Takes initiative to understand new or more complex equipment, software or changes in operational procedures.
- ❑ Exhibits positive attitudes, especially during times of change and disruption.
- ❑ Recognizes and provides support and/or assistance to coworkers.
- ❑ Works actively to resolve conflicts.
- ❑ Demonstrates strong problem solving skills to ensure smooth operations.
- ❑ Consistently analyzes problems and applies logical solutions.
- ❑ Makes effective decisions on a timely basis.

4. Improvement Needed

Performance/Goal Results

- Assignments occasionally are not completed on time.

Supporting Skills

- Does not understand some basic functions or activities of the unit.
- Inconsistently organizes activities and information.
- Occasionally fails to make proficient use of technology.
- Inconsistently uses correct practices or procedures
- Is inconsistent in meeting targets, timetables or deadlines.
- Is inconsistent in promptness or preparation for meetings or other scheduled events.
- Some routine assignments and duties require supervisory guidance.
- Is inconsistent in completing assigned work.
- Recognizes problems, but requires some assistance to develop workable solutions.
- Occasionally unable to meet an acceptable standard of quality
- Is inconsistent in organization or maintaining operations.
- Occasionally communicates in an inappropriate manner.
- Occasionally and reluctantly performs special assignments and projects or unanticipated activities.
- Is inconsistent in making decisions on a timely basis.
- Is inconsistent in analysis of problems or application of logical solutions.
- Marginally courteous; may provide requested assistance and information to others in a less than prompt or courteous manner.

5. Unsatisfactory

Performance/Goal Results

- Assignments often not completed on time.

Supporting Skills

- Rarely performs special assignments and projects or unanticipated activities.
- Is often not at work due to unscheduled absences.
- Attendance and/or punctuality habits cause hardship for colleagues.
- Frequent errors.
- Low tolerance to pressure situations or distractions.
- Rarely motivates employees.
- Rarely available to staff.
- Rarely manages changing conditions.
- Project activities often need to be redone.
- Budget and staff time are not used in an effective manner.
- Rarely communicates.
- Rarely participates in team discussion.
- Rarely contributes ideas and suggestions.
- Reluctantly cooperates with others to achieve agency goals.
- Reluctantly accepts direction from supervisor.
- Minimally supports team leader.
- Rarely develops and maintains cooperative relationships with team or with others outside the work unit.
- Often the source of negative conflict.
- Unit and individual productivity is significantly disrupted by unreliable attendance and/or punctuality.
- Often does not meet requirements.
- Frequently does not meet targets, timetables or deadlines.
- Frequently lacks promptness or preparation for meeting or other scheduled events.
- Routine developments require supervision.
- Rarely recognizes problems or unable to recommend effective solutions.
- Frequent errors that have negative impact.
- Must be reminded about customer service standards.
- Rarely able to work under pressure situations or handle distractions.
- Rarely effective in organizing or maintain operations.
- Occasionally does not provide assistance and information to others in a prompt or courteous manner.

**Summary Report of the Performance
Evaluation of the Director of the
Department of Environmental Quality
January 2003**

I. Background

When the new Director, Stephanie Hallock, assumed office, the Environmental Quality Commission appointed a subcommittee to start a formal procedure that would serve as a model for director evaluation every two years. The Commission in January 2002 adopted the standards, criteria, and policy directives for this evaluation. The subcommittee then worked on the "how" by fine tuning examples of other agency procedures that fit out needs.

In September, the Commission solicited input and sent surveys to government officials, stakeholders, DEQ managers and the DEQ Executive Management Team. All surveys were to be confidential but could be signed if the writer wished.

II. The Process

The actual stepwise process followed by the Commission is attached as Appendix A. The forms used in measuring and evaluating performance are attached in Appendix B. Slight changes in the forms were made to be relevant to each surveyed group. Of the three major groups of evaluators, we received thirty-two responses from Group 1—outside government officials and stakeholder or user groups. Sixteen were received from Group 2—DEQ managers and nine from Group 3—DEQ Executive Management team.

Each performance measure could be weighted and ranked from a high of "5" for outstanding to a low of "1" for unsatisfactory. Space for written comments was provided.

III. The Evaluation

The Commission was very pleased with the responses about the Director's performance. All three groups had each evaluated the Director above a 4(Exceeding Expectations) in their overall averaging. Out of fifty-seven responses there was only a single 3.00(Meets Expectations).

The Commission looked closely at the written comments, as they often portray a more complete vision of a manager than do numerical averages. Some of the repeated comments emphasized Director Hallock's keen sense of the agency mission and her ability to communicate that vision to a wide variety of groups.

Many responders commented on her seasoned understanding of how the agency functions and how highly sensitive is the nature of working with widely diverse groups.

She is appreciated for her straightforward and open approach in working with others. Some comments alluded to her rapid decision making that can be interpreted as both a positive or negative quality, depending on the situation.

The Commission had hoped for a larger response from the DEQ Managers, and we suggest a larger effort should be made next time to engage this group. This

response should be tempered by the fact that in large organizations knowing the leader is more difficult as one proceeds further down the organizational structure.

The Commission met in an executive session on December 12, 2002, to discuss responses and to share and discuss the Commissioners' own observations and comments on the Director's performance. Commissioners' comments were similar to those expressed by surveys.

IV. Conclusion

The Commission gives Director Hallock high marks in this first evaluation of her professional service.

This is a difficult agency to manage in an atmosphere of constant change and demands from a wide variety of clientele. It is an agency which is trying to be helpful to those it regulates without losing sight of the fact that its major mission is protecting the environment for the people of the State of Oregon. That is not an easy task when faced with Federal rules, uncertain state funding, and differing special interest groups.

Director Hallock has made a considerable impact in handling these relationships outside the agency while developing a strong pattern of leadership among a very good DEQ staff.

We do raise a serious concern that key state agency administrators are expected to be outstanding "external" managers as well as exceptional "internal" administrators, which in turn could lead to early "burnout" and the loss of valuable experience. Dwindling state support may complicate this situation and decrease the number of required administrators needed to carry out agency missions.

The Environmental Quality Commission respectfully submits this report to the Governor's office and the Legislature as meeting its obligation to evaluate the Director of DEQ.

Signed,

Mark Reeve, Chair

Tony Van Vliet, Vice Chair

Deirdre Malarkey, Commissioner

Harvey Bennett, Commissioner

Appendix A. The Purpose and Process Statement

Appendix B. Performance Measures and Evaluation Form

The Commission solicited input from the following people as part of their 2002 evaluation of the DEQ Director's performance.

- Louise Solliday, Governor's Natural Resources Policy Advisor
- Robin McArthur-Phillips, Governor's Community Development Office
- John Ledger, Associated Oregon Industries
- Willie Tiffany, League of Oregon Cities
- Janet Gillaspie, Association of Clean Water Agencies
- Jeff Allen, Oregon Environmental Council
- Maureen Kirk, OSPIRG
- Kathryn Van Natta, Northwest Pulp and Paper Association
- Dave Barrows, lobbyist
- Nina Bell, NW Environmental Advocates
- Tom Gallagher, various corporations, businesses and industry groups
- Jim Craven, American Electronics Association
- Rich Angstrom, Oregon Concrete and Aggregate Producers Association
- Ken Yates, NW Food Processors
- Kristen Mitchell, Oregon Reuse & Recycling Association
- Tom Zelenka, Schnitzer Steel
- Justin Burns, represents clients of Hagen, Dye, Hirschy & DiLorenzo
- Don Haagensen, Portland attorney
- Bill Smith, developer in Bend
- Rob Douglas, Oregon Food Processors Council, Oregon Soft Drink Association, others
- Paul Romain, Oregon Petroleum Marketers, Oregon Beer & Wine Distributors Association, Oregon Auto Dealers Association, others
- Paulette Pyle, agriculture lobbyist
- Cheryl Koshuta, Port of Portland
- Mike Greenfield, Oregon Department of Administrative Services Director
- Paul Cleary, Oregon Water Resources Department Director
- Phil Ward, Oregon Department of Agriculture Director
- Jim Brown, Oregon Department of Forestry Director
- Lindsay Ball, Oregon Department of Fish and Wildlife Director
- Ann Hanus, Oregon Department of State Lands Director
- Dan Opalski, Environmental Protection Agency
- Ken Rocco, Legislative Fiscal Office
- DEQ Executive Management Team members
- DEQ Managers

Ken's / Didi's Report

GREEN CHEMISTRY: The University of Oregon Chemistry Department has pioneered a movement that focuses on reducing, recycling or substituting toxic chemicals in organic chemistry. It expects that graduates who will later work in industrial labs will have developed skills to help industry solve environmental problems.

Professor Jim Hutchison and his students received a patent in May for a synthetic procedure that eliminates the use of diborane and benzene to synthesize a class of metal nanoparticles – and from that there may be a spin-off company to market the process to nanotechnology researchers worldwide.

ONAMI: Oregon Nanoscience and Microtechnologies Institute– a collaboration with University of Oregon, Portland State, Oregon State, the Pacific Northwest National Laboratory and high-tech private industry - is leveraging the state's strengths in nanoscience, nanostructures, materials characterization, microfluidics, process intensification and microfabrication. Research can expand to computers, healthcare, energy systems and environmental remediation. The Director is Richard "Skip" Rung. — *Didi requested we have him speak at a meeting.*

Private industries include those in the "Silicon Forest" (from Eugene to Vancouver, Washington), such as Intel, HP, FEI beam technologies, Tektronix, Electro Scientific Industries, Hynix Semiconductor, Wacker, In-Focus, Mentor Graphics, and many more.

LANE REGIONAL AIR POLLUTION AUTHORITY (LRAPA): Recognizing that diesel truck idling happens when loading or unloading cargo, as well as in truck stops where no hookups may be available, a new technology is being offered that will lower emissions in the I-5 corridor – the APU or Auxiliary Power Unit. The program is coordinated by LRAPA, while the OSU advisor is Jim Lundy from Ken's department.

LRAPA will provide devices at low cost, so that small companies lacking money and installation costs can take advantage of the program. LRAPA will get a pass-through tax credit from Oregon's Dept. of Energy. The agency borrows the money from DOE and repays with the lease payments from truck owners who install the units.

LRAPA also hopes to receive a grant from EPA to train mechanics to install and maintain these units, and Lane Community College is interested in being the training center. The manufacturer is committed to funding the first installation center and is willing to train mechanics to set up an installation center.

Oregon Trucking Association is willing to send out information, and other forms of advertising are underway.

Artificial Propagation of Salmon

in Oregon, 1875-1910

A Chapter in American Conservation

BY GORDON B. DODDS

HISTORIANS of the American conservation movement usually begin their treatises with the presidency of Theodore Roosevelt. Roosevelt, Gifford Pinchot, W J McGee, and their cohorts are rightly hailed as the leaders of the organized policy to conserve the natural resources of the nation. When "background" mention is made of pre-Roosevelt roots, it is the American Association for the Advancement of Science, Yellowstone Park, and the reclamation of desert lands that are singled out; the antecedents of the conservation movement in the realm of fisheries have been ignored.¹ This essay attempts to remedy this deficiency in part and to place the salmon preservation movement into the national conservation picture.

Fish culture is an ancient pursuit which probably originated with the Egyptians. The ancient Greeks and Romans also practiced fish conservation of a primitive type which consisted of driving fish into vivaria, where they were held until they spawned.² But the founder of modern fish culture was Stephan Ludwig Jacobi, a native of Varenholz, Germany, who experimented with breeding fish on his estates in the mid-18th century. In 1765 he announced his discovery of a process of artificially propagating fish by mixing eggs and sperm and then hatching out the eggs in retaining ponds.³ Jacobi's methods were not utilized on a large scale, however, until 1855, when the French government founded a hatchery at Hunigue in Alsace. The exaggerated hopes for this establishment had almost been extinguished when the hatchery, with Alsace, was transferred to the Germans as a spoil of the Franco-Prussian War. Subsequent success of the Germans in propagating fish artificially stimu-

lated interest in the practice in most other nations of the Western world.⁴

The scientific knowledge of the Old World was quickly improved upon in the United States. The first to make a significant improvement was Seth Green of New York, who in 1864 at Caledonia, New York, first hatched trout on a practical commercial scale. Others soon followed his lead, and artificial fish culture rapidly became popular in the United States. Livingston Stone established the Cold Spring trout ponds at Charlestown, New Hampshire, and Green turned successfully to the artificial propagation of the valuable shad. Salmon were first artificially hatched by Stone and Joseph Goodfellow on the Miramichi River in New Brunswick, Canada, in 1868.

The state governments also entered the artificial propagation field. New Hampshire established a fish commission in 1864. Five years later the New Hampshire commission artificially hatched 15,000 salmon fry at Concord from eggs taken on the Miramichi, the first governmental production of the fish in the United States.⁵

¹ Charles R. Van Hise, *Conservation of Natural Resources in the United States* (Madison, 1910); David C. Coyle, *Conservation: An American Story of Conflict and Accomplishment* (New Brunswick, N. J., 1957); J. Leonard Bates, "Fulfilling American Democracy: The Conservation Movement, 1907 to 1921," *Mississippi Valley Historical Review*, XLIV (1957-58), 29-57, are excellent treatments of conservation.

² G. Brown Goode, "The Status of the U.S. Fish Commission in 1884," U.S. Commissioner of Fish and Fisheries, *Report, 1884*, 48th Cong., 1st Sess., *House Miscellaneous Document No. 68* [Serial 2245], 1153.

³ G. Brown Goode, "Epochs in the History of Fish Culture," American Fish Cultural Association, *Transactions, 1879* (New York, 1879), 35-37.

⁴ A. J. Malmgren, "Memorial Addressed to the Bureau of Agriculture of the Imperial Senate for Finland," U.S. Commissioner of Fish and Fisheries, *Bulletin, 1883* (Washington, D.C., 1883), 369-70, 372-77.

⁵ Livingston Stone, "Some Brief Reminiscences of the Early Days of Fish-Culture in the United States," U.S. Fish Commission, *Bulletin, 1897*, 55th Cong., 2nd Sess., *House Document No. 561* [Serial 3699], 337, 338-39.

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Private and state hatcherymen in the East were chiefly interested in propagating the trout, shad, and the Atlantic salmon (*Salmo salar*). It was only with the founding of the American Fish Culturists Association and the United States Commission of Fish and Fisheries that any concern was shown for the salmon of the Pacific.

The American Fish Culturists Association was organized December 20, 1870, in New York City.⁶ This group, once formed, did not meet again for fourteen months, but spent the interim in gaining members and in laying plans for the future of fish culture in the United States.

The most important of the Association's projects was revealed at the second meeting, held in February, 1872. George S. Page introduced a resolution to appoint a committee to memorialize Congress for the construction of two or more fish-hatching establishments at federal expense. One was to be located on Puget Sound and the other on the Atlantic Coast.

The original objectives of the United States Fish Commission were twofold. The Commission had been established by Congress in 1871 to make scientific investigations of marine life and to study and gather statistics about the methods of the fishery industry. Now the Fish Culturists Association proposed to expand those objectives by adding artificial propagation to the Commission's work. Representative Robert B. Roosevelt of New York, later president of the American Fish Culturists Association, presented the organization's memorial to the House of Representatives, and in 1872 Congress voted \$15,000 to build the hatcheries.⁷

The Fish Commission moved quickly. Its director, Spencer F. Baird, dispatched Livingston Stone to the Sacramento River in California to build a salmon-breeding station. The purpose of this experimental venture in the Far West was to collect eggs of the Pacific salmon (*Oncorhynchus tshawytscha*) for shipment to the East. The Pacific salmon was to replace the native Atlantic fish which had been almost completely destroyed by overfishing, industrial wastes, and high dams.⁸

The epochal work of Stone on the McCloud River, a tributary of the Sacramento, was accomplished under great pressure. He knew very little about the Pacific salmon, he was opposed by Indians and by white fishermen, and his first establishment was destroyed by floods. In spite of these difficulties, however, Stone reported that his work in 1872 produced three significant results: it proved that California salmon eggs could be collected artificially, that they could be matured for shipment in hatching ponds, and

that they could be sent alive across the North American continent.⁹

Livingston Stone was only one of the famous early American fish breeders. The United States Fish Commission, under Director Spencer F. Baird, became world-renowned for its work on artificial propagation of fish. The United States won the major prizes at the International Fishery Exposition in Berlin in 1880, and the director of the German Fisheries Union stated flatly: "For the present we can certainly do no better than to strain every nerve and imitate the example set us by the Americans."¹⁰ In 1882 a Dutch representative at the London Fishery Exhibition lauded the American display and quoted the chairman of the American division: "In our country we would as little think of leaving fish-culture to private effort as of taking from the hands of the Government the care of light-houses."¹¹ At this exhibition the United States expanded upon its Berlin triumphs; American exhibitors won most of the gold medals and took the lead in all classes of awards.¹²

It was fortunate for Oregon and its magnificent salmon industry that Americans were so far advanced in fish culture, for the greed of the fishermen and canners had quickly threatened the salmon wealth of the Columbia. The pioneers in the canning of salmon on the Columbia River were the Hume brothers of San Francisco, originally from the state of Maine.¹³ William Hume had come to the Sacramento in 1852 and had soon realized the possibilities of canning the Chinook salmon of that stream. After convincing the skeptical housewives of San Francisco of the edibility of his product, and after making many tedious improvements in the canning process, William Hume was faced with the disappearance of the Sacramento salmon. In the American

⁶ Frederick Mather, "Recollections of the Early Days of the American Fish Cultural Association, with an Account of the Intentions of the Founders," American Fish Cultural Association, *Transactions, 1879*, 55-57, describes the first two meetings. The name of the association altered slightly over the years.

⁷ This paragraph is based on U.S. Commissioner of Fish and Fisheries, *Report, 1872-73*, 42nd Cong., 3rd Sess., *Senate Miscellaneous Document No. 74* [Serial 1547], xxiii.

⁸ Livingston Stone, "Reports of Operations During 1872 at the United States Salmon Hatching Establishment on the McCloud River, and on the California Salmonidae Generally; with a List of Specimens Collected," U.S. Commissioner of Fish and Fisheries, *Report, 1872-73*, 42nd Cong., 3rd Sess., *Senate Miscellaneous Document No. 74* [Serial 1547], 168, 170, 193.

⁹ Livingston Stone, "Account of Operations at the McCloud River Fish-Breeding Stations of the United States Fish Commission, from 1872 to 1882, Inclusive," U.S. Commissioner of Fish and Fisheries, *Bulletin, 1882* (Washington, D.C., 1882), 217.

tradition, heedless of conservation, he sought another source of supply.

In 1866 Hume went north to the Columbia River, an almost virgin stream. His brothers—John, George, and Robert (R. D.)—joined him there, and in the spring of 1867 they introduced the salmon-canning industry on the Columbia. The profits from the first years were spectacular, for the Humes controlled the market of an extremely valuable food fish that was popular in the industrial centers of Great Britain as a cheap nourishing food. The Humes' situation was too good to last, however; rival fishermen soon began to swarm to the Columbia to gain a share of its natural wealth. So numerous were these newcomers, and so effective were their seines and traps, that the beleaguered fishermen, faced with declining profits and ruinous competition, looked to the national government for aid in replenishing the Columbia.

The *Portland Oregonian* of March 3, 1875, carried a significant news item on its front page: the reply of Spencer F. Baird, the director of the United States Fish Commission, to Senator Zachariah Chandler, chairman of the Senate commerce committee, who had asked for information regarding the decline of salmon on the Columbia. Baird stated that the supply of salmon had decreased because of excessive fishing, because the erection of dams had made progress to the spawning beds impossible, and because lumbering and manufacturing operations had polluted the streams and killed the eggs of the fish. These hazards to the salmon, Baird asserted, had totally wiped out the fish on the Atlantic Coast. To forestall such a tragedy on the Columbia, the Fish Commissioner suggested two remedies: the enforcement of closed seasons and the establishment of hatcheries to maintain the supply of salmon.

The Oregon legislature in 1875 requested

¹⁰ U.S. Commissioner of Fish and Fisheries, *Report, 1880*, 46th Cong., 3rd Sess., *Senate Miscellaneous Document No. 29* [Serial 1947], xxiv.

¹¹ U.S. Commissioner of Fish and Fisheries, *Bulletin, 1883* (Washington, D.C., 1883), 339-40.

¹² Goode, "Status of U.S. Fish Commission," 1163.

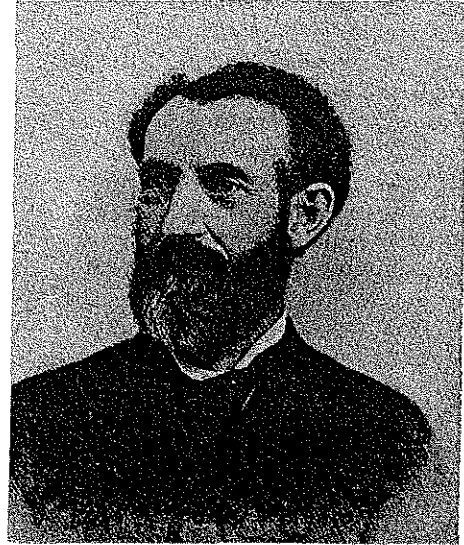
¹³ On the Hume family, see Gordon B. Dodds, "R. D. Hume: Rogue River Monopolist," unpublished doctoral dissertation (University of Wisconsin, 1958).

¹⁴ Livingston Stone, "Report on Operations at the Salmon Hatching Station on the Clackamas River, Oregon, in 1877," U.S. Commissioner of Fish and Fisheries, *Report, 1877*, 45th Cong., 2nd Sess., *Senate Miscellaneous Document No. 49* [Serial 1787], 783-84.

¹⁵ John N. Cobb, *Pacific Salmon Fisheries*, U.S. Bureau of Fisheries Document No. 1092, 4th ed. (Washington, D.C., 1930), 233.

¹⁶ U.S. Commissioner of Fish and Fisheries, *Report, 1888*, 51st Cong., 1st Sess., *House Miscellaneous Document No. 274* [Serial 2806], xxxvi.

Baird to investigate conditions on the Columbia. He responded by dispatching to Oregon the expert hatcheryman, Livingston Stone. That same year Stone published his comprehensive report on the "Salmon Fisheries of the Columbia River." In his report he stated that no steps had been taken to breed salmon artificially on the river except the selection of a site for a hatchery



Hume, *Salmon of the Pacific Coast* (1893)

R. D. Hume

in the event that propagation should later become desirable. He was able to report, however, that the Oregon legislature had adopted a closed season for salmon. Soon afterward private initiative took hold.

The Oregon and Washington Fish Propagating Company was incorporated in April, 1877. It was capitalized at \$30,000, and its officers included John Adair, Joseph G. Megler, and Henry Failing. The company immediately set to work constructing a hatchery on the Clackamas River. The director of this project, in this era of *laissez faire*, was the government fish expert, Livingston Stone.¹⁴

This station continued in operation as a private business until 1880, when it was abandoned, and the program for artificial propagation fell with it. Finally, in 1887 the Oregon Fish Commission was formed and placed in charge of the hatchery property.¹⁵ In the following year the state group turned the property over to the United States Commissioner of Fish and Fisheries.¹⁶ Both private and state enterprise had failed to do the job.

There was no doubt that the hatchery had done some good, but it had failed to offset the depletion of the Columbia by the short-sighted canning and fishing interests. The pack for the year 1889 was the lowest on the river since 1873, even though the 1889 season had been extended one month and for the first time bluebacks and steelheads were canned in addition to the Chinooks.¹⁷ The future of the fisheries of the Columbia looked dark unless the national government, by precept and example, could revive the practice of artificial propagation and convince the fishermen of its efficiency. In this effort the nation received aid from an unexpected quarter.

Ever since he had left the Columbia River in 1877, after having purchased a fishery on the Rogue River in southwestern Oregon, R. D. Hume, of the pioneer salmon-canning family, had practiced artificial propagation of fish. Hume had not been interested in this pursuit during the decade he had spent on the Columbia; like the other fishermen there, he had taken no thought for the morrow in his early drive for profits. Indeed, it is quite possible that if he had not gone to the Rogue River, where he operated the only fishery, he would never have become interested in the artificial propagation movement. However, spurred on by the desire to maintain the high productive capacity of the Rogue River, and unhampered by competitors, Hume bent his efforts toward developing and improving methods of artificial propagation of salmon.¹⁸

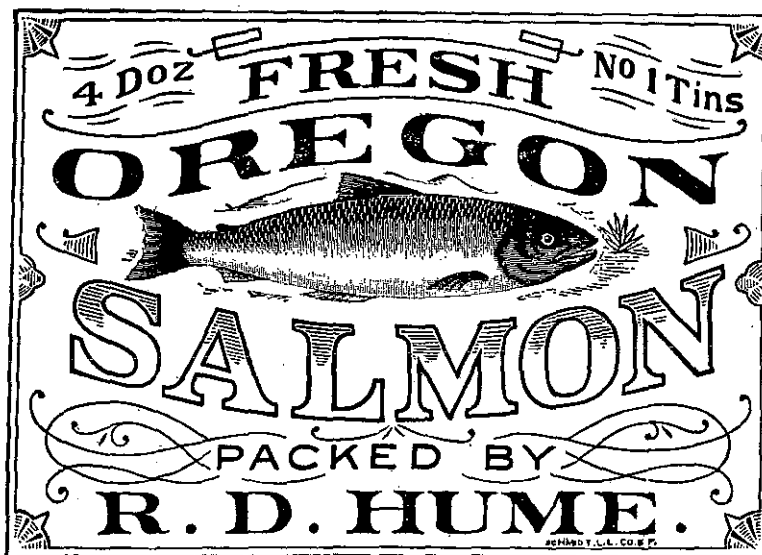
The connecting link between the national fish conservation movement and R. D. Hume was

Livingston Stone. The Oregon canner had first become interested in hatchery work on a visit to Stone's hatchery on the McCloud River in California in 1877. Impressed by the operations there, Hume returned to the new fishery on the Rogue determined not to allow "his" river to suffer the vicissitudes of the Columbia. Hume hired one of Stone's assistants, Kirby B. Pratt, to build his first hatchery, and he completed the building in the fall of 1877 on time for the autumn run of Chinooks.¹⁹ Hume and Pratt had numerous difficulties because of their inexperience, but they planted at least 100,000 healthy young fry in this first year of operation. The following year Hume, in an effort to expand his initial successful venture, almost ruined his entire enterprise.

Hume began constructing a new hatchery in the spring of 1878, and he spent \$1,676.66 on the year's operations.²⁰ This new project was built on a much larger scale than the old one. The spawning ponds, where the breeding salmon were held until ripe, were now lined with tarred planks, and the surrounding underbrush was cut away to permit the construction of a pipeline to carry plenty of fresh water to the ponds.²¹

To Hume's horror, the salmon fry began to die almost as soon as hatched. The investment in time and money for the entire year was unaccountably lost. In spite of Hume's attempts to improve his buildings, he had the same disappointing results during the next two years: the salmon fry in the ponds died as rapidly as they were caught. Discouragement was compounded with frustration when the fry planted in 1877 returned in such numbers that the catch

Hume, *Salmon of the Pacific Coast* (1893)



of 1881 was one of the best in many years. But how to do it again?

Hume had almost decided to abandon artificial propagation when he suddenly realized why his hatching process had failed: he had provided no shade for the spawning fish or for the fry. By cutting away the underbrush to provide a pipeline for clear water, Hume had removed the necessary protection against the killing rays of the summer sun. This vital pragmatic discovery, so typical of scientific work in a relatively unknown field, and of the "tinkerer" stage in American inventive history, saved Hume's hatcheries, and perhaps the entire practice in the state of Oregon.

Hume moved on to an unequalled record as a private hatcheryman. Since he operated the only hatchery in Oregon from 1880 to 1887, and since the packs on the Rogue did not decline, his experience carried great weight. Unhampered by having to share control of the river, and unhindered by debilitating precedent, Hume built several hatcheries during the next three decades.²²

THE WORK DONE by R. D. Hume on the Rogue River was the only artificial propagation enterprise in Oregon from 1880 to 1887, when the state created an Oregon Fish Commission. The new Commission operated the old Oregon and Washington Fish Propagation Company hatchery for a year until it was turned over to the United States Fish Commission.²³ This station became the main bastion of those seeking to save the salmon wealth of the Columbia, although it

¹⁷ Marshall McDonald, "The Salmon Fisheries of the Columbia River Basin," U.S. Fish Commission, *Bulletin*, 1894, 53rd Cong., 3rd Sess., *House Miscellaneous Document* No. 86 [Serial 3338], 156, 164.

¹⁸ Dodds, "Hume."

¹⁹ R. D. Hume, *Salmon of the Pacific Coast* (San Francisco, 1893), 37-39; Kirby B. Pratt, "Report on Salmon-Hatching Operations on Rogue River, Oregon, 1877-78," U.S. Commissioner of Fish and Fisheries, *Report*, 1878, 45th Cong., 3rd Sess., *Senate Miscellaneous Document* No. 31 [Serial 1834], 773.

²⁰ Ledger, 1878-79, Hume Papers, University of Oregon Library, Eugene. Hereafter cited as H. P.

²¹ Hume's early difficulties and his remedy are described in Hume, *Salmon*, 37-39.

²² H. P., *passim*; Wedderburn (Oregon) *Radium*, Jan. 30, 1908.

²³ U.S. Commissioner of Fish and Fisheries, *Report*, 1887, 50th Cong., 2nd Sess., *House Miscellaneous Document* No. 133 [Serial 2661], xix, xx.

²⁴ Marshall McDonald, "The Relation of the Fisheries to the Community," American Fisheries Society, *Transactions*, 1894 (New York, 1894), 35-36.

²⁵ Cobb, *Pacific Salmon Fisheries*, 1231.

²⁶ Hume had published a short pamphlet on conservation in 1893, detailing his own work.

was later supported by other federal stations and by hatcheries established by the Oregon Fish Commission.

This purposeful attack on the undersupply of the Columbia salmon was hindered by the greed of the fishermen who either defied the laws maintaining closed seasons or who lobbied in the legislature against passage of such measures. The United States Commissioner of Fish and Fisheries, Marshall McDonald, in a paper written in 1894, placed his confidence in farmers, miners, and manufacturers to preserve the soil and minerals, but said of the fisheries:

Individual ownership of the open waters is not entirely practicable, even if it were desirable; nor can we safely trust to the individual to establish or conserve conditions which are necessary to maintain supply. Indeed it is not reasonable to expect that he will undertake to sow the seeds of a harvest which other men may gather.²⁴

The remedy, he wrote, lay in control of fish conservation by the government. But McDonald, a government official, overestimated what government had done or could do in the field of artificial propagation. The man who was most successful in maintaining the salmon supply of the Pacific Coast was neither a federal nor a state ichthyologist, but a private individual, R. D. Hume. While the pack of the Sacramento and the Columbia declined, that of the Rogue increased.²⁵

It is, of course, true that Hume had an easier task on the Rogue, as far as interference was concerned, than had those interested in conservation on the Columbia. Yet it was his method, not the absence of competitors, which made Hume successful. In a science where there were no clear-cut conclusions to follow, Hume had hit upon the correct techniques for replenishing the salmon streams, and he fought valiantly for this technique in the later years of his life when he saw that the packs of the Columbia were declining catastrophically.²⁶

Hume gained stature as a propagandist for the cause of artificial propagation soon after Henry Van Dusen became master fish warden of Oregon in 1901. This official, by frequent, heated exchanges of views with Hume, did more to advance the canner's salmonology theories than did Hume himself. Van Dusen's annual report of 1904 clashed with two of Hume's basic propagation theories. The warden recommended that the closed season on the Columbia River be abandoned, since law enforcement was impracticable because of limited funds and equipment and because Oregon shared jurisdiction over the Columbia with the state of Washington, whose fishing laws were much more lenient. Hatcheries

alone should keep up the supply of salmon, he declared. Secondly, Van Dusen disparaged the idea of locating fish hatcheries near tidewater, as Hume had done on the Rogue River. Such a practice, Van Dusen declared, was unnatural and inefficient because it was contrary to natural law, which required salmon to breed in the headwaters of a river.²⁷

Hume immediately contradicted the youthful warden. In a letter of April 24 to Van Dusen, the salmon canner charged that the fish commissioner's methods of artificial propagation were completely wrong; salmon could not spawn on the muddy, turbulent headwaters of the Rogue as well as they could in hatcheries. Before Van Dusen had a chance to reply, Hume wrote a letter to the federal Bureau of Fisheries reporting the long history of hatchery operations on the Rogue and stigmatizing the "incompetent" Oregon warden as the chief barrier to further progress in this work. After Van Dusen replied to the canner, in a "remarkably fierce letter," according to Hume, the canner closed the initial exchange: "What do you care about laws! If you can get your fingers on the cash that is all you desire."²⁸

IN THE FOLLOWING year Hume became acquainted with a man who was to furnish him considerable aid in his fight against Van Dusen. H. T. Webster, Van Dusen's deputy, disagreed with his chief on artificial propagation. On a visit to Curry County, Webster was quoted as declaring that the current methods of propagating salmon were completely wrong except as followed on Rogue River.²⁹ He elaborated these ideas in a letter to the *Portland Oregonian* in December, when he advised that hatcheries should use tanks or ponds in which to feed and keep the young salmon before turning them out.

Webster stated that he had been asked frequently why artificial propagation had succeeded on the Rogue, while it had failed on the Columbia. His answer was, of course, that proper methods were not used on the Columbia, and he recommended Hume's practices as the salvation of the Oregon fisheries. Van Dusen remained unconvinced. He replied in his report for 1905 that it was best to release the salmon as soon as they hatched from the egg, for the young fry had "practically no enemies," an observation he had made on the basis of an examination of the stomachs of young trout which showed that these fish did not eat salmon.³⁰

This last point was the chief reason for the clash between Hume and Van Dusen. When to

release the fry? This problem had been faced long before, of course, by ichthyologists in Europe, Great Britain, and America. There was no agreement on a solution to the problem, so neither Hume nor Van Dusen could appeal to clear precedent in the work of other scientists. As early as 1858 a Belgian ichthyologist had posed the question of whether the salmon should be released as soon as the yolk sac was absorbed; his conclusion was that only further experimental work could tell.³¹

Many years later, in 1880, the problem was still unsolved, but the director of the German Fisheries Union recommended that fry should be placed in the water even before the sac was absorbed. He named two objections to artificial feeding: the expense involved and the danger that the fry would lose their innate alertness and thus become easy victims of their natural enemies when released.³² Five years later a comprehensive report on European fish-culture indicated that the time of planting fry varied from nation to nation from before sac-absorption up to one year.³³

A five-year experiment on the Chinook salmon of the Sacramento River in California furnished a government ichthyologist with information and conclusions about the young salmon. He suggested releasing them just after the yolk sac was absorbed, since before that time they were awkward and afterwards were so elusive that their enemies could not catch them.³⁴ In Oregon the Fish Commission in its early years, from 1887 to 1889, had released the fry as soon as they were clear of the eggs, although sometimes they were held for eight to ten weeks thereafter. One of the annual reports did advocate the practice of holding for longer periods but stated that it was inadvisable because of the great expense involved in feeding the fry. In 1877 Hume himself had released the fry three to four weeks after hatching.³⁵

²⁷ Department of Fisheries, *Annual Report, 1904*, 109, 110, 140-41.

²⁸ Hume to Bureau of Fisheries, April 28, 1904, H. P.; Hume to Van Dusen, May 8, 1904, H. P.

²⁹ Bandon (Oregon) *Recorder*, Nov. 7, 1905.

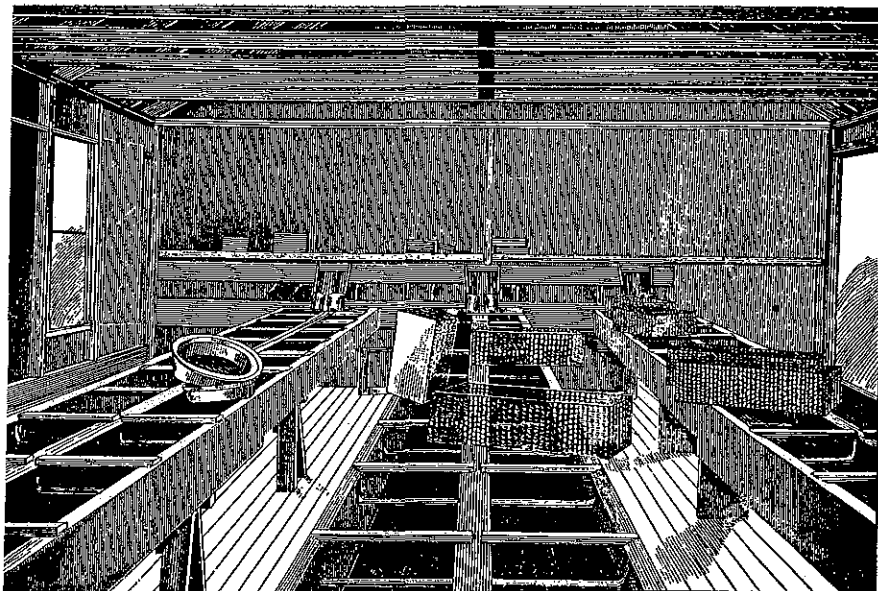
³⁰ *Portland Morning Oregonian*, Dec. 17, 1905; Dept. of Fisheries, *Annual Report, 1905*, 35.

³¹ J. P. J. Koltz, "The Artificial Propagation of Fish," U.S. Commissioner of Fish and Fisheries, *Report, 1880*, 46th Cong., 3rd Sess., *Senate Miscellaneous Document No. 29* [Serial 1947], 508-509.

³² Director Haack, "Treatment of Young Salmonoids and Coregoni from the Time They Leave the Egg till They Are Fully Developed and Can Be Placed in Open Waters," U.S. Commissioner of Fish and Fisheries, *Bulletin, 1885* (Washington, D.C., 1885), 688-89.

³³ Eugenio Bettini and Decio Vinciguerra, "On the Fish-Cultural Establishments of Central Europe," U.S. Commissioner of Fish and Fisheries, *Report, 1886*, 49th

Interior of hatchery, showing pans, distributing cans, hatching and distributing tanks, or troughs



Hume, *Salmon of the Pacific Coast* (1893)

Neither Van Dusen nor Hume would retreat from his respective position. Both men were gaining wide publicity, and their dispute over artificial propagation methods was becoming well-known to newspaper readers. Hume gave an interview to the *Portland Oregonian*, in the course of which he declared that the "Golden years have been wasted for want of the exercise of a little common sense." He argued that the best way to propagate salmon was to keep them for as long as possible after hatching in the retaining ponds; by contrast, the practice of the Oregon Fish Commission had always been to release the fry (to save feeding expense) into the river as soon as they had broken through the shell and even before the forty days had passed which the absorption of the yolk sac required.³⁷

The *Oregonian* and the *Bandon Recorder* agreed with Hume, and the latter paper predicted that Van Dusen would soon see the merits

of Hume's theories.³⁷ Webster concurred with this prediction and wrote to Hume that the publicity provided by the airing of the controversy in the *Oregonian* was going to bring results and that Van Dusen was soon going to take the "wind out of our sails" by giving orders to his hatcherymen to feed the young fry after hatching. The only trouble with this plan, Webster declared, was that the warden did not know how to go about this process.³⁸

Webster's prediction was premature, and in the following year Hume wrote another long letter to the *Oregonian*, outlining his beliefs about artificial propagation. He opened by asserting that "If the Oregon Fish Commission will follow my advice, they will make the salmon so plentiful that you can walk across the Columbia River on their backs." Hume again advocated the holding of fry in the hatchery ponds until they were at least five or six inches in length.³⁹

By July, 1907, Hume had convinced the *Oregonian* that his methods provided a solution for the decline of the Columbia fisheries. That year, the paper stated, the fishermen were experiencing their worst season ever on the Columbia. Whereas, in 1890, 57 per cent of the annual catch had come from the superior spring run, it was predicted that in 1907 only 20 per cent would come from the early season. Improper hatchery methods were being employed; the closed season had been abolished in 1904 at Van Dusen's urging, making it impossible for the hatcheries to obtain sufficient fish even for their inefficient operations.⁴⁰

Cong., 2nd Sess., *Senate Miscellaneous Document No. 90* [Serial 2453], 561.

³⁴ Cloudsley Rutter, "Natural History of the Quinntat Salmon," U.S. Fish Commission, *Bulletin*, 1902, 57th Cong., 2nd Sess., *House Document No. 486* [Serial 4551], 65-141.

³⁵ State Board of Fish Commissioners, *Report*, 1889, 7; Pratt, "Report," 773-74.

³⁶ *Portland Morning Oregonian*, Oct. 13, 1906; State Board of Fish Commissioners, *Annual Report*, 1887, 4-5.

³⁷ *Portland Morning Oregonian*, Oct. 13, 1906; *Bandon Recorder*, Nov. 8, 1906.

³⁸ Webster to Hume, Nov. 23, 1906, H. P. Van Dusen removed Webster as deputy on April 7, 1907, because he could not work in harmony with him. State Board of Fish Commissioners, *Minutes*, 1907. The records of the Fish Commission are in the Oregon State Archives, Salem.

³⁹ *Portland Morning Oregonian*, June 22, 1907.

⁴⁰ *Ibid.*, July 16, 1907. Van Dusen did seek approval, in December, 1907, from the State Fish Commission for

In the last year of his life Hume was victorious in this part of the propagation struggle. "I have at last convinced them that my methods are the correct ones and the future will prove it to the satisfaction of everyone."⁴¹ Hume's newspaper, the *Wedderburn Radium*, proudly announced that the United States Fish Commission would thereafter feed salmon fry until they were three or four inches long before releasing them. Oregon followed this lead in 1910, and statistics vindicated Hume.⁴²

The high point of production on the Columbia had been reached in 1899. The all-time low was touched in 1908. Fish were planted according to Hume's ideas in 1910, and allowing four or five years for a salmon cycle, the packs of 1914 and 1915 promised the first test on the Columbia of Hume's long-advocated principle. The catch of 1914 almost equaled that of 1895; the catch of 1915 surpassed it.⁴³

Hume not only opposed Van Dusen's theories of artificial propagation of salmon, but he also condemned the warden for not building hatcheries on the Rogue River. The crisis came when Hume refused to pay his cannery license tax. This tax, graduated according to the amount of salmon packed, was levied to provide state hatcheries, and Hume had paid it since 1892.⁴⁴

In 1906 Hume refused to pay his tax because he had not been refunded any of the money for his hatchery. He suggested that the other cannery and cold-storage plant operators should follow his lead and thus force the state to turn over its work to the more enlightened federal hatchery workers, who agreed with Hume's theories of artificial propagation. The state prosecuted Hume for failure to pay taxes, but Hume won his claim in circuit court: "I knocked the cannery & cold storage license law into a cocked hat. This leaves the Fish Warden without any funds to operate hatcheries, and gets even with him for his meanness towards me. . . ."⁴⁵ But only two other cannery operators defied the Fish Commission, and Hume ultimately lost his case in the Oregon Supreme Court.⁴⁶ Nevertheless, he had won his larger victory for conservation practices.

In spite of this reverse in the courts, Hume's constant attacks against Van Dusen, combined with the warden's inability to end the rivalry between the gill-netters and trap-fishermen on the Columbia, produced rumors that the master fish warden would soon be forced from office.⁴⁷ If this happened, the *Port Orford Tribune* editorialized, Van Dusen's successor should be R. D. Hume: "He is not afraid of responsibilities and can put his foot down with Jacksonian firmness, and no leading strings can manage him."⁴⁸

The *Oregonian* supported the rumor that Van Dusen might be fired and mentioned Hume as a possible successor. The paper added, however, that Hume's appointment was unlikely, since he was personally interested in the fisheries.⁴⁹ The *Oregonian* could have added that Hume would be disqualified because of the bitter opposition between him and Governor George Chamberlain. Van Dusen was dismissed on March 25, an event headlined in the *Radium*: "Van Dusen's Head Drops. Dull Thud."⁵⁰ Hume's victory was complete.

THE FULL STORY of the flowering of the conservation movement under Roosevelt has been well told. Now it is incumbent upon the historian to trace its roots in various areas from wildlife to soil to human beings. Only by an examination of the various themes that produced conservation can its later forms be fully understood. Many questions arise from a study of this early period. Why were certain industries more conservation conscious than others? What was the role of government, state and national, in the early conservation movement? How did individuals shape the conservation crusade, and who were these early leaders? Above all, where does conservation fit into the blending of the earlier American traditions with the post-Civil War forces of industrialism, laissez faire, materialism, governmental corruption, the westward movement, and sectionalism? Was conservation a product of these forces or of those that opposed these dominant themes?

The examination of the salmon conservation movement, of greatest importance in the state of Oregon, can provide some tentative answers

his plan to employ a scientist from the U.S. Fish Commission to make a study of salmon habits. But he did not seek Hume's advice! The study was not made under Van Dusen's tenure in office. State Board of Fish Commissioners, Minutes, 1907.

⁴¹ Hume to Herbert Hume, Dec. 21, 1907, H. P.

⁴² *Wedderburn Radium*, Jan. 2, 1908; Dept. of Fisheries, *Annual Report, 1911*, 16.

⁴³ Fish and Game Commission, *Biennial Report, 1915*, 16.

⁴⁴ E.g., R. D. Hume and Co. to Hume, Feb. 5, 1892, H. P.

⁴⁵ Hume to Herbert Hume, Aug. 27, 1906, H. P.

⁴⁶ State Board of Fish Commissioners, Minutes, 1907; *State v. Hume*, 52 Ore. 1 (1908).

⁴⁷ State Board of Fish Commissioners, Minutes, 1908.

⁴⁸ Quoted in the *Bandon Recorder*, March 19, 1908.

⁴⁹ *Portland Morning Oregonian*, March 26, 1908.

⁵⁰ State Board of Fish Commissioners, Minutes, 1908; *Wedderburn Radium*, April 9, 1908.

⁵¹ Earl Pomeroy, "Toward a Reorientation of Western History: Continuity and Environment," *Mississippi Valley Historical Review*, XLI (1954-55), 579-600.

to these problems. Salmon was an irreplaceable resource; that is why agitation for conservation began in 1875, only nine years after the first canning on the Columbia. Here precedents underlined this obvious fact, for the salmon of the Atlantic and of the Sacramento had been almost wiped out. The last frontier of salmon, like that of agriculture, mining, and stock raising, was in danger of being reached in the post-Civil War West.

Where now to turn? The answer was clear. In spite of laissez faire doctrines, business had prospered from the bounty of the nation throughout this period; this point need not be elaborated here. The government had the monetary resources, and the work of the United States Fish Commission was of great importance in the salvation of the salmon trade. And, like many other American institutions, frontier or otherwise, American conservation experience built upon, and in this case improved upon, Old World foundations. But this progress was not

the work of federal officers alone, although government scientists were in the forefront. The man most responsible for introducing the best techniques to salmon conservation, albeit with the aid of the government, was R. D. Hume, a private individual.

Recent historians have properly emphasized the continuity of Western institutions with those of older regions.⁵¹ In salmon propagation both continuity and change were present on the Pacific slope. But in the largest sense, R. D. Hume, who was in a position to improve ichthyology, was a product of the forces of industrialism, improved communications, government aid, materialism, and westward expansion which were characteristic of American life in general and of the salmon industry specifically after the Civil War. The early history of the salmon preservation movement suggests that the roots of conservation in other fields might explain the flowering of the national crusade in the Progressive Movement.

COMMENT BY CLARKE BROOKE

GORDON DODDS's paper is an effective tribute to R. D. Hume, a precursor and an exemplar of enlightened private interest in the development of conservational practices in the salmon fishery. In his day of uncontrolled fish wheels, traps, haul seines, and fixed gill nets, Hume was indeed a rare type. During Hume's lifetime, the annual salmon catch from Oregon's rivers increased rapidly to a position of considerable importance in the state's commercial economy.

During the middle years of the 19th century, salmon from the Columbia River were significant chiefly because the fish constituted the basis of life for Indian peoples settled in permanent communities along the lower course of the river and its tributaries. The estimated 18 million pounds of salmon taken from the Columbia each year by the Indians were sufficient to support a density of population that was exceptionally high

for primitive, nonagricultural peoples. Indian culture was diffused throughout with elements relating to the salmon fishery, including rigid regulations and taboos which were essentially conservational measures to insure the annual return of the great food fish.

Today, although the salmon catch is still the most valuable segment of the state's total fishery, Columbia River salmon do not directly contribute significantly to the state's economy. Indirectly, however, Columbia salmon—specifically, the controversy regarding their reduced numbers—are a factor in Oregon's economic development. The "salmon issue" can delay the construction of high dams, discourage new industries from establishing in the state, and can still make political heads drop with a "dull thud." For the "salmon lobby" is supported by a remarkably diverse and articulate group of the voting population, eager to write their Congressman or newspaper editor on any matter that might affect the fish unfavorably.

There are some, no doubt, who feel that Oregon would be a better state without huge dams,

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pulp and paper mills, and innumerable irrigation ditches (in which confused spawning salmon get lost). Extremist conservationists are in the minority, but they can and do affect state policy and planning. R. D. Hume was not of this ilk, but in his fight for sound propagation techniques, he sought for and gained public support, and, in effect, made salmon conservation the vital issue that it has continued to be even to the present. Probably in no other region of the United States does "conservation" so fully imply conflict of interests as it does here in the Pacific Northwest.

Gordon Dodds's well-documented paper presents clearly the difficulties which confronted pioneers in salmon conservation. I was impressed especially with the skillful and perceptive treatment of Hume's bitter struggle against the policies of Van Dusen, a typical bureaucrat of his day.

I am not convinced, however, that artificial propagation has succeeded in saving the commercial salmon fishery on the Columbia. Are hatcheries the salvation of the salmon? It is unfortunate that there is no record of the number of fry that were released in 1910 to return and be caught in 1914 and 1915. In the Pacific Northwest, as elsewhere, salmon hatcheries have been disappointing as a conservation measure. The federal government tried them in Alaska, and when results fell far below expectation, they were abandoned. Exceedingly few salmon hatcheries in the states have established successful records in their operation; such cases apply chiefly to the establishment of new spawning grounds, or to streams that have been so seriously depleted that they require this kind of desperate help if they are to recover at all. Artificial propagation can save the salmon from extinction, but I do not agree that hatcheries will preserve the commercial fishery.

The subtitle of the paper, "A Chapter in American Conservation," merits comment, for

there is a real need for scholarly study by the historian in the field of American conservation. Rich and ample source materials are available and I hope that Gordon Dodds's paper is evidence of a trend—or at least of increasing interest—the historian in the conservation movement, especially in terms of cultural change and the processes of nature. European scholars have linked the study of nature with the study of history, and I am puzzled by the apparent reluctance of Americans to do the same. Is it not the responsibility of the historian to trace the origins of our attitudes and practices which have profoundly changed the characteristics of original plant and animal life in America? Productive study in the field of conservation has come to be too exclusively the work of biologists engaged in technical research; historians and other social scientists have had relatively little to contribute.

Yet the original contribution to the study of conservation in America was made by a scholar and statesman whose training had been in the humanities and the social sciences—George Perkins Marsh. In his classic study, *Man and Nature*, published seventy-five years ago, Marsh examined the causes and results of human action on the physical and biological elements of the landscape. Drawing upon the works of foresters, agronomists, botanists, and biologists, Marsh interpreted their technical investigations against the background of history. By the adept employment of historical materials, Marsh gave meaning and explanation to the variety of ways in which man has used and misused his resource base.

Tremendous changes have occurred since Marsh's study was published. Gordon Dodds's paper is a welcome addition to the history of American conservation. But many other aspects of the modification and transformation of the biotic environment must be investigated before the account can be brought to date.