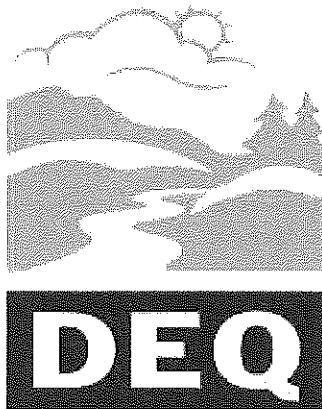


**OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 10/21/2005**



**State of Oregon
Department of
Environmental
Quality**

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1 MARK REEVE: Are there any
2 comments. Thanks very much. It sounds like you've
3 all been very involved in helping. It's very
4 beneficial to the state. I know Kevin, you know
5 we've worked for a number of years on your project.

6 END: TAPE 1, SIDE A FROM 51 THRU 484

7 START: TAPE 6, SIDE A FROM 183 TO END OF TAPE

8 MARK REEVE: Were there any final
9 questions for [inaudible]?

10 (Inaudible discussion)

11 MARK REEVE: Okay, well, now we'll
12 move to Agenda Item H and the public forum. I'll
13 remind members of the public that this is the time to
14 address the commission on any matter that is not on
15 our regular agenda, and all we ask is that you fill
16 out a sheet saying that you'd like to talk to us and
17 give it to our assistant Kat. And then we'll take
18 you - well, basically, in the order signed up. I'll
19 be happy to listen to anything you'd like to address
20 with us. I'll start with Kathryn Benada. Welcome.

21 KATHRYN BENADA: Chair Reeves,
22 members of the Environmental Quality Commission, for
23 the record I'm Kathryn Benada, the governmental
24 affairs manager in the Northwest [inaudible] Paper
25 association. But [inaudible] association that

1 represents the interest of the [inaudible] paper
2 industry in Oregon, Washington, and Idaho on
3 environmental and energy issues. [Inaudible] someone
4 who you knew I wanted to speak to you today about
5 some of the things that NWPTA, as we call it
6 [inaudible], does and is involved in my personal
7 actions that I do on behalf of the members of
8 Northwest Portland Paper. And [inaudible] items of
9 interest that we're currently working on are supposed
10 to be further involved in the future. And the NWPTA
11 represents nine mills that are [inaudible] and are
12 paper mills. That can be integrated facilities, bulk
13 making facilities, newsprint [inaudible] facilities in
14 the state. We've been doing this since the 1940's.
15 We were formed to actually help the [inaudible]
16 Willamette River work on cleaning up the river during
17 the era of the 40's, back when we didn't have primary
18 and secondary treatment. We did things differently
19 then. We did things we wouldn't dream of doing now.
20 But we've changed and the world has changed with us.
21 We are organized of committees and task forces that
22 address issues [inaudible] side of our association,
23 including technical issues, governmental affairs
24 issues, communications issues, [inaudible] lawyer
25 [inaudible] commissioners, and board of trustees that

1 manages the fiduciary affairs of our association.
2 Personally my work for the association for the last
3 decade, I did governmental affairs work in Salem
4 during the legislature but I also sent out a lot of
5 DEQ advisory committees, including issues of air,
6 hazardous waste and water. Recently some of the work
7 that I participated in has been the Blue Ribbon
8 Committee, and [inaudible] of working down in Salem to
9 help pass [inaudible] 45 working on the Willamette
10 River [inaudible] council, working on also triennial
11 review. And as a member of a policy advisory
12 committee on triennial review, we started meeting in
13 December of 1999 [inaudible] 2003, and I participated
14 in every one of those meetings except one, and
15 represented our views. On that particular issue the
16 association has always [inaudible] as 17.5 grand per
17 day fish consumption level for the human health
18 [inaudible] water quality standards. We supported
19 that during the process and continue to support that
20 now. We understand that that has been controversial
21 after [inaudible] by yourself [inaudible] EPA. We
22 understand the commitment has been made to review that
23 in 2008. In the time period between now and 2008
24 and 2008 onward, we would ask that we be considered a
25 stakeholder in the conversations to work on that

1 issue, as it does have a very big topic of interest
2 for us, because the water quality standards do affect
3 the work we do, because they are put into our water
4 quality [inaudible] permit. But we remain very
5 interested in that and we will perhaps come back to
6 talk to you about that in the future and bring you
7 third party work that we might contract [inaudible]
8 doing this process. But we would like to be involved
9 absolutely all aspects of that as we go forwards.
10 The second type of things we do is we listen to
11 concerns and the industry across the states. Because
12 we are a large industrial manufacturer, we are one of
13 the state's largest manufacturing industrial sectors.
14 We do have an environmental footprint. There are
15 concerns with that. And for [inaudible] one of the
16 things I did on my Tuesday night was I went over to
17 Toledo to the Newport area and listened to a public
18 hearing about concerns in the community, about the
19 re-issuance of the air and water comment in Toledo.
20 And when I do something like that, I take [inaudible]
21 notes here in my notebook, take it back and report it
22 to the rest of the companies. I kind of work as
23 an information conduit to make sure that we all
24 understand the concern in the community around us.
25 Another issue that we've been strongly involved in is

1 the mixing zone issue, and people's concerns with the
2 mixing zone issue. And we will continue to work on
3 that as the path goes forward, both from the
4 regulatory arena and the legislative arena. Working
5 to find solutions that will be a benefit it everyone.
6 That kind of summarizes the type of things we do, and
7 [inaudible] sitting out in the audience as we go
8 through working on these types of things. But we
9 always try to bring science and data to the table,
10 and that's one of the strengths of our association is
11 the ability to bring that to the table to help sound
12 and reasonable decisions when they are - when you're
13 looking at policy aspects. And the [inaudible] about
14 the environmental issues that face us in the
15 regulatory arenas at some point and help to make
16 policy decision based on what they do have.
17 [Inaudible] but one thing that we do is help collect
18 them [inaudible] research scientists [inaudible]
19 engineers [inaudible]. We definitely run our
20 facilities based on science through engineering
21 [inaudible]. Thank you for you time today.

22 MARK REEVE: Any questions?
23 Kathryn, before you go I have one questions for you
24 that came up just in thinking about the 2008 review.
25 And that is, [inaudible] the NWPTA - would they

1 likely be supportive of an effort to have the fish
2 consumption rate looked at regionally instead of just
3 state by state? Would you try to - would you want
4 to involved Washington and Idaho and EPA?

5 KATHRYN BENADA: Chair Reeve,
6 members of the commission, we haven't actually thought
7 about that. We [inaudible] regional process to
8 fulfill [inaudible] chemical water quality standard
9 [inaudible]. We haven't had further internal
10 discussion upon that, but I - I could offer this
11 added information. If you're looking at a state, and
12 a state has diverse populations of [inaudible]
13 populations, and people who have different concerns it
14 might be best to look at a state level rather than -
15 to be able to address [inaudible] concerns that reside
16 there because of [inaudible] places. One thing during
17 the triennial review process when we address this
18 issue and we were trying to struggle with what to do
19 is we [inaudible] with Judge Haggerty's decision on
20 the lawsuit on the temperature water quality standard,
21 because of where and when - knowing when and where
22 different native species were consumed was a problem.
23 And we felt [inaudible] by that in the [inaudible].

24 UNIDENTIFIED SPEAKER: Okay. One
25 of the things that came up when we looked at the

1 fish consumption rate issue was if you start to look
2 - or try to look at rates for a particular geographic
3 areas, many of the controversial or ones that have
4 generated the most interest so far includes
5 [inaudible]. One of our concerns [inaudible] whether
6 kind of one standard on one side of the river and a
7 different standard on the other side of the river.
8 And I imagine that that would be of concern to the
9 NWPTA as well.

10 UNIDENTIFIED SPEAKER: Chair Reeves,
11 Members of the commission, those issues are of
12 interest to us, but the most conservative [inaudible]
13 standard [inaudible] water quality [inaudible].

14 UNIDENTIFIED SPEAKER: And Mr.
15 Chair, just a point of clarification, assuming EPA
16 approves your standards by the end of January, then
17 Oregon - correct me if I'm wrong [inaudible], will
18 [inaudible].

19 MARK REEVE: Right. Thanks. Our
20 next [inaudible] is Mark Riscodall. Welcome.

21 MARK RISCODALL: [inaudible] Mark
22 Riscodall and I'm the Executive Director at Northwest
23 [inaudible] based at Lewis and Clark Law School here
24 in Portland. I appreciate this opportunity to testify
25 and I want to touch briefly in the limited time that

1 I have available two important issues. First, I made
2 copies for you of a scaling editorial from daily
3 historians early this week [inaudible]. The title is,
4 "A dark day at Oregon DEQ" I'd argue that, "Oregon
5 [inaudible] for going above and beyond national
6 standards is showing signs of serious decline and
7 [inaudible] called to action for DEQ. The governor
8 and the state legislature can do better at protecting
9 Oregon's water quality." I hope this editorial
10 reflects [inaudible] statewide that when it comes to
11 environmental protection this government is failing
12 Oregonians [inaudible]. No more are these failures
13 more apparent than [inaudible] than Oregon DEQ
14 [inaudible]. [Inaudible] really great people
15 [inaudible] right place, working diligently to ensure
16 that DEQ's policies are consistent with basic
17 scientific and legal [inaudible]. But when push comes
18 to shove, science and law tend to take a back seat
19 [inaudible]. This is simply not the Oregon way or
20 using effective [inaudible]. To cohort [inaudible]
21 have reached a critical juncture. Many of [inaudible]
22 considerable time, energy, and effort in building
23 relationships with agency managers, such [inaudible]
24 Shroder, hoping against those. That by diligently
25 commenting on agency [inaudible] and rules and

1 collaboratively elevating our concerns to agency
2 management when those orders and rules [inaudible]
3 departments, this agency will do the right thing. I
4 would step up and adhere to its [inaudible] and be
5 a leader and protecting the quality of Oregon
6 environment. I can't begin to tell you how
7 frustrating it is to see the agency talk about
8 [inaudible] law and its own rules, in blatant
9 disregard of the expense of the environment.
10 [Inaudible] example [inaudible] dollar and [inaudible]
11 agency resources. Last year any [inaudible] agreed to
12 settle a lawsuit [inaudible] large [inaudible] river.
13 [inaudible sentences]. [Inaudible] to follow the
14 [inaudible] revision of the [inaudible] and other
15 protective industrial [inaudible] permits. Although,
16 the initial [inaudible] by the industry [inaudible]
17 permit [inaudible] unnecessarily lengthy. [Inaudible]
18 spirit of compromise, we [inaudible]. Well after the
19 agreement was signed by both sides we were contacted
20 by the agency and again had the courtesy to extend
21 that [inaudible] until your December [inaudible].
22 Unfortunately, the agency is no where near
23 [inaudible]. [inaudible] formally notify the agency
24 that it has reached a settlement agreement [inaudible]
25 river. The failure of the agency to fulfill

1 pre-existing legal obligations [inaudible] further
2 legal liability are a waste of time, energy, and
3 resources, etcetera. With respect to the air program,
4 which [inaudible] work for years [inaudible] community,
5 but [inaudible]. I also wish to relate to you the
6 dynamic of public hearings on the [inaudible].
7 [inaudible] company the go ahead to give construction
8 on a new [inaudible] manufacturing [inaudible] DEQ
9 misinformed the public concerning the [inaudible] of
10 the ozone [inaudible] greenhouse staffs, a company
11 [inaudible], and has stepped past the reviews to
12 require the companies to submit and make publicly
13 available a mission state [inaudible] even though the
14 [inaudible] requires the commission to see it. The
15 result; company [inaudible] proprietary date,
16 proprietary [inaudible], no omission controls were
17 required, no omissions testing, monitoring or reporting
18 was required, and no one will ever know how much
19 [inaudible] manufacturers will be released from this
20 plant to the environment. Companies have already made
21 [inaudible] throughout the year [inaudible] Oregon DEQ
22 [inaudible]. Although agency has worked for early
23 misjudgment in permit process by holding additional
24 public meetings and engaging in outreach with the
25 local neighborhood, it's been clear to everyone who

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1 has watched the process [inaudible] that it was simply
2 [inaudible] formality. The agency [inaudible] the
3 audacity to develop [inaudible] for early public
4 hearings [inaudible]. [inaudible] because the company
5 might hear something from the public that [inaudible]
6 implement voluntarily. And two, simply because the
7 agency was required to do so by its [inaudible]
8 rules. Concerns that [inaudible] public process
9 forums as well as those of us who do it over, and
10 over, and over again, you have [inaudible] walked away
11 from the process [inaudible] formality [inaudible].
12 This must change. There's a crisis of leadership
13 within Oregon DEQ. It's time to move beyond the deer
14 and the headlights [inaudible] back and see his
15 [inaudible] road. Both [inaudible] have been told by
16 departing managers [inaudible] agency in order to
17 ensure [inaudible]. Although we certainly [inaudible]
18 to keep doing so, both state and potentially federal
19 court there's got to be a better way. Both
20 [inaudible] agency and [inaudible] capacity, skills,
21 and the magic to play a [inaudible] reform process.
22 Thanks for your time.

23 *Judy* MARK REEVE: Thank you. Questions?

24 UNIDENTIFIED SPEAKER: Mark, right?

25 MARK RISCODALL: Yeah.

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1 UNIDENTIFIED SPEAKER: Could you
2 furnish me a copy of your remarks [inaudible]? And
3 also [inaudible] can you tell me - I was just looking
4 at this article in the Daily Historian and it talks
5 here about [inaudible] Senator Ringo asking about, you
6 know, [inaudible] mapping of the [inaudible] and
7 whoever testified that they were almost done, and then
8 last month saying [inaudible]. [Inaudible sentence].

9 UNIDENTIFIED SPEAKER: Commissioner
10 [inaudible], there is more to the story and if Lori's
11 still here, Lori [inaudible] our administrator I think
12 could come to the table and give us an [inaudible].

13 UNIDENTIFIED SPEAKER: [inaudible]
14 about [inaudible].

15 UNIDENTIFIED SPEAKER: Right. No,
16 I appreciate that. And as you may or may not know,
17 this was a follow on to a similar article that was
18 in Willamette Reader.

19 UNIDENTIFIED SPEAKER: Lori, do you
20 want to -

21 UNIDENTIFIED SPEAKER: [inaudible]
22 couple words [inaudible] -

23 UNIDENTIFIED SPEAKER: Yeah, I'd
24 like to -

25 UNIDENTIFIED SPEAKER: I'd also

1 like to comment [inaudible].

2 (Inaudible discussion)

3 UNIDENTIFIED SPEAKER: [inaudible] *Lauri?*
4 and I'm [inaudible] article [inaudible]. Just a
5 little bit of background that might [inaudible]. The
6 mixing zones are something that are allowed by
7 [inaudible] and the way [inaudible] analysis that make
8 sure they're not [inaudible]. There was a legislation
9 used in the 2005 session that would have banned them,
10 phased them out. And there were several [inaudible].
11 It unfortunately became very [inaudible]. I was not
12 present at the hearing when this discussion took
13 place. I have [inaudible] find out exactly what was
14 said [inaudible] view that so you [inaudible]. My
15 understanding it was [inaudible] started. I also know
16 that it's a very complicated questions [inaudible] two
17 meetings with environmental organization [inaudible].
18 At the last meeting we talked about the [inaudible]
19 to do that [inaudible] accurately. Because one of
20 the things that we want to make sure [inaudible] do
21 something is facts with, you know, facts [inaudible].
22 And so we discussed briefly [inaudible] that there are
23 some organizations that [inaudible] information. And
24 my thought, which I did offer to [inaudible], was to
25 try and get together [inaudible] and [inaudible] talk

1 about this issue and make sure we're getting good
2 data [inaudible] concerns, figure out what might be
3 possible [inaudible]. My ideal would be [inaudible]
4 collaborative approach to doing this [inaudible].

5 UNIDENTIFIED SPEAKER: I would like
6 to make a comment. [inaudible] community for
7 [inaudible] that one paragraph alone. It does talk
8 about [inaudible] so I would [inaudible] that someone
9 do listen to the tape and see what was said
10 [inaudible]. [inaudible sentence].

11 UNIDENTIFIED SPEAKER: Well,
12 commissioner Urballau, one you can state on that point
13 is I mentioned this dialogue started with an article
14 in Willamette Week and then was picked up by the
15 Daily Historian and they wrote an editorial. And we
16 will be responding. There's always the questions and
17 let me just say, kind of equivocally, that I do not
18 agree with what was in the Willamette Week article,
19 or with what was stated in the Daily Historian, and I
20 do not believe it is accurate. With that said, we
21 always shave - when we - whether they're positive or
22 negative commentary, about what the department does we
23 have to weight whether or not we're going to respond.
24 And sometimes we do and sometimes we don't. And so
25 we're discussing that right now and how we do in fact

1 get what we [inaudible] accurate [inaudible].

2 UNIDENTIFIED SPEAKER: [inaudible]
3 respond to that [inaudible] but this particular
4 [inaudible] southern Oregon [inaudible]. You know,
5 there's a large [inaudible].

6 UNIDENTIFIED SPEAKER: [inaudible *Mark?*]
7 sentence]. [inaudible] or Oregon State's website and
8 what [inaudible] said [inaudible]. [Inaudible
9 sentence]. [Inaudible] she said, "I'm almost done."
10 She reiterated by saying [inaudible] she reiterated by
11 saying [inaudible]. And so it set up a public
12 dynamic where it was [inaudible]. She followed up by
13 saying, "I got [inaudible] worked very hard on it."

14 UNIDENTIFIED SPEAKER: [inaudible]
15 online or [inaudible] copy.

16 MARK REEVE: Thank you. Next,
17 we'll hear from Brent Foster.

18 BRENT FOSTER: Good afternoon,
19 Chair Reeves, and members of the commission. I
20 appreciate the opportunity to speak with you today.
21 I think that [inaudible] my personal frustrations, but
22 [inaudible] frustration to the broader environmental
23 community. I've been working with DEQ - I want to
24 start out by saying that I really want to emphasize
25 there are [inaudible] people of high caliber with high

1 moral ethics, and a real dedication to doing the
2 right thing. So [inaudible] see as [inaudible] crisis
3 of policy. Time and time again where there is a
4 questions and DEQ has to decide which side of the
5 questions they're going to come down on the side
6 [inaudible] water quality or air quality, or on the
7 side of industrial [inaudible] not on the side of
8 water quality, not on the side of what I consider to
9 be the public interest. And that's [inaudible] it no
10 longer makes sense for me to sit down with DEQ in a
11 collaborative working group, such as Lori was
12 describing, because [inaudible] don't have the
13 resources. I cannot sit on five, or six, or seven
14 different committees because I have 20 other thing to
15 do. There are only a few of us who have the
16 ability to work with department workers and time and
17 time again [inaudible] whether it's the storm water
18 control group. In my opinion [inaudible] so for me
19 to sit there and deal with them and try to get what
20 we ask for, in terms of [inaudible] and what was
21 committed here by the former environmental quality
22 director, was essentially a map [inaudible] let us
23 know if there are toxic [inaudible], which there are,
24 [inaudible] discharger has them, where are they? What
25 is being discharged into them? And how much? Those

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1 are three simple questions. Where are they? How
2 much is being discharged into them? And what is
3 discharged into them? And those are three questions
4 DEQ cannot answer for you. They are allowing the
5 discharge of toxic levels of toxic [inaudible] like
6 mercury, like cyanide, like [inaudible] all on down
7 the line. [inaudible] toxic concentrations. Not
8 concentrations that I say are toxic. These are
9 concentrations that exceed the state's own [inaudible]
10 standards. At the very least, the state should know
11 where. This is not rocket scientist [inaudible].
12 When every NPDS permit gets submitted it comes along
13 with a form. It's concentrations of at least one
14 sample required by [inaudible]. It will tell you how
15 much led, [inaudible] sample [inaudible] because these
16 [inaudible] does not require monitoring [inaudible]
17 even when they know the properties [inaudible].
18 [inaudible] frustration, which as led me to, I think,
19 my current [inaudible]. I hope that this committee
20 will help. We look to you frankly because we're out
21 of [inaudible]. We ask, for an example, that when
22 you're allowing that discharger to discharge
23 [inaudible] over the state water quality standard,
24 into the Willamette River [inaudible], into a river
25 that's already got so much mercury in it [inaudible]

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1 rest of sentence]. [inaudible] determine how much
2 mercury they're putting in? The answer, no, we're
3 not going to require that. That's clearly what
4 [inaudible] no cost to you to process that data.
5 They can just leave it in their folder, except DEQ
6 said, "No, we're not going to require it." Is it a
7 big burden on industry? Heck, no. You know,
8 [inaudible] more data [inaudible] well, unfortunate
9 [inaudible] events. We agree with [inaudible] and for
10 \$30 to \$50 and a few hundred dollars you could get
11 data on a lot of that [inaudible]. [inaudible] real
12 problem. The second big issue and it's gonna come up
13 for you so I wanted to address it indirectly is DEQ's
14 recent announcement, as of Wednesday, that they are
15 going to radically begin the water quality
16 [inaudible]. Okay? It's important [inaudible] only a
17 few pages. Unfortunately, you'll have to forgive the
18 typos in this, but really this is fresh off the
19 presses this morning. [Inaudible] what I've just
20 prepared for you is a little summary of it. Go
21 online, you can see the standard. In short, what
22 they're proposing to do is add a mixing zone, for the
23 first time, into the water clarity standards. Our
24 water clarity standard right now says, "No more than
25 a 10% increase compared to natural background." And

1 that's at the point - unless there's a mixing zone,
2 that's at the point where the pollution meets the
3 water. What DEQ has done now over our objection and
4 [inaudible] Northwest [inaudible] Paper Association
5 [inaudible] can't be true. Northwest [inaudible]
6 Paper could not have paid to rewrite the very
7 standard which they identified as one of their major
8 problems. Yes, they did. They signed a contract
9 with DEQ and it's in the record, I'll give you a
10 records number, for \$120,000. Now, certainly I'm not
11 gonna say that DEQ didn't exercise any [inaudible],
12 but it's clear Northwest [inaudible] Paper [inaudible]
13 current standard [inaudible]. They paid DEQ a big
14 contract for \$120,000, now the standard's been
15 radically [inaudible]. When I actually calculated
16 just in a test phase how much weaker it would be, I
17 reached the incredible conclusion that actually -
18 whereas if you were discharging into a current stream
19 would skip [inaudible] 1 NTU's [inaudible] water
20 clarity turbidity. 1 NTU - today [inaudible]
21 discharge would make that stream 1.1 NTU's [inaudible]
22 increase. Under the new standard, if that stream
23 [inaudible] 200 foot [inaudible] say, the Willamette
24 or the Columbia, just assuming [inaudible] 1 NTU.
25 First off, [inaudible] 300 foot mixing [inaudible].

1 DEQ said, "We're not even gonna look at what's
 2 happening under the first 300 feet of a [inaudible]
 3 discharge into the water [inaudible]. Never mind what
 4 fish are there. Never mind who fishes in it. Never
 5 mind who swims in it. Never mind anything that goes
 6 on in that 300 foot area, which is the generally
 7 philosophy behind [inaudible]. We're only going to be
 8 concerned about what's happening at the end of that
 9 300-foot [inaudible]. Well, even at the end of that
 10 300-foot park, under the current standard, you could
 11 go to 1.1 NTU's. Under the proposed standard, if
 12 it's any -- [inaudible] river [inaudible] 0 or 33
 13 NTU, right off the bat you've got 5 NTU national
 14 increase. So instead of having 1.1 NTU, even at the
 15 outside of this big mixing [inaudible] you get 6
 16 NTU's, okay? That's a pretty significant increase -
 17 about 500% [inaudible]. So then consider what's -
 18 how does that 300 foot mixing zone play in? That's
 19 when you really get the amazing - just the magnitude
 20 of the [inaudible] DEQ is now proposing. Typically,
 21 when you're looking at mixing zones, the big question
 22 is pollution [inaudible]? How much pollution do you
 23 get [inaudible] hits the water through the outside of
 24 the mixing zone? Now, we can play with numbers, but
 25 I'll tell you that a 50 to 1 pollution ratio for a

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1 300 foot area or stream like the Willamette is
2 extremely [inaudible]. For blue [inaudible] it's more
3 like 80 or 60. It's certainly above 50. If you
4 assumed that [inaudible] 50 [inaudible] ratio, this
5 proposed rule would mean that you could discharge 300
6 NTU's down the pipe. 300 NTU's in the pipe. Now,
7 this is 300 NTU at the pipe, and obviously that
8 dilutes as you go down the stream. But when you
9 consider that DEQ's own [inaudible] for this said that
10 we could see real effects on trout and species like
11 trout as low as 10 NTU. Do you realize that this
12 isn't just a theory. It's not just a problem of a
13 weakening in the standards that isn't gonna have an
14 effect. It's something that's gonna have an effect
15 on fish. Whether you eat fish, whether you simply
16 like to know that there are fish there. [Inaudible]
17 somebody like to look at a clear river. The picture
18 that's on the front cover there is something that
19 right now, under the current standard, would be
20 totally illegal. It would violate the 1.1 NTU
21 standard. Under the proposed standard, that would be
22 perfectly legal because you wouldn't be looking at
23 [inaudible] water. You'd have to go down 50, 100,
24 probably about 300 feet [inaudible]. To me, this is
25 symbolic of a [inaudible] a flawed perspective

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1 [inaudible] why is the standard being [inaudible]
2 pollutant. Hard to look at [inaudible] Willamette or
3 the Columbia or any other river and think that the
4 rivers are too clear right now, or that we have room
5 to make them dirtier. With that, I would invite you -
6 I wanted to let you understand - certainly the
7 articles that were in the Historian and I can tell
8 you from - because I was at that [inaudible] hearing -
9 when Ally Shroder did explain very clearly and
10 explicitly that they were very close to finishing this
11 out. And at that time I did not think that she
12 was. And I think that there's a very simple course
13 of action. We know that [inaudible] let alone
14 [inaudible] DEQ representative [inaudible]. It's
15 serious. We can move on from it. But if you - we
16 will forward you the transcript where the testimony's
17 very clear [inaudible]. You can listen to it and
18 [inaudible] it. I think the proper course of action
19 is for either the director or DEQ [inaudible]. I
20 apologize to the senate environment committee
21 [inaudible]. I think though, just to put it in
22 context, this is not a dollar issue. Okay? They
23 want to [inaudible] this as a dollar issue. Right
24 now, Oregon DEQ has a proposal by a private
25 contractor to prepare. What we said as a reasonable

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1 base [inaudible] let's just start with the major
2 entities on the Columbia and Willamette. That's only
3 about 20 of them. And I don't know the precise
4 numbers but [inaudible] GIS [inaudible] and do all the
5 [inaudible] assessment on the \$15,000. Now, \$15,000
6 is not a small amount of money, except that DEQ just
7 received a \$75,000 grant [inaudible]. This money
8 could be used to support this less than \$15,000
9 study, and you would have made progress. And this is
10 what we said during our meetings to DEQ [inaudible]
11 me to be so frustrated. You don't need to do it
12 all now. Just make some progress. We don't want to
13 sit down and [inaudible] some negotiation [inaudible]
14 polluting industry [inaudible] run up around the clock
15 for a month. This is the information [inaudible]
16 public. I'm gonna wrap it up [inaudible] questions
17 that you may have. I appreciate your time. END:
18 TAPE 6, SIDE A FROM 183 TO END START:
19 TAPE 7, SIDE B FROM 0 TO END OF TAPE

20 UNIDENTIFIED SPEAKER: -- our
21 relationship [inaudible] for the work that they do,
22 but I do think now [inaudible] great time. Hopefully
23 for the commission to exercise some due authority and
24 hopefully encourage and realize that this [inaudible]
25 and we're certainly going to do our best to work on

1 those issues as well. But I think that - there's a
2 real opportunity for these views to change its focus
3 and [inaudible] proposed water [inaudible].

4 MARK REEVE: Questions? I had a
5 couple for them. One is these proposed rules on
6 turbidity. I take it - it seems like they just came
7 out a couple days ago of proposed - was there a
8 rules advisory committee involved in this?

9 UNIDENTIFIED SPEAKER: There was
10 not a rules advisory committee. There were several
11 meetings. We [inaudible] several incarnations of this
12 over the last few years and from the very start we
13 said [inaudible]. Yet it's the first time it's ever
14 been done in Oregon. We've just come through with
15 this breezing session where most people think that
16 water quality is [inaudible] pipe. Most people just
17 learned [inaudible] standard [inaudible] without limit.
18 [Inaudible] and there is not standard [inaudible].
19 So, we just [inaudible] doing the water quality when
20 we're already doing the water clarity, and we're
21 already doing the [inaudible] backwards. Creating
22 zones in an unregulated pollutions. And it's not
23 allowed [inaudible] it is not - anywhere [inaudible].
24 They contract [inaudible] they are less acknowledged
25 than [inaudible] regulations [inaudible] water.

1 [Inaudible] statute which said we want to end all
2 water pollution by 1985 [inaudible], okay? But if
3 anyone ever tells us I'm too radical I would say,
4 "Well, look at the [inaudible] white guys in 1972
5 that say we had to end all water pollution by 1985."
6 I'm just saying that you should [inaudible]
7 concentration [inaudible].

8 UNIDENTIFIED SPEAKER: Okay, so
9 these - this proposal is out there for public comment
10 at this point. And when is the schedule for when it
11 would potentially come to the commission?

12 UNIDENTIFIED SPEAKER: [inaudible]
13 hearing set for November 29th. I think that public
14 comment hearings [inaudible].

15 MARK REEVE: Well, I'm not - I
16 don't care about exact dates, but roughly December -
17 timeframe?

18 UNIDENTIFIED SPEAKER: I think that
19 it would probably go back to DEQ, and probably be
20 later than December before it comes to [inaudible].

21 MARK REEVE: Okay, thank you.
22 Next we'll hear from Jay Christian Lanam (Phonetic).
23 Welcome.

24 JAY CHRISTIAN LANAM: Thank you
25 very much for [inaudible] and allowing this public

1 forum. [Inaudible] my name's Dr. Jay Christian Lanam.
2 I'm a psycho biologist. One of my specialties is the
3 effect [inaudible] on the brain and the nervous
4 system. But actually I'm here today as a resident of
5 Lincoln County. I have a home about seven miles down
6 river on the - I believe [inaudible] Oregon City. We
7 have some problems that I'd like to make you aware
8 of. First of all, the [inaudible] in Lincoln County
9 are quite disproportionate. We have - out of the 36
10 counties in Oregon Lincoln County is third in the
11 overall cancer death rate. It's seventh in the
12 overall rate of cancer. It's number one in the
13 [inaudible] of deaths from malignant brain cancer,
14 first in death rate from malignant melanoma. Second
15 in incidents of cervical cancer and so on down the
16 line. Out of nine kinds of cancer only one does not
17 list Lincoln County in the top ten, in terms of
18 mortality. According to the World Health
19 Organization, 80% of all cancers are environmentally
20 [inaudible] influenced. And [inaudible] Samuel
21 [inaudible] in Chicago [inaudible] 95%. When we look
22 at the top [inaudible] states in the area as being
23 [inaudible] Lincoln County is right among this 10%
24 [inaudible] of all the counties in the United States
25 for it. Air releases a recognized [inaudible]. We

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1 are, at this point, we only have one industry that's
2 putting out large amounts of pollution and this is
3 the [inaudible] Mill. It is the only time
4 [inaudible] industry in Lincoln County. Actually they
5 are putting out about 15 million pounds of [inaudible]
6 into the air per year. And right now there are no
7 [inaudible] up for renewal in the next five years. I
8 wanted to come here to speak to you today because at
9 this point it's not absolutely [inaudible] on this.
10 [Inaudible] have a water quality permit that was up
11 for renewal, which has already essentially been
12 approved. [Inaudible] citizens concern and outrage
13 basically [inaudible] new comment period that has been
14 reopened. And [inaudible] taking place shortly. Just
15 a little bit about this particular mill; there is no
16 independent monitoring other than by contractors that
17 [inaudible]. They do their own monitoring. There's
18 only one site to directly [inaudible] quality. Most
19 of the permit is based on modeling data for air
20 quality, other than direct measurement. We think the
21 conditions need to actually be measured on the ground.
22 The things that are being measured - the one side is
23 on the hill. And this is an area [inaudible] fog,
24 and in fact our weather conditions are a little bit
25 like Los Angeles, because we have the cool, coastal

1 air coming in contact with air from the warmer
2 interior and that sometimes [inaudible] in a blanket
3 [inaudible] toxins there. So not only do we think
4 they need to be measured on the ground, we think they
5 need to be measured in the valley where there is a
6 lot of these smog- generating conditions. Second,
7 there are no real direct studies of health [inaudible]
8 statistics of the cancer registry, things of this
9 sort, but nobody has done any studies related to the
10 health of people in various distances that they live
11 from the mill. We know that the chemicals in the
12 air result in combinations that are often quite
13 different from what's actually release. These are not
14 always in the standards. The health effects, of
15 course, are not predictable either and people will
16 often say, "Well, it's very difficult to prove what
17 causes cancer," cuz there are multiple conditions. But
18 when we have these kinds of statistics it certainly
19 makes it suspect and we think that there certainly
20 needs to be some kind of precaution exercised here.
21 Actually, the Georgia Pacific Corporation is second in
22 the top 100 air polluters in the United States. This
23 is a local example of a corporate giant and it's
24 actually [inaudible]. I guess that's obvious
25 [inaudible] industry. It's not necessary that they be

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1 this high. Weyerhaeuser, which is actually the number
2 one sized paper and [inaudible] timber company in the
3 world is fifteenth in their toxic conditions in the
4 air. So there's a lot that can be done. I wanted
5 to take just an example of one thing. One of the
6 permitted pollutants in demand; we know that lead is
7 a health risk at all sorts of levels, but it's not
8 just the direct health risk of lead itself, but
9 actually any heavy metal will compromise the blood
10 [inaudible] and allow other chemicals into the brain
11 that shouldn't be there. I was just hearing about
12 fish mercury, of course this is also a coastal area
13 where there's quite a bit of fish consumption. And
14 if you're considering whether to look at state's
15 levels of these or local conditions, I would say that
16 it's very important to look at local conditions. How
17 does the fish consumption and what's going into the
18 water interact [inaudible] our bodies with what the
19 air in fact does? We want this planet to modernize
20 its pollution controls. We [inaudible] before they
21 continue to operate. WE want direct monitoring of
22 the air quality and we want direct health studies,
23 not [inaudible] across the county. We are learning
24 all the time more about how toxins- reducing
25 [inaudible] cause autism, attention deficit,

1 hyperactivity disorder, and asthma. Some things are
2 simply too precious to lose, our health and the
3 health of our children are definitely something that
4 falls in this category. Thank you very much.

5 MARK REEVE: Thank you. Thanks
6 very much. Next we'll hear from Gretta [inaudible].

7 GRETТА: [inaudible]. First, I'd
8 like to leave this [inaudible]. I'm a [inaudible
9 sentences]. [Inaudible] cancer every night and day by
10 my pollution. My [inaudible sentences]. [Inaudible].
11 There are many homes on this lane [inaudible]. My
12 main mission [inaudible] cancer [inaudible] some form.
13 [Inaudible sentence]. [Inaudible] number of patients
14 [inaudible]. I've lived in my home for 27 years.
15 I'm deeply disturbed by what I can see [inaudible].
16 ongoing attempts to conceal and downplay the toxic
17 pollutants coming from the [inaudible] mill. Please
18 do not allow an increase of air pollution [inaudible].
19 Too many people are all ready dying. Let's all work
20 together to fight [inaudible] a way for the mill and
21 the community to coexist [inaudible] new technology
22 exists to solve the problem [inaudible]. Let's look at
23 greatly reducing, not increasing the toxins
24 [inaudible]. [Inaudible] and for myself, it's not
25 okay that I and many others wake up at 3 a.m.

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1 [inaudible]. [Inaudible sentences]. I wouldn't have
2 moved here if I'd known [inaudible]. [Inaudible
3 sentences]. [Inaudible] technology [inaudible]
4 especially [inaudible]. [inaudible sentences]. And
5 as for the corporation of the United States
6 [inaudible] and our air and water [inaudible]. And
7 lastly, it is our [inaudible] right to [inaudible].
8 Thank you very much.

9 MARK REEVE: Thank you. Lastly,
10 we'll hear from Brett Dandin [inaudible]. I'm not
11 sure if I got your last name correct, Brett.
12 Welcome.

13 BRETT: Okay, [inaudible] my name
14 is Brett [inaudible] and I'm here to talk to you
15 today about the proposed [inaudible] standards
16 [inaudible]. I will be brief cuz [inaudible] went
17 over some of the details. I got a couple of emails
18 yesterday telling me about the standard [inaudible] I
19 didn't want to read it. This - going through these
20 [inaudible] isn't always the most exciting thing to
21 do. But as I - it's only three pages so I've
22 provided it for you and I want to go over just a
23 few of the - what I consider the most radical
24 changes.

25 UNIDENTIFIED SPEAKER: Do you have

1 another copy?

2 BRETT: I do, but - I realize
3 [inaudible] draft rule of getting this out to the
4 commission in its early stages. I hope [inaudible]
5 comments will be effective. On the cover, briefly is
6 a chart that is not [inaudible] specific or not any
7 specific water body or even any specific [inaudible]
8 fish. It's just roughly showing [inaudible] turbidity
9 and time, on the x axis, showing the effects on fish.
10 And I show you these to make a point that certain
11 spikes in turbidity - certain spikes in murky water,
12 cloudy water, perhaps after a rain storm, [inaudible]
13 have a while to deal with that. Long-term spikes
14 [inaudible] long-term changes in the water clarity
15 have a much more profound effect on fish. So if we
16 look at - on the y-axis, say, this is expediential,
17 but between the ten and 100, say, 50 NTU's, which is
18 a unit for turbidity. For a couple of hours it may
19 not effect fish tremendously. When you move into the
20 [inaudible] that's why I'm looking at reduced
21 [inaudible] of long-term [inaudible]. The reason I
22 show that chart is that some of the proposed
23 standards have allowed monthly increases in turbidity
24 at the same rate that current turbidity standards
25 allow for an hour, not even for an hour but for a

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1 second, which I'll get to in a minute. So, I'll
2 just briefly talk about this rule. If you'll turn to
3 the second page, which is at the bottom of this
4 [inaudible] Page 27 of Section - or [inaudible] 41 of
5 the rules. It's - it's the redline version - the
6 red is an addition to the rule, and on the right is
7 where the lead is [inaudible] that big long paragraph.
8 That's the whole standard of - I'm not gonna vent to
9 much about DEQ, because I've only spent about three
10 years looking at these rules. So I don't have the
11 buildup as perhaps some of the earlier people have in
12 experience. And I hope that during my career of
13 looking at these rules that I'll never have to get to
14 that point. But [inaudible] red line [inaudible] so
15 I was looking at these rules and [inaudible] show DEQ
16 did provide the changes in the rule [inaudible]
17 comparing these rules side by side. [Inaudible] red
18 line [inaudible] so the deleted portion says, "No more
19 than 10% increase [inaudible] turbidity." [Inaudible]
20 where it comes out at a pipe. Basically, the old
21 rule says, "Whatever is [inaudible] discharge cannot
22 be more than 10% greater cloudy [inaudible] than
23 [inaudible] the natural background level [inaudible]."
24 That's [inaudible] if you'll turn to the next page,
25 labeled Page 28 here. The third line down says,

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"Maximum turbidity" -

UNIDENTIFIED SPEAKER: I have a question. [Inaudible] portion [inaudible] it says, "However limited duration activities necessary [inaudible] to emergency which would accommodate [inaudible] turbidity and cause [inaudible]." It talks about natural [inaudible sentences].

UNIDENTIFIED SPEAKER: Right, there are seven -

UNIDENTIFIED SPEAKER: Okay, good. So -

UNIDENTIFIED SPEAKER: -- there are [inaudible] emergencies [inaudible]. I'm talking about in a normal day-to-day operation [inaudible].

UNIDENTIFIED SPEAKER: [inaudible] I understood you to say that the red line was what was still needed, and yet on to the right there's this [inaudible] they don't seem to be related. So, are you saying the red line is the new?

UNIDENTIFIED SPEAKER: No, I'm sorry I wasn't clear. The red line in the text is the added part of the rule. And the deleted -

UNIDENTIFIED SPEAKER: The new part? The red line is the new?

UNIDENTIFIED SPEAKER: -- right,

1 the red text.

2 UNIDENTIFIED SPEAKER: Right.

3 UNIDENTIFIED SPEAKER: And the
4 deleted is off in a small box [inaudible] -

5 UNIDENTIFIED SPEAKER: Right.

6 Okay.

7 UNIDENTIFIED SPEAKER: -- okay. So
8 we're working from the old rule of 10% increase at
9 the pipe - 10% increase over the background level is
10 the natural [inaudible] level. Going on to the
11 second page, or Page 28 where the third - the first
12 subsection says, "To [inaudible] turbidity criteria for
13 waters of the state. A; maximum turbidity. The
14 background turbidity is 33 NTU's or less [inaudible] 5
15 NTU's above background." So we've gone from a
16 percent to an actual numeric value. And say if the
17 - if the - if the maximum - or if it was at 33
18 NTUs - if it was that murky, than 10% of that is
19 3.3 increase. So that [inaudible] versus 5 NTU's,
20 which isn't that big of a difference, but if the
21 background is 1 NTU -- that's how murky the water is,
22 then the standard allows five in addition to that and
23 that becomes - the new standard become 6 NTU's, which
24 is a 600% increase over the background level. If you
25 follow the DEQ [inaudible] 0.1 NTU's [inaudible] data

1 to show, so that's the default. If that was the
2 case, the stream had 0.1 NTU, the increase [inaudible]
3 6 would be a 6,000% increase. So these have
4 tremendous, potential impacts to water clarity of
5 Oregon. Moving on to monthly average for turbidity
6 in subsection 2B, about a third of the way down the
7 page and under 2B [inaudible] B, says, "Where
8 background turbidity is greater than 30 NTU's, monthly
9 average turbidity must not exceed 10% of the
10 background." What is that 10% covering in?
11 [Inaudible] time the old standard being it can't be
12 10% [inaudible] the new rule saying it can't - the
13 standard 10% for a month. And moving on to Page 29,
14 second to the last page. So if these increases that
15 I'm talking about - and Brad mentioned this, but I'm
16 going to reiterate it. They occur outside of the
17 [inaudible] rule. So - and in the case of the
18 Willamette, which is greater than 200 feet wide, is
19 600% or 6,000% increase that I'm talking about would
20 only be measured outside 300 [inaudible] in the pipe.
21 So if this is the pipe, the microphone stand,
22 [inaudible] into the rule all the way 300 feet down
23 stream, there's no measurements, there's no
24 requirements, there's no regulation. It could be
25 anything. It could be [inaudible]. [Inaudible] only

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1 measured outside of the safety zone [inaudible]. And
2 last, on Page 29, subsection F, about a third of the
3 way down the page. It says, "The department may
4 establish criteria for limited duration [inaudible]
5 more stringent than the criteria." So this is giving
6 the department the authority - giving DEQ the
7 opportunity to make it more stringent in certain
8 situations. But again, it says, "It may." There's
9 no legal requirement for DEQ to do so. So it may
10 or may not in these situations. There's not
11 mandatory requirement to protect the water clarity in
12 public waterways, waters that are already water body
13 limited, which are the [inaudible] stream of public
14 drinking water intake. There may be other drinking
15 water rules, but as far as this rule for the water
16 quality standards, a stream of red [inaudible]
17 spawning areas, there's no legal requirements for DEQ
18 to protect those areas in between. That's all I
19 have.

20 MARK REEVE: Okay. Thank you. I
21 think that concludes - well, I guess nobody in the
22 audience [inaudible] up. They don't have their slip.
23 I think that concludes the public forum. I'd like to
24 take a very brief break before we take up our last -

25 UNIDENTIFIED SPEAKER: Before we do

1 I'd like to [inaudible].

2 MARK REEVE: Sure, go ahead.

3 UNIDENTIFIED SPEAKER: [inaudible]
4 sentences]. [Inaudible] I don't know the truth of
5 them [inaudible]. [Inaudible] DEQ and I - I'd like
6 to explain that in several areas that bother me more
7 than others. If I understand [inaudible], is that
8 correct?

9 UNIDENTIFIED SPEAKER: I don't know
10 [inaudible].

11 UNIDENTIFIED SPEAKER: Oh, okay.
12 Because if it was and given the issues we've raised,
13 I wonder [inaudible] because [inaudible]. The second
14 thing we've already talked about [inaudible] as far as
15 the [inaudible] article about [inaudible] and what
16 I'm going to say is not directed [inaudible] I would
17 say the same thing. If the river papers funded a
18 study like this [inaudible] I mean, at least I feel
19 that way. When there is funding [inaudible] somebody,
20 and so I'd like to [inaudible]. And then
21 [inaudible].

22 UNIDENTIFIED SPEAKER: Do you have
23 more issues?

24 UNIDENTIFIED SPEAKER: No, I've
25 just pointed out the specific ones. I mean, the

1 gentleman that just spoke on his study [inaudible]
2 changes, and these [inaudible] effects [inaudible].

3 UNIDENTIFIED SPEAKER: That last
4 one, the turbidity rule is out on public notice and
5 is a rule that is in process of coming to you. So
6 you will get - and you will [inaudible] as you
7 recall, by Bob [inaudible]. So you will be -
8 continue to be involved in those discussions.

9 UNIDENTIFIED SPEAKER: Okay, and I
10 understand that that's a public process [inaudible].
11 [Inaudible] looking for is the [inaudible] rule change
12 itself.

13 UNIDENTIFIED SPEAKER: Okay.

14 UNIDENTIFIED SPEAKER: [inaudible]
15 first going back to the Georgia Pacific thing. This
16 is a Title 5 permit. They have to be renewed every
17 five years. It is in the process of public comment
18 right now, so it hasn't been issued. There has been
19 a -

20 UNIDENTIFIED SPEAKER: It's a tad
21 bit more complicated than that. It's a little more
22 complicated than that. Actually, the waterside of the
23 permit was issued. It went out for public comment,
24 public comment was received, but there wasn't
25 objection to the permit. And then the air permit was

1 out and public comment was received on that. And the
2 department heard concerns raised about the water side
3 of the permit during the air process. The department
4 took a relatively unusual step of withdrawing the
5 permit on reconsideration to -- the water permit, to
6 take more testimony. Obviously, they consulted with
7 Georgia Pacific and they didn't object, even though
8 they might have, because they wanted to get a - the
9 department wanted to get a full hearing on the water
10 side. So they're both out on public notice, but
11 technically the water permit did issue, and that's why
12 it's a little bit confusing.

13 UNIDENTIFIED SPEAKER: [inaudible]
14 DEQ did extend the public comment on the air side -

15 UNIDENTIFIED SPEAKER: Yes, as
16 well:

17 UNIDENTIFIED SPEAKER: [inaudible]
18 significant comment [inaudible].

19 UNIDENTIFIED SPEAKER: There's been
20 tremendous effort, I think, to get as much public
21 input as possible on that permit. And -

22 UNIDENTIFIED SPEAKER: [inaudible
23 sentence].

24 UNIDENTIFIED SPEAKER: Would you
25 like - I'm sure that the region has - working on the

1 permit, has a lot of background information on the
2 whole process. Would you like a little packet?

3 UNIDENTIFIED SPEAKER: [inaudible]
4 and if you have any side-by-side [inaudible] old or
5 the new. I'd also like to know why [inaudible]. I
6 think I know a little bit about [inaudible].

7 (Inaudible discussion)

8 UNIDENTIFIED SPEAKER: On the
9 turbidity one - well, there's two issues. One is
10 there's more known about turbidity effects on fish, so
11 there's been an improvement [inaudible]. The second
12 one is trying to clear up this whole monitoring
13 issue, because the fact of the matter is, the way the
14 rule is written, this 10% increase, at low values of
15 turbidity you can't measure. So Oregon has written
16 into its law a rule that, you know, just - that
17 really cannot be measured. So the department is
18 trying to deal with that and get it to a point that
19 we can actually [inaudible] these rules in the
20 streams. Well, for example, if you got 1 NTU and
21 you want to try to see if you now have 1.1, you
22 can't measure that with this new technology. So -
23 and even at 2 you can't. Even at 3 it's
24 questionable. These low NTU units are basically
25 really clear water. And so the idea is to move

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1 toward the standards that you really can know when
2 someone violates it [inaudible] legally approach it.
3 So that's what the department's trying to do. It's
4 not that they're trying to move back on these rules
5 [inaudible].

6 UNIDENTIFIED SPEAKER: All right,
7 commissioner Williamson's correct and I'll just respond
8 [inaudible], in terms at why we looked at the
9 turbidity standards was exactly that. We do, as you
10 heard, in some other discussion about water quality
11 toxins. We generally do a [inaudible] every three
12 years to look at water quality standards that need to
13 be looked at. The turbidity standard had not been
14 looked at for a long time. And as commissioner
15 Williamson said, the way it was written, quite
16 frankly, is basically unimplementable (Phonetic) from a
17 [inaudible]. And at the time, which I think was
18 2002, when the subject came up of looking at the
19 turbidity standards, which was a couple of water
20 quality administrators ago. And I think you're
21 beginning to understand why we go through water
22 quality administrators every two years. The turbidity
23 standard of the - department discussed how to go
24 about it, given the resource constraints. At that
25 time, I think the administrator was Mike Luellen.

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1 And we made - we do have authority given to us by
2 the legislature, which is referred to as Receipts
3 Authority, to enter into contractual arrangements to
4 have some services paid for. It is an authority that
5 we have. We generally use it only in permitting for
6 someone [inaudible] special acceleration of a permit
7 or a special study or something like that, they're
8 allowed to [inaudible] department to do that. We
9 experimented with that on this standard. I will not
10 do it again. You don't learn things unless you
11 experiment and we have experimented and I think you're
12 quite correct, Commission [inaudible], we are now in a
13 box on the turbidity standard, because regardless of
14 what we do, it's going to be considered to have been
15 paid for Northwest [inaudible] Paper. And we need to
16 deal with that as we go forward with the standard.
17 But that's the history and that's why we did that.

18 UNIDENTIFIED SPEAKER: [inaudible]
19 comment wasn't to say [inaudible] --

20 UNIDENTIFIED SPEAKER: Absolutely.
21 No, I don't disagree at all.

22 UNIDENTIFIED SPEAKER: --
23 [inaudible] and I don't care which side [inaudible].

24 UNIDENTIFIED SPEAKER: I agree.

25 UNIDENTIFIED SPEAKER: It's one

1 thing to have the pride [inaudible] do it's own study
2 and bring it to our consideration [inaudible] or
3 anybody else who does it [inaudible].

4 UNIDENTIFIED SPEAKER: No, I
5 absolutely agree with you because the sad fact is,
6 sort of, regardless of the outcome you paint the
7 outcome. And we're not [inaudible] having to deal
8 with that problem, even if the outcome is based on
9 very, very good science. It's gonna be a challenge
10 for us and for you to evaluate when a rule comes to
11 you, you know, whether or not this [inaudible] work.
12 And you should not [inaudible].

13 UNIDENTIFIED SPEAKER: But that is
14 - it's a much broader issue than that. For example,
15 coming down the pipe when this fish consumption study
16 gets back, it's gonna get paid for by the EPA. The
17 citizens of Oregon are probably not gonna pay for
18 this study, EPA is gonna pay for it. And the EPA
19 has already gone on record that they want a bigger
20 number than they have. So is that gonna be a
21 [inaudible] study? Well, a lot of people are gonna
22 say, "Yeah, that's a tainted study, because these guys
23 have a vested interest already." The fact of the
24 matter is that people pay for a lot of things. And
25 I know it doesn't look well or whatever, but you

1 know, it's a bigger issue than just [inaudible]
2 showing up and paying for this study.

3 UNIDENTIFIED SPEAKER: [inaudible]
4 public sector [inaudible] very aware of what the
5 public [inaudible].

6 UNIDENTIFIED SPEAKER: I agree
7 totally, but if we're not going to allow it form the
8 [inaudible] paper industry than we'd better look at
9 whether we're gonna accept the money from the EPA to
10 do this fish consumption study. Cuz I can tell you
11 they have a bias [inaudible]. And, at best, I think
12 what you got to do is just lay that out in front
13 and say, you know, I don't know. I think it's a
14 bigger issue than [inaudible] and I think turbidity is
15 a - turbidity is a tough one cuz we took it on.
16 Turbidity as a measure is - its' what we call a
17 [inaudible], okay? The measure of something that's
18 not very well defined, okay? And so the impacts are
19 pretty fuzzy. I mean, I think the diagram on the
20 front sort of shows that. You look at the impacts;
21 they're not very well defined. So, if you're looking
22 at something like zinc [inaudible], okay? You can
23 define a [inaudible] a precise curve of what the
24 impact is in zinc in certain concentration on a
25 certain kind of [inaudible]. You can't do that with

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1 turbidity, cuz there's a lot of different [inaudible].
2 Not only that, but there's a huge background of
3 different turbidities in Oregon streams and there's a
4 huge difference in turbidity over time. So, given
5 all that, there's a lot of noise in this system.
6 And there always will be turbidity. There's a lot of
7 noise. I'll - it's just a - inherently in turbidity
8 there is this problem of trying to provide standards
9 that are meaningful but not to [inaudible]. Than we
10 get [inaudible] whole controversy about [inaudible] and
11 that's like a whole philosophical [inaudible] between
12 the people who are trying to [inaudible] stream and
13 the people who have to discharge into stream. And
14 we're that interfacing [inaudible] and one of the
15 methodologies people have come up to try to make that
16 system work is mixing zones. There's a lot of
17 controversy on a mixing zone. And so if you're gonna
18 try to solve the turbidity problem and mixing zones
19 all at once then it's like you sort of [inaudible].
20 And I can understand the frustration on peoples side
21 to try to protect wildlife and streams, and I also
22 understand the frustration on the people who are
23 [inaudible] and the frustration by the regulators to
24 try to make this all work. And you just about
25 [inaudible].

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1 UNIDENTIFIED SPEAKER: Well, one
2 comment - just to kind of [inaudible] all of you
3 about why this is so difficult to water [inaudible]
4 and you know, we get our share of air issues as
5 well. [Inaudible] as we heard today, there is this
6 fundamental difference between the way the clean air
7 act comes from the [inaudible] water act [inaudible].
8 And the way the clean air act functions; the federal
9 government, [inaudible] EPA, basically sets the
10 criteria and the standards in very [inaudible] detail.
11 And so there's not much [inaudible] of interpretation
12 [inaudible] state adopt the federal rule by reference.
13 [Inaudible] and water on the other hand, they
14 basically give that authority all to the states to
15 figure it out. And then they have to approve
16 whatever the state does. So, in water, you're
17 continually in the debate about whatever standard it
18 might be because the federal government [inaudible].

19 UNIDENTIFIED SPEAKER: [inaudible]
20 interest to me to look at the clean air act.
21 [Inaudible] priority will come from [inaudible] models
22 [inaudible]. I don't hear anybody challenging that
23 whole process [inaudible]. But water we do. I mean,
24 it's a big philosophical debate and I'm not sure
25 [inaudible].

1 UNIDENTIFIED SPEAKER: There won't
2 be [inaudible].

3 UNIDENTIFIED SPEAKER: Can I ask
4 one - maybe I didn't understand this correctly, but I
5 was trying to [inaudible] got lost. But do I
6 understand you to say that the values we need are
7 low. We don't have the tools to be able to check
8 that, so that the lab values that we get don't go
9 low enough to get to the level that we need for
10 clean water or less turbid water or what?

11 UNIDENTIFIED SPEAKER: May I
12 respond to this? Mary Abrams is our lab
13 administrator and I don't know whether that was
14 something that Commission Laman had said he wanted to
15 respond, but [inaudible].

16 UNIDENTIFIED SPEAKER: Chairman
17 [inaudible] and [inaudible] comment [inaudible]
18 extremely difficult to measure up [inaudible] from the
19 laboratory [inaudible]. It's very difficult when you
20 get down to clean water, to measure [inaudible]. The
21 added difficulty [inaudible] which is [inaudible] you
22 have a pretty strong effect on turbidity [inaudible]
23 also difficult. [Inaudible] historically has been one
24 of the most difficult [inaudible] there is to measure.
25 [Inaudible] something that makes sense from a

1 measurement standpoint and regulate it. We've had a
2 very difficult time in that we [inaudible]. You
3 know? And if you have a really clear stream
4 [inaudible] 1 to 1.1 [inaudible].

5 UNIDENTIFIED SPEAKER: So, I mean,
6 you wanted to make an analogy, it's like giving a
7 speech, okay? We don't have a law that you're
8 speeding to go 10% over the [inaudible] because in a
9 25 mile an hour zone a police man can't tell whether
10 you're going 27. So, what do police do? Well, I
11 think they use like the 10-mile rule. That's what
12 they do, okay? And what we're doing here is we're
13 putting in the 5 mile an hour rule. That's what
14 we're doing, okay? And if somebody dumps more than 5
15 in there we can measure it. We're for sure. We
16 can measure 5 no matter where it is on the scale and
17 we're gonna [inaudible] if them if it's greater than
18 5. That's what Baumgartner basically told us, right?
19 That's why they chose 5.

20 END: TAPE 7, SIDE B FROM 0 TO END OF TAPE

21 START: TAPE 8, SIDE B FROM 0 THRU 94

22 UNIDENTIFIED SPEAKER: I don't know
23 whether that's the way to do it or not, I don't
24 know, but that's where they're trying to go.

25 UNIDENTIFIED SPEAKER: And also

1 related to that [inaudible] given the [inaudible] that
2 you have now. And this is sort of a growth
3 [inaudible] but it's also been [inaudible] go from 0
4 to [inaudible] and an ability to do some [inaudible]
5 because we can't even do it now, given the standards
6 of the past. It's not worth it.

7 UNIDENTIFIED SPEAKER: [inaudible]
8 so that - if I can - I'm just trying to understand
9 it. So this gives us the ability to whack
10 (Phonetic), whereas the other one gave us barometers
11 but we couldn't whack.

12 UNIDENTIFIED SPEAKER: Yeah, it was
13 very difficult. It was very difficult. The other
14 thing that we'll do that I think that they're hoping
15 that we will do, we know what stream we really don't
16 want [inaudible]. So we can [inaudible] and we know
17 that it won't have a very big impact there. We can
18 increase the monitoring, cuz that's like going to a
19 school zone and speeding tickets. It's really
20 important. You're not required [inaudible] I-5. And
21 the I-5 in our world is like the Columbia, okay.
22 And, you know, because we know we don't [inaudible]
23 in the Columbia [inaudible] a lot of things. So
24 that's - I think that's where we're trying to go with
25 turbidity because of just the nature of turbidity

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1 impact [inaudible].

2 UNIDENTIFIED SPEAKER: [inaudible]
3 if you will. The other problem with turbidity is
4 that it really is associated with some of the other
5 issues that we discovered with water [inaudible]
6 talking about. [Inaudible] around the water portion
7 of water, they tend to travel around the [inaudible]
8 portion of water. And so we do feel as [inaudible]
9 important to get [inaudible] and we've had trouble
10 [inaudible] in doing that in the past with our
11 [inaudible] very much struggle with the [inaudible].

12 UNIDENTIFIED SPEAKER: [inaudible]
13 combination [inaudible]?

14 UNIDENTIFIED SPEAKER: I apologize
15 [inaudible].

16 UNIDENTIFIED SPEAKER: Suspended.

17 UNIDENTIFIED SPEAKER: Like
18 suspended in the water quality.

19 UNIDENTIFIED SPEAKER: Okay, I was
20 thinking you were talking about -

21 UNIDENTIFIED SPEAKER: [inaudible
22 sentence].

23 UNIDENTIFIED SPEAKER: Thanks. Oh,
24 another comment?

25 UNIDENTIFIED SPEAKER: I just have

1 one brief comment. I was taking notes here and it
2 just occurred to me that [inaudible] all Stephanie is
3 saying [inaudible] lesson about a receipt, what did
4 you call them?

5 UNIDENTIFIED SPEAKER: It's called
6 receipts authority.

7 UNIDENTIFIED SPEAKER: Receipts
8 authority, okay. On the one had we have a very
9 strong recommendation that we require polluters to do
10 their own monitoring, and yet for somehow - which is
11 going to be a cost item for them, which we're relying
12 on them to make [inaudible] reports, etcetera,
13 etcetera. Yet somehow the idea that they - that an
14 industry as a whole would give money to an agency to
15 - for an agency to do their own research, which is
16 what I understand happened, is that what happened?

17 UNIDENTIFIED SPEAKER: That's
18 correct.

19 UNIDENTIFIED SPEAKER: Okay, all
20 right. So, what's so bad about that? I mean, I
21 can see if, you know, on the one hand we're relying
22 on the industry to sell to the [inaudible] well, and
23 this is the suggested tactic. Why aren't we making
24 the industry give money to DEQ so DEQ can monitor.
25 I mean, those seem to me like inconsistent reports by

1 inconsistently approaches by critics. So I personally
2 think that if you're - so long as the body, which is
3 doing the testing is neutral, there's nothing wrong in
4 asking or accepting money from the industry to get
5 more data on it. So maybe the lesson we learn is
6 that we contract out to a third party or we - you
7 know, I don't know. I wouldn't necessarily give up
8 on that approach.

9 UNIDENTIFIED SPEAKER: Thank you.

10 (Inaudible discussion)

11 UNIDENTIFIED SPEAKER: I know

12 public is at least as smart as I am.

13 UNIDENTIFIED SPEAKER: I totally
14 agree with that and ever day we take drugs. And I
15 can tell you the testing of those drugs was done by
16 an industry, they paid for it. There was a third
17 part involved that actually did the testing, but they
18 paid for it. Okay? We trust that process
19 [inaudible]. It seems like to me that we gotta be
20 able to trust this process here. That this agency
21 can do research and do tests, okay, and it's not
22 gonna be [inaudible]. We gotta have that trust, and
23 we can't give up on that trust.

24 UNIDENTIFIED SPEAKER: Okay.

25 UNIDENTIFIED SPEAKER: Thank you.

WORD INDEX

1 UNIDENTIFIED SPEAKER: Good.

2 [Inaudible] we have -

3 UNIDENTIFIED SPEAKER: We have
4 another agenda item.

5 UNIDENTIFIED SPEAKER: -- we have
6 an agenda item, but we're gonna take a short break.
7 We're just taking a five-minute break and we'll
8 reconvene in five minutes.

9 UNIDENTIFIED SPEAKER: Thank you.

10 END: TAPE 8, SIDE B FROM 0 TO 94.

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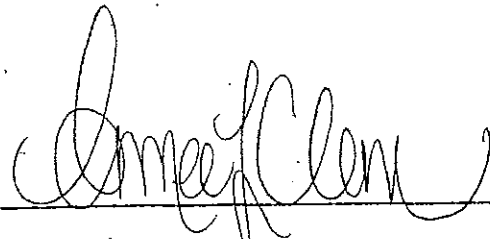
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CERTIFICATE

I, Aimee L. Clem, do hereby certify that the matter herein mentioned on the preceding title page was transcribed. I transcribed all requested audio in its entirety in the foregoing matter; and that the foregoing transcript pages constitute a full, true and correct record of such audio.

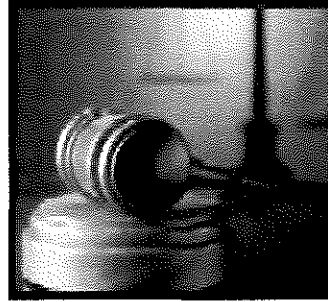
IN WITNESS HEREOF, I have hereunto set my hand this 4th day of December,
2005.

A handwritten signature in cursive script, reading "Aimee L. Clem", written over a horizontal line.

Tape Transcriptionist

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ENVIRONMENTAL QUALITY COMMISSION
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TAPE TRANSCRIPTION
TAPES 1, 6, 7, AND 8
OCTOBER 21, 2005

BE IT KNOW THAT, the above-referenced Transcript of Proceedings was transcribed from tape on December 4, 2005.

Page 1	Page 3
<p>1 ENVIRONMENTAL QUALITY COMMISSION 2 OREGON SOLUTIONS PRESENTATION & 3 PUBLIC COMMENT PERIOD 4 5 6 7 8 9 10 11 12 13 14 15 16 17 TAPE TRANSCRIPTION 18 TAPES 1, 6, 7, AND 8 19 OCTOBER 21, 2005 20 21 --- 22 23 BE IT KNOW THAT, the above-referenced Transcript of 24 Proceedings was transcribed from tape on December 4, 25 2005.</p>	<p>1 air quality program [inaudible]. 2 GREG WOLF: Thanks, Pete. We've 3 definitely [inaudible] well, we were very [inaudible] 4 talk about the program. The national [inaudible] is 5 a nation partnership [inaudible]. [Inaudible 6 sentences]. [Inaudible] and it's co-chaired by Dough 7 [inaudible] Kitzhaber and [inaudible]. We're currently 8 working with [inaudible] services [inaudible]. And I 9 just want to [inaudible]. [Inaudible sentences]. I 10 also want to thank [inaudible] for giving us 11 [inaudible]. I would say that one of the reasons 12 that we've had such success as [inaudible] federal 13 agency is because of the Oregon [inaudible] project. 14 [Inaudible sentences]. [Inaudible] through a couple 15 of these lines. [inaudible] Ted Kulongoski. This is 16 one of the programs that actually [inaudible] to 17 governor - governor - Govenor Kulongoski. [Inaudible] 18 I don't think there was any negative votes in either 19 the house or the senate. [Inaudible] and since the 20 work we are doing is collaborative [inaudible] work. 21 The next is the community government system and this 22 is really the system [inaudible] identify [inaudible]. 23 Second is the [inaudible] address [inaudible]. And 24 then we focus [inaudible]. [Inaudible sentences]. 25 Then the last step is just signing the declaration of</p>
Page 2	Page 4
<p>1 START: TAPE 1 - SIDE A FROM 51 THRU 484 2 MARK REEVE: Now we have Item B, 3 an informational item concerning Oregon solutions. 4 And we'll welcome Pete Falk and Greg Wolf. 5 UNIDENTIFIED SPEAKER: Thank you 6 Mr. Chair and we're - we've been trying to schedule 7 this [inaudible] for a long time. The Oregon 8 Solutions is, if you will, and these folks will talk 9 about this - this sort of the next iteration, which 10 was what was started by Governor Kitzhaber as 11 community solution, which involved the state agencies 12 and local government partners, which has now become 13 the governor's economic revitalization teams. And 14 then Oregon Solutions sort of takes that one step 15 further, so we actually have private sector 16 partnerships as well on various projects around 17 Oregon. And DEQ, primarily Pete, but others as well, 18 has been an active participant and supporter of these 19 projects. And so we've been wanting to have Greg and 20 Pete come talk to you about it for quite a while. 21 So I look forward to hearing from them. 22 MARK REEVE: Thanks, welcome. 23 PETE FALK: Thank you. Thanks for 24 having us today. My name is Pete Falk [inaudible]. 25 In our staff report [inaudible]. [Inaudible] from our</p>	<p>1 operations and each team member signs that 2 [inaudible]. [Inaudible sentences]. And in some of 3 our projects [inaudible]. So [inaudible] the value of 4 the [inaudible] in your packet. And, like I said, 5 it's chaired by the Governor Kulongoski. Then we 6 have [inaudible] Oregon [inaudible] JOI and 7 [inaudible]. [Inaudible] and then we have 8 representative of county government, city government, 9 state government [inaudible]. And then representative 10 [inaudible]. And the reason we have that strength 11 [inaudible] help us get access to the network of 12 resources that are in the Oregon [inaudible]. 13 [Inaudible sentence]. 14 UNIDENTIFIED SPEAKER: Thank you, 15 Greg. Just real quickly, putting it in a business 16 form, this is kind of the process we're look at 17 [inaudible]. The last thing that Greg was [inaudible] 18 screen there -- 19 MARK REEVE: I'm sorry to interrupt 20 you for just a second - we were hoping that - can 21 somebody help move the slide just a little - or the 22 screen just a little bit for Judy. 23 JUDY: That's good. That's good. 24 GREG WOLF: Sorry about that. 25 UNIDENTIFIED SPEAKER: Thanks.</p>

1 (Pages 1 to 4)



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1 UNIDENTIFIED SPEAKER: [inaudible]
 2 DEQ [inaudible].
 3 (Inaudible discussion)
 4 PETE FALK: But really the
 5 [inaudible] government involved in [inaudible].
 6 [Inaudible sentences]. [Inaudible] resources that
 7 [inaudible] or access the [inaudible]. We do also
 8 now [inaudible] and a timeline [inaudible] some
 9 similar examples [inaudible]. Obviously, [inaudible
 10 sentences]. The other projects [inaudible sentences].
 11 [inaudible] types of projects [inaudible] environmental
 12 [inaudible]. [Inaudible sentences].
 13 MARK REEVE: Pete, can I just
 14 interrupt you there for a second and ask you whether
 15 the solution - some of the solution [inaudible]
 16 projects are turned into long-term projects, or
 17 long-term commitments. It just seems like some are
 18 fairly discrete projects, like the [inaudible] but
 19 this, you know, restoration and maintenance can go on
 20 for a long time?
 21 PETE FALK: Right. I think
 22 [inaudible] project [inaudible]. [Inaudible
 23 sentences]. [Inaudible] parks and recreations
 24 department [inaudible]. I think the Oregon
 25 [inaudible] project into [inaudible].

Page 7

1 result about doing it in Oregon. Effective - well,
 2 when we started this was actually the largest rollout
 3 of [inaudible] in the country. And there's been
 4 other projects that [inaudible] since then are much
 5 bigger. But when Pete came to us it was kind of
 6 almost like [inaudible] chasing a [inaudible] away.
 7 He's always out looking for good projects to
 8 [inaudible] the Oregon Solutions principles to. And I
 9 was fairly skeptical. I mean, it sounded like -
 10 well, this is kind of an [inaudible] advisory
 11 committee process [inaudible] dominant [inaudible] I
 12 wasn't really sure what the value [inaudible] would be
 13 for doing Oregon Solutions on this. But we went
 14 ahead and did it anyway. And so we got a
 15 [inaudible] together [inaudible] and we brought
 16 [inaudible] the trucking industry as well as the truck
 17 stop operator and others with interest in this.
 18 [inaudible] we were having [inaudible] as a result of
 19 that [inaudible] ourselves all educated and oriented
 20 [inaudible] Oregon Solutions. And then providentially,
 21 EPA ran [inaudible] available that we were to convince
 22 the Oregon State University School of Engineering to
 23 apply for our [inaudible] and then also to engage
 24 climate [inaudible] and bring in their [inaudible] and
 25 kind of combining that with products from the

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1 UNIDENTIFIED SPEAKER: Okay.
 2 UNIDENTIFIED SPEAKER: [Inaudible
 3 sentences].
 4 UNIDENTIFIED SPEAKER: Okay.
 5 UNIDENTIFIED SPEAKER: I don't
 6 think [inaudible] air quality [inaudible]. On a
 7 lighter note, [inaudible] a little bit about
 8 [inaudible]. [Inaudible sentences].
 9 UNIDENTIFIED SPEAKER: Thanks.
 10 KEVIN DOWN: Good morning. My
 11 name is Kevin Down. I work in the air quality
 12 program with DEQ, and I've been working for the east
 13 several years on projects to reduce omissions from
 14 lethal [inaudible]. Primarily as a public health
 15 measure to reduce risks from cancer, but there's other
 16 [inaudible] warning methods. And occasionally, we'll
 17 [inaudible] properties like this where we can
 18 [inaudible] as well. We get [inaudible] all the way
 19 around, except that on some these projects, like this
 20 one in particular, we're just allowing [inaudible]
 21 truck stops [inaudible] something that people recognize
 22 [inaudible] industry for a long time as being
 23 something that's worth doing that's more like
 24 [inaudible] phenomemon or [inaudible]. And so within
 25 the Oregon Solution process [inaudible] very positive

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1 Department of Energy [inaudible]. [Inaudible] we were
 2 able to get a financing package that - at this point,
 3 we were planning [inaudible] 400 trucking spaces along
 4 I-5. And the second company that produces this
 5 technology initially had been interested then left the
 6 [inaudible] lottery somewhere else [inaudible]. Now,
 7 they've decided to come back to Oregon, and we're
 8 going to be looking to see what we can do to bring
 9 them in so we can have basically almost one-third of
 10 the trucking spaces [inaudible]. And the result of
 11 which, we'll end up saving the trucking industry about
 12 - over 1 million dollars a year and reduce fuel costs
 13 plus [inaudible] almost 6 million dollars a year, in
 14 terms of reduce environmental public health benefits.
 15 [Inaudible] reduce [inaudible] from [inaudible]. And
 16 let me just tell you a story that's kind of
 17 [inaudible] but I see as the value of the Oregon
 18 Solutions process. That - we've been working on this
 19 for several months, and actually I was working with
 20 Jim Anderson, who's the owner of [inaudible] truck
 21 stop in Coberg, Oregon. And this truck stop as the
 22 dubious distinction of being the [inaudible] for state
 23 law to prohibit car idling [inaudible], because the
 24 truck stop is just [inaudible] Coberg, and citizens
 25 were complaining about [inaudible] truck stop.

2 (Pages 5 to 8)



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1 [Inaudible] when I first approached him he was very
 2 well [inaudible] and was concerned about reducing the
 3 impacts, but basically get a number of excellent
 4 business reasons why it didn't make sense for him to
 5 do this. [Inaudible] in the middle night, especially
 6 on a rainy night. The [inaudible] doing. They're
 7 going to [inaudible]. They went bankrupt on them
 8 [inaudible] parking lot [inaudible] spaces. He's
 9 already got people coming into his facility right now
 10 [inaudible]. All that [inaudible] he comes through
 11 the process, the Oregon Solutions process, [inaudible]
 12 sign the agreement [inaudible] talked about.
 13 [Inaudible sentences]. [Inaudible] get access to the
 14 Oregon [inaudible] close of 5:00 p.m. on a Wednesday
 15 at 11:00 a.m. on that Wednesday they get a call from
 16 Jim, "Kevin, I've been thinking about this. I need
 17 to get something together. I need to get a proposal
 18 [inaudible]." So we were able to pull it off and
 19 [inaudible] we are going to be putting in 50 posts at
 20 his facility. And so I think that the reason that
 21 he was able to get to that point was really because
 22 of the collaborative [inaudible] of the Oregon
 23 Solutions process. That we were able to get him --
 24 I mean, we still had all those barriers. We didn't
 25 resolve any of those barriers [inaudible] take that

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1 job. And I think that we were able to do that was
 2 through the Oregon Solutions process.
 3 UNIDENTIFIED SPEAKER: [inaudible]
 4 fuel. It may end up [inaudible] issues better than
 5 the Oregon Solutions. But my question is, can you
 6 monitor? Or how well do you monitor, because you're
 7 talking about the truck stops and the parking spaces.
 8 And mine is a very informal observation, but going up
 9 and down I-5 a lot, a lot of the trucks are just
 10 doing the common, every day idling they've always
 11 done, cuz you can watch [inaudible]. I mean, so you
 12 monitor if the - if the [inaudible] is being used,
 13 reserve reduction, and so forth.
 14 KEVIN DOWN: Your first point is
 15 well on point. When I started this project
 16 [inaudible] gallon. Basically, the hookup charge was
 17 about \$1.00 an hour. And they brought about a gallon
 18 [inaudible], so at that point it was like [inaudible].
 19 Now, [inaudible] excited about hooking up. But not
 20 only that, within the industry itself, and by that I
 21 mean within the trucking industry, has always been -
 22 my characterization frankly, is that [inaudible]
 23 familiar with [inaudible]. That's the way we did it
 24 and that's [inaudible] do it if they [inaudible]. But
 25 we're seeing kind of changes of that. And actually

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1 in the [inaudible] of that we had - about a year ago
 2 [inaudible] truck stop, we had lot of couples that
 3 have their big tractor trailer [inaudible] their name
 4 on the side, and parked right at the entry of
 5 [inaudible]. And we had the [inaudible] there, and
 6 [inaudible] there. And one of the truckers came up
 7 to us as we're all [inaudible] there [inaudible], "I'm
 8 really disappointed because I see this [inaudible]
 9 here and I [inaudible]." And [inaudible] find out
 10 it's only a demo. And sort of along those lines
 11 too, there was another story about a trucker that had
 12 hooked up to the system and it makes it quieter in
 13 the truck. You're actually less prone to [inaudible]
 14 show people sleeping better. So it's actually some
 15 personal benefit outside of the fuel cost that once
 16 people get into it they're gonna start signing up for
 17 more of it. This one guy approached one of the
 18 representatives of these companies and said, "You
 19 know, I used to work for a company that had an
 20 agreement with you about your systems, and now I'm
 21 working for another company and I don't like it. Can
 22 you tell me which companies have signed agreements
 23 with you cuz I'm gonna go work for them." And so
 24 that's going to change. And then the other part of
 25 your question was about monitoring. Each of the

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1 systems, both the idle [inaudible] short [inaudible]
 2 system allow for record keeping so we can keep track
 3 of the hours of utilization at each one of the hookup
 4 facilities. And in fact, one of the interesting
 5 things about the Oregon Process is that in many other
 6 parts of the country where - where public funding as
 7 been provided for support of these insulations it's
 8 been, "Here's the money and we hope it works and
 9 we'll see you later." The climate trust doesn't give
 10 money away. What they do is they buy C02 reductions.
 11 So you have to sign a contract with them to guarantee
 12 that you're going to reduce, in this case, 110,000
 13 pounds of C02. And if you don't, well, [inaudible]
 14 get it from somewhere. So monitoring [inaudible]
 15 vendors in Oregon is going to be a very critical
 16 component of the whole process [inaudible] trust
 17 duration [inaudible].
 18 JUDGE HOGAN: So, [inaudible] along
 19 that line, there is a study planned in Oregon State
 20 to actually go out and survey these truckers who are
 21 actually using [inaudible] willingness to participate,
 22 did they enjoy it, all that sort of stuff. I know
 23 that [inaudible]. So anyway --
 24 UNIDENTIFIED SPEAKER: So would
 25 this study be made public? You know, a lot of the

3 (Pages 9 to 12)



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1 university studies [inaudible] person [inaudible]
 2 decipher among themselves.
 3 KEVIN DOWN: No, it will be made
 4 public and it will be distributed [inaudible] Jim, so
 5 yeah. So there is a plan to go out there and
 6 [inaudible].
 7 UNIDENTIFIED SPEAKER: Studies
 8 [inaudible sentences]. Another project that [inaudible]
 9 sentences].
 10 UNIDENTIFIED SPEAKER: [inaudible]
 11 get involved in the accident [inaudible]. [Inaudible]
 12 participate in the [inaudible] more and more
 13 [inaudible]. The other guy [inaudible] so as a -
 14 it's really kind of a [inaudible] for further
 15 [inaudible].
 16 UNIDENTIFIED SPEAKER: Lastly, we'll
 17 try to do [inaudible sentences].
 18 UNIDENTIFIED SPEAKER: [inaudible]
 19 see any [inaudible]?
 20 UNIDENTIFIED SPEAKER: [inaudible]
 21 sentences].
 22 (Inaudible discussion)
 23 UNIDENTIFIED SPEAKER: North Bend.
 24 UNIDENTIFIED SPEAKER: Oh, North
 25 Bend. I thought you said, Bend.

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1 represents the interest of the [inaudible] paper
 2 industry in Oregon, Washington, and Idaho on
 3 environmental and energy issues. [Inaudible] someone
 4 who you knew I wanted to speak to you today about
 5 some of the things that NWPTA, as we call it
 6 [inaudible], does and is involved in my personal
 7 actions that I do on behalf of the members of
 8 Northwest Portland Paper. And [inaudible] items of
 9 interest that we're currently working on are supposed
 10 to be further involved in the future. And the NWPTA
 11 represents nine mills that are [inaudible] and are
 12 paper mills. That can be integrated facilities, bulk
 13 making facilities, newsprint [inaudible] facilities in
 14 the state. We've been doing this since the 1940's.
 15 We were formed to actually help the [inaudible]
 16 Willamette River work on cleaning up the river during
 17 the era of the 40's, back when we didn't have primary
 18 and secondary treatment. We did things differently
 19 then. We did things we wouldn't dream of doing now.
 20 But we've changed and the world has changed with us.
 21 We are organized of committees and task forces that
 22 address issues [inaudible] side of our association,
 23 including technical issues, governmental affairs
 24 issues, communications issues, [inaudible] lawyer
 25 [inaudible] commissioners, and board of trustees that

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1 MARK REEVE: Are there any
 2 comments. Thanks very much. It sounds like you've
 3 all been very involved in helping. It's very
 4 beneficial to the state. I know Kevin, you know
 5 we've worked for a number of years on your project.
 6 END: TAPE 1, SIDE A FROM 51 THRU 484
 7 START: TAPE 6, SIDE A FROM 183 TO END OF TAPE
 8 MARK REEVE: Were there any final
 9 questions for [inaudible]?
 10 (Inaudible discussion)
 11 MARK REEVE: Okay, well, now we'll
 12 move to Agenda Item H and the public forum. I'll
 13 remind members of the public that this is the time to
 14 address the commission on any matter that is not on
 15 our regular agenda, and all we ask is that you fill
 16 out a sheet saying that you'd like to talk to us and
 17 give it to our assistant Kat. And then we'll take
 18 you - well, basically, in the order signed up. I'll
 19 be happy to listen to anything you'd like to address
 20 with us. I'll start with Kathryn Benada. Welcome.
 21 KATHRYN BENADA: Chair Reeves,
 22 members of the Environmental Quality Commission, for
 23 the record I'm Kathryn Benada, the governmental
 24 affairs manager in the Northwest [inaudible] Paper
 25 association. But [inaudible] association that

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1 manages the fiduciary affairs of our association.
 2 Personally my work for the association for the last
 3 decade, I did governmental affairs work in Salem
 4 during the legislature but I also sent out a lot of
 5 DEQ advisory committees, including issues of air,
 6 hazardous waste and water. Recently some of the work
 7 that I participated in has been the Blue Ribbon
 8 Committee, and [inaudible] of working down in Salem to
 9 help pass [inaudible] 45 working on the Willamette
 10 River [inaudible] council, working on also triennial
 11 review. And as a member of a policy advisory
 12 committee on triennial review, we started meeting in
 13 December of 1999 [inaudible] 2003, and I participated
 14 in every one of those meetings except one, and
 15 represented our views. On that particular issue the
 16 association has always [inaudible] as 17.5 grand per
 17 day fish consumption level for the human health
 18 [inaudible] water quality standards. We supported
 19 that during the process and continue to support that
 20 now. We understand that that has been controversial
 21 after [inaudible] by yourself [inaudible] EPA. We
 22 understand the commitment has been made to review that
 23 in 2008. In the time period between now and 2008
 24 and 2008 onward, we would ask that we be considered a
 25 stakeholder in the conversations to work on that

4 (Pages 13 to 16)



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1 issue, as it does have a very big topic of interest
 2 for us, because the water quality standards do affect
 3 the work we do, because they are put into our water
 4 quality [inaudible] permit. But we remain very
 5 interested in that and we will perhaps come back to
 6 talk to you about that in the future and bring you
 7 third party work that we might contract [inaudible]
 8 doing this process. But we would like to be involved
 9 absolutely all aspects of that as we go forwards.
 10 The second type of things we do is we listen to
 11 concerns and the industry across the states. Because
 12 we are a large industrial manufacturer, we are one of
 13 the state's largest manufacturing industrial sectors.
 14 We do have an environmental footprint. There are
 15 concerns with that. And for [inaudible] one of the
 16 things I did on my Tuesday night was I went over to
 17 Toledo to the Newport area and listened to a public
 18 hearing about concerns in the community, about the
 19 re-issuance of the air and water comment in Toledo.
 20 And when I do something like that, I take [inaudible]
 21 notes here in my notebook, take it back and report it
 22 to the rest of the companies. I kind of work as
 23 an information conduit to make sure that we all
 24 understand the concern in the community around us.
 25 Another issue that we've been strongly involved in is

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1 likely be supportive of an effort to have the fish
 2 consumption rate looked at regionally instead of just
 3 state by state? Would you Try to - would you want
 4 to involved Washington and Idaho and EPA?
 5 KATHRYN BENADA: Chair Reeve,
 6 members of the commission, we haven't actually thought
 7 about that. We [inaudible] regional process to
 8 fulfill [inaudible] chemical water quality standard
 9 [inaudible]. We haven't had further internal
 10 discussion upon that, but I - I could offer this
 11 added information. If you're looking at a state, and
 12 a state has diverse populations of [inaudible]
 13 populations, and people who have different concerns it
 14 might be best to look at a state level rather than -
 15 to be able to address [inaudible] concerns that reside
 16 there because of [inaudible] places. One thing during
 17 the triennial review process when we address this
 18 issue and we were trying to struggle with what to do
 19 is we [inaudible] with Judge Haggerty's decision on
 20 the lawsuit on the temperature water quality standard,
 21 because of where and when - knowing when and where
 22 different native species were consumed was a problem.
 23 And we felt [inaudible] by that in the [inaudible].
 24 UNIDENTIFIED SPEAKER: Okay. One
 25 of the things that came up when we looked at the

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1 the mixing zone issue, and people's concerns with the
 2 mixing zone issue. And we will continue to work on
 3 that as the path goes forward, both from the
 4 regulatory arena and the legislative arena. Working
 5 to find solutions that will be a benefit it everyone.
 6 That kind of summarizes the type of things we do, and
 7 [inaudible] sitting out in the audience as we go
 8 through working on these types of things. But we
 9 always try to bring science and data to the table,
 10 and that's one of the strengths of our association is
 11 the ability to bring that to the table to help sound
 12 and reasonable decisions when they are - when you're
 13 looking at policy aspects. And the [inaudible] about
 14 the environmental issues that face us in the
 15 regulatory arenas at some point and help to make
 16 policy decision based on what they do have.
 17 [Inaudible] but one thing that we do is help collect
 18 them [inaudible] research scientists [inaudible]
 19 engineers [inaudible]. We definitely run our
 20 facilities based on science through engineering
 21 [inaudible]. Thank you for you time today.
 22 MARK REEVE: Any questions?
 23 Kathryn, before you go I have one questions for you
 24 that came up just in thinking about the 2008 review.
 25 And that is, [inaudible] the NWPTA - would they

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1 fish consumption rate issue was if you start to look
 2 - or try to look at rates for a particular geographic
 3 areas, many of the controversial or ones that have
 4 generated the most interest so far includes
 5 [inaudible]. One of our concerns [inaudible] whether
 6 kind of one standard on one side of the river and a
 7 different standard on the other side of the river.
 8 And I imagine that that would be of concern to the
 9 NWPTA as well.
 10 UNIDENTIFIED SPEAKER: Chair Reeves,
 11 Members of the commission, those issues are of
 12 interest to us, but the most conservative [inaudible]
 13 standard [inaudible] water quality [inaudible].
 14 UNIDENTIFIED SPEAKER: And Mr.
 15 Chair, just a point of clarification, assuming EPA
 16 approves your standards by the end of January, then
 17 Oregon - correct me if I'm wrong [inaudible], will
 18 [inaudible].
 19 MARK REEVE: Right. Thanks. Our
 20 next [inaudible] is Mark Riscodall. Welcome.
 21 MARK RISCODALL: [inaudible] Mark
 22 Riscodall and I'm the Executive Director at Northwest
 23 [inaudible] based at Lewis and Clark Law School here
 24 in Portland. I appreciate this opportunity to testify
 25 and I want to touch briefly in the limited time that

5 (Pages 17 to 20)

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1 I have available two important issues. First, I made
 2 copies for you of a scaling editorial from daily
 3 historians early this week [inaudible]. The title is,
 4 "A dark day at Oregon DEQ" I'd argue that, "Oregon
 5 [inaudible] for going above and beyond national
 6 standards is showing signs of serious decline and
 7 [inaudible] called to action for DEQ. The governor
 8 and the state legislature can do better at protecting
 9 Oregon's water quality." I hope this editorial
 10 reflects [inaudible] statewide that when it comes to
 11 environmental protection this government is failing
 12 Oregonians [inaudible]. No more are these failures
 13 more apparent than [inaudible] than Oregon DEQ
 14 [inaudible]. [Inaudible] really great people
 15 [inaudible] right place, working diligently to ensure
 16 that DEQ's policies are consistent with basic
 17 scientific and legal [inaudible]. But when push comes
 18 to shove, science and law tend to take a back seat
 19 [inaudible]. This is simply not the Oregon way or
 20 using effective [inaudible]. To cohort [inaudible]
 21 have reached a critical juncture. Many of [inaudible]
 22 considerable time, energy, and effort in building
 23 relationships with agency managers, such [inaudible]
 24 Shroder, hoping against those. That by diligently
 25 commenting on agency [inaudible] and rules and

Page 23

1 pre-existing legal obligations [inaudible] further
 2 legal liability are a waste of time, energy, and
 3 resources, etcetera. With respect to the air program,
 4 which [inaudible] work for years [inaudible] community,
 5 but [inaudible]. I also wish to relate to you the
 6 dynamic of public hearings on the [inaudible].
 7 [inaudible] company the go ahead to give construction
 8 on a new [inaudible] manufacturing [inaudible] DEQ
 9 misinformed the public concerning the [inaudible] of
 10 the ozone [inaudible] greenhouse staffs, a company
 11 [inaudible], and has stepped past the reviews to
 12 require the companies to submit and make publicly
 13 available a mission state [inaudible] even though the
 14 [inaudible] requires the commission to see it. The
 15 result; company [inaudible] proprietary date,
 16 proprietary [inaudible], no omission controls were
 17 required, no omissions testing, monitoring or reporting
 18 was required, and no one will ever know how much
 19 [inaudible] manufacturers will be released from this
 20 plant to the environment. Companies have already made
 21 [inaudible] throughout the year [inaudible] Oregon DEQ
 22 [inaudible]. Although agency has worked for early
 23 misjudgment in permit process by holding additional
 24 public meetings and engaging in outreach with the
 25 local neighborhood, it's been clear to everyone who

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1 collaboratively elevating our concerns to agency
 2 management when those orders and rules [inaudible]
 3 departments, this agency will do the right thing. I
 4 would step up and adhere to its [inaudible] and be
 5 a leader and protecting the quality of Oregon
 6 environment. I can't begin to tell you how
 7 frustrating it is to see the agency talk about
 8 [inaudible] law and its own rules, in blatant
 9 disregard of the expense of the environment.
 10 [Inaudible] example [inaudible] dollar and [inaudible]
 11 agency resources. Last year any [inaudible] agreed to
 12 settle a lawsuit [inaudible] large [inaudible] river.
 13 [inaudible sentences]. [Inaudible] to follow the
 14 [inaudible] revision of the [inaudible] and other
 15 protective industrial [inaudible] permits. Although,
 16 the initial [inaudible] by the industry [inaudible]
 17 permit [inaudible] unnecessarily lengthy. [Inaudible]
 18 spirit of compromise, we [inaudible]. Well after the
 19 agreement was signed by both sides we were contacted
 20 by the agency and again had the courtesy to extend
 21 that [inaudible] until your December [inaudible].
 22 Unfortunately, the agency is no where near
 23 [inaudible]. [inaudible] formally notify the agency
 24 that it has reached a settlement agreement [inaudible]
 25 river. The failure of the agency to fulfill

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1 has watched the process [inaudible] that it was simply
 2 [inaudible] formality. The agency [inaudible] the
 3 audacity to develop [inaudible] for early public
 4 hearings [inaudible]. [inaudible] because the company
 5 might hear something from the public that [inaudible]
 6 implement voluntarily. And two, simply because the
 7 agency was required to do so by its [inaudible]
 8 rules. Concerns that [inaudible] public process
 9 forums as well as those of us who do it over, and
 10 over, and over again, you have [inaudible] walked away
 11 from the process [inaudible] formality [inaudible].
 12 This must change. There's a crisis of leadership
 13 within Oregon DEQ. It's time to move beyond the deer
 14 and the headlights [inaudible] back and see his
 15 [inaudible] road. Both [inaudible] have been told by
 16 departing managers [inaudible] agency in order to
 17 ensure [inaudible]. Although we certainly [inaudible]
 18 to keep doing so, both state and potentially federal
 19 court there's got to be a better way. Both
 20 [inaudible] agency and [inaudible] capacity, skills,
 21 and the magic to play a [inaudible] reform process.
 22 Thanks for your time.
 23 MARK REEVE: Thank you. Questions?
 24 UNIDENTIFIED SPEAKER: Mark, right?
 25 MARK RISCODALL: Yeah.

6 (Pages 21 to 24)



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1 UNIDENTIFIED SPEAKER: Could you
 2 furnish me a copy of your remarks [inaudible]? And
 3 also [inaudible] can you tell me - I was just looking
 4 at this article in the Daily Historian and it talks
 5 here about [inaudible] Senator Ringo asking about, you
 6 know, [inaudible] mapping of the [inaudible] and
 7 whoever testified that they were almost done, and then
 8 last month saying [inaudible]. [Inaudible sentence].
 9 UNIDENTIFIED SPEAKER: Commissioner
 10 [inaudible], there is more to the story and if Lori's
 11 still here, Lori [inaudible] our administrator I think
 12 could come to the table and give us an [inaudible].
 13 UNIDENTIFIED SPEAKER: [inaudible]
 14 about [inaudible].
 15 UNIDENTIFIED SPEAKER: Right. No,
 16 I appreciate that. And as you may or may not know,
 17 this was a follow on to a similar article that was
 18 in Willamette Reader.
 19 UNIDENTIFIED SPEAKER: Lori, do you
 20 want to -
 21 UNIDENTIFIED SPEAKER: [inaudible]
 22 couple words [inaudible] -
 23 UNIDENTIFIED SPEAKER: Yeah, I'd
 24 like to -
 25 UNIDENTIFIED SPEAKER: I'd also

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1 like to comment [inaudible].
 2 (Inaudible discussion)
 3 UNIDENTIFIED SPEAKER: [inaudible]
 4 and I'm [inaudible] article [inaudible]. Just a
 5 little bit of background that might [inaudible]. The
 6 mixing zones are something that are allowed by
 7 [inaudible] and the way [inaudible] analysis that make
 8 sure they're not [inaudible]. There was a legislation
 9 used in the 2005 session that would have banned them,
 10 phased them out. And there were several [inaudible].
 11 It unfortunately became very [inaudible]. I was not
 12 present at the hearing when this discussion took
 13 place. I have [inaudible] find out exactly what was
 14 said [inaudible] view that so you [inaudible]. My
 15 understanding it was [inaudible] started. I also know
 16 that it's a very complicated questions [inaudible] two
 17 meetings with environmental organization [inaudible].
 18 At the last meeting we talked about the [inaudible]
 19 to do that [inaudible] accurately. Because one of
 20 the things that we want to make sure [inaudible] do
 21 something is facts with, you know, facts [inaudible].
 22 And so we discussed briefly [inaudible] that there are
 23 some organizations that [inaudible] information. And
 24 my thought, which I did offer to [inaudible], was to
 25 try and get together [inaudible] and [inaudible] talk

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1 about this issue and make sure we're getting good
 2 data [inaudible] concerns, figure out what might be
 3 possible [inaudible]. My ideal would be [inaudible]
 4 collaborative approach to doing this [inaudible].
 5 UNIDENTIFIED SPEAKER: I would like
 6 to make a comment. [inaudible] community for
 7 [inaudible] that one paragraph alone. It does talk
 8 about [inaudible] so I would [inaudible] that someone
 9 do listen to the tape and see what was said
 10 [inaudible]. [inaudible sentence].
 11 UNIDENTIFIED SPEAKER: Well,
 12 commissioner Urballau, one you can state on that point
 13 is I mentioned this dialogue started with an article
 14 in Willamette Week and then was picked up by the
 15 Daily Historian and they wrote an editorial. And we
 16 will be responding. There's always the questions and
 17 let me just say, kind of equivocally, that I do not
 18 agree with what was in the Willamette Week article,
 19 or with what was stated in the Daily Historian, and I
 20 do not believe it is accurate. With that said, we
 21 always shave - when we - whether they're positive or
 22 negative commentary, about what the department does we
 23 have to weight whether or not we're going to respond.
 24 And sometimes we do and sometimes we don't. And so
 25 we're discussing that right now and how we do in fact

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1 get what we [inaudible] accurate [inaudible].
 2 UNIDENTIFIED SPEAKER: [inaudible]
 3 respond to that [inaudible] but this particular
 4 [inaudible] southern Oregon [inaudible]. You know,
 5 there's a large [inaudible].
 6 UNIDENTIFIED SPEAKER: [inaudible]
 7 sentence]. [inaudible] or Oregon State's website and
 8 what [inaudible] said [inaudible]. [Inaudible
 9 sentence]. [Inaudible] she said, "I'm almost done."
 10 She reiterated by saying [inaudible] she reiterated by
 11 saying [inaudible]. And so it set up a public
 12 dynamic where it was [inaudible]. She followed up by
 13 saying, "I got [inaudible] worked very hard on it."
 14 UNIDENTIFIED SPEAKER: [inaudible]
 15 online or [inaudible] copy.
 16 MARK REEVE: Thank you. Next,
 17 we'll hear from Brent Foster.
 18 BRENT FOSTER: Good afternoon,
 19 Chair Reeves, and members of the commission. I
 20 appreciate the opportunity to speak with you today.
 21 I think that [inaudible] my personal frustrations, but
 22 [inaudible] frustration to the broader environmental
 23 community. I've been working with DEQ - I want to
 24 start out by saying that I really want to emphasize
 25 there are [inaudible] people of high caliber with high

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1 moral ethics, and a real dedication to doing the
 2 right thing. So [inaudible] see as [inaudible] crisis
 3 of policy. Time and time again where there is a
 4 questions and DEQ has to decide which side of the
 5 questions they're going to come down on the side
 6 [inaudible] water quality or air quality, or on the
 7 side of industrial [inaudible] not on the side of
 8 water quality, not on the side of what I consider to
 9 be the public interest. And that's [inaudible] it no
 10 longer makes sense for me to sit down with DEQ in a
 11 collaborative working group, such as Lori was
 12 describing, because [inaudible] don't have the
 13 resources. I cannot sit on five, or six, or seven
 14 different committees because I have 20 other thing to
 15 do. There are only a few of us who have the
 16 ability to work with department workers and time and
 17 time again [inaudible] whether it's the storm water
 18 control group. In my opinion [inaudible] so for me
 19 to sit there and deal with them and try to get what
 20 we ask for, in terms of [inaudible] and what was
 21 committed here by the former environmental quality
 22 director, was essentially a map [inaudible] let us
 23 know if there are toxic [inaudible], which there are,
 24 [inaudible] discharger has them, where are they? What
 25 is being discharged into them? And how much? Those

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1 are three simple questions. Where are they? How
 2 much is being discharged into them? And what is
 3 discharged into them? And those are three questions
 4 DEQ cannot answer for you. They are allowing the
 5 discharge of toxic levels of toxic [inaudible] like
 6 mercury, like cyanide, like [inaudible] all on down
 7 the line. [inaudible] toxic concentrations. Not
 8 concentrations that I say are toxic. These are
 9 concentrations that exceed the state's own [inaudible]
 10 standards. At the very least, the state should know
 11 where. This is not rocket scientist [inaudible].
 12 When every NPDS permit gets submitted it comes along
 13 with a form. It's concentrations of at least one
 14 sample required by [inaudible]. It will tell you how
 15 much led, [inaudible] sample [inaudible] because these
 16 [inaudible] does not require monitoring [inaudible]
 17 even when they know the properties [inaudible].
 18 [inaudible] frustration, which as led me to, I think,
 19 my current [inaudible]. I hope that this committee
 20 will help. We look to you frankly because we're out
 21 of [inaudible]. We ask, for an example, that when
 22 you're allowing that discharger to discharge
 23 [inaudible] over the state water quality standard,
 24 into the Willamette River [inaudible], into a river
 25 that's already got so much mercury in it [inaudible]

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1 rest of sentence]. [inaudible] determine how much
 2 mercury they're putting in? The answer, no, we're
 3 not going to require that. That's clearly what
 4 [inaudible] no cost to you to process that data.
 5 They can just leave it in their folder, except DEQ
 6 said, "No, we're not going to require it." Is it a
 7 big burden on industry? Heck, no. You know,
 8 [inaudible] more data [inaudible] well, unfortunate
 9 [inaudible] events. We agree with [inaudible] and for
 10 \$30 to \$50 and a few hundred dollars you could get
 11 data on a lot of that [inaudible]. [inaudible] real
 12 problem. The second big issue and it's gonna come up
 13 for you so I wanted to address it indirectly is DEQ's
 14 recent announcement, as of Wednesday, that they are
 15 going to radically begin the water quality
 16 [inaudible]. Okay? It's important [inaudible] only a
 17 few pages. Unfortunately, you'll have to forgive the
 18 typos in this, but really this is fresh off the
 19 presses this morning. [inaudible] what I've just
 20 prepared for you is a little summary of it. Go
 21 online, you can see the standard. In short, what
 22 they're proposing to do is add a mixing zone, for the
 23 first time, into the water clarity standards. Our
 24 water clarity standard right now says, "No more than
 25 a 10% increase compared to natural background." And

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1 that's at the point - unless there's a mixing zone,
 2 that's at the point where the pollution meets the
 3 water. What DEQ has done now over our objection and
 4 [inaudible] Northwest [inaudible] Paper Association
 5 [inaudible] can't be true. Northwest [inaudible]
 6 Paper could not have paid to rewrite the very
 7 standard which they identified as one of their major
 8 problems. Yes, they did. They signed a contract
 9 with DEQ and it's in the record, I'll give you a
 10 records number, for \$120,000. Now, certainly I'm not
 11 gonna say that DEQ didn't exercise any [inaudible],
 12 but it's clear Northwest [inaudible] Paper [inaudible]
 13 current standard [inaudible]. They paid DEQ a big
 14 contract for \$120,000, now the standard's been
 15 radically [inaudible]. When I actually calculated
 16 just in a test phase how much weaker it would be, I
 17 reached the incredible conclusion that actually -
 18 whereas if you were discharging into a current stream
 19 would skip [inaudible] 1 NTU's [inaudible] water
 20 clarity turbidity. 1 NTU - today [inaudible]
 21 discharge would make that stream 1.1 NTU's [inaudible]
 22 increase. Under the new standard, if that stream
 23 [inaudible] 200 foot [inaudible] say, the Willamette
 24 or the Columbia, just assuming [inaudible] 1 NTU.
 25 First off, [inaudible] 300 foot mixing [inaudible].

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1 DEQ said, "We're not even gonna look at what's
 2 happening under the first 300 feet of a [inaudible]
 3 discharge into the water [inaudible]. Never mind what
 4 fish are there. Never mind who fishes in it. Never
 5 mind who swims in it. Never mind anything that goes
 6 on in that 300 foot area, which is the generally
 7 philosophy behind [inaudible]. We're only going to be
 8 concerned about what's happening at the end of that
 9 300-foot [inaudible]. Well, even at the end of that
 10 300-foot park, under the current standard, you could
 11 go to 1.1 NTU's. Under the proposed standard, if
 12 it's any -- [inaudible] river [inaudible] 0 or 33
 13 NTU, right off the bat you've got 5 NTU national
 14 increase. So instead of having 1.1 NTU, even at the
 15 outside of this big mixing [inaudible] you get 6
 16 NTU's, okay? That's a pretty significant increase -
 17 about 500% [inaudible]. So then consider what's -
 18 how does that 300 foot mixing zone play in? That's
 19 when you really get the amazing - just the magnitude
 20 of the [inaudible] DEQ is now proposing. Typically,
 21 when you're looking at mixing zones, the big question
 22 is pollution [inaudible]? How much pollution do you
 23 get [inaudible] hits the water through the outside of
 24 the mixing zone? Now, we can play with numbers, but
 25 I'll tell you that a 50 to 1 pollution ratio for a

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1 [inaudible] why is the standard being [inaudible]
 2 pollutant. Hard to look at [inaudible] Willamette or
 3 the Columbia or any other river and think that the
 4 rivers are too clear right now, or that we have room
 5 to make them dirtier. With that, I would invite you -
 6 I wanted to let you understand - certainly the
 7 articles that were in the Historian and I can tell
 8 you from - because I was at that [inaudible] hearing
 9 when Ally Shroder did explain very clearly and
 10 explicitly that they were very close to finishing this
 11 out. And at that time I did not think that she
 12 was. And I think that there's a very simple course
 13 of action. We know that [inaudible] let alone
 14 [inaudible] DEQ representative [inaudible]. It's
 15 serious. We can move on from it. But if you - we
 16 will forward you the transcript where the testimony's
 17 very clear [inaudible]. You can listen to it and
 18 [inaudible] it. I think the proper course of action
 19 is for either the director or DEQ [inaudible]. I
 20 apologize to the senate environment committee
 21 [inaudible]. I think though, just to put it in
 22 context, this is not a dollar issue. Okay? They
 23 want to [inaudible] this as a dollar issue. Right
 24 now, Oregon DEQ has a proposal by a private
 25 contractor to prepare. What we said as a reasonable

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1 300 foot area or stream like the Willamette is
 2 extremely [inaudible]. For blue [inaudible] it's more
 3 like 80 or 60. It's certainly above 50. If you
 4 assumed that [inaudible] 50 [inaudible] ratio, this
 5 proposed rule would mean that you could discharge 300
 6 NTU's down the pipe. 300 NTU's in the pipe. Now,
 7 this is 300 NTU at the pipe, and obviously that
 8 dilutes as you go down the stream. But when you
 9 consider that DEQ's own [inaudible] for this said that
 10 we could see real effects on trout and species like
 11 trout as low as 10 NTU. Do you realize that this
 12 isn't just a theory. It's not just a problem of a
 13 weakening in the standards that isn't gonna have an
 14 effect. It's something that's gonna have an effect
 15 on fish. Whether you eat fish, whether you simply
 16 like to know that there are fish there. [Inaudible]
 17 somebody like to look at a clear river. The picture
 18 that's on the front cover there is something that
 19 right now, under the current standard, would be
 20 totally illegal. It would violate the 1.1 NTU
 21 standard. Under the proposed standard, that would be
 22 perfectly legal because you wouldn't be looking at
 23 [inaudible] water. You'd have to go down 50, 100,
 24 probably about 300 feet [inaudible]. To me, this is
 25 symbolic of a [inaudible] a flawed perspective

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1 base [inaudible] let's just start with the major
 2 entities on the Columbia and Willamette. That's only
 3 about 20 of them. And I don't know the precise
 4 numbers but [inaudible] GIS [inaudible] and do all the
 5 [inaudible] assessment on the \$15,000. Now, \$15,000
 6 is not a small amount of money, except that DEQ just
 7 received a \$75,000 grant [inaudible]. This money
 8 could be used to support this less than \$15,000
 9 study, and you would have made progress. And this is
 10 what we said during our meetings to DEQ [inaudible]
 11 me to be so frustrated. You don't need to do it
 12 all now. Just make some progress. We don't want to
 13 sit down and [inaudible] some negotiation [inaudible]
 14 polluting industry [inaudible] run up around the clock
 15 for a month. This is the information [inaudible]
 16 public. I'm gonna wrap it up [inaudible] questions
 17 that you may have. I appreciate your time. END:
 18 TAPE 6, SIDE A FROM 183 TO END START:
 19 TAPE 7, SIDE B FROM 0 TO END OF TAPE
 20 UNIDENTIFIED SPEAKER: -- our
 21 relationship [inaudible] for the work that they do,
 22 but I do think now [inaudible] great time. Hopefully
 23 for the commission to exercise some due authority and
 24 hopefully encourage and realize that this [inaudible]
 25 and we're certainly going to do our best to work on

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1 those issues as well. But I think that - there's a
 2 real opportunity for these views to change its focus
 3 and [inaudible] proposed water [inaudible].
 4 MARK REEVE: Questions? I had a
 5 couple for them. One is these proposed rules on
 6 turbidity. I take it - it seems like they just came
 7 out a couple days ago of proposed - was there a
 8 rules advisory committee involved in this?
 9 UNIDENTIFIED SPEAKER: There was
 10 not a rules advisory committee. There were several
 11 meetings. We [inaudible] several incarnations of this
 12 over the last few years and from the very start we
 13 said [inaudible]. Yet it's the first time it's ever
 14 been done in Oregon. We've just come through with
 15 this breezing session where most people think that
 16 water quality is [inaudible] pipe. Most people just
 17 learned [inaudible] standard [inaudible] without limit.
 18 [Inaudible] and there is not standard [inaudible].
 19 So, we just [inaudible] doing the water quality when
 20 we're already doing the water clarity, and we're
 21 already doing the [inaudible] backwards. Creating
 22 zones in an unregulated pollutions. And it's not
 23 allowed [inaudible] it is not - anywhere [inaudible].
 24 They contract [inaudible] they are less acknowledged
 25 than [inaudible] regulations [inaudible] water.

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1 forum. [Inaudible] my name's Dr. Jay Christian Lanam.
 2 I'm a psycho biologist. One of my specialties is the
 3 effect [inaudible] on the brain and the nervous
 4 system. But actually I'm here today as a resident of
 5 Lincoln County. I have a home about seven miles down
 6 river on the - I believe [inaudible] Oregon City. We
 7 have some problems that I'd like to make you aware
 8 of. First of all, the [inaudible] in Lincoln County
 9 are quite disproportionate. We have - out of the 36
 10 counties in Oregon Lincoln County is third in the
 11 overall cancer death rate. It's seventh in the
 12 overall rate of cancer. It's number one in the
 13 [inaudible] of deaths from malignant brain cancer,
 14 first in death rate from malignant melanoma. Second
 15 in incidents of cervical cancer and so on down the
 16 line. Out of nine kinds of cancer only one does not
 17 list Lincoln County in the top ten, in terms of
 18 mortality. According to the World Health
 19 Organization, 80% of all cancers are environmentally
 20 [inaudible] influenced. And [inaudible] Samuel
 21 [inaudible] in Chicago [inaudible] 95%. When we look
 22 at the top [inaudible] states in the area as being
 23 [inaudible] Lincoln County is right among this 10%
 24 [inaudible] of all the counties in the United States
 25 for it. Air releases a recognized [inaudible]. We

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1 [Inaudible] statute which said we want to end all
 2 water pollution by 1985 [inaudible], okay? But if
 3 anyone ever tells us I'm too radical I would say,
 4 "Well, look at the [inaudible] white guys in 1972
 5 that say we had to end all water pollution by 1985."
 6 I'm just saying that you should [inaudible]
 7 concentration [inaudible].
 8 UNIDENTIFIED SPEAKER: Okay, so
 9 these - this proposal is out there for public comment
 10 at this point. And when is the schedule for when it
 11 would potentially come to the commission?
 12 UNIDENTIFIED SPEAKER: [inaudible]
 13 hearing set for November 29th. I think that public
 14 comment hearings [inaudible].
 15 MARK REEVE: Well, I'm not - I
 16 don't care about exact dates, but roughly December -
 17 timeframe?
 18 UNIDENTIFIED SPEAKER: I think that
 19 it would probably go back to DEQ, and probably be
 20 later than December before it comes to [inaudible].
 21 MARK REEVE: Okay, thank you.
 22 Next we'll hear from Jay Christian Lanam (Phonetic).
 23 Welcome.
 24 JAY CHRISTIAN LANAM: Thank you
 25 very much for [inaudible] and allowing this public

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1 are, at this point, we only have one industry that's
 2 putting out large amounts of pollution and this is
 3 the [inaudible] Mill. It is the only time
 4 [inaudible] industry in Lincoln County. Actually they
 5 are putting out about 15 million pounds of [inaudible]
 6 into the air per year. And right now there are no
 7 [inaudible] up for renewal in the next five years. I
 8 wanted to come here to speak to you today because at
 9 this point it's not absolutely [inaudible] on this.
 10 [Inaudible] have a water quality permit that was up
 11 for renewal, which has already essentially been
 12 approved. [Inaudible] citizens concern and outrage
 13 basically [inaudible] new comment period that has been
 14 reopened. And [inaudible] taking place shortly. Just
 15 a little bit about this particular mill; there is no
 16 independent monitoring other than by contractors that
 17 [inaudible]. They do their own monitoring. There's
 18 only one site to directly [inaudible] quality. Most
 19 of the permit is based on modeling data for air
 20 quality, other than direct measurement. We think the
 21 conditions need to actually be measured on the ground.
 22 The things that are being measured - the one side is
 23 on the hill. And this is an area [inaudible] fog,
 24 and in fact our weather conditions are a little bit
 25 like Los Angeles, because we have the cool, coastal

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<p>1 air coming in contact with air from the warmer 2 interior and that sometimes [inaudible] in a blanket 3 [inaudible] toxins there. So not only do we think 4 they need to be measured on the ground, we think they 5 need to be measured in the valley where there is a 6 lot of these smog- generating conditions. Second, 7 there are no real direct studies of health [inaudible] 8 statistics of the cancer registry, things of this 9 sort, but nobody has done any studies related to the 10 health of people in various distances that they live 11 from the mill. We know that the chemicals in the 12 air result in combinations that are often quite 13 different from what's actually release. These are not 14 always in the standards. The health effects, of 15 course, are not predictable either and people will 16 often say, "Well, it's very difficult to prove what 17 causes cancer," cuz there are multiple conditions. But 18 when we have these kinds of statistics it certainly 19 makes it suspect and we think that there certainly 20 needs to be some kind of precaution exercised here. 21 Actually, the Georgia Pacific Corporation is second in 22 the top 100 air polluters in the United States. This 23 is a local example of a corporate giant and it's 24 actually [inaudible]. I guess that's obvious 25 [inaudible] industry. It's not necessary that they be</p>	<p>1 hyperactivity disorder, and asthma. Some things are 2 simply too precious to lose, our health and the 3 health of our children are definitely something that 4 falls in this category. Thank you very much. 5 MARK REEVE: Thank you. Thanks 6 very much. Next we'll hear from Gretta [inaudible]. 7 GRETTA: [inaudible]. First, I'd 8 like to leave this [inaudible]. I'm a [inaudible] 9 sentences]. [Inaudible] cancer every night and day by 10 my pollution. My [inaudible] sentences]. [Inaudible]. 11 There are many homes on this lane [inaudible]. My 12 main mission [inaudible] cancer [inaudible] some form. 13 [Inaudible sentence]. [Inaudible] number of patients 14 [inaudible]. I've lived in my home for 27 years. 15 I'm deeply disturbed by what I can see [inaudible] 16 ongoing attempts to conceal and downplay the toxic 17 pollutants coming from the [inaudible] mill. Please 18 do not allow an increase of air pollution [inaudible]. 19 Too many people are all ready dying. Let's all work 20 together to fight [inaudible] a way for the mill and 21 the community to coexist [inaudible] new technology 22 exists to solve the problem [inaudible]. Let's look at 23 greatly reducing, not increasing the toxins 24 [inaudible]. [Inaudible] and for myself, it's not 25 okay that I and many others wake up at 3 a.m.</p>
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<p>1 this high. Weyerhaeuser, which is actually the number 2 one sized paper and [inaudible] timber company in the 3 world is fifteenth in their toxic conditions in the 4 air. So there's a lot that can be done. I wanted 5 to take just an example of one thing. One of the 6 permitted pollutants in demand; we know that lead is 7 a health risk at all sorts of levels, but it's not 8 just the direct health risk of lead itself, but 9 actually any heavy metal will compromise the blood 10 [inaudible] and allow other chemicals into the brain 11 that shouldn't be there. I was just hearing about 12 fish mercury, of course this is also a coastal area 13 where there's quite a bit of fish consumption. And 14 if you're considering whether to look at state's 15 levels of these or local conditions, I would say that 16 it's very important to look at local conditions. How 17 does the fish consumption and what's going into the 18 water interact [inaudible] our bodies with what the 19 air in fact does? We want this planet to modernize 20 its pollution controls. We [inaudible] before they 21 continue to operate. WE want direct monitoring of 22 the air quality and we want direct health studies, 23 not [inaudible] across the county. We are learning 24 all the time more about how toxins- reducing 25 [inaudible] cause autism, attention deficit,</p>	<p>1 [inaudible]. [Inaudible sentences]. I wouldn't have 2 moved here if I'd known [inaudible]. [Inaudible 3 sentences]. [Inaudible] technology [inaudible] 4 especially [inaudible]. [inaudible sentences]. And 5 as for the corporation of the United States 6 [inaudible] and our air and water [inaudible]. And 7 lastly, it is our [inaudible] right to [inaudible]. 8 Thank you very much. 9 MARK REEVE: Thank you. Lastly, 10 we'll hear from Brett Dandin [inaudible]. I'm not 11 sure if I got your last name correct, Brett. 12 Welcome. 13 BRETT: Okay, [inaudible] my name 14 is Brett [inaudible] and I'm here to talk to you 15 today about the proposed [inaudible] standards 16 [inaudible]. I will be brief cuz [inaudible] went 17 over some of the details. I got a couple of emails 18 yesterday telling me about the standard [inaudible] I 19 didn't want to read it. This - going through these 20 [inaudible] isn't always the most exciting thing to 21 do. But as I - it's only three pages so I've 22 provided it for you and I want to go over just a 23 few of the - what I consider the most radical 24 changes. 25 UNIDENTIFIED SPEAKER: Do you have</p>

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<p>1 another copy?</p> <p>2 BRET: I do, but - I realize</p> <p>3 [inaudible] draft rule of getting this out to the</p> <p>4 commission in its early stages. I hope [inaudible]</p> <p>5 comments will be effective. On the cover, briefly is</p> <p>6 a chart that is not [inaudible] specific or not any</p> <p>7 specific water body or even any specific [inaudible]</p> <p>8 fish. It's just roughly showing [inaudible] turbidity</p> <p>9 and time, on the x axis, showing the effects on fish.</p> <p>10 And I show you these to make a point that certain</p> <p>11 spikes in turbidity - certain spikes in murky water,</p> <p>12 cloudy water, perhaps after a rain storm, [inaudible]</p> <p>13 have a while to deal with that. Long-term spikes</p> <p>14 [inaudible] long-term changes in the water clarity</p> <p>15 have a much more profound effect on fish. So if we</p> <p>16 look at - on the y-axis, say, this is expediential,</p> <p>17 but between the ten and 100, say, 50 NTU's, which is</p> <p>18 a unit for turbidity. For a couple of hours it may</p> <p>19 not effect fish tremendously. When you move into the</p> <p>20 [inaudible] that's why I'm looking at reduced</p> <p>21 [inaudible] of long-term [inaudible]. The reason I</p> <p>22 show that chart is that some of the proposed</p> <p>23 standards have allowed monthly increases in turbidity</p> <p>24 at the same rate that current turbidity standards</p> <p>25 allow for an hour, not even for an hour but for a</p>	<p>1 "Maximum turbidity" -</p> <p>2 UNIDENTIFIED SPEAKER: I have a</p> <p>3 question. [Inaudible] portion [inaudible] it says,</p> <p>4 "However limited duration activities necessary</p> <p>5 [inaudible] to emergency which would accommodate</p> <p>6 [inaudible] turbidity and cause [inaudible]." It</p> <p>7 talks about natural [inaudible sentences].</p> <p>8 UNIDENTIFIED SPEAKER: Right, there</p> <p>9 are seven -</p> <p>10 UNIDENTIFIED SPEAKER: Okay, good.</p> <p>11 So -</p> <p>12 UNIDENTIFIED SPEAKER: -- there are</p> <p>13 [inaudible] emergencies [inaudible]. I'm talking about</p> <p>14 in a normal day-to-day operation [inaudible].</p> <p>15 UNIDENTIFIED SPEAKER: [inaudible] I</p> <p>16 understood you to say that the red line was what was</p> <p>17 still needed, and yet on to the right there's this</p> <p>18 [inaudible] they don't seem to be related. So, are</p> <p>19 you saying the red line is the new?</p> <p>20 UNIDENTIFIED SPEAKER: No, I'm</p> <p>21 sorry I wasn't clear. The red line in the text is</p> <p>22 the added part of the rule. And the deleted -</p> <p>23 UNIDENTIFIED SPEAKER: The new</p> <p>24 part? The red line is the new?</p> <p>25 UNIDENTIFIED SPEAKER: -- right,</p>
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<p>1 second, which I'll get to in a minute. So, I'll</p> <p>2 just briefly talk about this rule. If you'll turn to</p> <p>3 the second page, which is at the bottom of this</p> <p>4 [inaudible] Page 27 of Section - or [inaudible] 41 of</p> <p>5 the rules. It's - it's the redline version - the</p> <p>6 red is an addition to the rule, and on the right is</p> <p>7 where the lead is [inaudible] that big long paragraph.</p> <p>8 That's the whole standard of - I'm not gonna vent to</p> <p>9 much about DEQ, because I've only spent about three</p> <p>10 years looking at these rules. So I don't have the</p> <p>11 buildup as perhaps some of the earlier people have in</p> <p>12 experience. And I hope that during my career of</p> <p>13 looking at these rules that I'll never have to get to</p> <p>14 that point. But [inaudible] red line [inaudible] so</p> <p>15 I was looking at these rules and [inaudible] show DEQ</p> <p>16 did provide the changes in the rule [inaudible]</p> <p>17 comparing these rules side by side. [Inaudible] red</p> <p>18 line [inaudible] so the deleted portion says, "No more</p> <p>19 than 10% increase [inaudible] turbidity." [Inaudible]</p> <p>20 where it comes out at a pipe. Basically, the old</p> <p>21 rule says, "Whatever is [inaudible] discharge cannot</p> <p>22 be more than 10% greater cloudy [inaudible] than</p> <p>23 [inaudible] the natural background level [inaudible]."</p> <p>24 That's [inaudible] if you'll turn to the next page,</p> <p>25 labeled Page 28 here. The third line down says,</p>	<p>1 the red text.</p> <p>2 UNIDENTIFIED SPEAKER: Right.</p> <p>3 UNIDENTIFIED SPEAKER: And the</p> <p>4 deleted is off in a small box [inaudible] -</p> <p>5 UNIDENTIFIED SPEAKER: Right.</p> <p>6 Okay.</p> <p>7 UNIDENTIFIED SPEAKER: -- okay. So</p> <p>8 we're working from the old rule of 10% increase at</p> <p>9 the pipe - 10% increase over the background level is</p> <p>10 the natural [inaudible] level. Going on to the</p> <p>11 second page, or Page 28 where the third - the first</p> <p>12 subsection says, "To [inaudible] turbidity criteria for</p> <p>13 waters of the state. A; maximum turbidity. The</p> <p>14 background turbidity is 33 NTU's or less [inaudible] 5</p> <p>15 NTU's above background." So we've gone from a</p> <p>16 percent to an actual numeric value. And say if the</p> <p>17 - if the - if the maximum - or if it was at 33</p> <p>18 NTUs - if it was that murky, than 10% of that is</p> <p>19 3.3 increase. So that [inaudible] versus 5 NTU's,</p> <p>20 which isn't that big of a difference, but if the</p> <p>21 background is 1 NTU -- that's how murky the water is,</p> <p>22 then the standard allows five in addition to that and</p> <p>23 that becomes - the new standard become 6 NTU's, which</p> <p>24 is a 600% increase over the background level. If you</p> <p>25 follow the DEQ [inaudible] 0.1 NTU's [inaudible] data</p>

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1 to show, so that's the default. If that was the
 2 case, the stream had 0.1 NTU, the increase [inaudible]
 3 6 would be a 6,000% increase. So these have
 4 tremendous, potential impacts to water clarity of
 5 Oregon. Moving on to monthly average for turbidity
 6 in subsection 2B, about a third of the way down the
 7 page and under 2B [inaudible] B, says, "Where
 8 background turbidity is greater than 30 NTU's, monthly
 9 average turbidity must not exceed 10% of the
 10 background." What is that 10% covering in?
 11 [Inaudible] time the old standard being it can't be
 12 10% [inaudible] the new rule saying it can't - the
 13 standard 10% for a month. And moving on to Page 29,
 14 second to the last page. So if these increases that
 15 I'm talking about - and Brad mentioned this, but I'm
 16 going to reiterate it. They occur outside of the
 17 [inaudible] rule. So - and in the case of the
 18 Willamette, which is greater than 200 feet wide, is
 19 600% or 6,000% increase that I'm talking about would
 20 only be measured outside 300 [inaudible] in the pipe.
 21 So if this is the pipe, the microphone stand,
 22 [inaudible] into the rule all the way 300 feet down
 23 stream, there's no measurements, there's no
 24 requirements, there's no regulation. It could be
 25 anything. It could be [inaudible]. [Inaudible] only

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1 measured outside of the safety zone [inaudible]. And
 2 last, on Page 29, subsection F, about a third of the
 3 way down the page. It says, "The department may
 4 establish criteria for limited duration [inaudible]
 5 more stringent than the criteria." So this is giving
 6 the department the authority - giving DEQ the
 7 opportunity to make it more stringent in certain
 8 situations. But again, it says, "It may." There's
 9 no legal requirement for DEQ to do so. So it may
 10 or may not in these situations. There's not
 11 mandatory requirement to protect the water clarity in
 12 public waterways, waters that are already water body
 13 limited, which are the [inaudible] stream of public
 14 drinking water intake. There may be other drinking
 15 water rules, but as far as this rule for the water
 16 quality standards, a stream of red [inaudible]
 17 spawning areas, there's no legal requirements for DEQ
 18 to protect those areas in between. That's all I
 19 have.
 20 MARK REEVE: Okay. Thank you. I
 21 think that concludes - well, I guess nobody in the
 22 audience [inaudible] up. They don't have their slip.
 23 I think that concludes the public forum. I'd like to
 24 take a very brief break before we take up our last -
 25 UNIDENTIFIED SPEAKER: Before we do

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1 I'd like to [inaudible].
 2 MARK REEVE: Sure, go ahead.
 3 UNIDENTIFIED SPEAKER: [inaudible
 4 sentences]. [Inaudible] I don't know the truth of
 5 them [inaudible]. [Inaudible] DEQ and I - I'd like
 6 to explain that in several areas that bother me more
 7 than others. If I understand [inaudible], is that
 8 correct?
 9 UNIDENTIFIED SPEAKER: I don't know
 10 [inaudible].
 11 UNIDENTIFIED SPEAKER: Oh, okay.
 12 Because if it was and given the issues we've raised,
 13 I wonder [inaudible] because [inaudible]. The second
 14 thing we've already talked about [inaudible] as far as
 15 the [inaudible] article about [inaudible] and what
 16 I'm going to say is not directed [inaudible] I would
 17 say the same thing. If the river papers funded a
 18 study like this [inaudible] I mean, at least I feel
 19 that way. When there is funding [inaudible] somebody,
 20 and so I'd like to [inaudible]. And then
 21 [inaudible].
 22 UNIDENTIFIED SPEAKER: Do you have
 23 more issues?
 24 UNIDENTIFIED SPEAKER: No, I've
 25 just pointed out the specific ones. I mean, the

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1 gentleman that just spoke on his study [inaudible]
 2 changes, and these [inaudible] effects [inaudible].
 3 UNIDENTIFIED SPEAKER: That last
 4 one, the turbidity rule is out on public notice and
 5 is a rule that is in process of coming to you. So
 6 you will get - and you will [inaudible] as you
 7 recall, by Bob [inaudible]. So you will be -
 8 continue to be involved in those discussions.
 9 UNIDENTIFIED SPEAKER: Okay, and I
 10 understand that that's a public process [inaudible].
 11 [Inaudible] looking for is the [inaudible] rule change
 12 itself.
 13 UNIDENTIFIED SPEAKER: Okay.
 14 UNIDENTIFIED SPEAKER: [inaudible]
 15 first going back to the Georgia Pacific thing. This
 16 is a Title 5 permit. They have to be renewed every
 17 five years. It is in the process of public comment
 18 right now, so it hasn't been issued. There has been
 19 a -
 20 UNIDENTIFIED SPEAKER: It's a tad
 21 bit more complicated than that. It's a little more
 22 complicated than that. Actually, the waterside of the
 23 permit was issued. It went out for public comment,
 24 public comment was received, but there wasn't
 25 objection to the permit. And then the air permit was

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1 out and public comment was received on that. And the
 2 department heard concerns raised about the water side
 3 of the permit during the air process. The department
 4 took a relatively unusual step of withdrawing the
 5 permit on reconsideration to -- the water permit, to
 6 take more testimony. Obviously, they consulted with
 7 Georgia Pacific and they didn't object, even though
 8 they might have, because they wanted to get a - the
 9 department wanted to get a full hearing on the water
 10 side. So they're both out on public notice, but
 11 technically the water permit did issue, and that's why
 12 it's a little bit confusing.

13 UNIDENTIFIED SPEAKER: [inaudible]
 14 DEQ did extend the public comment on the air side -
 15 UNIDENTIFIED SPEAKER: Yes, as
 16 well.

17 UNIDENTIFIED SPEAKER: [inaudible]
 18 significant comment [inaudible].

19 UNIDENTIFIED SPEAKER: There's been
 20 tremendous effort, I think, to get as much public
 21 input as possible on that permit. And -
 22 UNIDENTIFIED SPEAKER: [inaudible
 23 sentence].

24 UNIDENTIFIED SPEAKER: Would you
 25 like - I'm sure that the region has - working on the

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1 toward the standards that you really can know when
 2 someone violates it [inaudible] legally approach it.
 3 So that's what the department's trying to do. It's
 4 not that they're trying to move back on these rules
 5 [inaudible].

6 UNIDENTIFIED SPEAKER: All right,
 7 commissioner Williamson's correct and I'll just respond
 8 [inaudible], in terms at why we looked at the
 9 turbidity standards was exactly that. We do, as you
 10 heard, in some other discussion about water quality
 11 toxins. We generally do a [inaudible] every three
 12 years to look at water quality standards that need to
 13 be looked at. The turbidity standard had not been
 14 looked at for a long time. And as commissioner
 15 Williamson said, the way it was written, quite
 16 frankly, is basically unimplementable (Phonetic) from a
 17 [inaudible]. And at the time, which I think was
 18 2002, when the subject came up of looking at the
 19 turbidity standards, which was a couple of water
 20 quality administrators ago. And I think you're
 21 beginning to understand why we go through water
 22 quality administrators every two years. The turbidity
 23 standard of the - department discussed how to go
 24 about it, given the resource constraints. At that
 25 time, I think the administrator was Mike Luellen.

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1 permit, has a lot of background information on the
 2 whole process. Would you like a little packet?
 3 UNIDENTIFIED SPEAKER: [inaudible]
 4 and if you have any side-by-side [inaudible] old or
 5 the new. I'd also like to know why [inaudible]. I
 6 think I know a little bit about [inaudible].
 7 (Inaudible discussion)
 8 UNIDENTIFIED SPEAKER: On the
 9 turbidity one - well, there's two issues. One is
 10 there's more known about turbidity effects on fish, so
 11 there's been an improvement [inaudible]. The second
 12 one is trying to clear up this whole monitoring
 13 issue, because the fact of the matter is, the way the
 14 rule is written, this 10% increase, at low values of
 15 turbidity you can't measure. So Oregon has written
 16 into its law a rule that, you know, just - that
 17 really cannot be measured. So the department is
 18 trying to deal with that and get it to a point that
 19 we can actually [inaudible] these rules in the
 20 streams. Well, for example, if you got 1 NTU and
 21 you want to try to see if you now have 1.1, you
 22 can't measure that with this new technology. So -
 23 and even at 2 you can't. Even at 3 it's
 24 questionable. These low NTU units are basically
 25 really clear water. And so the idea is to move

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1 And we made - we do have authority given to us by
 2 the legislature, which is referred to as Receipts
 3 Authority, to enter into contractual arrangements to
 4 have some services paid for. It is an authority that
 5 we have. We generally use it only in permitting for
 6 someone [inaudible] special acceleration of a permit
 7 or a special study or something like that, they're
 8 allowed to [inaudible] department to do that. We
 9 experimented with that on this standard. I will not
 10 do it again. You don't learn things unless you
 11 experiment and we have experimented and I think you're
 12 quite correct, Commission [inaudible], we are now in a
 13 box on the turbidity standard, because regardless of
 14 what we do, it's going to be considered to have been
 15 paid for Northwest [inaudible] Paper. And we need to
 16 deal with that as we go forward with the standard.
 17 But that's the history and that's why we did that.

18 UNIDENTIFIED SPEAKER: [inaudible]
 19 comment wasn't to say [inaudible] --

20 UNIDENTIFIED SPEAKER: Absolutely.
 21 No, I don't disagree at all.

22 UNIDENTIFIED SPEAKER: --
 23 [inaudible] and I don't care which side [inaudible].

24 UNIDENTIFIED SPEAKER: I agree.
 25 UNIDENTIFIED SPEAKER: It's one

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<p style="text-align: right;">Page 57</p> <p>1 thing to have the pride [inaudible] do it's own study 2 and bring it to our consideration [inaudible] or 3 anybody else who does it [inaudible]. 4 UNIDENTIFIED SPEAKER: No, I 5 absolutely agree with you because the sad fact is, 6 sort of, regardless of the outcome you paint the 7 outcome. And we're not [inaudible] having to deal 8 with that problem, even if the outcome is based on 9 very, very good science. It's gonna be a challenge 10 for us and for you to evaluate when a rule comes to 11 you, you know, whether or not this [inaudible] work. 12 And you should not [inaudible]. 13 UNIDENTIFIED SPEAKER: But that is 14 - it's a much broader issue than that. For example, 15 coming down the pipe when this fish consumption study 16 gets back, it's gonna get paid for by the EPA. The 17 citizens of Oregon are probably not gonna pay for 18 this study, EPA is gonna pay for it. And the EPA 19 has already gone on record that they want a bigger 20 number than they have. So is that gonna be a 21 [inaudible] study? Well, a lot of people are gonna 22 say, "Yeah, that's a tainted study, because these guys 23 have a vested interest already." The fact of the 24 matter is that people pay for a lot of things. And 25 I know it doesn't look well or whatever, but you</p>	<p style="text-align: right;">Page 59</p> <p>1 turbidity, cuz there's a lot of different [inaudible]. 2 Not only that, but there's a huge background of 3 different turbidities in Oregon streams and there's a 4 huge difference in turbidity over time. So, given 5 all that, there's a lot of noise in this system. 6 And there always will be turbidity. There's a lot of 7 noise. It's just a - inherently in turbidity 8 there is this problem of trying to provide standards 9 that are meaningful but not to [inaudible]. Than we 10 get [inaudible] whole controversy about [inaudible] and 11 that's like a whole philosophical [inaudible] between 12 the people who are trying to [inaudible] stream and 13 the people who have to discharge into stream. And 14 we're that interfacing [inaudible] and one of the 15 methodologies people have come up to try to make that 16 system work is mixing zones. There's a lot of 17 controversy on a mixing zone. And so if you're gonna 18 try to solve the turbidity problem and mixing zones 19 all at once then it's like you sort of [inaudible]. 20 And I can understand the frustration on peoples side 21 to try to protect wildlife and streams, and I also 22 understand the frustration on the people who are 23 [inaudible] and the frustration by the regulators to 24 try to make this all work. And you just about 25 [inaudible].</p>
<p style="text-align: right;">Page 58</p> <p>1 know, it's a bigger issue than just [inaudible] 2 showing up and paying for this study. 3 UNIDENTIFIED SPEAKER: [inaudible] 4 public sector [inaudible] very aware of what the 5 public [inaudible]. 6 UNIDENTIFIED SPEAKER: I agree 7 totally, but if we're not going to allow it form the 8 [inaudible] paper industry than we'd better look at 9 whether we're gonna accept the money from the EPA to 10 do this fish consumption study. Cuz I can tell you 11 they have a bias [inaudible]. And, at best, I think 12 what you got to do is just lay that out in front 13 and say, you know, I don't know. I think it's a 14 bigger issue than [inaudible] and I think turbidity is 15 a - turbidity is a tough one cuz we took it on. 16 Turbidity as a measure is - its' what we call a 17 [inaudible], okay? The measure of something that's 18 not very well defined, okay? And so the impacts are 19 pretty fuzzy. I mean, I think the diagram on the 20 front sort of shows that. You look at the impacts; 21 they're not very well defined. So, if you're looking 22 at something like zinc [inaudible], okay? You can 23 define a [inaudible] a precise curve of what the 24 impact is in zinc in certain concentration on a 25 certain kind of [inaudible]. You can't do that with</p>	<p style="text-align: right;">Page 60</p> <p>1 UNIDENTIFIED SPEAKER: Well, one 2 comment - just to kind of [inaudible] all of you 3 about why this is so difficult to water [inaudible] 4 and you know, we get our share of air issues as 5 well. [Inaudible] as we heard today, there is this 6 fundamental difference between the way the clean air 7 act comes from the [inaudible] water act [inaudible]. 8 And the way the clean air act functions; the federal 9 government, [inaudible] EPA, basically sets the 10 criteria and the standards in very [inaudible] detail. 11 And so there's not much [inaudible] of interpretation 12 [inaudible] state adopt the federal rule by reference. 13 [Inaudible] and water on the other hand, they 14 basically give that authority all to the states to 15 figure it out. And then they have to approve 16 whatever the state does. So, in water, you're 17 continually in the debate about whatever standard it 18 might be because the federal government [inaudible]. 19 UNIDENTIFIED SPEAKER: [inaudible] 20 interest to me to look at the clean air act. 21 [Inaudible] priority will come from [inaudible] models 22 [inaudible]. I don't hear anybody challenging that 23 whole process [inaudible]. But water we do. I mean, 24 it's a big philosophical debate and I'm not sure 25 [inaudible].</p>

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<p>1 UNIDENTIFIED SPEAKER: There won't 2 be [inaudible]. 3 UNIDENTIFIED SPEAKER: Can I ask 4 one - maybe I didn't understand this correctly, but I 5 was trying to [inaudible] got lost. But do I 6 understand you to say that the values we need are 7 low. We don't have the tools to be able to check 8 that, so that the lab values that we get don't go 9 low enough to get to the level that we need for 10 clean water or less turbid water or what? 11 UNIDENTIFIED SPEAKER: May I 12 respond to this? Mary Abrams is our lab 13 administrator and I don't know whether that was 14 something that Commission Laman had said he wanted to 15 respond, but [inaudible]. 16 UNIDENTIFIED SPEAKER: Chairman 17 [inaudible] and [inaudible] comment [inaudible] 18 extremely difficult to measure up [inaudible] from the 19 laboratory [inaudible]. It's very difficult when you 20 get down to clean water, to measure [inaudible]. The 21 added difficulty [inaudible] which is [inaudible] you 22 have a pretty strong effect on turbidity [inaudible] 23 also difficult. [Inaudible] historically has been one 24 of the most difficult [inaudible] there is to measure. 25 [Inaudible] something that makes sense from a</p>	<p>1 related to that [inaudible] given the [inaudible] that 2 you have now. And this is sort of a growth 3 [inaudible] but it's also been [inaudible] go from 0 4 to [inaudible] and an ability to do some [inaudible] 5 because we can't even do it now, given the standards 6 of the past. It's not worth it. 7 UNIDENTIFIED SPEAKER: [inaudible] 8 so that - if I can - I'm just trying to understand 9 it. So this gives us the ability to whack 10 (Phonetic), whereas the other one gave us barometers 11 but we couldn't whack. 12 UNIDENTIFIED SPEAKER: Yeah, it was 13 very difficult. It was very difficult. The other 14 thing that we'll do that I think that they're hoping 15 that we will do, we know what stream we really don't 16 want [inaudible]. So we can [inaudible] and we know 17 that it won't have a very big impact there. We can 18 increase the monitoring, cuz that's like going to a 19 school zone and speeding tickets. It's really 20 important. You're not required [inaudible] I-5. And 21 the I-5 in our world is like the Columbia, okay. 22 And, you know, because we know we don't [inaudible] 23 in the Columbia [inaudible] a lot of things. So 24 that's - I think that's where we're trying to go with 25 turbidity because of just the nature of turbidity</p>
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<p>1 measurement standpoint and regulate it. We've had a 2 very difficult time in that we [inaudible]. You 3 know? And if you have a really clear stream 4 [inaudible] 1 to 1.1 [inaudible]. 5 UNIDENTIFIED SPEAKER: So, I mean, 6 you wanted to make an analogy, it's like giving a 7 speech, okay? We don't have a law that you're 8 speeding to go 10% over the [inaudible] because in a 9 25 mile an hour zone a police man can't tell whether 10 you're going 27. So, what do police do? Well, I 11 think they use like the 10-mile rule. That's what 12 they do, okay? And what we're doing here is we're 13 putting in the 5 mile an hour rule. That's what 14 we're doing, okay? And if somebody dumps more than 5 15 in there we can measure it. We're for sure. We 16 can measure 5 no matter where it is on the scale and 17 we're gonna [inaudible] if them if it's greater than 18 5. That's what Baumgartner basically told us, right? 19 That's why they chose 5. 20 END: TAPE 7, SIDE B FROM 0 TO END OF TAPE 21 START: TAPE 8, SIDE B FROM 0 THRU 94 22 UNIDENTIFIED SPEAKER: I don't know 23 whether that's the way to do it or not, I don't 24 know, but that's where they're trying to go. 25 UNIDENTIFIED SPEAKER: And also</p>	<p>1 impact [inaudible]. 2 UNIDENTIFIED SPEAKER: [inaudible] 3 if you will. The other problem with turbidity is 4 that it really is associated with some of the other 5 issues that we discovered with water [inaudible] 6 talking about. [Inaudible] around the water portion 7 of water, they tend to travel around the [inaudible] 8 portion of water. And so we do feel as [inaudible] 9 important to get [inaudible] and we've had trouble 10 [inaudible] in doing that in the past with our 11 [inaudible] very much struggle with the [inaudible]. 12 UNIDENTIFIED SPEAKER: [inaudible] 13 combination [inaudible]? 14 UNIDENTIFIED SPEAKER: I apologize 15 [inaudible]. 16 UNIDENTIFIED SPEAKER: Suspended. 17 UNIDENTIFIED SPEAKER: Like 18 suspended in the water quality. 19 UNIDENTIFIED SPEAKER: Okay, I was 20 thinking you were talking about - 21 UNIDENTIFIED SPEAKER: [inaudible] 22 sentence]. 23 UNIDENTIFIED SPEAKER: Thanks. Oh, 24 another comment? 25 UNIDENTIFIED SPEAKER: I just have</p>

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1 one brief comment. I was taking notes here and it
 2 just occurred to me that [inaudible] all Stephanie is
 3 saying [inaudible] lesson about a receipt, what did
 4 you call them?
 5 UNIDENTIFIED SPEAKER: It's called
 6 receipts authority.
 7 UNIDENTIFIED SPEAKER: Receipts
 8 authority, okay. On the one had we have a very
 9 strong recommendation that we require polluters to do
 10 their own monitoring, and yet for somehow - which is
 11 going to be a cost item for them, which we're relying
 12 on them to make [inaudible] reports, etcetera,
 13 etcetera. Yet somehow the idea that they - that an
 14 industry as a whole would give money to an agency to
 15 - for an agency to do their own research, which is
 16 what I understand happened, is that what happened?
 17 UNIDENTIFIED SPEAKER: That's
 18 correct.
 19 UNIDENTIFIED SPEAKER: Okay, all
 20 right. So, what's so bad about that? I mean, I
 21 can see if, you know, on the one hand we're relying
 22 on the industry to sell to the [inaudible] well, and
 23 this is the suggested tactic. Why aren't we making
 24 the industry give money to DEQ so DEQ can monitor.
 25 I mean, those seem to me like inconsistent reports by

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1 inconsistently approaches by critics. So I personally
 2 think that if you're - so long as the body, which is
 3 doing the testing is neutral, there's nothing wrong in
 4 asking or accepting money from the industry to get
 5 more data on it. So maybe the lesson we learn is
 6 that we contract out to a third party or we - you
 7 know, I don't know. I wouldn't necessarily give up
 8 on that approach.
 9 UNIDENTIFIED SPEAKER: Thank you.
 10 (Inaudible discussion)
 11 UNIDENTIFIED SPEAKER: I know
 12 public is at least as smart as I am.
 13 UNIDENTIFIED SPEAKER: I totally
 14 agree with that and ever day we take drugs. And I
 15 can tell you the testing of those drugs was done by
 16 an industry, they paid for it. There was a third
 17 part involved that actually did the testing, but they
 18 paid for it. Okay? We trust that process
 19 [inaudible]. It seems like to me that we gotta be
 20 able to trust this process here. That this agency
 21 can do research and do tests, okay, and it's not
 22 gonna be [inaudible]. We gotta have that trust, and
 23 we can't give up on that trust.
 24 UNIDENTIFIED SPEAKER: Okay.
 25 UNIDENTIFIED SPEAKER: Thank you.

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1 UNIDENTIFIED SPEAKER: Good.
 2 [Inaudible] we have -
 3 UNIDENTIFIED SPEAKER: We have
 4 another agenda item.
 5 UNIDENTIFIED SPEAKER: -- we have
 6 an agenda item, but we're gonna take a short break.
 7 We're just taking a five-minute break and we'll
 8 reconvene in five minutes.
 9 UNIDENTIFIED SPEAKER: Thank you.
 10 END: TAPE 8, SIDE B FROM 0 TO 94.
 11 .
 12 .
 13 .
 14 .
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 16 .
 17 .
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 19 .
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 25 .

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1 CERTIFICATE
 2 .
 3 I, Aimee L. Clem, do hereby certify
 4 that the matter herein mentioned on the preceding
 5 title page was transcribed via tape recording. I
 6 transcribed all testimony adduced and other oral
 7 proceedings had in the foregoing matter; and that
 8 the foregoing transcript pages constitute a full,
 9 true and correct record of such testimony adduced
 10 and oral proceeding had and of the whole thereof.
 11 .
 12 .
 13 IN WITNESS WHEREOF, I have hereunto set my hand
 14 this 4th day of December, 2005.
 15 .
 16 .
 17 .
 18 _____
 19 Aimee L. Clem
 20 .
 21 .
 22 .
 23 .
 24 .
 25 .

17 (Pages 65 to 68)



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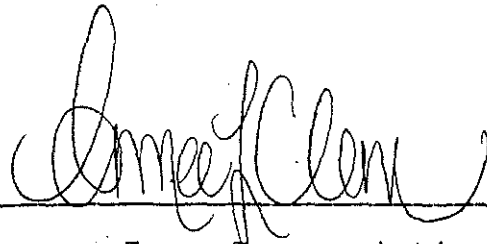
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I, Aimee L. Clem, do hereby certify that the matter herein mentioned on the preceding title page was transcribed. I transcribed all requested audio in its entirety in the foregoing matter; and that the foregoing transcript pages constitute a full, true and correct record of such audio.

IN WITNESS HEREOF, I have hereunto set my hand this 4th day of December, 2005.

A handwritten signature in cursive script, reading "Aimee L. Clem", written over a horizontal line.

Tape Transcriptionist

ORIGINAL

ENVIRONMENTAL QUALITY COMMISSION
OREGON SOLUTIONS PRESENTATION &
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TAPE TRANSCRIPTION
TAPES 1, 6, 7, AND 8
OCTOBER 21, 2005

- - -

BE IT KNOWN THAT, the above-referenced Transcript of Proceedings was transcribed from tape on December 4, 2005.

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1 START: TAPE 1 - SIDE A FROM 51 THRU 484

2 MARK REEVE: Now we have Item B,
3 an informational item concerning Oregon solutions.
4 And we'll welcome Pete Falk and Greg Wolf.

5 UNIDENTIFIED SPEAKER: Thank you
6 Mr. Chair and we're - we've been trying to schedule
7 this [inaudible] for a long time. The Oregon
8 Solutions is, if you will, and these folks will talk
9 about this - this sort of the next iteration, which
10 was what was started by Governor Kitzhaber as
11 community solution, which involved the state agencies
12 and local government partners, which has now become
13 the governor's economic revitalization teams. And
14 then Oregon Solutions sort of takes that one step
15 further, so we actually have private sector
16 partnerships as well on various projects around
17 Oregon. And DEQ, primarily Pete, but others as well,
18 has been an active participant and supporter of these
19 projects. And so we've been wanting to have Greg and
20 Pete come talk to you about it for quite a while.
21 So I look forward to hearing from them.

22 MARK REEVE: Thanks, welcome.

23 PETE FALK: Thank you. Thanks for
24 having us today. My name is Pete Falk [inaudible].
25 In our staff report [inaudible]. [Inaudible] from our

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1 air quality program [inaudible].
2 GREG WOLF: Thanks, Pete. We've
3 definitely [inaudible] well, we were very [inaudible]
4 talk about the program. The national [inaudible] is
5 a nation partnership [inaudible]. [Inaudible
6 sentences]. [Inaudible] and it's co-chaired by Dough
7 [inaudible] Kitzhaber and [inaudible]. We're currently
8 working with [inaudible] services [inaudible]. And I
9 just want to [inaudible]. [Inaudible sentences]. I
10 also want to thank [inaudible] for giving us
11 [inaudible]. I would say that one of the reasons
12 that we've had such success as [inaudible] federal
13 agency is because of the Oregon [inaudible] project.
14 [Inaudible sentences]. [Inaudible] through a couple
15 of these lines. [inaudible] Ted Kulongoski. This is
16 one of the programs that actually [inaudible] to
17 governor - governor - Govenor Kulongoski. [Inaudible]
18 I don't think there was any negative votes in either
19 the house or the senate. [Inaudible] and since the
20 work we are doing is collaborative [inaudible] work.
21 The next is the community government system and this
22 is really the system [inaudible] identify [inaudible].
23 Second is the [inaudible] address [inaudible]. And
24 then we focus [inaudible]. [Inaudible sentences].
25 Then the last step is just signing the declaration of

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1 operations and each team member signs that
2 [inaudible]. [Inaudible sentences]. And in some of
3 our projects [inaudible]. So [inaudible] the value of
4 the [inaudible] in your packet. And, like I said,
5 it's chaired by the Governor Kulongoski. Then we
6 have [inaudible] Oregon [inaudible] JOI and
7 [inaudible]. [Inaudible] and then we have
8 representative of county government, city government,
9 state government [inaudible]. And then representative
10 [inaudible]. And the reason we have that strength
11 [inaudible] help us get access to the network of
12 resources that are in the Oregon [inaudible].
13 [Inaudible sentence].

14 UNIDENTIFIED SPEAKER: Thank you,
15 Greg. Just real quickly, putting it in a business
16 form, this is kind of the process we're look at
17 [inaudible]. The last thing that Greg was [inaudible]
18 screen there --

19 MARK REEVE: I'm sorry to interrupt
20 you for just a second - we were hoping that - can
21 somebody help move the slide just a little - or the
22 screen just a little bit for Judy.

23 JUDY: That's good. That's good.

24 GREG WOLF: Sorry about that.

25 UNIDENTIFIED SPEAKER: Thanks.

1 UNIDENTIFIED SPEAKER: [inaudible]
2 DEQ [inaudible].
3 (Inaudible discussion)
4 PETE FALK: But really the
5 [inaudible] government involved in [inaudible].
6 [Inaudible sentences]. [Inaudible] resources that
7 [inaudible] or access the [inaudible]. We do also
8 now [inaudible] and a timeline [inaudible] some
9 similar examples [inaudible]. Obviously, [inaudible
10 sentences]. The other projects [inaudible sentences].
11 [inaudible] types of projects [inaudible] environmental
12 [inaudible]. [Inaudible sentences].
13 MARK REEVE: Pete, can I just
14 interrupt you there for a second and ask you whether
15 the solution - some of the solution [inaudible]
16 projects are turned into long-term projects, or
17 long-term commitments. It just seems like some are
18 fairly discrete projects, like the [inaudible] but
19 this, you know, restoration and maintenance can go on
20 for a long time?
21 PETE FALK: Right. I think
22 [inaudible] project [inaudible]. [Inaudible
23 sentences]. [Inaudible] parks and recreations
24 department [inaudible]. I think the Oregon
25 [inaudible] project into [inaudible].

1 UNIDENTIFIED SPEAKER: Okay.

2 UNIDENTIFIED SPEAKER: [Inaudible
3 sentences].

4 UNIDENTIFIED SPEAKER: Okay.

5 UNIDENTIFIED SPEAKER: I don't
6 think [inaudible] air quality [inaudible]. On a
7 lighter note, [inaudible] a little bit about
8 [inaudible]. [Inaudible sentences].

9 UNIDENTIFIED SPEAKER: Thanks.

10 KEVIN DOWN: Good morning. My
11 name is Kevin Down. I work in the air quality
12 program with DEQ, and I've been working for the east
13 several years on projects to reduce omissions from
14 lethal [inaudible]. Primarily as a public health
15 measure to reduce risks from cancer, but there's other
16 [inaudible] warning methods. And occasionally, we'll
17 [inaudible] properties like this where we can
18 [inaudible] as well. We get [inaudible] all the way
19 around, except that on some these projects, like this
20 one in particular, we're just allowing [inaudible]
21 truck stops [inaudible] something that people recognize
22 [inaudible] industry for a long time as being
23 something that's worth doing that's more like
24 [inaudible] phenomemon or [inaudible]. And so within
25 the Oregon Solution process [inaudible] very positive

1 result about doing it in Oregon. Effective - well,
2 when we started this was actually the largest rollout
3 of [inaudible] in the country. And there's been
4 other projects that [inaudible] since then are much
5 bigger. But when Pete came to us it was kind of
6 almost like [inaudible] chasing a [inaudible] away.
7 He's always out looking for good projects to
8 [inaudible] the Oregon Solutions principles to. And I
9 was fairly skeptical. I mean, it sounded like -
10 well, this is kind of an [inaudible] advisory
11 committee process [inaudible] dominant [inaudible] I
12 wasn't really sure what the value [inaudible] would be
13 for doing Oregon Solutions on this. But we went
14 ahead and did it anyway. And so we got a
15 [inaudible] together [inaudible] and we brought
16 [inaudible] the trucking industry as well as the truck
17 stop operator and others with interest in this.
18 [inaudible] we were having [inaudible] as a result of
19 that [inaudible] ourselves all educated and oriented
20 [inaudible] Oregon Solutions. And then providentially,
21 EPA ran [inaudible] available that we were to convince
22 the Oregon State University School of Engineering to
23 apply for our [inaudible] and then also to engage
24 climate [inaudible] and bring in their [inaudible] and
25 kind of combining that with products from the

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1 Department of Energy [inaudible]. [Inaudible] we were
2 able to get a financing package that - at this point,
3 we were planning [inaudible] 400 trucking spaces along
4 I-5. And the second company that produces this
5 technology initially had been interested then left the
6 [inaudible] lottery somewhere else [inaudible]. Now,
7 they've decided to come back to Oregon, and we're
8 going to be looking to see what we can do to bring
9 them in so we can have basically almost one-third of
10 the trucking spaces [inaudible]. And the result of
11 which, we'll end up saving the trucking industry about
12 - over 1 million dollars a year and reduce fuel costs
13 plus [inaudible] almost 6 million dollars a year, in
14 terms of reduce environmental public health benefits.
15 [Inaudible] reduce [inaudible] from [inaudible]. And
16 let me just tell you a story that's kind of
17 [inaudible] but I see as the value of the Oregon
18 Solutions process. That - we've been working on this
19 for several months, and actually I was working with
20 Jim Anderson, who's the owner of [inaudible] truck
21 stop in Coberg, Oregon. And this truck stop as the
22 dubious distinction of being the [inaudible] for state
23 law to prohibit car idling [inaudible], because the
24 truck stop is just [inaudible] Coberg, and citizens
25 were complaining about [inaudible] truck stop.

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1 [Inaudible] when I first approached him he was very
2 well [inaudible] and was concerned about reducing the
3 impacts, but basically get a number of excellent
4 business reasons why it didn't make sense for him to
5 do this. [Inaudible] in the middle night, especially
6 on a rainy night. The [inaudible] doing. They're
7 going to [inaudible]. They went bankrupt on them
8 [inaudible] parking lot [inaudible] spaces. He's
9 already got people coming into his facility right now
10 [inaudible]. All that [inaudible] he comes through
11 the process, the Oregon Solutions process, [inaudible]
12 sign the agreement [inaudible] talked about.
13 [Inaudible sentences]. [Inaudible] get access to the
14 Oregon [inaudible] close of 5:00 p.m. on a Wednesday
15 at 11:00 a.m. on that Wednesday they get a call from
16 Jim, "Kevin, I've been thinking about this. I need
17 to get something together. I need to get a proposal
18 [inaudible]." So we were able to pull it off and
19 [inaudible] we are going to be putting in 50 posts at
20 his facility. And so I think that the reason that
21 he was able to get to that point was really because
22 of the collaborative [inaudible] of the Oregon
23 Solutions process. That we were able to get him --
24 I mean, we still had all those barriers. We didn't
25 resolve any of those barriers [inaudible] take that

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1 job. And I think that we were able to do that was
2 through the Oregon Solutions process.

3 UNIDENTIFIED SPEAKER: [inaudible]
4 fuel. It may end up [inaudible] issues better than
5 the Oregon Solutions. But my question is, can you
6 monitor? Or how well do you monitor, because you're
7 talking about the truck stops and the parking spaces.
8 And mine is a very informal observation, but going up
9 and down I-5 a lot, a lot of the trucks are just
10 doing the common, every day idling they've always
11 done, cuz you can watch [inaudible]. I mean, so you
12 monitor if the - if the [inaudible] is being used,
13 reserve reduction, and so forth.

14 KEVIN DOWN: Your first point is
15 well on point. When I started this project
16 [inaudible] gallon. Basically, the hookup charge was
17 about \$1.00 an hour. And they brought about a gallon
18 [inaudible], so at that point it was like [inaudible].
19 Now, [inaudible] excited about hooking up. But not
20 only that, within the industry itself, and by that I
21 mean within the trucking industry, has always been -
22 my characterization frankly, is that [inaudible]
23 familiar with [inaudible]. That's the way we did it
24 and that's [inaudible] do it if they [inaudible]. But
25 we're seeing kind of changes of that. And actually

1 in the [inaudible] of that we had - about a year ago
2 [inaudible] truck stop, we had lot of couples that
3 have their big tractor trailer [inaudible] their name
4 on the side, and parked right at the entry of
5 [inaudible]. And we had the [inaudible] there, and
6 [inaudible] there. And one of the truckers came ur
7 to us as we're all [inaudible] there [inaudible], "I'm
8 really disappointed because I see this [inaudible]
9 here and I [inaudible]." And [inaudible] find out
10 it's only a demo. And sort of along those lines
11 too, there was another story about a trucker that had
12 hooked up to the system and it makes it quieter in
13 the truck. You're actually less prone to [inaudible]
14 show people sleeping better. So it's actually some
15 personal benefit outside of the fuel cost that once
16 people get into it they're gonna start signing up for
17 more of it. This one guy approached one of the
18 representatives of these companies and said, "You
19 know, I used to work for a company that had an
20 agreement with you about your systems, and now I'm
21 working for another company and I don't like it. Can
22 you tell me which companies have signed agreements
23 with you cuz I'm gonna go work for them." And so
24 that's going to change. And then the other part of
25 your question was about monitoring. Each of the

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1 systems, both the idle [inaudible] short [inaudible]
2 system allow for record keeping so we can keep track
3 of the hours of utilization at each one of the hookup
4 facilities. And in fact, one of the interesting
5 things about the Oregon Process is that in many other
6 parts of the country where - where public funding as
7 been provided for support of these insulations it's
8 been; "Here's the money and we hope it works and
9 we'll see you later." The climate trust doesn't give
10 money away. What they do is they buy CO2 reductions.
11 So you have to sign a contract with them to guarantee
12 that you're going to reduce, in this case, 110,000
13 pounds of CO2. And if you don't, well, [inaudible]
14 get it from somewhere. So monitoring [inaudible]
15 vendors in Oregon is going to be a very critical
16 component of the whole process [inaudible] trust
17 duration [inaudible].

18 JUDGE HOGAN: So, [inaudible] along
19 that line, there is a study planned in Oregon State
20 to actually go out and survey these truckers who are
21 actually using [inaudible] willingness to participate,
22 did they enjoy it, all that sort of stuff. I know
23 that [inaudible]. So anyway --

24 UNIDENTIFIED SPEAKER: So would
25 this study be made public? You know, a lot of the

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1 university studies [inaudible] person [inaudible]
2 decipher among themselves.

3 KEVIN DOWN: No, it will be made
4 public and it will be distributed [inaudible] Jim, so
5 yeah. So there is a plan to go out there and
6 [inaudible].

7 UNIDENTIFIED SPEAKER: Studies
8 [inaudible sentences]. Another project that [inaudible
9 sentences].

10 UNIDENTIFIED SPEAKER: [inaudible]
11 get involved in the accident [inaudible]. [Inaudible]
12 participate in the [inaudible] more and more
13 [inaudible]. The other guy [inaudible] so as a -
14 it's really kind of a [inaudible] for further
15 [inaudible].

16 UNIDENTIFIED SPEAKER: Lastly, we'll
17 try to do [inaudible sentences].

18 UNIDENTIFIED SPEAKER: [inaudible]
19 see any [inaudible]?

20 UNIDENTIFIED SPEAKER: [inaudible
21 sentences].

22 (Inaudible discussion)

23 UNIDENTIFIED SPEAKER: North Bend.

24 UNIDENTIFIED SPEAKER: Oh, North
25 Bend. I thought you said, Bend.

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1 MARK REEVE: Are there any
2 comments. Thanks very much. It sounds like you've
3 all been very involved in helping. It's very
4 beneficial to the state. I know Kevin, you know
5 we've worked for a number of years on your project.

6 END: TAPE 1, SIDE A FROM 51 THRU 484

7 START: TAPE 6, SIDE A FROM 183 TO END OF TAPE

8 MARK REEVE: Were there any final
9 questions for [inaudible]?

10 (Inaudible discussion)

11 MARK REEVE: Okay, well, now we'll
12 move to Agenda Item H and the public forum. I'll
13 remind members of the public that this is the time to
14 address the commission on any matter that is not on
15 our regular agenda, and all we ask is that you fill
16 out a sheet saying that you'd like to talk to us and
17 give it to our assistant Kat. And then we'll take
18 you - well, basically, in the order signed up. I'll
19 be happy to listen to anything you'd like to address
20 with us. I'll start with Kathryn Benada. Welcome.

21 KATHRYN BENADA: Chair Reeves,
22 members of the Environmental Quality Commission, for
23 the record I'm Kathryn Benada, the governmental
24 affairs manager in the Northwest [inaudible] Paper
25 association. But [inaudible] association that

1 represents the interest of the [inaudible] paper
2 industry in Oregon, Washington, and Idaho on
3 environmental and energy issues. [Inaudible] someone
4 who you knew I wanted to speak to you today about
5 some of the things that NWPTA, as we call it
6 [inaudible], does and is involved in my personal
7 actions that I do on behalf of the members of
8 Northwest Portland Paper. And [inaudible] items of
9 interest that we're currently working on are supposed
10 to be further involved in the future. And the NWPTA
11 represents nine mills that are [inaudible] and are
12 paper mills. That can be integrated facilities, bulk
13 making facilities, newsprint [inaudible] facilities in
14 the state. We've been doing this since the 1940's.
15 We were formed to actually help the [inaudible]
16 Willamette River work on cleaning up the river during
17 the era of the 40's, back when we didn't have primary
18 and secondary treatment. We did things differently
19 then. We did things we wouldn't dream of doing now.
20 But we've changed and the world has changed with us.
21 We are organized of committees and task forces that
22 address issues [inaudible] side of our association,
23 including technical issues, governmental affairs
24 issues, communications issues, [inaudible] lawyer
25 [inaudible] commissioners, and board of trustees that

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1 manages the fiduciary affairs of our association.
2 Personally my work for the association for the last
3 decade, I did governmental affairs work in Salem
4 during the legislature but I also sent out a lot of
5 DEQ advisory committees, including issues of air,
6 hazardous waste and water. Recently some of the work
7 that I participated in has been the Blue Ribbon
8 Committee, and [inaudible] of working down in Salem to
9 help pass [inaudible] 45 working on the Willamette
10 River [inaudible] council, working on also triennial
11 review. And as a member of a policy advisory
12 committee on triennial review, we started meeting in
13 December of 1999 [inaudible] 2003, and I participated
14 in every one of those meetings except one, and
15 represented our views. On that particular issue the
16 association has always [inaudible] as 17.5 grand per
17 day fish consumption level for the human health
18 [inaudible] water quality standards. We supported
19 that during the process and continue to support that
20 now. We understand that that has been controversial
21 after [inaudible] by yourself [inaudible] EPA. We
22 understand the commitment has been made to review that
23 in 2008. In the time period between now and 2008
24 and 2008 onward, we would ask that we be considered a
25 stakeholder in the conversations to work on that

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1 issue, as it does have a very big topic of interest
2 for us, because the water quality standards do affect
3 the work we do, because they are put into our water
4 quality [inaudible] permit. But we remain very
5 interested in that and we will perhaps come back to
6 talk to you about that in the future and bring you
7 third party work that we might contract [inaudible]
8 doing this process. But we would like to be involved
9 absolutely all aspects of that as we go forwards.
10 The second type of things we do is we listen to
11 concerns and the industry across the states. Because
12 we are a large industrial manufacturer, we are one of
13 the state's largest manufacturing industrial sectors.
14 We do have an environmental footprint. There are
15 concerns with that. And for [inaudible] one of the
16 things I did on my Tuesday night was I went over to
17 Toledo to the Newport area and listened to a public
18 hearing about concerns in the community, about the
19 re-issuance of the air and water comment in Toledo.
20 And when I do something like that, I take [inaudible]
21 notes here in my notebook, take it back and report it
22 to the rest of the companies. I kind of work as
23 an information conduit to make sure that we all
24 understand the concern in the community around us.
25 Another issue that we've been strongly involved in is

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1 the mixing zone issue, and people's concerns with the
2 mixing zone issue. And we will continue to work on
3 that as the path goes forward, both from the
4 regulatory arena and the legislative arena. Working
5 to find solutions that will be a benefit it everyone.
6 That kind of summarizes the type of things we do, and
7 [inaudible] sitting out in the audience as we go
8 through working on these types of things. But we
9 always try to bring science and data to the table,
10 and that's one of the strengths of our association is
11 the ability to bring that to the table to help sound
12 and reasonable decisions when they are - when you're
13 looking at policy aspects. And the [inaudible] about
14 the environmental issues that face us in the
15 regulatory arenas at some point and help to make
16 policy decision based on what they do have.
17 [Inaudible] but one thing that we do is help collect
18 them [inaudible] research scientists [inaudible]
19 engineers [inaudible]. We definitely run our
20 facilities based on science through engineering
21 [inaudible]. Thank you for you time today.

22 MARK REEVE: Any questions?
23 Kathryn, before you go I have one questions for you
24 that came up just in thinking about the 2008 review.
25 And that is, [inaudible] the NWPTA - would they

1 likely be supportive of an effort to have the fish
2 consumption rate looked at regionally instead of just
3 state by state? Would you Try to - would you want
4 to involved Washington and Idaho and EPA?

5 KATHRYN BENADA: Chair Reeve,
6 members of the commission, we haven't actually thought
7 about that. We [inaudible] regional process to
8 fulfill [inaudible] chemical water quality standard
9 [inaudible]. We haven't had further internal
10 discussion upon that, but I - I could offer this
11 added information. If you're looking at a state, and
12 a state has diverse populations of [inaudible]
13 populations, and people who have different concerns it
14 might be best to look at a state level rather than -
15 to be able to address [inaudible] concerns that reside
16 there because of [inaudible] places. One thing during
17 the triennial review process when we address this
18 issue and we were trying to struggle with what to do
19 is we [inaudible] with Judge Haggerty's decision on
20 the lawsuit on the temperature water quality standard,
21 because of where and when - knowing when and where
22 different native species were consumed was a problem.
23 And we felt [inaudible] by that in the [inaudible].

24 UNIDENTIFIED SPEAKER: Okay. One
25 of the things that came up when we looked at the

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1 fish consumption rate issue was if you start to look
2 - or try to look at rates for a particular geographic
3 areas, many of the controversial or ones that have
4 generated the most interest so far includes
5 [inaudible]. One of our concerns [inaudible] whether
6 kind of one standard on one side of the river and a
7 different standard on the other side of the river.
8 And I imagine that that would be of concern to the
9 NWPTA as well.

10 UNIDENTIFIED SPEAKER: Chair Reeves,
11 Members of the commission, those issues are of
12 interest to us, but the most conservative [inaudible]
13 standard [inaudible] water quality [inaudible].

14 UNIDENTIFIED SPEAKER: And Mr.
15 Chair, just a point of clarification, assuming EPA
16 approves your standards by the end of January, then
17 Oregon - correct me if I'm wrong [inaudible], will
18 [inaudible].

19 MARK REEVE: Right. Thanks. Our
20 next [inaudible] is Mark Riscodall. Welcome.

21 MARK RISCODALL: [inaudible] Mark
22 Riscodall and I'm the Executive Director at Northwest
23 [inaudible] based at Lewis and Clark Law School here
24 in Portland. I appreciate this opportunity to testify
25 and I want to touch briefly in the limited time that

1 I have available two important issues. First, I made
2 copies for you of a scaling editorial from daily
3 historians early this week [inaudible]. The title is,
4 "A dark day at Oregon DEQ" I'd argue that, "Oregon
5 [inaudible] for going above and beyond national
6 standards is showing signs of serious decline and
7 [inaudible] called to action for DEQ. The governor
8 and the state legislature can do better at protecting
9 Oregon's water quality." I hope this editorial
10 reflects [inaudible] statewide that when it comes to
11 environmental protection this government is failing
12 Oregonians [inaudible]. No more are these failures
13 more apparent than [inaudible] than Oregon DEQ
14 [inaudible]. [Inaudible] really great people
15 [inaudible] right place, working diligently to ensure
16 that DEQ's policies are consistent with basic
17 scientific and legal [inaudible]. But when push comes
18 to shove, science and law tend to take a back seat
19 [inaudible]. This is simply not the Oregon way or
20 using effective [inaudible]. To cohort [inaudible]
21 have reached a critical juncture. Many of [inaudible]
22 considerable time, energy, and effort in building
23 relationships with agency managers, such [inaudible]
24 Shroder, hoping against those. That by diligently
25 commenting on agency [inaudible] and rules and

1 collaboratively elevating our concerns to agency
2 management when those orders and rules [inaudible]
3 departments, this agency will do the right thing. I
4 would step up and adhere to its [inaudible] and be
5 a leader and protecting the quality of Oregon
6 environment. I can't begin to tell you how
7 frustrating it is to see the agency talk about
8 [inaudible] law and its own rules, in blatant
9 disregard of the expense of the environment.
10 [Inaudible] example [inaudible] dollar and [inaudible]
11 agency resources. Last year any [inaudible] agreed to
12 settle a lawsuit [inaudible] large [inaudible] river.
13 [inaudible sentences]. [Inaudible] to follow the
14 [inaudible] revision of the [inaudible] and other
15 protective industrial [inaudible] permits. Although,
16 the initial [inaudible] by the industry [inaudible]
17 permit [inaudible] unnecessarily lengthy. [Inaudible]
18 spirit of compromise, we [inaudible]. Well after the
19 agreement was signed by both sides we were contacted
20 by the agency and again had the courtesy to extend
21 that [inaudible] until your December [inaudible].
22 Unfortunately, the agency is no where near
23 [inaudible]. [inaudible] formally notify the agency
24 that it has reached a settlement agreement [inaudible]
25 river. The failure of the agency to fulfill

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1 pre-existing legal obligations [inaudible] further
2 legal liability are a waste of time, energy, and
3 resources, etcetera. With respect to the air program,
4 which [inaudible] work for years [inaudible] community,
5 but [inaudible]. I also wish to relate to you the
6 dynamic of public hearings on the [inaudible].
7 [inaudible] company the go ahead to give construction
8 on a new [inaudible] manufacturing [inaudible] DEQ
9 misinformed the public concerning the [inaudible] of
10 the ozone [inaudible] greenhouse effects, a company
11 [inaudible], and has stepped past the reviews to
12 require the companies to submit and make publicly
13 available a mission state [inaudible] even though the
14 [inaudible] requires the commission to see it. The
15 result; company [inaudible] proprietary data,
16 proprietary [inaudible], no omission controls were
17 required, no omissions testing, monitoring or reporting
18 was required, and no one will ever know how much
19 [inaudible] manufacturers will be released from this
20 plant to the environment. Companies have already made
21 [inaudible] throughout the year [inaudible] Oregon DEQ
22 [inaudible]. Although agency has worked for early
23 misjudgment in permit process by holding additional
24 public meetings and engaging in outreach with the
25 local neighborhood, it's been clear to everyone who

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1 has watched the process [inaudible] that it was simply
2 [inaudible] formality. The agency [inaudible] the
3 audacity to develop [inaudible] for early public
4 hearings [inaudible]. [inaudible] because the company
5 might hear something from the public that [inaudible]
6 implement voluntarily. And two, simply because the
7 agency was required to do so by its [inaudible]
8 rules. Concerns that [inaudible] public process
9 forums as well as those of us who do it over, and
10 over, and over again, you have [inaudible] walked away
11 from the process [inaudible] formality [inaudible].
12 This must change. There's a crisis of leadership
13 within Oregon DEQ. It's time to move beyond the deer
14 and the headlights [inaudible] back and see his
15 [inaudible] road. Both [inaudible] have been told by
16 departing managers [inaudible] agency in order to
17 ensure [inaudible]. Although we certainly [inaudible]
18 to keep doing so, both state and potentially federal
19 court there's got to be a better way. Both
20 [inaudible] agency and [inaudible] capacity, skills,
21 and the magic to play a [inaudible] reform process.
22 Thanks for your time.

23 MARK REEVE: Thank you. Questions?

24 UNIDENTIFIED SPEAKER: Mark, right?

25 MARK RISCODALL: Yeah.

1 UNIDENTIFIED SPEAKER: Could you
2 furnish me a copy of your remarks [inaudible]? And
3 also [inaudible] can you tell me - I was just looking
4 at this article in the Daily Historian and it talks
5 here about [inaudible] Senator Ringo asking about, you
6 know, [inaudible] mapping of the [inaudible] and
7 whoever testified that they were almost done, and then
8 last month saying [inaudible]. [Inaudible sentence].

9 UNIDENTIFIED SPEAKER: Commissioner
10 [inaudible], there is more to the story and if Lori's
11 still here, Lori [inaudible] our administrator I think
12 could come to the table and give us an [inaudible].

13 UNIDENTIFIED SPEAKER: [inaudible]
14 about [inaudible].

15 UNIDENTIFIED SPEAKER: Right. No,
16 I appreciate that. And as you may or may not know,
17 this was a follow on to a similar article that was
18 in Willamette Reader.

19 UNIDENTIFIED SPEAKER: Lori, do you
20 want to -

21 UNIDENTIFIED SPEAKER: [inaudible]
22 couple words [inaudible] -

23 UNIDENTIFIED SPEAKER: Yeah, I'd
24 like to -

25 UNIDENTIFIED SPEAKER: I'd also

1 like to comment [inaudible].

2 (Inaudible discussion)

3 UNIDENTIFIED SPEAKER: [inaudible]

4 and I'm [inaudible] article [inaudible]. Just a
5 little bit of background that might [inaudible]. The
6 mixing zones are something that are allowed by
7 [inaudible] and the way [inaudible] analysis that make
8 sure they're not [inaudible]. There was a legislation
9 used in the 2005 session that would have banned them,
10 phased them out. And there were several [inaudible].
11 It unfortunately became very [inaudible]. I was not
12 present at the hearing when this discussion took
13 place. I have [inaudible] find out exactly what was
14 said [inaudible] view that so you [inaudible]. My
15 understanding it was [inaudible] started. I also know
16 that it's a very complicated questions [inaudible] two
17 meetings with environmental organization [inaudible].
18 At the last meeting we talked about the [inaudible]
19 to do that [inaudible] accurately. Because one of
20 the things that we want to make sure [inaudible] do
21 something is facts with, you know, facts [inaudible].
22 And so we discussed briefly [inaudible] that there are
23 some organizations that [inaudible] information. And
24 my thought, which I did offer to [inaudible], was to
25 try and get together [inaudible] and [inaudible] talk

1 about this issue and make sure we're getting good
2 data [inaudible] concerns, figure out what might be
3 possible [inaudible]. My ideal would be [inaudible]
4 collaborative approach to doing this [inaudible].

5 UNIDENTIFIED SPEAKER: I would like
6 to make a comment. [inaudible] community for
7 [inaudible] that one paragraph alone. It does talk
8 about [inaudible] so I would [inaudible] that someone
9 do listen to the tape and see what was said
10 [inaudible]. [inaudible sentence].

11 UNIDENTIFIED SPEAKER: Well,
12 commissioner Urballau, one you can state on that point
13 is I mentioned this dialogue started with an article
14 in Willamette Week and then was picked up by the
15 Daily Historian and they wrote an editorial. And we
16 will be responding. There's always the questions and
17 let me just say, kind of equivocally, that I do not
18 agree with what was in the Willamette Week article,
19 or with what was stated in the Daily Historian, and I
20 do not believe it is accurate. With that said, we
21 always shave - when we - whether they're positive or
22 negative commentary, about what the department does we
23 have to weight whether or not we're going to respond.
24 And sometimes we do and sometimes we don't. And so
25 we're discussing that right now and how we do in fact

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1 get what we [inaudible] accurate [inaudible].

2 UNIDENTIFIED SPEAKER: [inaudible]
3 respond to that [inaudible] but this particular
4 [inaudible] southern Oregon [inaudible]. You know,
5 there's a large [inaudible].

6 UNIDENTIFIED SPEAKER: [inaudible
7 sentence]. [inaudible] or Oregon State's website and
8 what [inaudible] said [inaudible]. [Inaudible
9 sentence]. [Inaudible] she said, "I'm almost done."
10 She reiterated by saying [inaudible] she reiterated by
11 saying [inaudible]. And so it set up a public
12 dynamic where it was [inaudible]. She followed up by
13 saying, "I got [inaudible] worked very hard on it."

14 UNIDENTIFIED SPEAKER: [inaudible]
15 online or [inaudible] copy.

16 MARK REEVE: Thank you. Next,
17 we'll hear from Brent Foster.

18 BRENT FOSTER: Good afternoon,
19 Chair Reeves, and members of the commission. I
20 appreciate the opportunity to speak with you today.
21 I think that [inaudible] my personal frustrations, but
22 [inaudible] frustration to the broader environmental
23 community. I've been working with DEQ - I want to
24 start out by saying that I really want to emphasize
25 there are [inaudible] people of high caliber with high

1 moral ethics, and a real dedication to doing the
2 right thing. So [inaudible] see as [inaudible] crisis
3 of policy. Time and time again where there is a
4 questions and DEQ has to decide which side of the
5 questions they're going to come down on the side
6 [inaudible] water quality or air quality, or on the
7 side of industrial [inaudible] not on the side of
8 water quality, not on the side of what I consider to
9 be the public interest. And that's [inaudible] it no
10 longer makes sense for me to sit down with DEQ in a
11 collaborative working group, such as Lori was
12 describing, because [inaudible] don't have the
13 resources. I cannot sit on five, or six, or seven
14 different committees because I have 20 other thing to
15 do. There are only a few of us who have the
16 ability to work with department workers and time and
17 time again [inaudible] whether it's the storm water
18 control group. In my opinion [inaudible] so for me
19 to sit there and deal with them and try to get what
20 we ask for, in terms of [inaudible] and what was
21 committed here by the former environmental quality
22 director, was essentially a map [inaudible] let us
23 know if there are toxic [inaudible], which there are,
24 [inaudible] discharger has them, where are they? What
25 is being discharged into them? And how much? Those

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1 are three simple questions. Where are they? How
2 much is being discharged into them? And what is
3 discharged into them? And those are three questions
4 DEQ cannot answer for you. They are allowing the
5 discharge of toxic levels of toxic [inaudible] like
6 mercury, like cyanide, like [inaudible] all on down
7 the line. [inaudible] toxic concentrations. Not
8 concentrations that I say are toxic. These are
9 concentrations that exceed the state's own [inaudible]
10 standards. At the very least, the state should know
11 where. This is not rocket scientist [inaudible].
12 When every NPDS permit gets submitted it comes along
13 with a form. It's concentrations of at least one
14 sample required by [inaudible]. It will tell you how
15 much led, [inaudible] sample [inaudible] because these
16 [inaudible] does not require monitoring [inaudible]
17 even when they know the properties [inaudible].
18 [inaudible] frustration, which as led me to, I think,
19 my current [inaudible]. I hope that this committee
20 will help. We look to you frankly because we're out
21 of [inaudible]. We ask, for an example, that when
22 you're allowing that discharger to discharge
23 [inaudible] over the state water quality standard,
24 into the Willamette River [inaudible], into a river
25 that's already got so much mercury in it [inaudible]

1 rest of sentence]. [inaudible] determine how much
2 mercury they're putting in? The answer, no, we're
3 not going to require that. That's clearly what
4 [inaudible] no cost to you to process that data.
5 They can just leave it in their folder, except DEQ
6 said, "No, we're not going to require it." Is it a
7 big burden on industry? Heck, no. You know,
8 [inaudible] more data [inaudible] well, unfortunate
9 [inaudible] events. We agree with [inaudible] and for
10 \$30 to \$50 and a few hundred dollars you could get
11 data on a lot of that [inaudible]. [inaudible] real
12 problem. The second big issue and it's gonna come up
13 for you so I wanted to address it indirectly is DEQ's
14 recent announcement, as of Wednesday, that they are
15 going to radically begin the water quality
16 [inaudible]. Okay? It's important [inaudible] only a
17 few pages. Unfortunately, you'll have to forgive the
18 typos in this, but really this is fresh off the
19 presses this morning. [Inaudible] what I've just
20 prepared for you is a little summary of it. Go
21 online, you can see the standard. In short, what
22 they're proposing to do is add a mixing zone, for the
23 first time, into the water clarity standards. Our
24 water clarity standard right now says, "No more than
25 a 10% increase compared to natural background." And

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1 that's at the point - unless there's a mixing zone,
2 that's at the point where the pollution meets the
3 water. What DEQ has done now over our objection and
4 [inaudible] Northwest [inaudible] Paper Association
5 [inaudible] can't be true. Northwest [inaudible]
6 Paper could not have paid to rewrite the very
7 standard which they identified as one of their major
8 problems. Yes, they did. They signed a contract
9 with DEQ and it's in the record, I'll give you a
10 records number, for \$120,000. Now, certainly I'm not
11 gonna say that DEQ didn't exercise any [inaudible],
12 but it's clear Northwest [inaudible] Paper [inaudible]
13 current standard [inaudible]. They paid DEQ a big
14 contract for \$120,000, now the standard's been
15 radically [inaudible]. When I actually calculated
16 just in a test phase how much weaker it would be, I
17 reached the incredible conclusion that actually -
18 whereas if you were discharging into a current stream
19 would skip [inaudible] 1 NTU's [inaudible] water
20 clarity turbidity. 1 NTU - today [inaudible]
21 discharge would make that stream 1.1 NTU's [inaudible]
22 increase. Under the new standard, if that stream
23 [inaudible] 200 foot [inaudible] say, the Willamette
24 or the Columbia, just assuming [inaudible] 1 NTU.
25 First off, [inaudible] 300 foot mixing [inaudible].

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1 DEQ said, "We're not even gonna look at what's
2 happening under the first 300 feet of a [inaudible]
3 discharge into the water [inaudible]. Never mind what
4 fish are there. Never mind who fishes in it. Never
5 mind who swims in it. Never mind anything that goes
6 on in that 300 foot area, which is the generally
7 philosophy behind [inaudible]. We're only going to be
8 concerned about what's happening at the end of that
9 300-foot [inaudible]. Well, even at the end of that
10 300-foot park, under the current standard, you could
11 go to 1.1 NTU's. Under the proposed standard, if
12 it's any -- [inaudible] river [inaudible] 0 or 33
13 NTU, right off the bat you've got 5 NTU national
14 increase. So instead of having 1.1 NTU, even at the
15 outside of this big mixing [inaudible] you get 6
16 NTU's, okay? That's a pretty significant increase -
17 about 500% [inaudible]. So then consider what's -
18 how does that 300 foot mixing zone play in? That's
19 when you really get the amazing - just the magnitude
20 of the [inaudible] DEQ is now proposing. Typically,
21 when you're looking at mixing zones, the big question
22 is pollution [inaudible]? How much pollution do you
23 get [inaudible] hits the water through the outside of
24 the mixing zone? Now, we can play with numbers, but
25 I'll tell you that a 50 to 1 pollution ratio for a

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1 300 foot area or stream like the Willamette is
2 extremely [inaudible]. For blue [inaudible] it's more
3 like 80 or 60. It's certainly above 50. If you
4 assumed that [inaudible] 50 [inaudible] ratio, this
5 proposed rule would mean that you could discharge 300
6 NTU's down the pipe. 300 NTU's in the pipe. Now,
7 this is 300 NTU at the pipe, and obviously that
8 dilutes as you go down the stream. But when you
9 consider that DEQ's own [inaudible] for this said that
10 we could see real effects on trout and species like
11 trout as low as 10 NTU. Do you realize that this
12 isn't just a theory. It's not just a problem of a
13 weakening in the standards that isn't gonna have an
14 effect. It's something that's gonna have an effect
15 on fish. Whether you eat fish, whether you simply
16 like to know that there are fish there. [Inaudible]
17 somebody like to look at a clear river. The picture
18 that's on the front cover there is something that
19 right now, under the current standard, would be
20 totally illegal. It would violate the 1.1 NTU
21 standard. Under the proposed standard, that would be
22 perfectly legal because you wouldn't be looking at
23 [inaudible] water. You'd have to go down 50, 100,
24 probably about 300 feet [inaudible]. To me, this is
25 symbolic of a [inaudible] a flawed perspective

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1 [inaudible] why is the standard being [inaudible]
2 pollutant. Hard to look at [inaudible] Willamette or
3 the Columbia or any other river and think that the
4 rivers are too clear right now, or that we have room
5 to make them dirtier. With that, I would invite you -
6 I wanted to let you understand - certainly the
7 articles that were in the Historian and I can tell
8 you from - because I was at that [inaudible] hearing
9 when Ally Shroder did explain very clearly and
10 explicitly that they were very close to finishing this
11 out. And at that time I did not think that she
12 was. And I think that there's a very simple course
13 of action. We know that [inaudible] let alone
14 [inaudible] DEQ representative [inaudible]. It's
15 serious. We can move on from it. But if you - we
16 will forward you the transcript where the testimony's
17 very clear [inaudible]. You can listen to it and
18 [inaudible] it. I think the proper course of action
19 is for either the director or DEQ [inaudible]. I
20 apologize to the senate environment committee
21 [inaudible]. I think though, just to put it in
22 context, this is not a dollar issue. Okay? They
23 want to [inaudible] this as a dollar issue. Right
24 now, Oregon DEQ has a proposal by a private
25 contractor to prepare. What we said as a reasonable

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1 base [inaudible] let's just start with the major
2 entities on the Columbia and Willamette. That's only
3 about 20 of them. And I don't know the precise
4 numbers but [inaudible] GIS [inaudible] and do all the
5 [inaudible] assessment on the \$15,000. Now, \$15,000
6 is not a small amount of money, except that DEQ just
7 received a \$75,000 grant [inaudible]. This money
8 could be used to support this less than \$15,000
9 study, and you would have made progress. And this is
10 what we said during our meetings to DEQ [inaudible]
11 me to be so frustrated. You don't need to do it
12 all now. Just make some progress. We don't want to
13 sit down and [inaudible] some negotiation [inaudible]
14 polluting industry [inaudible] run up around the clock
15 for a month. This is the information [inaudible]
16 public. I'm gonna wrap it up [inaudible] questions
17 that you may have. I appreciate your time. END:

18 TAPE 6, SIDE A FROM 183 TO END START:

19 TAPE 7, SIDE B FROM 0 TO END OF TAPE

20 UNIDENTIFIED SPEAKER: -- our
21 relationship [inaudible] for the work that they do,
22 but I do think now [inaudible] great time. Hopefully
23 for the commission to exercise some due authority and
24 hopefully encourage and realize that this [inaudible]
25 and we're certainly going to do our best to work on

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1 those issues as well. But I think that - there's a
2 real opportunity for these views to change its focus
3 and [inaudible] proposed water [inaudible].

4 MARK REEVE: Questions? I had a
5 couple for them. One is these proposed rules on
6 turbidity. I take it - it seems like they just came
7 out a couple days ago of proposed - was there a
8 rules advisory committee involved in this?

9 UNIDENTIFIED SPEAKER: There was
10 not a rules advisory committee. There were several
11 meetings. We [inaudible] several incarnations of this
12 over the last few years and from the very start we
13 said [inaudible]. Yet it's the first time it's ever
14 been done in Oregon. We've just come through with
15 this breezing session where most people think that
16 water quality is [inaudible] pipe. Most people just
17 learned [inaudible] standard [inaudible] without limit.
18 [Inaudible] and there is not standard [inaudible].
19 So, we just [inaudible] doing the water quality when
20 we're already doing the water clarity, and we're
21 already doing the [inaudible] backwards. Creating
22 zones in an unregulated pollutions. And it's not
23 allowed [inaudible] it is not - anywhere [inaudible].
24 They contract [inaudible] they are less acknowledged
25 than [inaudible] regulations [inaudible] water.

1 [Inaudible] statute which said we want to end all
2 water pollution by 1985 [inaudible], okay? But if
3 anyone ever tells us I'm too radical I would say,
4 "Well, look at the [inaudible] white guys in 1972
5 that say we had to end all water pollution by 1985."
6 I'm just saying that you should [inaudible]
7 concentration [inaudible].

8 UNIDENTIFIED SPEAKER: Okay, so
9 these - this proposal is out there for public comment
10 at this point. And when is the schedule for when it
11 would potentially come to the commission?

12 UNIDENTIFIED SPEAKER: [inaudible]
13 hearing set for November 29th. I think that public
14 comment hearings [inaudible].

15 MARK REEVE: Well, I'm not - I
16 don't care about exact dates, but roughly December -
17 timeframe?

18 UNIDENTIFIED SPEAKER: I think that
19 it would probably go back to DEQ, and probably be
20 later than December before it comes to [inaudible].

21 MARK REEVE: Okay, thank you.
22 Next we'll hear from Jay Christian Lanam (Phonetic).
23 Welcome.

24 JAY CHRISTIAN LANAM: Thank you
25 very much for [inaudible] and allowing this public

1 forum. [Inaudible] my name's Dr. Jay Christian Lanam.
2 I'm a psycho biologist. One of my specialties is the
3 effect [inaudible] on the brain and the nervous
4 system. But actually I'm here today as a resident of
5 Lincoln County. I have a home about seven miles down
6 river on the - I believe [inaudible] Oregon City. We
7 have some problems that I'd like to make you aware
8 of. First of all, the [inaudible] in Lincoln County
9 are quite disproportionate. We have - out of the 36
10 counties in Oregon Lincoln County is third in the
11 overall cancer death rate. It's seventh in the
12 overall rate of cancer. It's number one in the
13 [inaudible] of deaths from malignant brain cancer,
14 first in death rate from malignant melanoma. Second
15 in incidents of cervical cancer and so on down the
16 line. Out of nine kinds of cancer only one does not
17 list Lincoln County in the top ten, in terms of
18 mortality. According to the World Health
19 Organization, 80% of all cancers are environmentally
20 [inaudible] influenced. And [inaudible] Samuel
21 [inaudible] in Chicago [inaudible] 95%. When we look
22 at the top [inaudible] states in the area as being
23 [inaudible] Lincoln County is right among this 10%
24 [inaudible] of all the counties in the United States
25 for it. Air releases a recognized [inaudible]. We

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1 are, at this point, we only have one industry that's
 2 putting out large amounts of pollution and this is
 3 the [inaudible] Mill. It is the only time
 4 [inaudible] industry in Lincoln County. Actually they
 5 are putting out about 15 million pounds of [inaudible]
 6 into the air per year. And right now there are no
 7 [inaudible] up for renewal in the next five years. I
 8 wanted to come here to speak to you today because at
 9 this point it's not absolutely [inaudible] on this.
 10 [Inaudible] have a water quality permit that was up
 11 for renewal, which has already essentially been
 12 approved. [Inaudible] citizens concern and outrage
 13 basically [inaudible] new comment period that has been
 14 reopened. And [inaudible] taking place shortly. Just
 15 a little bit about this particular mill; there is no
 16 independent monitoring other than by contractors that
 17 [inaudible]. They do their own monitoring. There's
 18 only one site to directly [inaudible] quality. Most
 19 of the permit is based on modeling data for air
 20 quality, other than direct measurement. We think the
 21 conditions need to actually be measured on the ground.
 22 The things that are being measured - the one side is
 23 on the hill. And this is an area [inaudible] fog,
 24 and in fact our weather conditions are a little bit
 25 like Los Angeles, because we have the cool, coastal



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1 air coming in contact with air from the warmer
2 interior and that sometimes [inaudible] in a blanket
3 [inaudible] toxins there. So not only do we think
4 they need to be measured on the ground, we think they
5 need to be measured in the valley where there is a
6 lot of these smog- generating conditions. Second,
7 there are no real direct studies of health [inaudible]
8 statistics of the cancer registry, things of this
9 sort, but nobody has done any studies related to the
10 health of people in various distances that they live
11 from the mill. We know that the chemicals in the
12 air result in combinations that are often quite
13 different from what's actually release. These are not
14 always in the standards. The health effects, of
15 course, are not predictable either and people will
16 often say, "Well, it's very difficult to prove what
17 causes cancer," cuz there are multiple conditions. But
18 when we have these kinds of statistics it certainly
19 makes it suspect and we think that there certainly
20 needs to be some kind of precaution exercised here.
21 Actually, the Georgia Pacific Corporation is second in
22 the top 100 air polluters in the United States. This
23 is a local example of a corporate giant and it's
24 actually [inaudible]. I guess that's obvious
25 [inaudible] industry. It's not necessary that they be

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1 this high. Weyerhaeuser, which is actually the number
2 one sized paper and [inaudible] timber company in the
3 world is fifteenth in their toxic conditions in the
4 air. So there's a lot that can be done. I wanted
5 to take just an example of one thing. One of the
6 permitted pollutants in demand; we know that lead is
7 a health risk at all sorts of levels, but it's not
8 just the direct health risk of lead itself, but
9 actually any heavy metal will compromise the blood
10 [inaudible] and allow other chemicals into the brain
11 that shouldn't be there. I was just hearing about
12 fish mercury, of course this is also a coastal area
13 where there's quite a bit of fish consumption. And
14 if you're considering whether to look at state's
15 levels of these or local conditions, I would say that
16 it's very important to look at local conditions. How
17 does the fish consumption and what's going into the
18 water interact [inaudible] our bodies with what the
19 air in fact does? We want this planet to modernize
20 its pollution controls. We [inaudible] before they
21 continue to operate. WE want direct monitoring of
22 the air quality and we want direct health studies,
23 not [inaudible] across the county. We are learning
24 all the time more about how toxins- reducing
25 [inaudible] cause autism, attention deficit,

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1 hyperactivity disorder, and asthma. Some things are
2 simply too precious to lose, our health and the
3 health of our children are definitely something that
4 falls in this category. Thank you very much.

5 MARK REEVE: Thank you. Thanks
6 very much. Next we'll hear from Gretta [inaudible].

7 GRETTA: [inaudible]. First, I'd
8 like to leave this [inaudible]. I'm a [inaudible
9 sentences]. [Inaudible] cancer every night and day by
10 my pollution. My [inaudible sentences]. [Inaudible].
11 There are many homes on this lane [inaudible]. My
12 main mission [inaudible] cancer [inaudible] some form.
13 [Inaudible sentence]. [Inaudible] number of patients
14 [inaudible]. I've lived in my home for 27 years.
15 I'm deeply disturbed by what I can see [inaudible]
16 ongoing attempts to conceal and downplay the toxic
17 pollutants coming from the [inaudible] mill. Please
18 do not allow an increase of air pollution [inaudible].
19 Too many people are all ready dying. Let's all work
20 together to fight [inaudible] a way for the mill and
21 the community to coexist [inaudible] new technology
22 exists to solve the problem [inaudible]. Let's look at
23 greatly reducing, not increasing the toxins
24 [inaudible]. [Inaudible] and for myself, it's not
25 okay that I and many others wake up at 3 a.m.

1 [inaudible]. [Inaudible sentences]. I wouldn't have
2 moved here if I'd known [inaudible]. [Inaudible
3 sentences]. [Inaudible] technology [inaudible]
4 especially [inaudible]. [inaudible sentences]. And
5 as for the corporation of the United States
6 [inaudible] and our air and water [inaudible]. And
7 lastly, it is our [inaudible] right to [inaudible].
8 Thank you very much.

9 MARK REEVE: Thank you. Lastly,
10 we'll hear from Brett Dandin [inaudible]. I'm not
11 sure if I got your last name correct, Brett.
12 Welcome.

13 BRETT: Okay, [inaudible] my name
14 is Brett [inaudible] and I'm here to talk to you
15 today about the proposed [inaudible] standards
16 [inaudible]. I will be brief cuz [inaudible] went
17 over some of the details. I got a couple of emails
18 yesterday telling me about the standard [inaudible] I
19 didn't want to read it. This - going through these
20 [inaudible] isn't always the most exciting thing to
21 do. But as I - it's only three pages so I've
22 provided it for you and I want to go over just a
23 few of the - what I consider the most radical
24 changes.

25 UNIDENTIFIED SPEAKER: Do you have

1 another copy?

2 BRETT: I do, but - I realize

3 [inaudible] draft rule of getting this out to the

4 commission in its early stages. I hope [inaudible]

5 comments will be effective. On the cover, briefly is

6 a chart that is not [inaudible] specific or not any

7 specific water body or even any specific [inaudible]

8 fish. It's just roughly showing [inaudible] turbidity

9 and time, on the x axis, showing the effects on fish.

10 And I show you these to make a point that certain

11 spikes in turbidity - certain spikes in murky water,

12 cloudy water, perhaps after a rain storm, [inaudible]

13 have a while to deal with that. Long-term spikes

14 [inaudible] long-term changes in the water clarity

15 have a much more profound effect on fish. So if we

16 look at - on the y-axis, say, this is expediential,

17 but between the ten and 100, say, 50 NTU's, which is

18 a unit for turbidity. For a couple of hours it may

19 not effect fish tremendously. When you move into the

20 [inaudible] that's why I'm looking at reduced

21 [inaudible] of long-term [inaudible]. The reason I

22 show that chart is that some of the proposed

23 standards have allowed monthly increases in turbidity

24 at the same rate that current turbidity standards

25 allow for an hour, not even for an hour but for a

1 second, which I'll get to in a minute. So, I'll
2 just briefly talk about this rule. If you'll turn to
3 the second page, which is at the bottom of this
4 [inaudible] Page 27 of Section - or [inaudible] 41 of
5 the rules. It's - it's the redline version - the
6 red is an addition to the rule, and on the right is
7 where the lead is [inaudible] that big long paragraph.
8 That's the whole standard of - I'm not gonna vent to
9 much about DEQ, because I've only spent about three
10 years looking at these rules. So I don't have the
11 buildup as perhaps some of the earlier people have in
12 experience. And I hope that during my career of
13 looking at these rules that I'll never have to get to
14 that point. But [inaudible] red line [inaudible] so
15 I was looking at these rules and [inaudible] show DEQ
16 did provide the changes in the rule [inaudible]
17 comparing these rules side by side. [Inaudible] red
18 line [inaudible] so the deleted portion says, "No more
19 than 10% increase [inaudible] turbidity." [Inaudible]
20 where it comes out at a pipe. Basically, the old
21 rule says, "Whatever is [inaudible] discharge cannot
22 be more than 10% greater cloudy [inaudible] than
23 [inaudible] the natural background level [inaudible]."
24 That's [inaudible] if you'll turn to the next page,
25 labeled Page 28 here. The third line down says,

1 "Maximum turbidity" -

2 UNIDENTIFIED SPEAKER: I have a
3 question. [Inaudible] portion [inaudible] it says,
4 "However limited duration activities necessary
5 [inaudible] to emergency which would accommodate
6 [inaudible] turbidity and cause [inaudible]." It
7 talks about natural [inaudible sentences].

8 UNIDENTIFIED SPEAKER: Right, there
9 are seven -

10 UNIDENTIFIED SPEAKER: Okay, good.
11 So -

12 UNIDENTIFIED SPEAKER: -- there are
13 [inaudible] emergencies [inaudible]. I'm talking about
14 in a normal day-to-day operation [inaudible].

15 UNIDENTIFIED SPEAKER: [inaudible] I
16 understood you to say that the red line was what was
17 still needed, and yet on to the right there's this
18 [inaudible] they don't seem to be related. So, are
19 you saying the red line is the new?

20 UNIDENTIFIED SPEAKER: No, I'm
21 sorry I wasn't clear. The red line in the text is
22 the added part of the rule. And the deleted -

23 UNIDENTIFIED SPEAKER: The new
24 part? The red line is the new?

25 UNIDENTIFIED SPEAKER: -- right,

1 the red text.

2 UNIDENTIFIED SPEAKER: Right.

3 UNIDENTIFIED SPEAKER: And the
4 deleted is off in a small box [inaudible] -

5 UNIDENTIFIED SPEAKER: Right.

6 Okay.

7 UNIDENTIFIED SPEAKER: -- okay. So
8 we're working from the old rule of 10% increase at
9 the pipe - 10% increase over the background level is
10 the natural [inaudible] level. Going on to the
11 second page, or Page 28 where the third - the first
12 subsection says, "To [inaudible] turbidity criteria for
13 waters of the state. A; maximum turbidity. The
14 background turbidity is 33 NTU's or less [inaudible] 5
15 NTU's above background." So we've gone from a
16 percent to an actual numeric value. And say if the
17 - if the - if the maximum - or if it was at 33
18 NTUs - if it was that murky, than 10% of that is
19 3.3 increase. So that [inaudible] versus 5 NTU's,
20 which isn't that big of a difference, but if the
21 background is 1 NTU -- that's how murky the water is,
22 then the standard allows five in addition to that and
23 that becomes - the new standard become 6 NTU's, which
24 is a 600% increase over the background level. If you
25 follow the DEQ [inaudible] 0.1 NTU's [inaudible] data

1 to show, so that's the default. If that was the
2 case, the stream had 0.1 NTU, the increase [inaudible]
3 6 would be a 6,000% increase. So these have
4 tremendous, potential impacts to water clarity of
5 Oregon. Moving on to monthly average for turbidity
6 in subsection 2B, about a third of the way down the
7 page and under 2B [inaudible] B, says, "Where
8 background turbidity is greater than 30 NTU's, monthly
9 average turbidity must not exceed 10% of the
10 background." What is that 10% covering in?
11 [Inaudible] time the old standard being it can't be
12 10% [inaudible] the new rule saying it can't - the
13 standard 10% for a month. And moving on to Page 29,
14 second to the last page. So if these increases that
15 I'm talking about - and Brad mentioned this, but I'm
16 going to reiterate it. They occur outside of the
17 [inaudible] rule. So - and in the case of the
18 Willamette, which is greater than 200 feet wide, is
19 600% or 6,000% increase that I'm talking about would
20 only be measured outside 300 [inaudible] in the pipe.
21 So if this is the pipe, the microphone stand,
22 [inaudible] into the rule all the way 300 feet down
23 stream, there's no measurements, there's no
24 requirements, there's no regulation. It could be
25 anything. It could be [inaudible]. [Inaudible] only

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1 measured outside of the safety zone [inaudible]. And
2 last, on Page 29, subsection F, about a third of the
3 way down the page. It says, "The department may
4 establish criteria for limited duration [inaudible]
5 more stringent than the criteria." So this is giving
6 the department the authority - giving DEQ the
7 opportunity to make it more stringent in certain
8 situations. But again, it says, "It may." There's
9 no legal requirement for DEQ to do so. So it may
10 or may not in these situations. There's not
11 mandatory requirement to protect the water clarity in
12 public waterways, waters that are already water body
13 limited, which are the [inaudible] stream of public
14 drinking water intake. There may be other drinking
15 water rules, but as far as this rule for the water
16 quality standards, a stream of red [inaudible]
17 spawning areas, there's no legal requirements for DEQ
18 to protect those areas in between. That's all I
19 have.

20 MARK REEVE: Okay. Thank you. I
21 think that concludes - well, I guess nobody in the
22 audience [inaudible] up. They don't have their slip.
23 I think that concludes the public forum. I'd like to
24 take a very brief break before we take up our last -

25 UNIDENTIFIED SPEAKER: Before we do

1 I'd like to [inaudible].

2 MARK REEVE: Sure, go ahead.

3 UNIDENTIFIED SPEAKER: [inaudible
4 sentences]. [Inaudible] I don't know the truth of
5 them [inaudible]. [Inaudible] DEQ and I - I'd like
6 to explain that in several areas that bother me more
7 than others. If I understand [inaudible], is that
8 correct?

9 UNIDENTIFIED SPEAKER: I don't know
10 [inaudible].

11 UNIDENTIFIED SPEAKER: Oh, okay.
12 Because if it was and given the issues we've raised,
13 I wonder [inaudible] because [inaudible]. The second
14 thing we've already talked about [inaudible] as far as
15 the [inaudible] article about [inaudible] and what
16 I'm going to say is not directed [inaudible] I would
17 say the same thing. If the river papers funded a
18 study like this [inaudible] I mean, at least I feel
19 that way. When there is funding [inaudible] somebody,
20 and so I'd like to [inaudible]. And then
21 [inaudible].

22 UNIDENTIFIED SPEAKER: Do you have
23 more issues?

24 UNIDENTIFIED SPEAKER: No, I've
25 just pointed out the specific ones. I mean, the

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1 gentleman that just spoke on his study [inaudible]
2 changes, and these [inaudible] effects [inaudible].

3 UNIDENTIFIED SPEAKER: That last
4 one, the turbidity rule is out on public notice and
5 is a rule that is in process of coming to you. So
6 you will get - and you will [inaudible] as you
7 recall, by Bob [inaudible]. So you will be -
8 continue to be involved in those discussions.

9 UNIDENTIFIED SPEAKER: Okay, and I
10 understand that that's a public process [inaudible].
11 [Inaudible] looking for is the [inaudible] rule change
12 itself.

13 UNIDENTIFIED SPEAKER: Okay.

14 UNIDENTIFIED SPEAKER: [inaudible]
15 first going back to the Georgia Pacific thing. This
16 is a Title 5 permit. They have to be renewed every
17 five years. It is in the process of public comment
18 right now, so it hasn't been issued. There has been
19 a -

20 UNIDENTIFIED SPEAKER: It's a tad
21 bit more complicated than that. It's a little more
22 complicated than that. Actually, the waterside of the
23 permit was issued. It went out for public comment,
24 public comment was received, but there wasn't
25 objection to the permit. And then the air permit was

1 out and public comment was received on that. And the
2 department heard concerns raised about the water side
3 of the permit during the air process. The department
4 took a relatively unusual step of withdrawing the
5 permit on reconsideration to -- the water permit, to
6 take more testimony. Obviously, they consulted with
7 Georgia Pacific and they didn't object, even though
8 they might have, because they wanted to get a - the
9 department wanted to get a full hearing on the water
10 side. So they're both out on public notice, but
11 technically the water permit did issue, and that's why
12 it's a little bit confusing.

13 UNIDENTIFIED SPEAKER: [inaudible]
14 DEQ did extend the public comment on the air side -

15 UNIDENTIFIED SPEAKER: Yes, as
16 well.

17 UNIDENTIFIED SPEAKER: [inaudible]
18 significant comment [inaudible].

19 UNIDENTIFIED SPEAKER: There's been
20 tremendous effort, I think, to get as much public
21 input as possible on that permit. And -

22 UNIDENTIFIED SPEAKER: [inaudible
23 sentence].

24 UNIDENTIFIED SPEAKER: Would you
25 like - I'm sure that the region has - working on the

1 permit, has a lot of background information on the
2 whole process. Would you like a little packet?

3 UNIDENTIFIED SPEAKER: [inaudible]

4 and if you have any side-by-side [inaudible] old or
5 the new. I'd also like to know why [inaudible]. I
6 think I know a little bit about [inaudible].

7 (Inaudible discussion)

8 UNIDENTIFIED SPEAKER: On the

9 turbidity one - well, there's two issues. One is
10 there's more known about turbidity effects on fish, so
11 there's been an improvement [inaudible]. The second
12 one is trying to clear up this whole monitoring
13 issue, because the fact of the matter is, the way the
14 rule is written, this 10% increase, at low values of
15 turbidity you can't measure. So Oregon has written
16 into its law a rule that, you know, just - that
17 really cannot be measured. So the department is
18 trying to deal with that and get it to a point that
19 we can actually [inaudible] these rules in the
20 streams. Well, for example, if you got 1 NTU and
21 you want to try to see if you now have 1.1, you
22 can't measure that with this new technology. So -
23 and even at 2 you can't. Even at 3 it's
24 questionable. These low NTU units are basically
25 really clear water. And so the idea is to move

1 toward the standards that you really can know when
2 someone violates it [inaudible] legally approach it.
3 So that's what the department's trying to do. It's
4 not that they're trying to move back on these rules
5 [inaudible].

6 UNIDENTIFIED SPEAKER: All right,
7 commissioner Williamson's correct and I'll just respond
8 [inaudible], in terms at why we looked at the
9 turbidity standards was exactly that. We do, as you
10 heard, in some other discussion about water quality
11 toxins. We generally do a [inaudible] every three
12 years to look at water quality standards that need to
13 be looked at. The turbidity standard had not been
14 looked at for a long time. And as commissioner
15 Williamson said, the way it was written, quite
16 frankly, is basically unimplementable (Phonetic) from a
17 [inaudible]. And at the time, which I think was
18 2002, when the subject came up of looking at the
19 turbidity standards, which was a couple of water
20 quality administrators ago. And I think you're
21 beginning to understand why we go through water
22 quality administrators every two years. The turbidity
23 standard of the - department discussed how to go
24 about it, given the resource constraints. At that
25 time, I think the administrator was Mike Luellen.

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1 And we made - we do have authority given to us by
2 the legislature, which is referred to as Receipts
3 Authority, to enter into contractual arrangements to
4 have some services paid for. It is an authority that
5 we have. We generally use it only in permitting for
6 someone [inaudible] special acceleration of a permit
7 or a special study or something like that, they're
8 allowed to [inaudible] department to do that. We
9 experimented with that on this standard. I will not
10 do it again. You don't learn things unless you
11 experiment and we have experimented and I think you're
12 quite correct, Commission [inaudible], we are now in a
13 box on the turbidity standard, because regardless of
14 what we do, it's going to be considered to have been
15 paid for Northwest [inaudible] Paper. And we need to
16 deal with that as we go forward with the standard.
17 But that's the history and that's why we did that.

18 UNIDENTIFIED SPEAKER: [inaudible]
19 comment wasn't to say [inaudible] --

20 UNIDENTIFIED SPEAKER: Absolutely.
21 No, I don't disagree at all.

22 UNIDENTIFIED SPEAKER: --
23 [inaudible] and I don't care which side [inaudible].

24 UNIDENTIFIED SPEAKER: I agree.

25 UNIDENTIFIED SPEAKER: It's one

1 thing to have the pride [inaudible] do it's own study
2 and bring it to our consideration [inaudible] or
3 anybody else who does it [inaudible].

4 UNIDENTIFIED SPEAKER: No, I
5 absolutely agree with you because the sad fact is,
6 sort of, regardless of the outcome you paint the
7 outcome. And we're not [inaudible] having to deal
8 with that problem, even if the outcome is based on
9 very, very good science. It's gonna be a challenge
10 for us and for you to evaluate when a rule comes to
11 you, you know, whether or not this [inaudible] work.
12 And you should not [inaudible].

13 UNIDENTIFIED SPEAKER: But that is
14 - it's a much broader issue than that. For example,
15 coming down the pipe when this fish consumption study
16 gets back, it's gonna get paid for by the EPA. The
17 citizens of Oregon are probably not gonna pay for
18 this study, EPA is gonna pay for it. And the EPA
19 has already gone on record that they want a bigger
20 number than they have. So is that gonna be a
21 [inaudible] study? Well, a lot of people are gonna
22 say, "Yeah, that's a tainted study, because these guys
23 have a vested interest already." The fact of the
24 matter is that people pay for a lot of things. And
25 I know it doesn't look well or whatever, but you

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1 know, it's a bigger issue than just [inaudible]
2 showing up and paying for this study.

3 UNIDENTIFIED SPEAKER: [inaudible]
4 public sector [inaudible] very aware of what the
5 public [inaudible].

6 UNIDENTIFIED SPEAKER: I agree
7 totally, but if we're not going to allow it form the
8 [inaudible] paper industry than we'd better look at
9 whether we're gonna accept the money from the EPA to
10 do this fish consumption study. Cuz I can tell you
11 they have a bias [inaudible]. And, at best, I think
12 what you got to do is just lay that out in front
13 and say, you know, I don't know. I think it's a
14 bigger issue than [inaudible] and I think turbidity is
15 a - turbidity is a tough one cuz we took it on.
16 Turbidity as a measure is - its' what we call a
17 [inaudible], okay? The measure of something that's
18 not very well defined, okay? And so the impacts are
19 pretty fuzzy. I mean, I think the diagram on the
20 front sort of shows that. You look at the impacts;
21 they're not very well defined. So, if you're looking
22 at something like zinc [inaudible], okay? You can
23 define a [inaudible] a precise curve of what the
24 impact is in zinc in certain concentration on a
25 certain kind of [inaudible]. You can't do that with

1 turbidity, cuz there's a lot of different [inaudible].
2 Not only that, but there's a huge background of
3 different turbidities in Oregon streams and there's a
4 huge difference in turbidity over time. So, given
5 all that, there's a lot of noise in this system.
6 And there always will be turbidity. There's a lot of
7 noise. I'll - it's just a - inherently in turbidity
8 there is this problem of trying to provide standards
9 that are meaningful but not to [inaudible]. Than we
10 get [inaudible] whole controversy about [inaudible] and
11 that's like a whole philosophical [inaudible] between
12 the people who are trying to [inaudible] stream and
13 the people who have to discharge into stream. And
14 we're that interfacing [inaudible] and one of the
15 methodologies people have come up to try to make that
16 system work is mixing zones. There's a lot of
17 controversy on a mixing zone. And so if you're gonna
18 try to solve the turbidity problem and mixing zones
19 all at once then it's like you sort of [inaudible].
20 And I can understand the frustration on peoples side
21 to try to protect wildlife and streams, and I also
22 understand the frustration on the people who are
23 [inaudible] and the frustration by the regulators to
24 try to make this all work. And you just about
25 [inaudible].

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1 UNIDENTIFIED SPEAKER: Well, one
2 comment - just to kind of [inaudible] all of you
3 about why this is so difficult to water [inaudible]
4 and you know, we get our share of air issues as
5 well. [Inaudible] as we heard today, there is this
6 fundamental difference between the way the clean air
7 act comes from the [inaudible] water act [inaudible].
8 And the way the clean air act functions; the federal
9 government, [inaudible] EPA, basically sets the
10 criteria and the standards in very [inaudible] detail.
11 And so there's not much [inaudible] of interpretation
12 [inaudible] state adopt the federal rule by reference.
13 [Inaudible] and water on the other hand, they
14 basically give that authority all to the states to
15 figure it out. And then they have to approve
16 whatever the state does. So, in water, you're
17 continually in the debate about whatever standard it
18 might be because the federal government [inaudible].

19 UNIDENTIFIED SPEAKER: [inaudible]
20 interest to me to look at the clean air act.
21 [Inaudible] priority will come from [inaudible] models
22 [inaudible]. I don't hear anybody challenging that
23 whole process [inaudible]. But water we do. I mean,
24 it's a big philosophical debate and I'm not sure
25 [inaudible].

1 UNIDENTIFIED SPEAKER: There won't
2 be [inaudible].

3 UNIDENTIFIED SPEAKER: Can I ask
4 one - maybe I didn't understand this correctly, but I
5 was trying to [inaudible] got lost. But do I
6 understand you to say that the values we need are
7 low. We don't have the tools to be able to check
8 that, so that the lab values that we get don't go
9 low enough to get to the level that we need for
10 clean water or less turbid water or what?

11 UNIDENTIFIED SPEAKER: May I
12 respond to this? Mary Abrams is our lab
13 administrator and I don't know whether that was
14 something that Commission Laman had said he wanted to
15 respond, but [inaudible].

16 UNIDENTIFIED SPEAKER: Chairman
17 [inaudible] and [inaudible] comment [inaudible]
18 extremely difficult to measure up [inaudible] from the
19 laboratory [inaudible]. It's very difficult when you
20 get down to clean water, to measure [inaudible]. The
21 added difficulty [inaudible] which is [inaudible] you
22 have a pretty strong effect on turbidity [inaudible]
23 also difficult. [Inaudible] historically has been one
24 of the most difficult [inaudible] there is to measure.
25 [Inaudible] something that makes sense from a

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1 measurement standpoint and regulate it. We've had a
2 very difficult time in that we [inaudible]. You
3 know? And if you have a really clear stream
4 [inaudible] 1 to 1.1 [inaudible].

5 UNIDENTIFIED SPEAKER: So, I mean,
6 you wanted to make an analogy, it's like giving a
7 speech, okay? We don't have a law that you're
8 speeding to go 10% over the [inaudible] because in a
9 25 mile an hour zone a police man can't tell whether
10 you're going 27. So, what do police do? Well, I
11 think they use like the 10-mile rule. That's what
12 they do, okay? And what we're doing here is we're
13 putting in the 5 mile an hour rule. That's what
14 we're doing, okay? And if somebody dumps more than 5
15 in there we can measure it. We're for sure. We
16 can measure 5 no matter where it is on the scale and
17 we're gonna [inaudible] if them if it's greater than
18 5. That's what Baumgartner basically told us, right?
19 That's why they chose 5.

20 END: TAPE 7, SIDE B FROM 0 TO END OF TAPE

21 START: TAPE 8, SIDE B FROM 0 THRU 94

22 UNIDENTIFIED SPEAKER: I don't know
23 whether that's the way to do it or not, I don't
24 know, but that's where they're trying to go.

25 UNIDENTIFIED SPEAKER: And also

1 related to that [inaudible] given the [inaudible] that
2 you have now. And this is sort of a growth
3 [inaudible] but it's also been [inaudible] go from 0
4 to [inaudible] and an ability to do some [inaudible]
5 because we can't even do it now, given the standards
6 of the past. It's not worth it.

7 UNIDENTIFIED SPEAKER: [inaudible]
8 so that - if I can - I'm just trying to understand
9 it. So this gives us the ability to whack
10 (Phonetic), whereas the other one gave us barometers
11 but we couldn't whack.

12 UNIDENTIFIED SPEAKER: Yeah, it was
13 very difficult. It was very difficult. The other
14 thing that we'll do that I think that they're hoping
15 that we will do, we know what stream we really don't
16 want [inaudible]. So we can [inaudible] and we know
17 that it won't have a very big impact there. We can
18 increase the monitoring, cuz that's like going to a
19 school zone and speeding tickets. It's really
20 important. You're not required [inaudible] I-5. And
21 the I-5 in our world is like the Columbia, okay.
22 And, you know, because we know we don't [inaudible]
23 in the Columbia [inaudible] a lot of things. So
24 that's - I think that's where we're trying to go with
25 turbidity because of just the nature of turbidity

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1 impact [inaudible].

2 UNIDENTIFIED SPEAKER: [inaudible]

3 if you will. The other problem with turbidity is
4 that it really is associated with some of the other
5 issues that we discovered with water [inaudible]
6 talking about. [Inaudible] around the water portion
7 of water, they tend to travel around the [inaudible]
8 portion of water. And so we do feel as [inaudible]
9 important to get [inaudible] and we've had trouble
10 [inaudible] in doing that in the past with our
11 [inaudible] very much struggle with the [inaudible].

12 UNIDENTIFIED SPEAKER: [inaudible]
13 combination [inaudible]?

14 UNIDENTIFIED SPEAKER: I apologize
15 [inaudible].

16 UNIDENTIFIED SPEAKER: Suspended.

17 UNIDENTIFIED SPEAKER: Like
18 suspended in the water quality.

19 UNIDENTIFIED SPEAKER: Okay, I was
20 thinking you were talking about -

21 UNIDENTIFIED SPEAKER: [inaudible
22 sentence].

23 UNIDENTIFIED SPEAKER: Thanks. Oh,
24 another comment?

25 UNIDENTIFIED SPEAKER: I just have

1 one brief comment. I was taking notes here and it
2 just occurred to me that [inaudible] all Stephanie is
3 saying [inaudible] lesson about a receipt, what did
4 you call them?

5 UNIDENTIFIED SPEAKER: It's called
6 receipts authority.

7 UNIDENTIFIED SPEAKER: Receipts
8 authority, okay. On the one had we have a very
9 strong recommendation that we require polluters to do
10 their own monitoring, and yet for somehow - which is
11 going to be a cost item for them, which we're relying
12 on them to make [inaudible] reports, etcetera,
13 etcetera. Yet somehow the idea that they - that an
14 industry as a whole would give money to an agency to
15 - for an agency to do their own research, which is
16 what I understand happened, is that what happened?

17 UNIDENTIFIED SPEAKER: That's
18 correct.

19 UNIDENTIFIED SPEAKER: Okay, all
20 right. So, what's so bad about that? I mean, I
21 can see if, you know, on the one hand we're relying
22 on the industry to sell to the [inaudible] well, and
23 this is the suggested tactic. Why aren't we making
24 the industry give money to DEQ so DEQ can monitor.
25 I mean, those seem to me like inconsistent reports by

1 inconsistently approaches by critics. So I personally
2 think that if you're - so long as the body, which is
3 doing the testing is neutral, there's nothing wrong in
4 asking or accepting money from the industry to get
5 more data on it. So maybe the lesson we learn is
6 that we contract out to a third party or we - you
7 know, I don't know. I wouldn't necessarily give up
8 on that approach.

9 UNIDENTIFIED SPEAKER: Thank you.

10 (Inaudible discussion)

11 UNIDENTIFIED SPEAKER: I know
12 public is at least as smart as I am.

13 UNIDENTIFIED SPEAKER: I totally
14 agree with that and ever day we take drugs. And I
15 can tell you the testing of those drugs was done by
16 an industry, they paid for it. There was a third
17 part involved that actually did the testing, but they
18 paid for it. Okay? We trust that process
19 [inaudible]. It seems like to me that we gotta be
20 able to trust this process here. That this agency
21 can do research and do tests, okay, and it's not
22 gonna be [inaudible]. We gotta have that trust, and
23 we can't give up on that trust.

24 UNIDENTIFIED SPEAKER: Okay.

25 UNIDENTIFIED SPEAKER: Thank you.

1 UNIDENTIFIED SPEAKER: Good.

2 [Inaudible] we have -

3 UNIDENTIFIED SPEAKER: We have

4 another agenda item.

5 UNIDENTIFIED SPEAKER: -- we have

6 an agenda item, but we're gonna take a short break.

7 We're just taking a five-minute break and we'll

8 reconvene in five minutes.

9 UNIDENTIFIED SPEAKER: Thank you.

10 END: TAPE 8, SIDE B FROM 0 TO 94.

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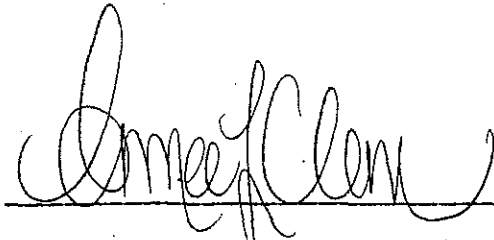
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CERTIFICATE

I, Aimee L. Clem, do hereby certify that the matter herein mentioned on the preceding title page was transcribed. I transcribed all requested audio in its entirety in the foregoing matter; and that the foregoing transcript pages constitute a full, true and correct record of such audio.

IN WITNESS HEREOF, I have hereunto set my hand this 4th day of December,
2005.

A handwritten signature in cursive script, appearing to read "Aimee L. Clem", is written over a horizontal line.

Tape Transcriptionist

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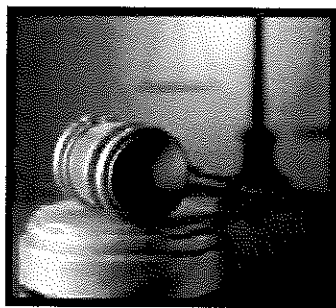
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ENVIRONMENTAL QUALITY COMMISSION
OREGON SOLUTIONS PRESENTATION &
PUBLIC COMMENT PERIOD



TAPE TRANSCRIPTION
TAPES 1, 6, 7, AND 8
OCTOBER 21, 2005

- - -

BE IT KNOWN THAT, the above-referenced Transcript of Proceedings was transcribed from tape on December 4, 2005.

Page 1

1 ENVIRONMENTAL QUALITY COMMISSION
 2 OREGON SOLUTIONS PRESENTATION &
 3 PUBLIC COMMENT PERIOD
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 17 TAPE TRANSCRIPTION
 18 TAPES 1, 6, 7, AND 8
 19 OCTOBER 21, 2005
 20
 21 ---
 22
 23 BE IT KNOW THAT, the above-referenced Transcript of
 24 Proceedings was transcribed from tape on December 4,
 25 2005.

Page 2

1 START: TAPE 1 - SIDE A FROM 51 THRU 484
 2 MARK REEVE: Now we have Item B,
 3 an informational item concerning Oregon solutions.
 4 And we'll welcome Pete Falk and Greg Wolf.
 5 UNIDENTIFIED SPEAKER: Thank you
 6 Mr. Chair and we're - we've been trying to schedule
 7 this [inaudible] for a long time. The Oregon
 8 Solutions is, if you will, and these folks will talk
 9 about this - this sort of the next iteration, which
 10 was what was started by Governor Kitzhaber as
 11 community solution, which involved the state agencies
 12 and local government partners, which has now become
 13 the governor's economic revitalization teams. And
 14 then Oregon Solutions sort of takes that one step
 15 further, so we actually have private sector
 16 partnerships as well on various projects around
 17 Oregon. And DEQ, primarily Pete, but others as well,
 18 has been an active participant and supporter of these
 19 projects. And so we've been wanting to have Greg and
 20 Pete come talk to you about it for quite a while.
 21 So I look forward to hearing from them.
 22 MARK REEVE: Thanks, welcome.
 23 PETE FALK: Thank you. Thanks for
 24 having us today. My name is Pete Falk [inaudible].
 25 In our staff report [inaudible]. [Inaudible] from our

Page 3

1 air quality program [inaudible].
 2 GREG WOLF: Thanks, Pete. We've
 3 definitely [inaudible] well, we were very [inaudible]
 4 talk about the program. The national [inaudible] is
 5 a nation partnership [inaudible]. [Inaudible
 6 sentences]. [Inaudible] and it's co-chaired by Dough
 7 [inaudible] Kitzhaber and [inaudible]. We're currently
 8 working with [inaudible] services [inaudible]. And I
 9 just want to [inaudible]. [Inaudible sentences]. I
 10 also want to thank [inaudible] for giving us
 11 [inaudible]. I would say that one of the reasons
 12 that we've had such success as [inaudible] federal
 13 agency is because of the Oregon [inaudible] project.
 14 [Inaudible sentences]. [Inaudible] through a couple
 15 of these lines. [inaudible] Ted Kulongoski. This is
 16 one of the programs that actually [inaudible] to
 17 governor - governor - Governor Kulongoski. [Inaudible]
 18 I don't think there was any negative votes in either
 19 the house or the senate. [Inaudible] and since the
 20 work we are doing is collaborative [inaudible] work.
 21 The next is the community government system and this
 22 is really the system [inaudible] identify [inaudible].
 23 Second is the [inaudible] address [inaudible]. And
 24 then we focus [inaudible]. [Inaudible sentences].
 25 Then the last step is just signing the declaration of

Page 4

1 operations and each team member signs that
 2 [inaudible]. [Inaudible sentences]. And in some of
 3 our projects [inaudible]. So [inaudible] the value of
 4 the [inaudible] in your packet. And, like I said,
 5 it's chaired by the Governor Kulongoski. Then we
 6 have [inaudible] Oregon [inaudible] JOI and
 7 [inaudible]. [Inaudible] and then we have
 8 representative of county government, city government,
 9 state government [inaudible]. And then representative
 10 [inaudible]. And the reason we have that strength
 11 [inaudible] help us get access to the network of
 12 resources that are in the Oregon [inaudible].
 13 [Inaudible sentence].
 14 UNIDENTIFIED SPEAKER: Thank you,
 15 Greg. Just real quickly, putting it in a business
 16 form, this is kind of the process we're look at
 17 [inaudible]. The last thing that Greg was [inaudible]
 18 screen there --
 19 MARK REEVE: I'm sorry to interrupt
 20 you for just a second - we were hoping that - can
 21 somebody help move the slide just a little - or the
 22 screen just a little bit for Judy.
 23 JUDY: That's good. That's good.
 24 GREG WOLF: Sorry about that.
 25 UNIDENTIFIED SPEAKER: Thanks.

1 (Pages 1 to 4)



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Page 5	Page 7
<p>1 UNIDENTIFIED SPEAKER: [inaudible] 2 DEQ [inaudible]. 3 (Inaudible discussion) 4 PETE FALK: But really the 5 [inaudible] government involved in [inaudible]. 6 [Inaudible sentences]. [Inaudible] resources that 7 [inaudible] or access the [inaudible]. We do also 8 now [inaudible] and a timeline [inaudible] some 9 similar examples [inaudible]. Obviously, [inaudible 10 sentences]. The other projects [inaudible sentences]. 11 [inaudible] types of projects [inaudible] environmental 12 [inaudible]. [Inaudible sentences]. 13 MARK REEVE: Pete, can I just 14 interrupt you there for a second and ask you whether 15 the solution - some of the solution [inaudible] 16 projects are turned into long-term projects, or 17 long-term commitments. It just seems like some are 18 fairly discrete projects, like the [inaudible] but 19 this, you know, restoration and maintenance can go on 20 for a long time? 21 PETE FALK: Right. I think 22 [inaudible] project [inaudible]. [Inaudible 23 sentences]. [Inaudible] parks and recreations 24 department [inaudible]. I think the Oregon 25 [inaudible] project into [inaudible].</p>	<p>1 result about doing it in Oregon. Effective - well, 2 when we started this was actually the largest rollout 3 of [inaudible] in the country. And there's been 4 other projects that [inaudible] since then are much 5 bigger. But when Pete came to us it was kind of 6 almost like [inaudible] chasing a [inaudible] away. 7 He's always out looking for good projects to 8 [inaudible] the Oregon Solutions principles to. And I 9 was fairly skeptical. I mean, it sounded like - 10 well, this is kind of an [inaudible] advisory 11 committee process [inaudible] dominant [inaudible] I 12 wasn't really sure what the value [inaudible] would be 13 for doing Oregon Solutions on this. But we went 14 ahead and did it anyway. And so we got a 15 [inaudible] together [inaudible] and we brought 16 [inaudible] the trucking industry as well as the truck 17 stop operator and others with interest in this. 18 [inaudible] we were having [inaudible] as a result of 19 that [inaudible] ourselves all educated and oriented 20 [inaudible] Oregon Solutions. And then providentially, 21 EPA ran [inaudible] available that we were to convince 22 the Oregon State University School of Engineering to 23 apply for our [inaudible] and then also to engage 24 climate [inaudible] and bring in their [inaudible] and 25 kind of combining that with products from the</p>
Page 6	Page 8
<p>1 UNIDENTIFIED SPEAKER: Okay. 2 UNIDENTIFIED SPEAKER: [Inaudible 3 sentences]. 4 UNIDENTIFIED SPEAKER: Okay. 5 UNIDENTIFIED SPEAKER: I don't 6 think [inaudible] air quality [inaudible]. On a 7 lighter note, [inaudible] a little bit about 8 [inaudible]. [Inaudible sentences]. 9 UNIDENTIFIED SPEAKER: Thanks. 10 KEVIN DOWN: Good morning. My 11 name is Kevin Down. I work in the air quality 12 program with DEQ, and I've been working for the east 13 several years on projects to reduce omissions from 14 lethal [inaudible]. Primarily as a public health 15 measure to reduce risks from cancer, but there's other 16 [inaudible] warning methods. And occasionally, we'll 17 [inaudible] properties like this where we can 18 [inaudible] as well. We get [inaudible] all the way 19 around, except that on some these projects, like this 20 one in particular, we're just allowing [inaudible] 21 truck stops [inaudible] something that people recognize 22 [inaudible] industry for a long time as being 23 something that's worth doing that's more like 24 [inaudible] phenomemon or [inaudible]. And so within 25 the Oregon Solution process [inaudible] very positive</p>	<p>1 Department of Energy [inaudible]. [Inaudible] we were 2 able to get a financing package that - at this point, 3 we were planning [inaudible] 400 trucking spaces along 4 I-5. And the second company that produces this 5 technology initially had been interested then left the 6 [inaudible] lottery somewhere else [inaudible]. Now, 7 they've decided to come back to Oregon, and we're 8 going to be looking to see what we can do to bring 9 them in so we can have basically almost one-third of 10 the trucking spaces [inaudible]. And the result of 11 which, we'll end up saving the trucking industry about 12 - over 1 million dollars a year and reduce fuel costs 13 plus [inaudible] almost 6 million dollars a year, in 14 terms of reduce environmental public health benefits. 15 [Inaudible] reduce [inaudible] from [inaudible]. And 16 let me just tell you a story that's kind of 17 [inaudible] but I see as the value of the Oregon 18 Solutions process. That - we've been working on this 19 for several months, and actually I was working with 20 Jim Anderson, who's the owner of [inaudible] truck 21 stop in Coberg, Oregon. And this truck stop as the 22 dubious distinction of being the [inaudible] for state 23 law to prohibit car idling [inaudible], because the 24 truck stop is just [inaudible] Coberg, and citizens 25 were complaining about [inaudible] truck stop.</p>

2 (Pages 5 to 8)

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1 [Inaudible] when I first approached him he was very
 2 well [inaudible] and was concerned about reducing the
 3 impacts, but basically get a number of excellent
 4 business reasons why it didn't make sense for him to
 5 do this. [Inaudible] in the middle night, especially
 6 on a rainy night. The [inaudible] doing. They're
 7 going to [inaudible]. They went bankrupt on them
 8 [inaudible] parking lot [inaudible] spaces. He's
 9 already got people coming into his facility right now
 10 [inaudible]. All that [inaudible] he comes through
 11 the process, the Oregon Solutions process, [inaudible]
 12 sign the agreement [inaudible] talked about.
 13 [Inaudible sentences]. [Inaudible] get access to the
 14 Oregon [inaudible] close of 5:00 p.m. on a Wednesday
 15 at 11:00 a.m. on that Wednesday they get a call from
 16 Jim, "Kevin, I've been thinking about this. I need
 17 to get something together. I need to get a proposal
 18 [inaudible]." So we were able to pull it off and
 19 [inaudible] we are going to be putting in 50 posts at
 20 his facility. And so I think that the reason that
 21 he was able to get to that point was really because
 22 of the collaborative [inaudible] of the Oregon
 23 Solutions process. That we were able to get him --
 24 I mean, we still had all those barriers. We didn't
 25 resolve any of those barriers [inaudible] take that

1 in the [inaudible] of that we had - about a year ago
 2 [inaudible] truck stop, we had lot of couples that
 3 have their big tractor trailer [inaudible] their name
 4 on the side, and parked right at the entry of
 5 [inaudible]. And we had the [inaudible] there, and
 6 [inaudible] there. And one of the truckers came up
 7 to us as we're all [inaudible] there [inaudible], "I'm
 8 really disappointed because I see this [inaudible]
 9 here and I [inaudible]." And [inaudible] find out
 10 it's only a demo. And sort of along those lines
 11 too, there was another story about a trucker that had
 12 hooked up to the system and it makes it quieter in
 13 the truck. You're actually less prone to [inaudible]
 14 show people sleeping better. So it's actually some
 15 personal benefit outside of the fuel cost that once
 16 people get into it they're gonna start signing up for
 17 more of it. This one guy approached one of the
 18 representatives of these companies and said, "You
 19 know, I used to work for a company that had an
 20 agreement with you about your systems, and now I'm
 21 working for another company and I don't like it. Can
 22 you tell me which companies have signed agreements
 23 with you cuz I'm gonna go work for them." And so
 24 that's going to change. And then the other part of
 25 your question was about monitoring. Each of the

1 job. And I think that we were able to do that was
 2 through the Oregon Solutions process.
 3 UNIDENTIFIED SPEAKER: [inaudible]
 4 fuel. It may end up [inaudible] issues better than
 5 the Oregon Solutions. But my question is, can you
 6 monitor? Or how well do you monitor, because you're
 7 talking about the truck stops and the parking spaces.
 8 And mine is a very informal observation, but going up
 9 and down I-5 a lot, a lot of the trucks are just
 10 doing the common, every day idling they've always
 11 done, cuz you can watch [inaudible]. I mean, so you
 12 monitor if the - if the [inaudible] is being used,
 13 reserve reduction, and so forth.
 14 KEVIN DOWN: Your first point is
 15 well on point. When I started this project
 16 [inaudible] gallon. Basically, the hookup charge was
 17 about \$1.00 an hour. And they brought about a gallon
 18 [inaudible], so at that point it was like [inaudible].
 19 Now, [inaudible] excited about hooking up. But not
 20 only that, within the industry itself, and by that I
 21 mean within the trucking industry, has always been -
 22 my characterization frankly, is that [inaudible]
 23 familiar with [inaudible]. That's the way we did it
 24 and that's [inaudible] do it if they [inaudible]. But
 25 we're seeing kind of changes of that. And actually

1 systems, both the idle [inaudible] short [inaudible]
 2 system allow for record keeping so we can keep track
 3 of the hours of utilization at each one of the hookup
 4 facilities. And in fact, one of the interesting
 5 things about the Oregon Process is that in many other
 6 parts of the country where - where public funding as
 7 been provided for support of these insulations it's
 8 been, "Here's the money and we hope it works and
 9 we'll see you later." The climate trust doesn't give
 10 money away. What they do is they buy CO2 reductions.
 11 So you have to sign a contract with them to guarantee
 12 that you're going to reduce, in this case, 110,000
 13 pounds of CO2. And if you don't, well, [inaudible]
 14 get it from somewhere. So monitoring [inaudible]
 15 vendors in Oregon is going to be a very critical
 16 component of the whole process [inaudible] trust
 17 duration [inaudible].
 18 JUDGE HOGAN: So, [inaudible] along
 19 that line, there is a study planned in Oregon State
 20 to actually go out and survey these truckers who are
 21 actually using [inaudible] willingness to participate,
 22 did they enjoy it, all that sort of stuff. I know
 23 that [inaudible]. So anyway --
 24 UNIDENTIFIED SPEAKER: So would
 25 this study be made public? You know, a lot of the

3 (Pages 9 to 12)



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<p>1 university studies [inaudible] person [inaudible] 2 decipher among themselves. 3 KEVIN DOWN: No, it will be made 4 public and it will be distributed [inaudible] Jim, so 5 yeah. So there is a plan to go out there and 6 [inaudible]. 7 UNIDENTIFIED SPEAKER: Studies 8 [inaudible sentences]. Another project that [inaudible] 9 sentences]. 10 UNIDENTIFIED SPEAKER: [inaudible] 11 get involved in the accident [inaudible]. [Inaudible] 12 participate in the [inaudible] more and more 13 [inaudible]. The other guy [inaudible] so as a - 14 it's really kind of a [inaudible] for further 15 [inaudible]. 16 UNIDENTIFIED SPEAKER: Lastly, we'll 17 try to do [inaudible sentences]. 18 UNIDENTIFIED SPEAKER: [inaudible] 19 see any [inaudible]? 20 UNIDENTIFIED SPEAKER: [inaudible] 21 sentences]. 22 (Inaudible discussion) 23 UNIDENTIFIED SPEAKER: North Bend. 24 UNIDENTIFIED SPEAKER: Oh, North 25 Bend. I thought you said, Bend.</p>	<p>1 represents the interest of the [inaudible] paper 2 industry in Oregon, Washington, and Idaho on 3 environmental and energy issues. [Inaudible] someone 4 who you knew I wanted to speak to you today about 5 some of the things that NWPTA, as we call it 6 [inaudible], does and is involved in my personal 7 actions that I do on behalf of the members of 8 Northwest Portland Paper. And [inaudible] items of 9 interest that we're currently working on are supposed 10 to be further involved in the future. And the NWPTA 11 represents nine mills that are [inaudible] and are 12 paper mills. That can be integrated facilities, bulk 13 making facilities, newsprint [inaudible] facilities in 14 the state. We've been doing this since the 1940's. 15 We were formed to actually help the [inaudible] 16 Willamette River work on cleaning up the river during 17 the era of the 40's, back when we didn't have primary 18 and secondary treatment. We did things differently 19 then. We did things we wouldn't dream of doing now. 20 But we've changed and the world has changed with us. 21 We are organized of committees and task forces that 22 address issues [inaudible] side of our association, 23 including technical issues, governmental affairs 24 issues, communications issues, [inaudible] lawyer 25 [inaudible] commissioners, and board of trustees that</p>
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<p>1 MARK REEVE: Are there any 2 comments. Thanks very much. It sounds like you've 3 all been very involved in helping. It's very 4 beneficial to the state. I know Kevin, you know 5 we've worked for a number of years on your project. 6 END: TAPE 1, SIDE A FROM 51 THRU 484 7 START: TAPE 6, SIDE A FROM 183 TO END OF TAPE 8 MARK REEVE: Were there any final 9 questions for [inaudible]? 10 (Inaudible discussion) 11 MARK REEVE: Okay, well, now we'll 12 move to Agenda Item H and the public forum. I'll 13 remind members of the public that this is the time to 14 address the commission on any matter that is not on 15 our regular agenda, and all we ask is that you fill 16 out a sheet saying that you'd like to talk to us and 17 give it to our assistant Kat. And then we'll take 18 you - well, basically, in the order signed up. I'll 19 be happy to listen to anything you'd like to address 20 with us. I'll start with Kathryn Benada. Welcome. 21 KATHRYN BENADA: Chair Reeves, 22 members of the Environmental Quality Commission, for 23 the record I'm Kathryn Benada, the governmental 24 affairs manager in the Northwest [inaudible] Paper 25 association. But [inaudible] association that</p>	<p>1 manages the fiduciary affairs of our association. 2 Personally my work for the association for the last 3 decade, I did governmental affairs work in Salem 4 during the legislature but I also sent out a lot of 5 DEQ advisory committees, including issues of air, 6 hazardous waste and water. Recently some of the work 7 that I participated in has been the Blue Ribbon 8 Committee, and [inaudible] of working down in Salem to 9 help pass [inaudible] 45 working on the Willamette 10 River [inaudible] council, working on also triennial 11 review. And as a member of a policy advisory 12 committee on triennial review, we started meeting in 13 December of 1999 [inaudible] 2003, and I participated 14 in every one of those meetings except one, and 15 represented our views. On that particular issue the 16 association has always [inaudible] as 17.5 grand per 17 day fish consumption level for the human health 18 [inaudible] water quality standards. We supported 19 that during the process and continue to support that 20 now. We understand that that has been controversial 21 after [inaudible] by yourself [inaudible] EPA. We 22 understand the commitment has been made to review that 23 in 2008. In the time period between now and 2008 24 and 2008 onward, we would ask that we be considered a 25 stakeholder in the conversations to work on that</p>

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1 issue, as it does have a very big topic of interest
 2 for us, because the water quality standards do affect
 3 the work we do, because they are put into our water
 4 quality [inaudible] permit. But we remain very
 5 interested in that and we will perhaps come back to
 6 talk to you about that in the future and bring you
 7 third party work that we might contract [inaudible]
 8 doing this process. But we would like to be involved
 9 absolutely all aspects of that as we go forwards.
 10 The second type of things we do is we listen to
 11 concerns and the industry across the states. Because
 12 we are a large industrial manufacturer, we are one of
 13 the state's largest manufacturing industrial sectors.
 14 We do have an environmental footprint. There are
 15 concerns with that. And for [inaudible] one of the
 16 things I did on my Tuesday night was I went over to
 17 Toledo to the Newport area and listened to a public
 18 hearing about concerns in the community, about the
 19 re-issuance of the air and water comment in Toledo.
 20 And when I do something like that, I take [inaudible]
 21 notes here in my notebook, take it back and report it
 22 to the rest of the companies. I kind of work as
 23 an information conduit to make sure that we all
 24 understand the concern in the community around us.
 25 Another issue that we've been strongly involved in is

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1 the mixing zone issue, and people's concerns with the
 2 mixing zone issue. And we will continue to work on
 3 that as the path goes forward, both from the
 4 regulatory arena and the legislative arena. Working
 5 to find solutions that will be a benefit it everyone.
 6 That kind of summarizes the type of things we do, and
 7 [inaudible] sitting out in the audience as we go
 8 through working on these types of things. But we
 9 always try to bring science and data to the table,
 10 and that's one of the strengths of our association is
 11 the ability to bring that to the table to help sound
 12 and reasonable decisions when they are - when you're
 13 looking at policy aspects. And the [inaudible] about
 14 the environmental issues that face us in the
 15 regulatory arenas at some point and help to make
 16 policy decision based on what they do have.
 17 [Inaudible] but one thing that we do is help collect
 18 them [inaudible] research scientists [inaudible]
 19 engineers [inaudible]. We definitely run our
 20 facilities based on science through engineering
 21 [inaudible]. Thank you for you time today.
 22 MARK REEVE: Any questions?
 23 Kathryn, before you go I have one questions for you
 24 that came up just in thinking about the 2008 review.
 25 And that is, [inaudible] the NWPTA - would they

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1 likely be supportive of an effort to have the fish
 2 consumption rate looked at regionally instead of just
 3 state by state? Would you Try to - would you want
 4 to involved Washington and Idaho and EPA?
 5 KATHRYN BENADA: Chair Reeve,
 6 members of the commission, we haven't actually thought
 7 about that. We [inaudible] regional process to
 8 fulfill [inaudible] chemical water quality standard
 9 [inaudible]. We haven't had further internal
 10 discussion upon that, but I - I could offer this
 11 added information. If you're looking at a state, and
 12 a state has diverse populations of [inaudible]
 13 populations, and people who have different concerns it
 14 might be best to look at a state level rather than -
 15 to be able to address [inaudible] concerns that reside
 16 there because of [inaudible] places. One thing during
 17 the triennial review process when we address this
 18 issue and we were trying to struggle with what to do
 19 is we [inaudible] with Judge Haggerty's decision on
 20 the lawsuit on the temperature water quality standard,
 21 because of where and when - knowing when and where
 22 different native species were consumed was a problem.
 23 And we felt [inaudible] by that in the [inaudible].
 24 UNIDENTIFIED SPEAKER: Okay. One
 25 of the things that came up when we looked at the

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1 fish consumption rate issue was if you start to look
 2 - or try to look at rates for a particular geographic
 3 areas, many of the controversial or ones that have
 4 generated the most interest so far includes
 5 [inaudible]. One of our concerns [inaudible] whether
 6 kind of one standard on one side of the river and a
 7 different standard on the other side of the river.
 8 And I imagine that that would be of concern to the
 9 NWPTA as well.
 10 UNIDENTIFIED SPEAKER: Chair Reeves,
 11 Members of the commission, those issues are of
 12 interest to us, but the most conservative [inaudible]
 13 standard [inaudible] water quality [inaudible].
 14 UNIDENTIFIED SPEAKER: And Mr.
 15 Chair, just a point of clarification, assuming EPA
 16 approves your standards by the end of January, then
 17 Oregon - correct me if I'm wrong [inaudible], will
 18 [inaudible].
 19 MARK REEVE: Right. Thanks. Our
 20 next [inaudible] is Mark Riscodall. Welcome.
 21 MARK RISCODALL: [inaudible] Mark
 22 Riscodall and I'm the Executive Director at Northwest
 23 [inaudible] based at Lewis and Clark Law School here
 24 in Portland. I appreciate this opportunity to testify
 25 and I want to touch briefly in the limited time that

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<p style="text-align: right;">Page 21</p> <p>1 I have available two important issues. First, I made 2 copies for you of a scaling editorial from daily 3 historians early this week [inaudible]. The title is, 4 "A dark day at Oregon DEQ" I'd argue that, "Oregon 5 [inaudible] for going above and beyond national 6 standards is showing signs of serious decline and 7 [inaudible] called to action for DEQ. The governor 8 and the state legislature can do better at protecting 9 Oregon's water quality." I hope this editorial 10 reflects [inaudible] statewide that when it comes to 11 environmental protection this government is failing 12 Oregonians [inaudible]. No more are these failures 13 more apparent than [inaudible] than Oregon DEQ 14 [inaudible]. [Inaudible] really great people 15 [inaudible] right place, working diligently to ensure 16 that DEQ's policies are consistent with basic 17 scientific and legal [inaudible]. But when push comes 18 to shove, science and law tend to take a back seat 19 [inaudible]. This is simply not the Oregon way or 20 using effective [inaudible]. To cohort [inaudible] 21 have reached a critical juncture. Many of [inaudible] 22 considerable time, energy, and effort in building 23 relationships with agency managers, such [inaudible] 24 Shroder, hoping against those. That by diligently 25 commenting on agency [inaudible] and rules and</p>	<p style="text-align: right;">Page 23</p> <p>1 pre-existing legal obligations [inaudible] further 2 legal liability are a waste of time, energy, and 3 resources, etcetera. With respect to the air program, 4 which [inaudible] work for years [inaudible] community, 5 but [inaudible]. I also wish to relate to you the 6 dynamic of public hearings on the [inaudible]. 7 [inaudible] company the go ahead to give construction 8 on a new [inaudible] manufacturing [inaudible] DEQ 9 misinformed the public concerning the [inaudible] of 10 the ozone [inaudible] greenhouse staffs, a company 11 [inaudible], and has stepped past the reviews to 12 require the companies to submit and make publicly 13 available a mission state [inaudible] even though the 14 [inaudible] requires the commission to see it. The 15 result; company [inaudible] proprietary date, 16 proprietary [inaudible], no omission controls were 17 required, no omissions testing, monitoring or reporting 18 was required, and no one will ever know how much 19 [inaudible] manufacturers will be released from this 20 plant to the environment. Companies have already made 21 [inaudible] throughout the year [inaudible] Oregon DEQ 22 [inaudible]. Although agency has worked for early 23 misjudgment in permit process by holding additional 24 public meetings and engaging in outreach with the 25 local neighborhood, it's been clear to everyone who</p>
<p style="text-align: right;">Page 22</p> <p>1 collaboratively elevating our concerns to agency 2 management when those orders and rules [inaudible] 3 departments, this agency will do the right thing. I 4 would step up and adhere to its [inaudible] and be 5 a leader and protecting the quality of Oregon 6 environment. I can't begin to tell you how 7 frustrating it is to see the agency talk about 8 [inaudible] law and its own rules, in blatant 9 disregard of the expense of the environment. 10 [Inaudible] example [inaudible] dollar and [inaudible] 11 agency resources. Last year any [inaudible] agreed to 12 settle a lawsuit [inaudible] large [inaudible] river. 13 [inaudible] sentences]. [Inaudible] to follow the 14 [inaudible] revision of the [inaudible] and other 15 protective industrial [inaudible] permits. Although, 16 the initial [inaudible] by the industry [inaudible] 17 permit [inaudible] unnecessarily lengthy. [Inaudible] 18 spirit of compromise, we [inaudible]. Well after the 19 agreement was signed by both sides we were contacted 20 by the agency and again had the courtesy to extend 21 that [inaudible] until your December [inaudible]. 22 Unfortunately, the agency is no where near 23 [inaudible]. [inaudible] formally notify the agency 24 that it has reached a settlement agreement [inaudible] 25 river. The failure of the agency to fulfill</p>	<p style="text-align: right;">Page 24</p> <p>1 has watched the process [inaudible] that it was simply 2 [inaudible] formality. The agency [inaudible] the 3 audacity to develop [inaudible] for early public 4 hearings [inaudible]. [inaudible] because the company 5 might hear something from the public that [inaudible] 6 implement voluntarily. And two, simply because the 7 agency was required to do so by its [inaudible] 8 rules. Concerns that [inaudible] public process 9 forums as well as those of us who do it over, and 10 over, and over again, you have [inaudible] walked away 11 from the process [inaudible] formality [inaudible]. 12 This must change. There's a crisis of leadership 13 within Oregon DEQ. It's time to move beyond the deer 14 and the headlights [inaudible] back and see his 15 [inaudible] road. Both [inaudible] have been told by 16 departing managers [inaudible] agency in order to 17 ensure [inaudible]. Although we certainly [inaudible] 18 to keep doing so, both state and potentially federal 19 court there's got to be a better way. Both 20 [inaudible] agency and [inaudible] capacity, skills, 21 and the magic to play a [inaudible] reform process. 22 Thanks for your time. 23 MARK REEVE: Thank you. Questions? 24 UNIDENTIFIED SPEAKER: Mark, right? 25 MARK RISCODALL: Yeah.</p>

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1 UNIDENTIFIED SPEAKER: Could you
 2 furnish me a copy of your remarks [inaudible]? And
 3 also [inaudible] can you tell me - I was just looking
 4 at this article in the Daily Historian and it talks
 5 here about [inaudible] Senator Ringo asking about, you
 6 know, [inaudible] mapping of the [inaudible] and
 7 whoever testified that they were almost done, and then
 8 last month saying [inaudible]. [Inaudible sentence].
 9 UNIDENTIFIED SPEAKER: Commissioner
 10 [inaudible], there is more to the story and if Lori's
 11 still here, Lori [inaudible] our administrator I think
 12 could come to the table and give us an [inaudible].
 13 UNIDENTIFIED SPEAKER: [inaudible]
 14 about [inaudible].
 15 UNIDENTIFIED SPEAKER: Right. No,
 16 I appreciate that. And as you may or may not know,
 17 this was a follow on to a similar article that was
 18 in Willamette Reader.
 19 UNIDENTIFIED SPEAKER: Lori, do you
 20 want to -
 21 UNIDENTIFIED SPEAKER: [inaudible]
 22 couple words [inaudible] -
 23 UNIDENTIFIED SPEAKER: Yeah, I'd
 24 like to -
 25 UNIDENTIFIED SPEAKER: I'd also

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1 like to comment [inaudible].
 2 (Inaudible discussion)
 3 UNIDENTIFIED SPEAKER: [inaudible]
 4 and I'm [inaudible] article [inaudible]. Just a
 5 little bit of background that might [inaudible]. The
 6 mixing zones are something that are allowed by
 7 [inaudible] and the way [inaudible] analysis that make
 8 sure they're not [inaudible]. There was a legislation
 9 used in the 2005 session that would have banned them,
 10 phased them out. And there were several [inaudible].
 11 It unfortunately became very [inaudible]. I was not
 12 present at the hearing when this discussion took
 13 place. I have [inaudible] find out exactly what was
 14 said [inaudible] view that so you [inaudible]. My
 15 understanding it was [inaudible] started. I also know
 16 that it's a very complicated questions [inaudible] two
 17 meetings with environmental organization [inaudible].
 18 At the last meeting we talked about the [inaudible]
 19 to do that [inaudible] accurately. Because one of
 20 the things that we want to make sure [inaudible] do
 21 something is facts with, you know, facts [inaudible].
 22 And so we discussed briefly [inaudible] that there are
 23 some organizations that [inaudible] information. And
 24 my thought, which I did offer to [inaudible], was to
 25 try and get together [inaudible] and [inaudible] talk

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1 about this issue and make sure we're getting good
 2 data [inaudible] concerns, figure out what might be
 3 possible [inaudible]. My ideal would be [inaudible]
 4 collaborative approach to doing this [inaudible].
 5 UNIDENTIFIED SPEAKER: I would like
 6 to make a comment. [inaudible] community for
 7 [inaudible] that one paragraph alone. It does talk
 8 about [inaudible] so I would [inaudible] that someone
 9 do listen to the tape and see what was said
 10 [inaudible]. [inaudible sentence].
 11 UNIDENTIFIED SPEAKER: Well,
 12 commissioner Urballau, one you can state on that point
 13 is I mentioned this dialogue started with an article
 14 in Willamette Week and then was picked up by the
 15 Daily Historian and they wrote an editorial. And we
 16 will be responding. There's always the questions and
 17 let me just say, kind of equivocally, that I do not
 18 agree with what was in the Willamette Week article,
 19 or with what was stated in the Daily Historian, and I
 20 do not believe it is accurate. With that said, we
 21 always shave - when we - whether they're positive or
 22 negative commentary, about what the department does we
 23 have to weight whether or not we're going to respond.
 24 And sometimes we do and sometimes we don't. And so
 25 we're discussing that right now and how we do in fact

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1 get what we [inaudible] accurate [inaudible].
 2 UNIDENTIFIED SPEAKER: [inaudible]
 3 respond to that [inaudible] but this particular
 4 [inaudible] southern Oregon [inaudible]. You know,
 5 there's a large [inaudible].
 6 UNIDENTIFIED SPEAKER: [inaudible
 7 sentence]. [inaudible] or Oregon State's website and
 8 what [inaudible] said [inaudible]. [Inaudible
 9 sentence]. [Inaudible] she said, "I'm almost done."
 10 She reiterated by saying [inaudible] she reiterated by
 11 saying [inaudible]. And so it set up a public
 12 dynamic where it was [inaudible]. She followed up by
 13 saying, "I got [inaudible] worked very hard on it."
 14 UNIDENTIFIED SPEAKER: [inaudible]
 15 online or [inaudible] copy.
 16 MARK REEVE: Thank you. Next,
 17 we'll hear from Brent Foster.
 18 BRENT FOSTER: Good afternoon,
 19 Chair Reeves, and members of the commission. I
 20 appreciate the opportunity to speak with you today.
 21 I think that [inaudible] my personal frustrations, but
 22 [inaudible] frustration to the broader environmental
 23 community. I've been working with DEQ - I want to
 24 start out by saying that I really want to emphasize
 25 there are [inaudible] people of high caliber with high

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1 moral ethics, and a real dedication to doing the
 2 right thing. So [inaudible] see as [inaudible] crisis
 3 of policy. Time and time again where there is a
 4 questions and DEQ has to decide which side of the
 5 questions they're going to come down on the side
 6 [inaudible] water quality or air quality, or on the
 7 side of industrial [inaudible] not on the side of
 8 water quality, not on the side of what I consider to
 9 be the public interest. And that's [inaudible] it no
 10 longer makes sense for me to sit down with DEQ in a
 11 collaborative working group, such as Lori was
 12 describing, because [inaudible] don't have the
 13 resources. I cannot sit on five, or six, or seven
 14 different committees because I have 20 other thing to
 15 do. There are only a few of us who have the
 16 ability to work with department workers and time and
 17 time again [inaudible] whether it's the storm water
 18 control group. In my opinion [inaudible] so for me
 19 to sit there and deal with them and try to get what
 20 we ask for, in terms of [inaudible] and what was
 21 committed here by the former environmental quality
 22 director, was essentially a map [inaudible] let us
 23 know if there are toxic [inaudible], which there are,
 24 [inaudible] discharger has them, where are they? What
 25 is being discharged into them? And how much? Those

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1 rest of sentence]. [inaudible] determine how much
 2 mercury they're putting in? The answer, no, we're
 3 not going to require that. That's clearly what
 4 [inaudible] no cost to you to process that data.
 5 They can just leave it in their folder, except DEQ
 6 said, "No, we're not going to require it." Is it a
 7 big burden on industry? Heck, no. You know,
 8 [inaudible] more data [inaudible] well, unfortunate
 9 [inaudible] events. We agree with [inaudible] and for
 10 \$30 to \$50 and a few hundred dollars you could get
 11 data on a lot of that [inaudible]. [inaudible] real
 12 problem. The second big issue and it's gonna come up
 13 for you so I wanted to address it indirectly is DEQ's
 14 recent announcement, as of Wednesday, that they are
 15 going to radically begin the water quality
 16 [inaudible]. Okay? It's important [inaudible] only a
 17 few pages. Unfortunately, you'll have to forgive the
 18 typos in this, but really this is fresh off the
 19 presses this morning. [Inaudible] what I've just
 20 prepared for you is a little summary of it. Go
 21 online, you can see the standard. In short, what
 22 they're proposing to do is add a mixing zone, for the
 23 first time, into the water clarity standards. Our
 24 water clarity standard right now says, "No more than
 25 a 10% increase compared to natural background." And

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1 are three simple questions. Where are they? How
 2 much is being discharged into them? And what is
 3 discharged into them? And those are three questions
 4 DEQ cannot answer for you. They are allowing the
 5 discharge of toxic levels of toxic [inaudible] like
 6 mercury, like cyanide, like [inaudible] all on down
 7 the line. [inaudible] toxic concentrations. Not
 8 concentrations that I say are toxic. These are
 9 concentrations that exceed the state's own [inaudible]
 10 standards. At the very least, the state should know
 11 where. This is not rocket scientist [inaudible].
 12 When every NPDS permit gets submitted it comes along
 13 with a form. It's concentrations of at least one
 14 sample required by [inaudible]. It will tell you how
 15 much led, [inaudible] sample [inaudible] because these
 16 [inaudible] does not require monitoring [inaudible]
 17 even when they know the properties [inaudible].
 18 [inaudible] frustration, which as led me to, I think,
 19 my current [inaudible]. I hope that this committee
 20 will help. We look to you frankly because we're out
 21 of [inaudible]. We ask, for an example, that when
 22 you're allowing that discharger to discharge
 23 [inaudible] over the state water quality standard,
 24 into the Willamette River [inaudible], into a river
 25 that's already got so much mercury in it [inaudible]

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1 that's at the point - unless there's a mixing zone,
 2 that's at the point where the pollution meets the
 3 water. What DEQ has done now over our objection and
 4 [inaudible] Northwest [inaudible] Paper Association
 5 [inaudible] can't be true. Northwest [inaudible]
 6 Paper could not have paid to rewrite the very
 7 standard which they identified as one of their major
 8 problems. Yes, they did. They signed a contract
 9 with DEQ and it's in the record, I'll give you a
 10 records number, for \$120,000. Now, certainly I'm not
 11 gonna say that DEQ didn't exercise any [inaudible],
 12 but it's clear Northwest [inaudible] Paper [inaudible]
 13 current standard [inaudible]. They paid DEQ a big
 14 contract for \$120,000, now the standard's been
 15 radically [inaudible]. When I actually calculated
 16 just in a test phase how much weaker it would be, I
 17 reached the incredible conclusion that actually -
 18 whereas if you were discharging into a current stream
 19 would skip [inaudible] 1 NTU's [inaudible] water
 20 clarity turbidity. 1 NTU - today [inaudible]
 21 discharge would make that stream 1.1 NTU's [inaudible]
 22 increase. Under the new standard, if that stream
 23 [inaudible] 200 foot [inaudible] say, the Willamette
 24 or the Columbia, just assuming [inaudible] 1 NTU.
 25 First off, [inaudible] 300 foot mixing [inaudible].

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1 DEQ said, "We're not even gonna look at what's
 2 happening under the first 300 feet of a [inaudible]
 3 discharge into the water [inaudible]. Never mind what
 4 fish are there. Never mind who fishes in it. Never
 5 mind who swims in it. Never mind anything that goes
 6 on in that 300 foot area, which is the generally
 7 philosophy behind [inaudible]. We're only going to be
 8 concerned about what's happening at the end of that
 9 300-foot [inaudible]. Well, even at the end of that
 10 300-foot park, under the current standard, you could
 11 go to 1.1 NTU's. Under the proposed standard, if
 12 it's any -- [inaudible] river [inaudible] 0 or 33
 13 NTU, right off the bat you've got 5 NTU national
 14 increase. So instead of having 1.1 NTU, even at the
 15 outside of this big mixing [inaudible] you get 6
 16 NTU's, okay? That's a pretty significant increase -
 17 about 500% [inaudible]. So then consider what's -
 18 how does that 300 foot mixing zone play in? That's
 19 when you really get the amazing - just the magnitude
 20 of the [inaudible] DEQ is now proposing. Typically,
 21 when you're looking at mixing zones, the big question
 22 is pollution [inaudible]? How much pollution do you
 23 get [inaudible] hits the water through the outside of
 24 the mixing zone? Now, we can play with numbers, but
 25 I'll tell you that a 50 to 1 pollution ratio for a

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1 [inaudible] why is the standard being [inaudible]
 2 pollutant. Hard to look at [inaudible] Willamette or
 3 the Columbia or any other river and think that the
 4 rivers are too clear right now, or that we have room
 5 to make them dirtier. With that, I would invite you -
 6 I wanted to let you understand - certainly the
 7 articles that were in the Historian and I can tell
 8 you from - because I was at that [inaudible] hearing
 9 when Ally Shroder did explain very clearly and
 10 explicitly that they were very close to finishing this
 11 out. And at that time I did not think that she
 12 was. And I think that there's a very simple course
 13 of action. We know that [inaudible] let alone
 14 [inaudible] DEQ representative [inaudible]. It's
 15 serious. We can move on from it. But if you - we
 16 will forward you the transcript where the testimony's
 17 very clear [inaudible]. You can listen to it and
 18 [inaudible] it. I think the proper course of action
 19 is for either the director or DEQ [inaudible]. I
 20 apologize to the senate environment committee
 21 [inaudible]. I think though, just to put it in
 22 context, this is not a dollar issue. Okay? They
 23 want to [inaudible] this as a dollar issue. Right
 24 now, Oregon DEQ has a proposal by a private
 25 contractor to prepare. What we said as a reasonable

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1 300 foot area or stream like the Willamette is
 2 extremely [inaudible]. For blue [inaudible] it's more
 3 like 80 or 60. It's certainly above 50. If you
 4 assumed that [inaudible] 50 [inaudible] ratio, this
 5 proposed rule would mean that you could discharge 300
 6 NTU's down the pipe. 300 NTU's in the pipe. Now,
 7 this is 300 NTU at the pipe, and obviously that
 8 dilutes as you go down the stream. But when you
 9 consider that DEQ's own [inaudible] for this said that
 10 we could see real effects on trout and species like
 11 trout as low as 10 NTU. Do you realize that this
 12 isn't just a theory. It's not just a problem of a
 13 weakening in the standards that isn't gonna have an
 14 effect. It's something that's gonna have an effect
 15 on fish. Whether you eat fish, whether you simply
 16 like to know that there are fish there. [Inaudible]
 17 somebody like to look at a clear river. The picture
 18 that's on the front cover there is something that
 19 right now, under the current standard, would be
 20 totally illegal. It would violate the 1.1 NTU
 21 standard. Under the proposed standard, that would be
 22 perfectly legal because you wouldn't be looking at
 23 [inaudible] water. You'd have to go down 50, 100,
 24 probably about 300 feet [inaudible]. To me, this is
 25 symbolic of a [inaudible] a flawed perspective

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1 base [inaudible] let's just start with the major
 2 entities on the Columbia and Willamette. That's only
 3 about 20 of them. And I don't know the precise
 4 numbers but [inaudible] GIS [inaudible] and do all the
 5 [inaudible] assessment on the \$15,000. Now, \$15,000
 6 is not a small amount of money, except that DEQ just
 7 received a \$75,000 grant [inaudible]. This money
 8 could be used to support this less than \$15,000
 9 study, and you would have made progress. And this is
 10 what we said during our meetings to DEQ [inaudible]
 11 me to be so frustrated. You don't need to do it
 12 all now. Just make some progress. We don't want to
 13 sit down and [inaudible] some negotiation [inaudible]
 14 polluting industry [inaudible] run up around the clock
 15 for a month. This is the information [inaudible]
 16 public. I'm gonna wrap it up [inaudible] questions
 17 that you may have. I appreciate your time. END:
 18 TAPE 6, SIDE A FROM 183 TO END START:
 19 TAPE 7, SIDE B FROM 0 TO END OF TAPE
 20 UNIDENTIFIED SPEAKER: -- our
 21 relationship [inaudible] for the work that they do,
 22 but I do think now [inaudible] great time. Hopefully
 23 for the commission to exercise some due authority and
 24 hopefully encourage and realize that this [inaudible]
 25 and we're certainly going to do our best to work on

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<p>1 those issues as well. But I think that - there's a 2 real opportunity for these views to change its focus 3 and [inaudible] proposed water [inaudible]. 4 MARK REEVE: Questions? I had a 5 couple for them. One is these proposed rules on 6 turbidity. I take it - it seems like they just came 7 out a couple days ago of proposed - was there a 8 rules advisory committee involved in this? 9 UNIDENTIFIED SPEAKER: There was 10 not a rules advisory committee. There were several 11 meetings. We [inaudible] several incarnations of this 12 over the last few years and from the very start we 13 said [inaudible]. Yet it's the first time it's ever 14 been done in Oregon. We've just come through with 15 this breezing session where most people think that 16 water quality is [inaudible] pipe. Most people just 17 learned [inaudible] standard [inaudible] without limit. 18 [Inaudible] and there is not standard [inaudible]. 19 So, we just [inaudible] doing the water quality when 20 we're already doing the water clarity, and we're 21 already doing the [inaudible] backwards. Creating 22 zones in an unregulated pollutions. And it's not 23 allowed [inaudible] it is not - anywhere [inaudible]. 24 They contract [inaudible] they are less acknowledged 25 than [inaudible] regulations [inaudible] water.</p>	<p>1 forum. [Inaudible] my name's Dr. Jay Christian Lanam. 2 I'm a psycho biologist. One of my specialties is the 3 effect [inaudible] on the brain and the nervous 4 system. But actually I'm here today as a resident of 5 Lincoln County. I have a home about seven miles down 6 river on the - I believe [inaudible] Oregon City. We 7 have some problems that I'd like to make you aware 8 of. First of all, the [inaudible] in Lincoln County 9 are quite disproportionate. We have - out of the 36 10 counties in Oregon Lincoln County is third in the 11 overall cancer death rate. It's seventh in the 12 overall rate of cancer. It's number one in the 13 [inaudible] of deaths from malignant brain cancer, 14 first in death rate from malignant melanoma. Second 15 in incidents of cervical cancer and so on down the 16 line. Out of nine kinds of cancer only one does not 17 list Lincoln County in the top ten, in terms of 18 mortality. According to the World Health 19 Organization, 80% of all cancers are environmentally 20 [inaudible] influenced. And [inaudible] Samuel 21 [inaudible] in Chicago [inaudible] 95%. When we look 22 at the top [inaudible] states in the area as being 23 [inaudible] Lincoln County is right among this 10% 24 [inaudible] of all the counties in the United States 25 for it. Air releases a recognized [inaudible]. We</p>
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<p>1 [Inaudible] statute which said we want to end all 2 water pollution by 1985 [inaudible], okay? But if 3 anyone ever tells us I'm too radical I would say, 4 "Well, look at the [inaudible] white guys in 1972 5 that say we had to end all water pollution by 1985." 6 I'm just saying that you should [inaudible] 7 concentration [inaudible]. 8 UNIDENTIFIED SPEAKER: Okay, so 9 these - this proposal is out there for public comment 10 at this point. And when is the schedule for when it 11 would potentially come to the commission? 12 UNIDENTIFIED SPEAKER: [inaudible] 13 hearing set for November 29th. I think that public 14 comment hearings [inaudible]. 15 MARK REEVE: Well, I'm not - I 16 don't care about exact dates, but roughly December - 17 timeframe? 18 UNIDENTIFIED SPEAKER: I think that 19 it would probably go back to DEQ, and probably be 20 later than December before it comes to [inaudible]. 21 MARK REEVE: Okay, thank you. 22 Next we'll hear from Jay Christian Lanam (Phonetic). 23 Welcome. 24 JAY CHRISTIAN LANAM: Thank you 25 very much for [inaudible] and allowing this public</p>	<p>1 are, at this point, we only have one industry that's 2 putting out large amounts of pollution and this is 3 the [inaudible] Mill. It is the only time 4 [inaudible] industry in Lincoln County. Actually they 5 are putting out about 15 million pounds of [inaudible] 6 into the air per year. And right now there are no 7 [inaudible] up for renewal in the next five years. I 8 wanted to come here to speak to you today because at 9 this point it's not absolutely [inaudible] on this. 10 [Inaudible] have a water quality permit that was up 11 for renewal, which has already essentially been 12 approved. [Inaudible] citizens concern and outrage 13 basically [inaudible] new comment period that has been 14 reopened. And [inaudible] taking place shortly. Just 15 a little bit about this particular mill; there is no 16 independent monitoring other than by contractors that 17 [inaudible]. They do their own monitoring. There's 18 only one site to directly [inaudible] quality. Most 19 of the permit is based on modeling data for air 20 quality, other than direct measurement. We think the 21 conditions need to actually be measured on the ground. 22 The things that are being measured - the one side is 23 on the hill. And this is an area [inaudible] fog, 24 and in fact our weather conditions are a little bit 25 like Los Angeles, because we have the cool, coastal</p>

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<p>1 air coming in contact with air from the warmer 2 interior and that sometimes [inaudible] in a blanket 3 [inaudible] toxins there. So not only do we think 4 they need to be measured on the ground, we think they 5 need to be measured in the valley where there is a 6 lot of these smog- generating conditions. Second, 7 there are no real direct studies of health [inaudible] 8 statistics of the cancer registry, things of this 9 sort, but nobody has done any studies related to the 10 health of people in various distances that they live 11 from the mill. We know that the chemicals in the 12 air result in combinations that are often quite 13 different from what's actually release. These are not 14 always in the standards. The health effects, of 15 course, are not predictable either and people will 16 often say, "Well, it's very difficult to prove what 17 causes cancer," cuz there are multiple conditions. But 18 when we have these kinds of statistics it certainly 19 makes it suspect and we think that there certainly 20 needs to be some kind of precaution exercised here. 21 Actually, the Georgia Pacific Corporation is second in 22 the top 100 air polluters in the United States. This 23 is a local example of a corporate giant and it's 24 actually [inaudible]. I guess that's obvious 25 [inaudible] industry. It's not necessary that they be</p>	<p>1 hyperactivity disorder, and asthma. Some things are 2 simply too precious to lose, our health and the 3 health of our children are definitely something that 4 falls in this category. Thank you very much. 5 MARK REEVE: Thank you. Thanks 6 very much. Next we'll hear from Gretta [inaudible]. 7 GRETTA: [inaudible]. First, I'd 8 like to leave this [inaudible]. I'm a [inaudible] 9 sentences]. [Inaudible] cancer every night and day by 10 my pollution. My [inaudible sentences]. [Inaudible]. 11 There are many homes on this lane [inaudible]. My 12 main mission [inaudible] cancer [inaudible] some form. 13 [Inaudible sentence]. [Inaudible] number of patients 14 [inaudible]. I've lived in my home for 27 years. 15 I'm deeply disturbed by what I can see [inaudible] 16 ongoing attempts to conceal and downplay the toxic 17 pollutants coming from the [inaudible] mill. Please 18 do not allow an increase of air pollution [inaudible]. 19 Too many people are all ready dying. Let's all work 20 together to fight [inaudible] a way for the mill and 21 the community to coexist [inaudible] new technology 22 exists to solve the problem [inaudible]. Let's look at 23 greatly reducing, not increasing the toxins 24 [inaudible]. [Inaudible] and for myself, it's not 25 okay that I and many others wake up at 3 a.m.</p>
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<p>1 this high. Weyerhaeuser, which is actually the number 2 one sized paper and [inaudible] timber company in the 3 world is fifteenth in their toxic conditions in the 4 air. So there's a lot that can be done. I wanted 5 to take just an example of one thing. One of the 6 permitted pollutants in demand; we know that lead is 7 a health risk at all sorts of levels, but it's not 8 just the direct health risk of lead itself, but 9 actually any heavy metal will compromise the blood 10 [inaudible] and allow other chemicals into the brain 11 that shouldn't be there. I was just hearing about 12 fish mercury, of course this is also a coastal area 13 where there's quite a bit of fish consumption. And 14 if you're considering whether to look at state's 15 levels of these or local conditions, I would say that 16 it's very important to look at local conditions. How 17 does the fish consumption and what's going into the 18 water interact [inaudible] our bodies with what the 19 air in fact does? We want this planet to modernize 20 its pollution controls. We [inaudible] before they 21 continue to operate. WE want direct monitoring of 22 the air quality and we want direct health studies, 23 not [inaudible] across the county. We are learning 24 all the time more about how toxins- reducing 25 [inaudible] cause autism, attention deficit,</p>	<p>1 [inaudible]. [Inaudible sentences]. I wouldn't have 2 moved here if I'd known [inaudible]. [Inaudible 3 sentences]. [Inaudible] technology [inaudible] 4 especially [inaudible]. [inaudible sentences]. And 5 as for the corporation of the United States 6 [inaudible] and our air and water [inaudible]. And 7 lastly, it is our [inaudible] right to [inaudible]. 8 Thank you very much. 9 MARK REEVE: Thank you. Lastly, 10 we'll hear from Brett Dandin [inaudible]. I'm not 11 sure if I got your last name correct, Brett. 12 Welcome. 13 BRETT: Okay, [inaudible] my name 14 is Brett [inaudible] and I'm here to talk to you 15 today about the proposed [inaudible] standards 16 [inaudible]. I will be brief cuz [inaudible] went 17 over some of the details. I got a couple of emails 18 yesterday telling me about the standard [inaudible] I 19 didn't want to read it. This - going through these 20 [inaudible] isn't always the most exciting thing to 21 do. But as I - it's only three pages so I've 22 provided it for you and I want to go over just a 23 few of the - what I consider the most radical 24 changes. 25 UNIDENTIFIED SPEAKER: Do you have</p>

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<p>1 another copy? 2 BRETT: I do, but - I realize 3 [inaudible] draft rule of getting this out to the 4 commission in its early stages. I hope [inaudible] 5 comments will be effective. On the cover, briefly is 6 a chart that is not [inaudible] specific or not any 7 specific water body or even any specific [inaudible] 8 fish. It's just roughly showing [inaudible] turbidity 9 and time, on the x axis, showing the effects on fish. 10 And I show you these to make a point that certain 11 spikes in turbidity - certain spikes in murky water, 12 cloudy water, perhaps after a rain storm, [inaudible] 13 have a while to deal with that. Long-term spikes 14 [inaudible] long-term changes in the water clarity 15 have a much more profound effect on fish. So if we 16 look at - on the y-axis, say, this is expediential, 17 but between the ten and 100, say, 50 NTU's, which is 18 a unit for turbidity. For a couple of hours it may 19 not effect fish tremendously. When you move into the 20 [inaudible] that's why I'm looking at reduced 21 [inaudible] of long-term [inaudible]. The reason I 22 show that chart is that some of the proposed 23 standards have allowed monthly increases in turbidity 24 at the same rate that current turbidity standards 25 allow for an hour, not even for an hour but for a</p>	<p>1 "Maximum turbidity" - 2 UNIDENTIFIED SPEAKER: I have a 3 question. [Inaudible] portion [inaudible] it says, 4 "However limited duration activities necessary 5 [inaudible] to emergency which would accommodate 6 [inaudible] turbidity and cause [inaudible]." It 7 talks about natural [inaudible sentences]. 8 UNIDENTIFIED SPEAKER: Right, there 9 are seven - 10 UNIDENTIFIED SPEAKER: Okay, good. 11 So - 12 UNIDENTIFIED SPEAKER: -- there are 13 [inaudible] emergencies [inaudible]. I'm talking about 14 in a normal day-to-day operation [inaudible]. 15 UNIDENTIFIED SPEAKER: [inaudible] I 16 understood you to say that the red line was what was 17 still needed, and yet on to the right there's this 18 [inaudible] they don't seem to be related. So, are 19 you saying the red line is the new? 20 UNIDENTIFIED SPEAKER: No, I'm 21 sorry I wasn't clear. The red line in the text is 22 the added part of the rule. And the deleted - 23 UNIDENTIFIED SPEAKER: The new 24 part? The red line is the new? 25 UNIDENTIFIED SPEAKER: -- right,</p>
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<p>1 second, which I'll get to in a minute. So, I'll 2 just briefly talk about this rule. If you'll turn to 3 the second page, which is at the bottom of this 4 [inaudible] Page 27 of Section - or [inaudible] 41 of 5 the rules. It's - it's the redline version - the 6 red is an addition to the rule, and on the right is 7 where the lead is [inaudible] that big long paragraph. 8 That's the whole standard of - I'm not gonna vent to 9 much about DEQ, because I've only spent about three 10 years looking at these rules. So I don't have the 11 buildup as perhaps some of the earlier people have in 12 experience. And I hope that during my career of 13 looking at these rules that I'll never have to get to 14 that point. But [inaudible] red line [inaudible] so 15 I was looking at these rules and [inaudible] show DEQ 16 did provide the changes in the rule [inaudible] 17 comparing these rules side by side. [Inaudible] red 18 line [inaudible] so the deleted portion says, "No more 19 than 10% increase [inaudible] turbidity." [Inaudible] 20 where it comes out at a pipe. Basically, the old 21 rule says, "Whatever is [inaudible] discharge cannot 22 be more than 10% greater cloudy [inaudible] than 23 [inaudible] the natural background level [inaudible]." 24 That's [inaudible] if you'll turn to the next page, 25 labeled Page 28 here. The third line down says,</p>	<p>1 the red text. 2 UNIDENTIFIED SPEAKER: Right. 3 UNIDENTIFIED SPEAKER: And the 4 deleted is off in a small box [inaudible] - 5 UNIDENTIFIED SPEAKER: Right. 6 Okay. 7 UNIDENTIFIED SPEAKER: -- okay. So 8 we're working from the old rule of 10% increase at 9 the pipe - 10% increase over the background level is 10 the natural [inaudible] level. Going on to the 11 second page, or Page 28 where the third - the first 12 subsection says, "To [inaudible] turbidity criteria for 13 waters of the state. A; maximum turbidity. The 14 background turbidity is 33 NTU's or less [inaudible] 5 15 NTU's above background." So we've gone from a 16 percent to an actual numeric value. And say if the 17 - if the - if the maximum - or if it was at 33 18 NTUs - if it was that murky, than 10% of that is 19 3.3 increase. So that [inaudible] versus 5 NTU's, 20 which isn't that big of a difference, but if the 21 background is 1 NTU -- that's how murky the water is, 22 then the standard allows five in addition to that and 23 that becomes - the new standard become 6 NTU's, which 24 is a 600% increase over the background level. If you 25 follow the DEQ [inaudible] 0.1 NTU's [inaudible] data</p>

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<p>1 to show, so that's the default. If that was the 2 case, the stream had 0.1 NTU, the increase [inaudible] 3 6 would be a 6,000% increase. So these have 4 tremendous, potential impacts to water clarity of 5 Oregon. Moving on to monthly average for turbidity 6 in subsection 2B, about a third of the way down the 7 page and under 2B [inaudible] B, says, "Where 8 background turbidity is greater than 30 NTU's, monthly 9 average turbidity must not exceed 10% of the 10 background." What is that 10% covering in? 11 [Inaudible] time the old standard being it can't be 12 10% [inaudible] the new rule saying it can't - the 13 standard 10% for a month. And moving on to Page 29, 14 second to the last page. So if these increases that 15 I'm talking about - and Brad mentioned this, but I'm 16 going to reiterate it. They occur outside of the 17 [inaudible] rule. So - and in the case of the 18 Willamette, which is greater than 200 feet wide, is 19 600% or 6,000% increase that I'm talking about would 20 only be measured outside 300 [inaudible] in the pipe. 21 So if this is the pipe, the microphone stand, 22 [inaudible] into the rule all the way 300 feet down 23 stream, there's no measurements, there's no 24 requirements, there's no regulation. It could be 25 anything. It could be [inaudible]. [Inaudible] only</p>	<p>1 I'd like to [inaudible]. 2 MARK REEVE: Sure, go ahead. 3 UNIDENTIFIED SPEAKER: [inaudible 4 sentences]. [Inaudible] I don't know the truth of 5 them [inaudible]. [Inaudible] DEQ and I - I'd like 6 to explain that in several areas that bother me more 7 than others. If I understand [inaudible], is that 8 correct? 9 UNIDENTIFIED SPEAKER: I don't know 10 [inaudible]. 11 UNIDENTIFIED SPEAKER: Oh, okay. 12 Because if it was and given the issues we've raised, 13 I wonder [inaudible] because [inaudible]. The second 14 thing we've already talked about [inaudible] as far as 15 the [inaudible] article about [inaudible] and what 16 I'm going to say is not directed [inaudible] I would 17 say the same thing. If the river papers funded a 18 study like this [inaudible] I mean, at least I feel 19 that way. When there is funding [inaudible] somebody, 20 and so I'd like to [inaudible]. And then 21 [inaudible]. 22 UNIDENTIFIED SPEAKER: Do you have 23 more issues? 24 UNIDENTIFIED SPEAKER: No, I've 25 just pointed out the specific ones. I mean, the</p>
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<p>1 measured outside of the safety zone [inaudible]. And 2 last, on Page 29, subsection F, about a third of the 3 way down the page. It says, "The department may 4 establish criteria for limited duration [inaudible] 5 more stringent than the criteria." So this is giving 6 the department the authority - giving DEQ the 7 opportunity to make it more stringent in certain 8 situations. But again, it says, "It may." There's 9 no legal requirement for DEQ to do so. So it may 10 or may not in these situations. There's not 11 mandatory requirement to protect the water clarity in 12 public waterways, waters that are already water body 13 limited, which are the [inaudible] stream of public 14 drinking water intake. There may be other drinking 15 water rules, but as far as this rule for the water 16 quality standards, a stream of red [inaudible] 17 spawning areas, there's no legal requirements for DEQ 18 to protect those areas in between. That's all I 19 have. 20 MARK REEVE: Okay. Thank you. I 21 think that concludes - well, I guess nobody in the 22 audience [inaudible] up. They don't have their slip. 23 I think that concludes the public forum. I'd like to 24 take a very brief break before we take up our last - 25 UNIDENTIFIED SPEAKER: Before we do</p>	<p>1 gentleman that just spoke on his study [inaudible] 2 changes, and these [inaudible] effects [inaudible]. 3 UNIDENTIFIED SPEAKER: That last 4 one, the turbidity rule is out on public notice and 5 is a rule that is in process of coming to you. So 6 you will get - and you will [inaudible] as you 7 recall, by Bob [inaudible]. So you will be - 8 continue to be involved in those discussions. 9 UNIDENTIFIED SPEAKER: Okay, and I 10 understand that that's a public process [inaudible]. 11 [Inaudible] looking for is the [inaudible] rule change 12 itself. 13 UNIDENTIFIED SPEAKER: Okay. 14 UNIDENTIFIED SPEAKER: [inaudible] 15 first going back to the Georgia Pacific thing. This 16 is a Title 5 permit. They have to be renewed every 17 five years. It is in the process of public comment 18 right now, so it hasn't been issued. There has been 19 a - 20 UNIDENTIFIED SPEAKER: It's a tad 21 bit more complicated than that. It's a little more 22 complicated than that. Actually, the waterside of the 23 permit was issued. It went out for public comment, 24 public comment was received, but there wasn't 25 objection to the permit. And then the air permit was</p>

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<p>1 out and public comment was received on that. And the 2 department heard concerns raised about the water side 3 of the permit during the air process. The department 4 took a relatively unusual step of withdrawing the 5 permit on reconsideration to -- the water permit, to 6 take more testimony. Obviously, they consulted with 7 Georgia Pacific and they didn't object, even though 8 they might have, because they wanted to get a - the 9 department wanted to get a full hearing on the water 10 side. So they're both out on public notice, but 11 technically the water permit did issue, and that's why 12 it's a little bit confusing. 13 UNIDENTIFIED SPEAKER: [inaudible] 14 DEQ did extend the public comment on the air side - 15 UNIDENTIFIED SPEAKER: Yes, as 16 well. 17 UNIDENTIFIED SPEAKER: [inaudible] 18 significant comment [inaudible]. 19 UNIDENTIFIED SPEAKER: There's been 20 tremendous effort, I think, to get as much public 21 input as possible on that permit. And - 22 UNIDENTIFIED SPEAKER: [inaudible 23 sentence]. 24 UNIDENTIFIED SPEAKER: Would you 25 like - I'm sure that the region has - working on the</p>	<p>1 toward the standards that you really can know when 2 someone violates it [inaudible] legally approach it. 3 So that's what the department's trying to do. It's 4 not that they're trying to move back on these rules 5 [inaudible]. 6 UNIDENTIFIED SPEAKER: All right, 7 commissioner Williamson's correct and I'll just respond 8 [inaudible], in terms at why we looked at the 9 turbidity standards was exactly that. We do, as you 10 heard, in some other discussion about water quality 11 toxins. We generally do a [inaudible] every three 12 years to look at water quality standards that need to 13 be looked at. The turbidity standard had not been 14 looked at for a long time. And as commissioner 15 Williamson said, the way it was written, quite 16 frankly, is basically unimplementable (Phonetic) from a 17 [inaudible]. And at the time, which I think was 18 2002, when the subject came up of looking at the 19 turbidity standards, which was a couple of water 20 quality administrators ago. And I think you're 21 beginning to understand why we go through water 22 quality administrators every two years. The turbidity 23 standard of the - department discussed how to go 24 about it, given the resource constraints. At that 25 time, I think the administrator was Mike Luellen.</p>
<p>1 permit, has a lot of background information on the 2 whole process. Would you like a little packet? 3 UNIDENTIFIED SPEAKER: [inaudible] 4 and if you have any side-by-side [inaudible] old or 5 the new. I'd also like to know why [inaudible]. I 6 think I know a little bit about [inaudible]. 7 (Inaudible discussion) 8 UNIDENTIFIED SPEAKER: On the 9 turbidity one - well, there's two issues. One is 10 there's more known about turbidity effects on fish, so 11 there's been an improvement [inaudible]. The second 12 one is trying to clear up this whole monitoring 13 issue, because the fact of the matter is, the way the 14 rule is written, this 10% increase, at low values of 15 turbidity you can't measure. So Oregon has written 16 into its law a rule that, you know, just - that 17 really cannot be measured. So the department is 18 trying to deal with that and get it to a point that 19 we can actually [inaudible] these rules in the 20 streams. Well, for example, if you got 1 NTU and 21 you want to try to see if you now have 1.1, you 22 can't measure that with this new technology. So - 23 and even at 2 you can't. Even at 3 it's 24 questionable. These low NTU units are basically 25 really clear water. And so the idea is to move</p>	<p>1 And we made - we do have authority given to us by 2 the legislature, which is referred to as Receipts 3 Authority, to enter into contractual arrangements to 4 have some services paid for. It is an authority that 5 we have. We generally use it only in permitting for 6 someone [inaudible] special acceleration of a permit 7 or a special study or something like that, they're 8 allowed to [inaudible] department to do that. We 9 experimented with that on this standard. I will not 10 do it again. You don't learn things unless you 11 experiment and we have experimented and I think you're 12 quite correct, Commission [inaudible], we are now in a 13 box on the turbidity standard, because regardless of 14 what we do, it's going to be considered to have been 15 paid for Northwest [inaudible] Paper. And we need to 16 deal with that as we go forward with the standard. 17 But that's the history and that's why we did that. 18 UNIDENTIFIED SPEAKER: [inaudible] 19 comment wasn't to say [inaudible] -- 20 UNIDENTIFIED SPEAKER: Absolutely. 21 No, I don't disagree at all. 22 UNIDENTIFIED SPEAKER: -- 23 [inaudible] and I don't care which side [inaudible]. 24 UNIDENTIFIED SPEAKER: I agree. 25 UNIDENTIFIED SPEAKER: It's one</p>

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1 thing to have the pride [inaudible] do it's own study
2 and bring it to our consideration [inaudible] or
3 anybody else who does it [inaudible].

4 UNIDENTIFIED SPEAKER: No, I
5 absolutely agree with you because the sad fact is,
6 sort of, regardless of the outcome you paint the
7 outcome. And we're not [inaudible] having to deal
8 with that problem, even if the outcome is based on
9 very, very good science. It's gonna be a challenge
10 for us and for you to evaluate when a rule comes to
11 you, you know, whether or not this [inaudible] work.
12 And you should not [inaudible].

13 UNIDENTIFIED SPEAKER: But that is
14 - it's a much broader issue than that. For example,
15 coming down the pipe when this fish consumption study
16 gets back, it's gonna get paid for by the EPA. The
17 citizens of Oregon are probably not gonna pay for
18 this study, EPA is gonna pay for it. And the EPA
19 has already gone on record that they want a bigger
20 number than they have. So is that gonna be a
21 [inaudible] study? Well, a lot of people are gonna
22 say, "Yeah, that's a tainted study, because these guys
23 have a vested interest already." The fact of the
24 matter is that people pay for a lot of things. And
25 I know it doesn't look well or whatever, but you

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1 turbidity, cuz there's a lot of different [inaudible].
2 Not only that, but there's a huge background of
3 different turbidities in Oregon streams and there's a
4 huge difference in turbidity over time. So, given
5 all that, there's a lot of noise in this system.
6 And there always will be turbidity. There's a lot of
7 noise. It - it's just a - inherently in turbidity
8 there is this problem of trying to provide standards
9 that are meaningful but not to [inaudible]. Then we
10 get [inaudible] whole controversy about [inaudible] and
11 that's like a whole philosophical [inaudible] between
12 the people who are trying to [inaudible] stream and
13 the people who have to discharge into stream. And
14 we're that interfacing [inaudible] and one of the
15 methodologies people have come up to try to make that
16 system work is mixing zones. There's a lot of
17 controversy on a mixing zone. And so if you're gonna
18 try to solve the turbidity problem and mixing zones
19 all at once then it's like you sort of [inaudible].
20 And I can understand the frustration on peoples side
21 to try to protect wildlife and streams, and I also
22 understand the frustration on the people who are
23 [inaudible] and the frustration by the regulators to
24 try to make this all work. And you just about
25 [inaudible].

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1 know, it's a bigger issue than just [inaudible]
2 showing up and paying for this study.

3 UNIDENTIFIED SPEAKER: [inaudible]
4 public sector [inaudible] very aware of what the
5 public [inaudible].

6 UNIDENTIFIED SPEAKER: I agree
7 totally, but if we're not going to allow it form the
8 [inaudible] paper industry than we'd better look at
9 whether we're gonna accept the money from the EPA to
10 do this fish consumption study. Cuz I can tell you
11 they have a bias [inaudible]. And, at best, I think
12 what you got to do is just lay that out in front
13 and say, you know, I don't know. I think it's a
14 bigger issue than [inaudible] and I think turbidity is
15 a - turbidity is a tough one cuz we took it on.
16 Turbidity as a measure is - its' what we call a
17 [inaudible], okay? The measure of something that's
18 not very well defined, okay? And so the impacts are
19 pretty fuzzy. I mean, I think the diagram on the
20 front sort of shows that. You look at the impacts;
21 they're not very well defined. So, if you're looking
22 at something like zinc [inaudible], okay? You can
23 define a [inaudible] a precise curve of what the
24 impact is in zinc in certain concentration on a
25 certain kind of [inaudible]. You can't do that with

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1 UNIDENTIFIED SPEAKER: Well, one
2 comment - just to kind of [inaudible] all of you
3 about why this is so difficult to water [inaudible]
4 and you know, we get our share of air issues as
5 well. [Inaudible] as we heard today, there is this
6 fundamental difference between the way the clean air
7 act comes from the [inaudible] water act [inaudible].
8 And the way the clean air act functions; the federal
9 government, [inaudible] EPA, basically sets the
10 criteria and the standards in very [inaudible] detail.
11 And so there's not much [inaudible] of interpretation
12 [inaudible] state adopt the federal rule by reference.
13 [Inaudible] and water on the other hand, they
14 basically give that authority all to the states to
15 figure it out. And then they have to approve
16 whatever the state does. So, in water, you're
17 continually in the debate about whatever standard it
18 might be because the federal government [inaudible].

19 UNIDENTIFIED SPEAKER: [inaudible]
20 interest to me to look at the clean air act.
21 [Inaudible] priority will come from [inaudible] models
22 [inaudible]. I don't hear anybody challenging that
23 whole process [inaudible]. But water we do. I mean,
24 it's a big philosophical debate and I'm not sure
25 [inaudible].

15 (Pages 57 to 60)

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<p>1 UNIDENTIFIED SPEAKER: There won't 2 be [inaudible].</p> <p>3 UNIDENTIFIED SPEAKER: Can I ask 4 one - maybe I didn't understand this correctly, but I 5 was trying to [inaudible] got lost. But do I 6 understand you to say that the values we need are 7 low. We don't have the tools to be able to check 8 that, so that the lab values that we get don't go 9 low enough to get to the level that we need for 10 clean water or less turbid water or what?</p> <p>11 UNIDENTIFIED SPEAKER: May I 12 respond to this? Mary Abrams is our lab 13 administrator and I don't know whether that was 14 something that Commission Laman had said he wanted to 15 respond, but [inaudible].</p> <p>16 UNIDENTIFIED SPEAKER: Chairman 17 [inaudible] and [inaudible] comment [inaudible] 18 extremely difficult to measure up [inaudible] from the 19 laboratory [inaudible]. It's very difficult when you 20 get down to clean water, to measure [inaudible]. The 21 added difficulty [inaudible] which is [inaudible] you 22 have a pretty strong effect on turbidity [inaudible] 23 also difficult. [Inaudible] historically has been one 24 of the most difficult [inaudible] there is to measure. 25 [Inaudible] something that makes sense from a</p>	<p>1 related to that [inaudible] given the [inaudible] that 2 you have now. And this is sort of a growth 3 [inaudible] but it's also been [inaudible] go from 0 4 to [inaudible] and an ability to do some [inaudible] 5 because we can't even do it now, given the standards 6 of the past. It's not worth it.</p> <p>7 UNIDENTIFIED SPEAKER: [inaudible] 8 so that - if I can - I'm just trying to understand 9 it. So this gives us the ability to whack 10 (Phonetic), whereas the other one gave us barometers 11 but we couldn't whack.</p> <p>12 UNIDENTIFIED SPEAKER: Yeah, it was 13 very difficult. It was very difficult. The other 14 thing that we'll do that I think that they're hoping 15 that we will do, we know what stream we really don't 16 want [inaudible]. So we can [inaudible] and we know 17 that it won't have a very big impact there. We can 18 increase the monitoring, cuz that's like going to a 19 school zone and speeding tickets. It's really 20 important. You're not required [inaudible] I-5. And 21 the I-5 in our world is like the Columbia, okay. 22 And, you know, because we know we don't [inaudible] 23 in the Columbia [inaudible] a lot of things. So 24 that's - I think that's where we're trying to go with 25 turbidity because of just the nature of turbidity</p>
Page 62	Page 64
<p>1 measurement standpoint and regulate it. We've had a 2 very difficult time in that we [inaudible]. You 3 know? And if you have a really clear stream 4 [inaudible] 1 to 1.1 [inaudible].</p> <p>5 UNIDENTIFIED SPEAKER: So, I mean, 6 you wanted to make an analogy, it's like giving a 7 speech, okay? We don't have a law that you're 8 speeding to go 10% over the [inaudible] because in a 9 25 mile an hour zone a police man can't tell whether 10 you're going 27. So, what do police do? Well, I 11 think they use like the 10-mile rule. That's what 12 they do, okay? And what we're doing here is we're 13 putting in the 5 mile an hour rule. That's what 14 we're doing, okay? And if somebody dumps more than 5 15 in there we can measure it. We're for sure. We 16 can measure 5 no matter where it is on the scale and 17 we're gonna [inaudible] if them if it's greater than 18 5. That's what Baumgartner basically told us, right? 19 That's why they chose 5.</p> <p>20 END: TAPE 7, SIDE B FROM 0 TO END OF TAPE 21 START: TAPE 8, SIDE B FROM 0 THRU 94</p> <p>22 UNIDENTIFIED SPEAKER: I don't know 23 whether that's the way to do it or not, I don't 24 know, but that's where they're trying to go.</p> <p>25 UNIDENTIFIED SPEAKER: And also</p>	<p>1 impact [inaudible].</p> <p>2 UNIDENTIFIED SPEAKER: [inaudible] 3 if you will. The other problem with turbidity is 4 that it really is associated with some of the other 5 issues that we discovered with water [inaudible] 6 talking about. [Inaudible] around the water portion 7 of water, they tend to travel around the [inaudible] 8 portion of water. And so we do feel as [inaudible] 9 important to get [inaudible] and we've had trouble 10 [inaudible] in doing that in the past with our 11 [inaudible] very much struggle with the [inaudible].</p> <p>12 UNIDENTIFIED SPEAKER: [inaudible] 13 combination [inaudible]?</p> <p>14 UNIDENTIFIED SPEAKER: I apologize 15 [inaudible].</p> <p>16 UNIDENTIFIED SPEAKER: Suspended. 17 UNIDENTIFIED SPEAKER: Like 18 suspended in the water quality.</p> <p>19 UNIDENTIFIED SPEAKER: Okay, I was 20 thinking you were talking about -</p> <p>21 UNIDENTIFIED SPEAKER: [inaudible] 22 sentence].</p> <p>23 UNIDENTIFIED SPEAKER: Thanks. Oh, 24 another comment?</p> <p>25 UNIDENTIFIED SPEAKER: I just have</p>

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1 one brief comment. I was taking notes here and it
 2 just occurred to me that [inaudible] all Stephanie is
 3 saying [inaudible] lesson about a receipt, what did
 4 you call them?
 5 UNIDENTIFIED SPEAKER: It's called
 6 receipts authority.
 7 UNIDENTIFIED SPEAKER: Receipts
 8 authority, okay. On the one had we have a very
 9 strong recommendation that we require polluters to do
 10 their own monitoring, and yet for somehow - which is
 11 going to be a cost item for them, which we're relying
 12 on them to make [inaudible] reports, etcetera,
 13 etcetera. Yet somehow the idea that they - that an
 14 industry as a whole would give money to an agency to
 15 - for an agency to do their own research, which is
 16 what I understand happened, is that what happened?
 17 UNIDENTIFIED SPEAKER: That's
 18 correct.
 19 UNIDENTIFIED SPEAKER: Okay, all
 20 right. So, what's so bad about that? I mean, I
 21 can see if, you know, on the one hand we're relying
 22 on the industry to sell to the [inaudible] well, and
 23 this is the suggested tactic. Why aren't we making
 24 the industry give money to DEQ so DEQ can monitor.
 25 I mean, those seem to me like inconsistent reports by

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1 inconsistently approaches by critics. So I personally
 2 think that if you're - so long as the body, which is
 3 doing the testing is neutral, there's nothing wrong in
 4 asking or accepting money from the industry to get
 5 more data on it. So maybe the lesson we learn is
 6 that we contract out to a third party or we - you
 7 know, I don't know. I wouldn't necessarily give up
 8 on that approach.
 9 UNIDENTIFIED SPEAKER: Thank you.
 10 (Inaudible discussion)
 11 UNIDENTIFIED SPEAKER: I know
 12 public is at least as smart as I am.
 13 UNIDENTIFIED SPEAKER: I totally
 14 agree with that and ever day we take drugs. And I
 15 can tell you the testing of those drugs was done by
 16 an industry, they paid for it. There was a third
 17 part involved that actually did the testing, but they
 18 paid for it. Okay? We trust that process
 19 [inaudible]. It seems like to me that we gotta be
 20 able to trust this process here. That this agency
 21 can do research and do tests, okay, and it's not
 22 gonna be [inaudible]. We gotta have that trust, and
 23 we can't give up on that trust.
 24 UNIDENTIFIED SPEAKER: Okay.
 25 UNIDENTIFIED SPEAKER: Thank you.

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1 UNIDENTIFIED SPEAKER: Good.
 2 [Inaudible] we have -
 3 UNIDENTIFIED SPEAKER: We have
 4 another agenda item.
 5 UNIDENTIFIED SPEAKER: -- we have
 6 an agenda item, but we're gonna take a short break.
 7 We're just taking a five-minute break and we'll
 8 reconvene in five minutes.
 9 UNIDENTIFIED SPEAKER: Thank you.
 10 END: TAPE 8, SIDE B FROM 0 TO 94.
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1 CERTIFICATE
 2 .
 3 I, Aimee L. Clem, do hereby certify
 4 that the matter herein mentioned on the preceding
 5 title page was transcribed via tape recording. I
 6 transcribed all testimony adduced and other oral
 7 proceedings had in the foregoing matter; and that
 8 the foregoing transcript pages constitute a full,
 9 true and correct record of such testimony adduced
 10 and oral proceeding had and of the whole thereof.
 11 .
 12 .
 13 IN WITNESS HEREOF, I have hereunto set my hand
 14 this 4th day of December, 2005.
 15 .
 16 .
 17 .
 18 .
 19 Aimee L. Clem
 20 .
 21 .
 22 .
 23 .
 24 .
 25 .



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State of Oregon
Department of Environmental Quality

Memorandum

Date: September 21, 2005
To: Environmental Quality Commission
From: Cat Skaar
DEQ Director's Office
Subject: Materials for the October 21, 2005, Commission meeting in Portland

I hope this letter finds each of you well. Here at the office, Stephanie is off on a much needed vacation until October 10 and we have thankfully quieted down a good deal since the end of session.

You will find the materials for the October 21 meeting enclosed here.

Item A: Minutes from the August 11-12 EQC meeting in Eugene

Item B: Informational Item - Oregon Solutions

Item C: Contested Case - John Richard Fleming

Item D: Contested Case - Glenn and Barbara Fleming

Item F: Informational Item - Mac's Radiator

Item I: Action Item - Pollution Control Tax Credit

Informational Items E (Umatilla Update), G (Director's Dialogue), and K (CTUIR Report) will be sent closer to the meeting.

I have hotel rooms held for Ken, Judy and Lynn at the Sheridan Four Points hotel on the waterfront. When Day was blocking rooms back in August for the October meeting, this was the closest hotel with government rate rooms available. I will arrange for a state vehicle to pick you up and drop you off at the hotel on Oct 21 if you like. Your rooms are booked for Thursday and Friday nights (Judy and Lynn) and Thursday night only (Ken). Enclosed, please find details for getting to the hotel and parking.

Please call or email if you have any questions. I look forward to seeing you in October!



**EQC Agenda - Friday, October 21, 2005
Portland, OR**

Time	Item	Topic	Presenter	Notes
Friday, October 21, 2005				
9:00 a.m. (15 min.)	A	Approval of Minutes from August 11-12 EQC meeting		These are included in this mailing for your review.
9:15 a.m. (30 min.)	B	Oregon Solutions	Greg Wolf— National Policy Consensus Center; Pete Dalke	
9:45 a.m. (45 min)	C	Contested case: Fleming, John Richard	Bryan Smith Anne Price	
10:30 a.m. (10 min.)		Break		
10:40 a.m. (45 min.)	D	Contested case: Glenn and Barbara Fleming	Bryan Smith Anne Price	
11:25 a.m. (20 min.)	E	UMCDF Update	Dennis Murphey	
11:45 p.m. (15 min.)	F	Recognize Macs Radiator, winner, <i>EPA National Small Business Environmental Leader in Pollution Prevention Award</i> and NATA, winner, <i>National Environmental Industry Leadership Award</i>	Linda Hayes Gorman, Andy Ginsburg	A photographer will be present to document the recognition for the award recipients as well as for the EQC record.
Noon (45 min.)		Executive session—Working Lunch		A buffet style lunch for the group will be ordered and will include salad and meat options.
12:45 p.m. (15 min.)		Break		
1:00 p.m. (30 min.)	G	Director's Dialogue	Stephanie Hallock	
1:30 p.m. (45 min.)	H	Public forum		We expect a turn out from the tribes for the public forum section. The Government to Government Summit is being held at PSU during the EQC meeting.
2:15 p.m. (15 min.)		Break		
2:30 p.m. (15 min.)	I	Action item: Pollution Control Facility Tax Credit	Sally Puent, Maggie Vandehey	
2:45 p.m. (15 min)	J	Commissioner reports		
3:00 p.m.		Adjourn		Judy and Lynn – there are rooms reserved for you on Thursday and Friday nights. Let Day know ASAP if there will be any changes to these reservations.

**Environmental Quality Commission Meeting
October 21, 2005¹**

DEQ Headquarters Room 3a
811 SW 6th Ave, Portland, Oregon

Beginning at noon and ending at 1:00 p.m. on June 21, the Commission will hold an executive session to consult with counsel concerning legal rights and duties regarding current and potential litigation against the Department. Executive session is held pursuant to ORS 192.660(1)(h). Only representatives of the media may attend, and media representatives may not report on any deliberations during the session.

Friday, October 21 – regular meeting begins at 9:00 a.m.

A. Adoption of Minutes

The Commission will review, amend if necessary, and approve draft minutes of the August 11 & 12, 2005, Environmental Quality Commission meeting.

B. Informational Item: Oregon Solutions

Greg Wolf, National Policy Consensus Center at Portland State University, and Pete Dalke, DEQ, will present information to the Commission on Oregon Solutions; an organization which fosters community governance based on collaboration, integration and sustainability.

C. Contested Case: No. WQ/OS-ER-04-070 concerning John Richard Fleming

The Commission will consider a contested case in which John Richard Fleming appealed a proposed order and \$4,200 civil penalty for violations pertaining to sewage disposal. The Commission will hear statements on behalf of Mr. Fleming and the DEQ at this meeting.

D. Contested Case: No. WQ/OS-ER-04-072 concerning Glenn Martin Fleming and Barbara Chapman Fleming

The Commission will consider a contested case in which Glenn Martin Fleming and Barbara Chapman Fleming appealed a proposed order and \$1,263 civil penalty for violations pertaining to sewage disposal. The Commission will hear statements on behalf of Mr. Fleming and the DEQ at this meeting.

E. Informational Item: Umatilla Chemical Agent Disposal Facility

Dennis Murphey, DEQ Chemical Demilitarization Program Administrator, will give an update on the status of recent activities at the Umatilla Chemical Agent Disposal Facility (UMCDF).

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>.

- F. Informational Item: Mac's Radiator, and Northwest Automotive Trades Association, EPA award winners**
The Commission will recognize Macs Radiator, recipient of the EPA *2004 National Small Business Environmental Leader in Pollution Prevention Award* and The Northwest Automotive Trades Association, recipient of the EPA *2005 National Environmental Industry Leadership Award*.
- G. Director's Dialogue**
Stephanie Hallock, DEQ Director, will discuss current events and issues involving the Department and the state with Commissioners.
- H. Public Forum**
Members of the public are invited to request time before the Commission during this agenda item by filling out a public forum request form and turning it in to Cathy Skaar ahead of time. **
- I. Action Item: Pollution Control Facility Tax Credit**
The Department will present recommendations to the Commission on final certification of 13 facilities as well as alternate action on several other certificates.
- J. Commissioners' Report**

Adjourn

Future Environmental Quality Commission meeting dates for 2005 include:
December 22-23 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 Cathy Skaar in the Director's Office of the Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204; telephone 503-229-5301, toll-free 1-800-452-4011 extension 5301, 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 Ms. Skaar as soon as possible, but at least 48 hours in advance of the meeting.

****Public Forum:** The Commission will break the meeting at approximately 1:30. on Friday, October 21 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 a member 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.

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.

Judy Uherbelau, Commissioner

Judy Uherbelau is a graduate of Ball State University with a B.S. in Economics/Political Science. She received a J.D. from UCLA School of Law and currently works as an attorney with Thomas C. Howser, PC in Ashland. Judy served in the Peace Corps and the Oregon House of Representatives as well as numerous boards and commissions. Commissioner Uherbelau was appointed to the EQC in February 2005 and lives in Ashland.

Donalda Dodson

Donalda Dodson is currently Interim Executive Director of the Oregon Child Development Coalition. Previously, she served as Administrator of the Department of Human Services Office of Family Health and as Manager of the Maternal/Child Health Program at the Marion County Health Department. Donalda has a B.S. in Nursing and a M.S. in Public Health. She has chaired or served on nearly a dozen public health committees and task forces. Commissioner Dodson resides in Salem.

Stephanie Hallock, Director

Department of Environmental Quality

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Cathy Skaar, Assistant to the Commission
Telephone: (503) 229-5301

Minutes are not final until approved by the Commission.

Oregon Environmental Quality Commission Minutes of the Three Hundredth and Twenty Seventh Meeting

August 11-12, 2005
Regular Meeting¹

Beginning at 8:30 a.m. on August 11, the Environmental Quality Commission (EQC, Commission) toured local environmental projects for an on-site inspection of the Department of Environmental Quality's (DEQ) activities. After the tour, the Commission met in an executive session beginning at 12:40 p.m. to consult with counsel about legal rights and duties regarding current and potential litigation against the DEQ². The executive session was held in the Farwest Room of the Red Lion Hotel, located at 204 Coburg Road, Eugene, Oregon.

The following Commissioners were present for the regular meeting, which was held in the Estate Room of the Red Lion Hotel in Eugene.

Mark Reeve, Chair
Ken Williamson, Member
Judy Uherbelau, Member

Chair Reeve called the regular meeting to order at approximately 1:30 p.m., and introduced the Commission members, DEQ Director Stephanie Hallock, Assistant Attorney General Larry Knudsen, and Commission Assistant Cat Skaar. Agenda items were taken in the following order.

B. Contested Case No. LQ/HW-NWR-03-060 regarding United States Army Corps of Engineers

The Commission considered a contested case in which the United States Army Corps of Engineers (USACE) appealed a proposed order and \$84,900 civil penalty for hazardous waste management violations. Larry Knudsen, Assistant Attorney General, summarized the Administrative Law Judge's (ALJ) findings of fact and asked Commissioners to declare any *ex parte* contacts or conflicts of interest regarding the case. All Commissioners declared that they had no *ex parte* contacts or conflicts of interest. Mr. Knudsen explained that an affirmative vote of all three Commissioners would be necessary for a decision. Les Carlough, DEQ Office of Compliance and Enforcement Senior Policy Advisor, Jeff Bachman, DEQ Environmental Law Specialist, and Lynne Perry, Department of Justice, summarized arguments on behalf of DEQ. Misty Latcu summarized arguments on behalf of USACE.

The primary legal issue before the Commission was whether USACE has sovereign immunity from the financial benefit portion of the civil penalties. Commissioners discussed facts in the case and the Commission's role in reviewing contested cases. Commissioner Williamson moved to uphold the ALJ's order in the case. Commissioner Uherbelau seconded the motion and it passed with three "yes" votes.

¹ 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>. To request a copy to be sent by mail, contact DEQ, Office of the Director, 811 SW Sixth Avenue, Portland, Oregon 97204; phone: (503) 229-5990.

² Pursuant to ORS 192.660(1)(h)

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

Dennis Murphey, DEQ Chemical Demilitarization Program Administrator, gave an update on the status of recent activities at the Umatilla Chemical Agent Disposal Facility (UMCDF). Mr. Murphey introduced Lieutenant Colonel Donna Rutten, new commander of UMCDF. In August 2004, the Commission gave the US Army approval to start chemical weapon destruction at the facility, and DEQ's Chemical Demilitarization Program continues close oversight of work at the facility.

C. Rule Adoption: Air Quality – Lakeview PM10 Maintenance Plan and LaGrande PM10 Maintenance Plan

Andy Ginsburg, DEQ Air Quality Administrator and Larry Calkins, DEQ Eastern Region Senior Natural Resource Specialist, summarized and proposed adoption of the Lakeview and La Grande PM₁₀ Maintenance Plans and corresponding rules, which include amended air quality permitting rules associated with each community. Adoption of the plans enables DEQ to request that EPA re-designate Lakeview and La Grande from non-attainment areas to attainment areas for PM₁₀. Mr. Ginsburg explained that the plans continue strategies that have succeeded in reducing PM₁₀ in Lakeview and LaGrande, while also allowing for community growth. Commissioner Uherbelau moved to adopt the plans and the corresponding rules. Commissioner Williamson seconded the motion and it passed with three "yes" votes.

D. Director's Dialogue

Stephanie Hallock, DEQ Director, discussed with Commissioners current events and issues involving the Department and the state. Director Hallock reported that DEQ did well in the budget process this session—all DEQ bills passed. Legislative action supporting DEQ water quality initiatives lined up with DEQ's Strategic Directions—the planning process produced results. DEQ will be working with the EQC to set a direction and budget next session to address recent cutbacks in Air Quality and Hazardous Waste programs and funding.

Friday, August 12, 2005

Chair Reeve called the meeting to order at approximately 8:30 a.m.

E. Adoption of Minutes

The Commission reviewed draft minutes of the June 23-24, 2005, EQC meeting. Commissioner Uherbelau moved to approve the draft minutes. Commissioner Williamson seconded the motion and it passed with 3 "yes" votes.

G. Informational Item: Water Quality Turbidity Overview

Lauri Aunan, DEQ Water Quality Administrator, Robert Baumgartner, DEQ Water Quality Program and Policy Assistance Section Manager and Tom Rosetta (lead staff person developing turbidity standards) briefed the Commission on DEQ plans to develop a new turbidity rule, and discussed key issues involved in revising the current criteria. The proposed rule includes numeric criteria for evaluating turbidity and addresses the affects of turbidity on beneficial uses of water bodies.

H. Public Forum

At approximately 9:30 a.m., Chair Reeve invited members of the audience to provide public comment to the Commission. Larry Chase of Springfield testified, expressing concerns about the economic impact on rural communities and small-scale suction dredge miners as a result of the changes to the 700PM NPDES General Permit that were adopted at the June 22-23, 2005, EQC meeting.

I. Commissioner Reports

No Commissioners gave a report.

At approximately 10:20 a.m., the Commission adjourned.

State of Oregon
Department of Environmental Quality

Memorandum

Date: September 12, 2005
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Agenda Item B. Informational Item: *Oregon Solutions* Update
October 21, 2005, EQC Meeting

Purpose of Item To provide an overview and discuss DEQ's involvement with the *Oregon Solutions* collaborative approach to environmental projects.

Background The mission of *Oregon Solutions* is to develop sustainable solutions to community-based problems that support economic, environmental, and community objectives and are built through the collaborative efforts of businesses, government, and non-profit organizations.

In order to achieve sustainable solutions, there is often a need to work across sectors, jurisdictions, interests, and issues. *Oregon Solutions* provides the mechanism and the place for this type of problem-solving. Using a new model, the Community Governance System, *Oregon Solutions* projects work with communities to bring diverse partners to the table to reach an agreement on the solution.

Oregon Solutions projects are designated by the Governor and implemented using the Community Governance System. The projects grow out of the collaborative efforts of government, businesses, and non-profits and support the Legislature's sustainable community objectives adopted in 2001 and summarized in the *Oregon Solutions* brochure (Attachment A).

The *Oregon Solutions* process involves the Governor appointing a highly respected "convener" (chairperson) for a collaborative team comprised of federal, state, and local government officials, business interests, and non-profit and civic organizations. The convener and these "project partners" then work to find an integrated solution that leverages the resources of the team, and to develop an implementation plan.

Oregon Solutions Project Teams routinely include the State's Economic Revitalization Teams. The Economic Revitalization Teams,

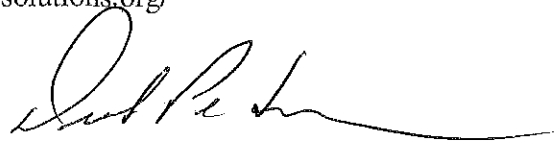
of which DEQ is a member, help bring other state and local government officials to the table around *Oregon Solutions* projects.

- Key Issues** DEQ has been instrumental in several *Oregon Solutions* projects to reduce diesel emissions and minimize the impacts of wildfire (Attachments C, D, and E). Involvement in additional projects is anticipated in support of the agency's mission.
- Next Steps** DEQ staff are assessing a number of potential *Oregon Solutions* projects. One is a jointly sponsored project with ODOT to reduce diesel emission in the I-5 Delta Park corridor in Portland. Other projects may involve water quality trading, Brownfields redevelopment and renewable energy facilities, in particular small-scale hydro, biofuels and biomass projects.
- EQC Involvement** Potential EQC involvement includes suggestions and recommendations for *Oregon Solutions* projects, or serving as the Governor's appointed convener for a project.
- Attachments**
- A. *Oregon Solutions* informational brochure
 - B. What the *Oregon Solutions* Collaborative Approach Brings to the Table.
 - C. "Saving Energy, the Environment, and a Good Night's Rest- Oregon's Approach to Truck Idling," Kevin Downing, Winter 2005 *ECOStates*.
 - D. Clean Lane Diesel Project, information from the Lane Regional Air Pollution Authority Web site.
 - E. Central Oregon Partnerships for Wildfire Risk Reduction, *Oregon Solutions* project summary.
 - F. Background information: Greg Wolf and the National Policy Consensus Center.

Available Upon Request Additional information is available from the *Oregon Solutions* Web site: <http://www.orsolutions.org/>

Approved:

Division:



Report Prepared By: Pete Dalke

Phone: (503) 229-5588

The Oregon Solutions Network is comprised of businesses, non-profits, government agencies and citizen organizations that are able to connect their resources, expertise and interests to collaborative, community based projects.

The Oregon Solutions Steering Committee serves as the hub of the Oregon Solutions Network. They help connect the resources of the Oregon community to projects.

Chair: Ted Kulongoski, Governor, State of Oregon

Business Representatives

Tom Kelly, Board Chair, Oregon Business Association
John Ledger, Legislative Representative, Association of Oregon Industries
Duncan Wyse, President, Oregon Business Council

Government Representatives

Judge Mike McArthur, Sherman County
Michael Jordan, Chief Operating Officer, Metro Regional Government
Jim Torrey, Mayor, City of Eugene
Ray Naff, Director, Governor's Economic Revitalization Team

Non-profit Representatives

Eileen Brady, Vice President of Marketing and Information Services, Ecotrust
John Emrick, Board Chair, Meyer Memorial Trust
Martin Goebel, President, Sustainable Northwest

Staff

Greg Wolf, Director, National Policy Consensus Center
Pete Dalke, Oregon Solutions
Kim Travis, Administrative Assistant



National Policy Consensus Center
College of Urban and Public Affairs Phone: 503-725-9092
Portland State University Fax: 503-725-9099
Post Office Box 751 www.ORSolutions.org
Portland, Oregon 97207-751 Info@ORSolutions.org



Some of our projects include:

The construction of **17 wind turbines** in Sherman County. This project was permitted in four months as a result of early participation of stakeholders that had siting concerns.

The **Delta Ponds** project will result in watershed and habitat restoration of a Willamette River floodplain and develop the area as a center for recreation and environmental education.

Rice Island is the largest in-water dredge disposal site in the Lower Columbia, and it is quickly approaching capacity. A diverse group of stakeholders are preparing to market Rice Island sand while ensuring protective habitat for wildlife.

Zenger Farm, in outer Southeast Portland, encompasses both farm and wetland and will serve as the state's only "eco-agricultural park" where visitors learn about ways that agriculture and natural areas can co-exist.

Fort Clatsop-to-the-Sea-Trail team members are designing a trail from the Fort Clatsop Memorial, under Highway 101, and traversing multiple property ownerships to Sunset Beach and the Pacific Ocean as part of the Lewis and Clark Bicentennial.

Metro Carbon Offsets will provide individual motorists and businesses in the Portland area the opportunity to contribute to a fund to purchase transportation related carbon offsets in amounts sufficient to offset the CO₂ emissions from the vehicles they own or operate. Current partners include: Jiffy Lube, Nike and the City of Portland.

The **Farmer's Irrigation District** fish screen project involved developing, prototyping, and utilizing fish-friendly screens that will help provide long-term sustainability for the orchard industry in Hood River.

The development of an **Opportunity Foundation** facility in Madras will provide vocational training for adults with disabilities. The facility will sit on a Brownfield redevelopment site and is the cornerstone of the downtown revitalization effort.

Oregon Solutions thanks all those involved with our projects, including the following Network sponsors:

Oregon Community Foundation
The Governor's Office
Portland State University, The Hatfield School of Government
Samuel S. Johnson Foundation
Bonneville Power Administration
US Bank



Solving problems in a new way



The mission of Oregon Solutions is to develop sustainable solutions to community based problems that support economic, environmental, and community objectives and are built through the col-

laborative efforts of businesses, government, and non-profit organizations.

In order to achieve sustainable solutions, we often need to work across sectors, jurisdictions, interests, and issues. Oregon Solutions provides the mechanism and the place for this type of problem-solving to occur. Our staff works with communities to bring diverse partners to the table. By using a collaborative process, the partners reach agreement on what they will do together to solve the problem at hand.

This approach integrates and makes efficient use of public and private investments, overcomes impediments early on, elevates the visibility of the project and engages communities in creating solutions.

"I believe that to meet the challenges we face today it is essential to engage businesses, government, non-profit organizations and citizens in collective action. Oregon Solutions creates the place to come together and provides the means to reach community agreements that connect Oregonians in solving these challenges, in communities across the state."

- Ted Kulongoski, Governor, State of Oregon

Sustainable Community Objectives

The Oregon State Legislature signed these objectives into law during the 2001 Legislative Session. Oregon Solutions projects must address at least one sustainable community objective and attempt to address multiple objectives.

Economy

1. A resilient economy that provides a diversity of good economic opportunities for all citizens.
2. Workers whose knowledge and skills are globally competitive, and supported by life-long education.

Community

3. Independent and productive citizens.
4. Youth who are fully supported by strong families and communities.
5. Downtowns and mainstreets that are vital and active.
6. Efficient development that saves infrastructure investments and natural resources.
7. Available and quality affordable housing.

Environment

8. Healthy urban and rural watersheds and species abundance and diversity.
9. Clean and sufficient water for human and natural use.
10. Efficient use and reuse of resources, and elimination of harmful toxins in the environment.

Community Governance System

Oregon Solutions projects are implemented using the Community Governance System. The projects grow out of the collaborative efforts of government, businesses, and non-profits and support the sustainable community objectives. There are five elements of the Community Governance System.

1. A problem or opportunity defined by the community that addresses at least one sustainable community objective.
2. The Governor's designation of the Oregon Solutions project and appointment of a neutral community convener, who can lead a team to address the challenge.
3. An Oregon Solutions Team of federal, state, local, and other government entities, businesses, non-profits, and citizens who are needed, or can contribute to a solution.
4. An integrated solution that leverages the resources of the Solution Team to meet the challenge at hand and sustainability objectives.
5. A declaration of cooperation that team members sign that commits their resources and time in an integrated action plan.



WHAT THE *OREGON SOLUTIONS* COLLABORATIVE APPROACH BRINGS TO THE TABLE

Oregon Solutions transitioned out of state government several years ago and found a natural home as a program of the National Policy Consensus Center (NPCC) at Portland State University. The Center assists public leaders and state dispute resolution programs in establishing and strengthening the use of collaborative practices to address difficult public policy issues. The Center is a partnership between the Policy Consensus Initiative (PCI), a national non-profit, and Portland State University's College of Urban and Public Affairs. NPCC serves as the applied research and development arm of PCI.

The “value added” that *Oregon Solutions* brings to a project includes:

1. ***A Neutral Forum*** – a place where various interests and stakeholders can come together that is more neutral than a meeting sponsored or hosted by one of the parties at the table.
2. ***Proven Experience and Success in Collaborative Efforts*** – Successful experience with over 25 collaborative projects over the past 3 years, engaging all levels of government, businesses, non-profit agencies and local citizen groups.
3. ***Private Sector Participation*** – For projects that could benefit from financial or other contributions from the private sector, it is often uncomfortable for local governments or state agencies that may have regulatory roles to invite private sector participation. *Oregon Solutions* can play that role with no conflict of interest.
4. ***State Agency Cooperation*** – The Governor is the chair of *Oregon Solutions*' steering committee and appoints a neutral convener for each *Oregon Solutions* project. This designation brings with it the cooperation of the appropriate regional Economic Revitalization Team, and a heightened level of attention from state agencies.
5. ***A Declaration of Cooperation*** – The *Oregon Solutions* process concludes with a Declaration of Cooperation signed by each of the participating parties. This non-legally binding document provides a clear statement of the group's intent, clarifying commitments and agreements of the participating parties. The Declaration of Cooperation includes an *implementation plan* and serves as an excellent vehicle to attract additional funding to a project, showcasing the broad level of support for the project.

SAVING ENERGY, THE ENVIRONMENT, AND A GOOD NIGHT'S REST—OREGON'S APPROACH TO TRUCK IDLING

Attachment C

BY KEVIN DOWNING

TRUCKING IS AN IMPORTANT part of America's economy, as any trucker will tell you that everything you have was brought to you by truck. They'll also tell you that life on the road, supplying that demand, can be hard. Many drivers are away from home for weeks at a time. The margins are slim and it isn't possible for these truckers to spend the night in motels. So they rest in their trucks. Sleeper compartments have come a long way in the past several years, offering a number of amenities like televisions, VCRs, and refrigerators. But it takes power to run this technology, and that requires idling of the truck's engine. This becomes an issue for the driver, the truck owner, and the community at large, as well as environmental agencies. This is a story about how Oregonians have come to address this problem.

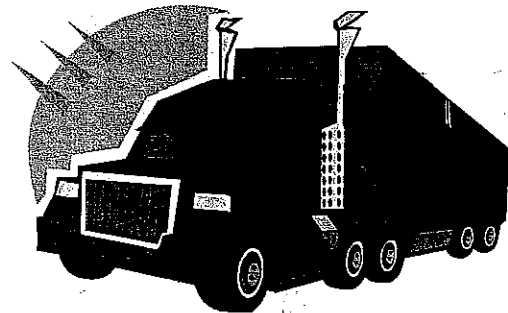
The diesel fuel consumed by truck idling during rest periods represents about one percent of the petroleum imported into the United States and five percent of the fuel used by heavy trucks altogether.

The Impacts of Truck Idling

With up to a million trucks across the country each idling almost 2,000 hours a year, the impacts can be rather sizeable. Long duration idling by trucks is estimated to consume approximately 960 million gallons of diesel fuel every year, costing truck operators over \$1.4 billion in fuel and an additional \$300 million for wear and tear on the engines. The diesel fuel consumed by truck idling during rest periods represents about one percent of the petroleum imported into the United States and five percent of the fuel used by heavy trucks altogether. All of that idling also results in significant air pol-

lution impacts: 180,000 tons of nitrogen oxides (NO_x), 5,000 tons of particulate matter (PM), and 11 million tons of carbon dioxide (CO₂) emitted each year.

NO_x emissions contribute to ozone creation, which remains a challenge in many parts of the country, but it is the latter two pollutants that have attracted increasing attention in the last few years. Diesel particulate is identified as a probable or likely human carcinogen by a number of international, federal, and state environ-



mental and public health agencies. Many states, including Oregon, have posited that diesel particulate accounts for the greatest risk for cancer in breathing the outdoor air, in some cases by an order of magnitude greater than the next air toxic in the ranking. CO₂ is identified as the most significant anthropogenic climate change agent, although carbon soot, which comprises a large portion of the particulates found in diesel exhaust, has also been put forward as another important global warming influence. It is the combination of these public health and environmental impacts from idling diesel trucks that enabled various players in private, public, and nonprofit sectors in Oregon to take advantage of currently existing programs and incentives to produce an effective and comprehensive response to this problem.

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Saving Energy, the Environment, and a Good Night's Rest— Oregon's Approach to Truck Idling

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Initially, long duration idling was identified as an issue of interest under the West Coast Governors' Climate Change Initiative. Launched by the Governors of Washington, Oregon, and California in September 2003, the goal of the initiative was to devise a regional approach to global warming. The recommendation on idling was to develop a string of "electrified" truck stops along the Interstate 5 corridor. This is a technique that provides for infrastructure changes at truck stops

Seeing an opportunity to move this project idea forward, Stephanie Hallock, director of the ODEQ, petitioned Governor Ted Kulongoski, a former trucker himself, to convene an Oregon Solutions team to address the problem.

that allow drivers' comfort needs to be met more efficiently with fewer environmental impacts. It would rely upon privately owned truck stops to refit their facilities to incorporate these technologies into their operations. How that was to be accomplished was left to the states.

Oregon's Approach to the Problem

The health impact of exposure to diesel exhaust has been an issue of interest to the Oregon Department of Environmental Quality (ODEQ). ODEQ's diesel program, known as the Oregon Clean Diesel Initiative, relied primarily on promoting retrofitting exhaust controls on existing engines and using cleaner grades of diesel fuel. However, it also became clear that reducing emissions during trucker rest periods could prove to be another viable strategy. As clear as it may be to most observers that reducing truck idling is a good idea with benefits for all parties, for the participants directly involved there remained a number of barrier issues that resembled the old chicken-and-egg phenomenon. Truck stop operators were reluctant to in-

stall units on their sites if they didn't see a demand for the service, truckers weren't able to demand a service they couldn't see in the marketplace, and technology providers found it difficult to overcome the risk to put new technology in place.

Seeing an opportunity to move this project idea forward, Stephanie Hallock, director of the ODEQ, petitioned Governor Ted Kulongoski, a former trucker himself, to convene an Oregon Solutions team to address the problem. Oregon Solutions, a program in place since 2001, promotes a new style of community governance, one based on the principles of collaboration, integration, and sustainability. It is intended to create a place to come together and reach community agreement on solving specific problems important to Oregonians.

The team for this project—representing truck companies; truck stop operators; electricity providers; technology vendors; and economic development, energy and environmental agencies—was able to develop a consensus around the concept of truck stop electrification. While recognizing that idling trucks can be found at locations other than truck stops, the team chose to focus on truck stop electrification in part because the target was more focused: 5,700 commercial truck parking spaces in the state versus 290,000 long haul trucks licensed to operate in Oregon. However, that doesn't mean that the latter aspect of truck idling isn't addressed in Oregon. More on that shortly.

The team worked to develop a project plan supporting a grant application to EPA's SmartWay Transport program for Oregon State University and The Climate Trust to administer a project that would "electrify" at least 600 commercial truck parking spaces primarily along the I-5 corridor. Financing for the project comes from a variety of sources. Oregon's Business Energy Tax Credit Program, administered by the Oregon Department of Energy, will provide \$2.3 million in credits, and the State Low Interest Energy Loan Program will provide \$1.4 million in loans. The idling technology providers are expected to provide a matching con-

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Saving Energy, the Environment, and a Good Night's Rest— Oregon's Approach to Truck Idling

continued from page 18

tribution valued at \$1.6 million, and The Climate Trust will commit \$2 million. The Climate Trust derives its funds from implementing Oregon's innovative CO₂ standard, the first state-mandated regulation of greenhouse gases, passed by the Legislature in 1997. This standard requires new power plants to offset a significant portion of their CO₂ emissions. A plant developer may choose to meet part or all of its reduction target by paying mitigation funds to The Climate Trust, which in turn must use the funds to carry out projects that avoid, sequester, or displace the CO₂ the plant will emit in excess of the standard. The project sites are not necessarily limited to Oregon. The Climate Trust at the same time also committed \$200,000 to support truck stop projects in Washington State.

In January 2005 The Climate Trust published a request for proposals for projects to be funded under this financing package. The solicitation period was still open as this article went to press. Although the overall project costs—about \$7 million—are significant, the benefits are tremendous. When completed, the project will result in the following annual savings:

- ❖ 3.1 million gallons of diesel fuel;
- ❖ \$1.8 million to truck drivers and trucking companies in avoided fuel costs and reduced engine wear;
- ❖ \$6.6 million in avoided public health costs;
- ❖ more than 900 tons of carbon monoxide, hydrocarbon, PM, and NO_x; and
- ❖ 33,000 tons of CO₂.

Idling Outside Truck Stops

As noted earlier, trucks will still idle for long periods of time at other locations like public rest areas, "wide spots" in the road, and distribution centers. Emissions from idling at these places can still be significant and are not addressed by an effort that focuses only on truck stops. There are technological solutions like providing auxiliary power units, onboard cabin heaters, and battery powered systems that can answer the

driver's need for comfort, but again, these face many of the same challenges preventing widespread truck stop idling solutions.

Stepping up to this challenge is the Lane Regional Air Pollution Authority (LRAPA) based in Eugene, Oregon. Its program, known as "Everybody Wins," takes advantage of the state's Business Energy Tax Credit and the Low Interest Energy Loan Program to underwrite a purchase/lease program for these onboard truck idle reduction systems. Promoted on placemats used at truck stops across the state, the program is designed to overcome the capital cost barrier that truckers face in making this kind of investment by allowing them to effectively make their payments from the resulting savings in fuel costs. LRAPA also organized installation training at a local community college, recruited local truck repair facilities to become trained and certified to complete these installations, and provided hospitality packages to truckers staying over while their rigs were refitted with this technology.

Both the truck stop electrification effort and the LRAPA program reflect the creativity and enterprise of people coming together from the public and private sectors to solve significant challenges. As a result, it will soon be possible to tell truckers that when they come to Oregon, they can help the environment and get a good night's rest.

Kevin Downing is clean diesel program coordinator with the Oregon Department of Environmental Quality. For more information on the West Coast Governors' Climate Change Initiative, see http://www.energy.ca.gov/global_climate_change/west-coastgov/. For information on Oregon Solutions, see <http://www.orsolutions.org/>. For information on The Climate Trust and the truck stop electrification solicitation, see <http://www.climatetrust.org/truckstopRFP.html>. For information about the Business Energy Tax Credit and Low Interest Energy Loan Program, see <http://egov.oregon.gov/ENERGY/CONS/BUS/bushome.shtml>. For information on LRAPA's "Everybody Wins" project, see <http://www.apucentral.com/index.php>.





Oregon Solutions and Lane Clean Diesel Project



F A C T S H E E T

What is the Lane Clean Diesel Project?

The Lane Clean Diesel Project was born out of the need to establish a stable, reasonably priced supply of Ultra Low Sulfur Diesel and biodiesel in Lane County. Sponsored by LRAPA through an EPA grant, designated by Governor Ted Kulongoski as an *Oregon Solutions* project, headed by Lane Metro Partnership and staffed by Good Company, the project team has brought together more than 30 participants from the public and private sectors to work side-by-side to bring clean fuel to this community.

The project's *Oregon Solutions* designation assures governor support and assistance, and commitment to address at least one sustainable community objective as determined by the governor's Community Governance System. Specifically, this project encourages the use of cleaner, more sustainable fuels and gives recognition to entities who are making wise environmental choices for the future.

What are the Project Components?

- ✦ *Bulk Storage Tanks:* Bulk Ultra Low Sulfur Diesel is now available in Eugene from two bulk distributors: The Jerry Brown Company and Tyree Oil. Both distributors have added bulk storage tanks at their distribution sites, providing a stable supply

of clean diesel to the community, at a combined cost of more than \$160,000 in private funds. EPA provided



Local clean-diesel storage tanks make project a success.

\$15,000 to each provider to help offset the installation costs.

✦ *Oakridge Card Lock:* The community of Oakridge will be able to benefit from clean fuels as well, due to a commitment from Ed Staub &

Sons Petroleum Inc. to include Ultra Low Sulfur Diesel and biodiesel at its new card lock refueling station in the city of Oakridge. The project, which received funding help from the EPA, is expected to be completed by September.

- ✦ *Recognition Program:* The team as developed a logo and *Clean Lane Fuel* trademark for use with this project.



Fleets or individuals using the clean fuels will be authorized to use the Clean Lane Fuel logo on promotional materials, vehicles and workplaces. Recognition license plate frames and bumper stickers will be supplied to participants as well. The recognition program will be transferred to LRAPA to continue implementation at the completion of the project.

Who are the participants?

Collectively, more than 30 government agencies, non-profits and private businesses have committed to the project at this time.

4J School District
Bethel School District
City of Eugene
City of Oakridge
City of Springfield
Cummins Northwest
Ed Staub & Sons Petroleum Inc.
Eugene Water and Electric Board (EWEB)
Good Company
J. H. Baxter Corporation
Laidlaw
Lane Metro Partnership
Lane Regional Air Pollution Authority (LRAPA)
Lane Transit District (LTD)
Northwest Youth Corp.
Oakridge School District

Oregon Dept. of Agriculture
Oregon Dept. of Energy
Oregon Dept. of Environmental Quality
Oregon Dept. of Transportation's Oakridge
Maintenance Station
Oregon Office of the Governor
Oregon Toxics Alliance
Rainbow Water District
Rexius
Royal Caribbean Cruises Limited
SeQuential Biofuels
Springfield School District
The Jerry Brown Company
Tyree Oil
USDA Forest Service - Middle Fork Ranger
District
Willamalane Parks and Recreation

DRAFT : : : Central Oregon Partnerships for Wildfire Risk Reduction

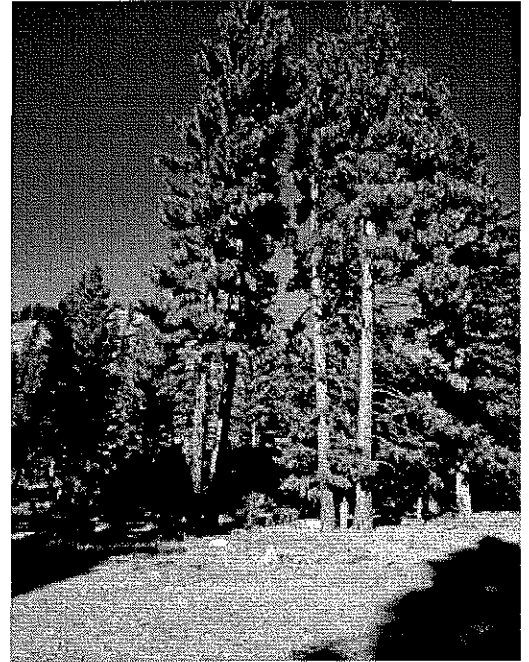
In 2004 Oregon Solutions convened a group of federal agencies, timber industry representatives, environmentalists, and local governments to develop a strategy to make the harvest of small diameter timber economically profitable in Central Oregon. The project reduces the threat of wildfire to populated areas, protects ecologically valuable old growth, and improves the local economy.

The Problem: Since the late 1980s, a combination of wildfire fuel accumulation and droughts have created uncharacteristically severe wildfire in Central Oregon. At the same time, there has been increased interest in putting homes in forested areas, putting more people and property in the path of wildfire.

The best solution, harvest of small diameter timber around residential areas, was economically difficult because timber companies were unable to invest in processing infrastructure while the supply of small diameter timber fluctuated so dramatically year to year. Businesses need to be able to forecast accurately, and traditionally only large diameter timber was managed for economic output.

The Solution: Stakeholders agreed to create a central office to both maintain a database of all available small diameter timber sales and actively solicit new ones so that there is always a five year "shelf-stock" available. The system is called the "Coordinated Resource Offering Protocol" (CROP).

Based on these assurances one company has committed to building a 15.5 megawatt biomass power plant to take advantage of the new resource, and other non-profits and community groups are actively working to expand markets for small diameter products like fence posts and furniture.



Resources Leveraged:

Central Oregon Intergovernmental Council

Initiated the project and currently administers the CROP database.
Obtained \$65,000 in grants for project implementation.

U.S. Forest Service & Bureau of Land Management local offices

Have reorganized timber inventories to make information on small diameter timber available to CROP organizers and developed an agency team responsible for implementing CROP.

Warm Springs Forest Products Industries

Upgraded existing infrastructure worth over \$250,000 to make more efficient use of small diameter timber. Committed to build a 15.5 MW biomass processing facility when ten years worth of fuels are identified.

U.S. Forest Service Woody Biomass Utilization Team

Provided COIC \$220,000 grant for two years of start-up costs to make the CROP project a national model for efficient use of small diameter timber.

Oregon Economic and Community Development Department

Provided \$21,000 in cash and in-kind employee time to match the USFS grants.

Oregon Department of Environmental Quality

Developing air quality measurement models to determine the efficiency of burning biomass for energy.

Oregon Natural Resources Council

Serves on the monitoring board to verify ecologic compliance.
Acts as liaison to other environmental groups.

Friends of the Metolius

Provides technical design assistance on restoration ecology projects.

Current Status:

This project simultaneously
- reduces the threat of wildfire,
- protects valuable old growth, and
- improves the local economy.

It has been so successful that the U.S. Forest Service has made it a national model. Efforts to duplicate the project are currently ongoing in nine communities across the country.



Attachment F

GREG WOLF

Greg Wolf graduated from the University of Oregon Honors College in 1975 with a BA in Interdisciplinary Studies focusing on land use issues. Mr. Wolf has 24 years of experience working in state and local government. In the mid to late 1980s Wolf served as the Executive Director of the Capitol Planning Commission. He then moved to the Oregon Department of Land Conservation and Development (DLCD), where he served as Assistant Director. He co-founded Oregon's dispute resolution program in 1989. He has been an advocate of collaborative planning and mediation in resolving public policy issues throughout his career. When Governor Kitzhaber took office in January 1995, he hired Wolf as his Community Development Advisor, with primary responsibility for programs in the Departments of Transportation, Economic Development, Land Conservation and Development and Housing, where he created a state and local problem solving system called the Community Solutions Team. Wolf also served as Governor Kitzhaber's Dispute Resolution and Sustainability Advisor. Currently Greg is Director of the National Policy Consensus Center. The Center provides governors and policy makers with consultation and research into consensus building.

NATIONAL POLICY CONSENSUS CENTER**Mission**

The National Policy Consensus Center assists public leaders in establishing and strengthening the use of collaborative governing tools to address difficult public policy issues.

Background

The National Policy Consensus Center (NPCC) is a center of expertise for public leaders addressing public policy issues using consensus-based governing models. It represents a unique partnership between Portland State University's College of Urban and Public Affairs and the Policy Consensus Initiative (PCI). PCI and NPCC are governed by a joint Board of Directors—a nationally recognized group of state leaders and elected officials. NPCC is a part of the Hatfield School of Government at PSU.

State of Oregon
Department of Environmental Quality

Memorandum

Date: September 12, 2005
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Agenda Item C: Contested Case No. WQ/OS-ER-04-072 in the Matter of John Richard Fleming regarding October 21, 2005, Environmental Quality Commission (EQC) Meeting

Appeal to the EQC

On April 14, 2005, John Richard Fleming (Respondent) appealed the Proposed Order (Attachment L) which assessed him a \$4,200 civil penalty for constructing an on-site sewage disposal system, or a part thereof, without first obtaining an on-site sewage disposal system construction permit.

Key people involved

John Richard Fleming Respondent. Assisted in installation of an on-site sewage disposal system on property owned by Glenn Fleming and Barbara Chapman Fleming.

Glenn Fleming and Barbara Chapman Fleming Property owners. Parents of John Richard Fleming.

Jo Fleming Daughter of property owners. Oversaw building project on Respondent's property.

Diane Naglee Inspector, Department of Environmental Quality (DEQ).

Robert Baggett Natural Resource Specialist, Special Variance Officer, DEQ On-site Sewage Treatment and Disposal Program.

Debbie DeShaw Baker City Building Department

Overview of events

Date	Facts	Cite
Aug. 4, 2004	DEQ issued Respondent a Notice of Violation and Civil Penalty Assessment (Notice). The Notice alleged that Respondent violated Oregon environmental laws by constructing an on-site sewage disposal system without first	Notice [Attachment O]

Date	Facts	Cite
	obtaining an on-site sewage disposal system construction permit and by performing sewage disposal services without first obtaining a DEQ license. The Notice did not penalize the Respondent for the latter alleged violation.	
Aug. 11, 2004	Respondent appealed the Notice and Order.	
Feb. 15, 2005	Contested case hearing was held.	
Mar. 18, 2005	Administrative Law Judge (ALJ) issued a Proposed Order holding Respondent liable for the violation, and upholding DEQ's \$4,200 civil penalty.	Proposed Order [Attachment L]
April 14, 2005	Respondent filed a petition for Environmental Quality Commission (EQC) review of the Proposed Order.	

Summary of ALJ Findings of Fact—see ALJ Proposed Order [Attachment L]

Date	Facts	Cite
2000	Jo Fleming, undertook a building project on Property owned by her parents (the Respondents) in Baker County, Oregon (the Property). Jo Fleming does not own the property.	Findings of Fact (FOF) [Attachment L]
Nov. 2000	Diane Naglee, DEQ, evaluated whether the Property was appropriate for an on-site sewage disposal system (OSSD system) for a single-family dwelling.	FOF 3 [Attachment L]
Nov. 9, 2000	Ms. Naglee wrote Respondent that the Property was appropriate for such a system, but warned "Note: This is NOT a permit to construct an OSSD system. To apply for a permit, please submit the enclosed permit application with the accompanying attachments. DEQ cannot sign off on any Building Codes forms until a DEQ permit is issued." Ms. Naglee enclosed a permit application with the letter.	FOF 4 [Attachment L]
May 14, 2001	Jo Fleming applied for a plumbing permit at the Baker City Building Department (the Building Department) and understood, from a discussion with Debbie DeShaw of the Building Department that no DEQ inspection of her OSSD	FOF 5 [Attachment L]

Date	Facts	Cite
	system was required.	
Sept. 11, 2002	Ms. Naglee received a complaint from the Salem Building Code Division that Jo Fleming was installing an OSSD system without a permit.	FOF 8 [Attachment L]
Sept. 12, 2002	Ms. Naglee observed mounds of gravel on the Property that looked like drain rock.	FOF 9 [Attachment L]
Sept. 2002	The Respondent assisted in installation of the OSSD system.	FOF 10 [Attachment L]
Aug. 11, 2003	<p>Ms. Naglee inspected and observed the following construction deficiencies in the OSSD system, which she identified in a Correction Notice posted to the Property that day:</p> <p>(1) System lacked the minimum six inches of fall for the effluent line between the tank and distribution box. (2) Disposal (perforated) pipe was not level to within plus or minus one inch. (3) Insufficient gravel surrounded the perforated piping. (4) Because the pipe was partially covered, she could not verify that there was at least four feet of solid pipe out of the distribution box before the start of the perforated pipe.</p>	FOF 15 [Attachment L]
March 3, 2004	DEQ sent Respondents a second NON identifying violations relating to system construction, failure to correct violations within 30 days of written notice and operating a system without first obtaining a CSC.	2 nd NON [Attachment N, Exhibit A9] FOF 17 [Attachment L]
March 19, 2004	In a letter to DEQ, Respondent acknowledged that he assisted with the system's construction and installation.	[Attachment N, Exhibit A11) FOF 17 [Attachment L]

ALJ Conclusions of Law

In her Conclusions of Law, the ALJ found that:

1. Respondent constructed an ODDS system on the Property without first obtaining a permit.
2. Respondent did not have a business license from DEQ to perform sewage disposal services at the time he constructed the OSSD system on the Property.
3. DEQ's civil penalty assessment is appropriate.

Issues on appeal

In his Exceptions and Brief (Attachment I), Respondent requests that the Commission adopt alternate findings of fact and alternate conclusions of law, and reverse the Administrative Law Judge's conclusion that Respondent is liable for the violation.

In its Answering Brief (Attachment F), DEQ requests that the Commission uphold the Proposed Order.

Summary of exceptions and response

Respondent's first exception

Respondent argues that he believed he did not need a DEQ permit prior to installing the on-site sewage disposal system because his sister, Jo Fleming, understood from her conversation with Debbie DeShaw of the Baker City Building Department that no DEQ inspection was required for a drain field for a shop.

DEQ response to first exception

DEQ responds that Respondent appears to be implying that he acted reasonably and was not negligent when he chose to install the system without a permit or an inspection on the basis of information his sister provided to him. However, the ALJ found that Respondent had applied for and obtained DEQ permits in his capacity as Baker City's Public Works Director, and that because of his employment experience, he should have known of the DEQ's authority to regulate the installation of septic systems. (Page 6 of the Proposed Order, Attachment L) Furthermore, the ALJ found that the "fact that Respondent considered the structure a 'shop' rather than a 'dwelling' does not render reasonable his belief that no DEQ permit was required to install the septic system" and concluded that Respondent was negligent. (Page 6 of the Proposed Order)

Respondent's second exception

Respondent argues that Diane Naglee of DEQ was aware, prior to his installation of the septic system, that his sister Jo Fleming was under the impression that no DEQ approval was needed.

DEQ response to second exception

DEQ responds that Respondent seems to be arguing that Ms. Naglee should have informed him that DEQ approval was required, prior to his installation of the system. However, the ALJ found that Ms. Naglee notified Respondent's family in writing that a permit was required after evaluating the property in 2000, and before the system was installed. (FOF 4 of the Proposed Order) Additionally, Respondent has not established that Ms. Naglee had any duty to stop his work, or that he somehow relied on her inaction to his detriment. Finally, the ALJ found that Respondent's failure to become informed of and to follow the applicable rules is the result of his own negligence. (Page 6 of the Proposed Order) The ALJ did not find that any DEQ act or omission contributed to Respondent's negligence.

Respondent's third exception

Respondent argues that the corrections DEQ ordered in the Correction Notice might be difficult or impossible to perform, and that it might be less expensive simply to install a new system.

DEQ response to third exception

DEQ responds that Respondent was not cited, penalized or ordered to take any action related to the Correction Notice, and so this argument is not relevant to any issue in this matter.

Respondent's fourth and fifth exceptions

Respondent argues in his fourth and fifth exceptions that the system he installed has significantly more assimilative capacity than a system installed according to DEQ's minimum specifications for a shop, and would function longer.

DEQ response to fourth and fifth exceptions

DEQ responds that, regardless of whether or not the system had greater assimilative capacity, it had construction deficiencies which rendered it unapprovable, resulting in the posting of a Correction Notice. Because Respondent's construction without a permit resulted in the installation and subsequent operation of an unapprovable system, the ALJ correctly found that the violation had potential for adverse impact on the environment. (See Page 6 of the Proposed Order).

Respondent's sixth exception

Respondent argues that he was not the only individual to perform work related to the installation of the system, and states that he was not paid for his work.

DEQ response to sixth exception

DEQ responds that Respondent appears to be arguing that these circumstances should relieve him from liability for the violation of installing a septic system without first obtaining a permit. However, the applicable rules do not require that an individual must receive compensation, or work alone, in order to be held liable for this violation. Furthermore, DEQ notes that Respondent admitted taking two days of vacation time to assist on the installation project, running the excavation and the pipe layout and installation. (FOF 17) The ALJ weighed the evidence and properly concluded that Respondent's activities constituted the installation of an on-site sewage disposal system without first obtaining a permit.

EQC authority

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

The Department's contested case hearings must be conducted by an ALJ.¹ The Proposed Order was issued under current statutes and rules governing the ALJ Panel.²

Under ORS 183.600 to 183.690, the Commission's authority to change or reverse an ALJ's proposed order is limited.

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.³
- (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.⁴
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.

¹ ORS 183.635.

² ORS 183.600 to 183.690 and OAR 137-003-0501 to 137-003-0700.

³ ORS 183.650(2).

⁴ ORS 183.650(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.

- (3) The Commission may not consider any new or additional evidence, but may only remand the matter to the ALJ to take the evidence.

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.⁵

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 ALJ unless it is necessary to prevent a manifest injustice.⁶
- (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.⁷

Alternatives

The Commission may:

1. As requested by Respondent, reverse the ALJ's decision, based on the reasoning offered by Respondent. Making this determination would require the Commission to make a finding that Respondent's Exceptions are supported by the record and do not constitute new evidence.
2. As requested by the Department, uphold the ALJ's Proposed Order that Respondent constructed an on-site sewage disposal system on the Property without first obtaining a permit and is liable for the \$4,200 civil penalty.
3. Uphold the ALJ's decision, but adopt different reasoning.
4. Determine that the case cannot be decided without considering the new evidence, and therefore remand the case to the ALJ for a further proceeding to consider new evidence.

Attachments

- A. Letter from Cat Skaar to Respondent, dated August 2, 2005.
- B. Letter from Respondent to Cat Skaar, and Respondent's Response to the Department's Answers to Respondent's Exceptions and Briefs, dated July 28, 2005.
- C. Letter from Cat Skaar to Respondent, dated July 13, 2005.
- D. Letter from Respondent to Cat Skaar, received July 7, 2005.
- E. Letter from Bryan Smith (signed by Deb Nesbit) to Respondent, dated June 21, 2005.

⁵ OAR 137-003-0655(7), referring to ORS Chapter 244; OAR 137-003-0660.

⁶ OAR 340-011-0132(3)(a).

⁷ *Id.* at (4).

- F. Department's Answering Brief, dated June 17, 2005.
- G. Letter from Jane Hickman to Bryan Smith, dated June 13, 2005.
- H. Letter from Bryan Smith to Jane Hickman, dated June 9, 2005.
- I. Respondent's Exceptions and Brief, dated May 10, 2005.
- J. Letter from Jane Hickman to Respondent, dated April 26, 2005.
- K. Respondent's Petition for Commission Review, dated April 14, 2005.
- L. Proposed Order for Assessment of Civil Penalty, dated March 18, 2005.
- M. Notice of Hearing and Contested Case Rights, dated January 5, 2005.
- N. Respondent's Answer and Request for Hearing, dated August 11, 2004.
- O. Notice of Violation and Assessment of Civil Penalty, dated August 4, 2004.
- P. Exhibits from Hearing of February 15, 2005.
 - A1. Phone memo drafted by Diane Naglee, dated August 19, 2002.
 - A2. Phone memo drafted by Diane Naglee, dated September 11, 2002.
 - A3. Pollution Complaint, dated September 11, 2002.
 - A4. Letter from Robert Marshall to Glenn and Barbara Fleming, dated September 26, 2002.
 - A5. Handwritten note from Barbara Fleming, written on a copy of the letter from Robert Marshall to Glenn and Barbara Fleming, dated September 26, 2002.
 - A6. Correction Notice, dated August 11, 2003.
 - A7. Notice of Noncompliance, drafted by Diane Naglee and sent to Glenn and Barbara Fleming, dated April 21, 2003.
 - A8. Handwritten note from Jo Fleming to the Department, received October 8, 2003.
 - A9. Notice of Noncompliance, drafted by Diane Naglee and sent to Glenn and Barbara Fleming, dated March 3, 2004.
 - A10. Notice of Noncompliance, drafted by Diane Naglee and sent to John Richard Fleming, dated March 3, 2004.
 - A11. Handwritten note from John Richard Fleming to the Department, received March 23, 2004.
 - A12. Letter from Debra DeShaw of the City of Baker City Building Department to the Department, dated October 1, 2004.
 - A13. Site Evaluation Report, drafted by Diane Naglee and sent to Glen and Barbara Fleming, dated November 9, 2000.
 - A14. Economic Benefit Calculation, drafted by Susan Greco of the Department, dated June 23, 2004.
 - A15. Letter from Robert Baggett of the Department to John Richard Fleming, dated November 2, 2004.
 - A16. Self Installer Handout, prepared by the Department.
 - A17. Letter from Jim Sayers, Building Official with the City of Baker City, sent to Mark Bennett, Baker County Planning Director, dated March 10, 2003.
 - A18. Photographs of the interior of the Property, taken by Vicky Foland of the Baker County Planning Department on February 28, 2003, and received by the Department on March 12, 2003.
 - A19. Baker County Tax Assessor information for the Property, dated March 2, 2004.

Agenda Item C: Contested Case No. WQ/WS-ER-04-071 in the Matter of John Richard Fleming
October 21, 2005 EQC Meeting
Page 9 of 9

- R1. Letter from Barbara Fleming to ALJ Alison Greene Webster, dated January 20, 2005.
- R1-4. Letter from Barbara Fleming to Diane Naglee, dated March 7, 2004 (handwritten note from Jo Fleming to the Department, received October 8, 2003, enclosed)
- R2. Drawings of OSSD system, and handwritten notes pertaining to alleged violations, by John Richard Fleming.
- R3. Letter from Barbara Fleming to Mark Bennett (including multiple enclosures), dated April 3, 2003.
- R4. Phone memo written by Tom Hack, dated June 30, 2003.
- R5. Jo Fleming's Plumbing Permit Application, signed on May 14, 2001.

Report Prepared by: Cat Skaar
Assistant to the Commission

Phone: (503) 229-5301



Oregon

Theodore R. Kuiongosi, Governor

Department of Environmental Quality

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

August 2, 2005

Via Certified Mail

John Richard Fleming
P.O. Box 447
Baker City, OR 897814

RE: Rebuttal received and proposed EQC appeal date
John Richard Fleming, Respondent
OAH Case No. 118750
DEQ Case No. WQ/OS-ER-04-070

On July 29, 2005, the Environmental Quality Commission (EQC) received your timely rebuttal to the June 17, 2005, response from DEQ Environmental Law Specialist Bryan Smith. By copy of this letter, I've forwarded the rebuttal to Bryan Smith for his review.

The department would like to schedule your appeal to the EQC for the October 21-22, 2005, EQC meeting in Gresham, Oregon. *Please contact me by August 15 at the number or e-mail address below if you have a conflict with either of those possible meeting dates.* If you express no objections, I will send you confirmation of your meeting date, time and location as soon as the meeting agenda is established. I will also send you the Commission record for this case as soon as it is available.

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 or by e-mail at skaar.cathy@deq.state.or.us. Thank you.

Sincerely,

Cat Skaar
Assistant to the Commission

c: Bryan Smith, Oregon Department of Environmental Quality
Larry Knudsen, Oregon Department of Justice

RECEIVED

AUG 04 2005

Eastern Region - Bend

John Richard Fleming
C/O P.O. Box 477
Baker City, OR 97814
July 28, 2005

Cathy Skaar
Oregon DEQ
811 SW Sixth Avenue
Portland, OR 97204-1390

RECEIVED

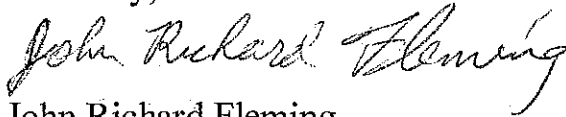
JUL 29 2005

Oregon DEQ
Office of the Director

Dear Ms. Skaar:

Attached is my response to Brian Smith's response regarding OAH Case NO 118750. Thank you for the Audio CD. It was beneficial.

Sincerely,



John Richard Fleming

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OAH Case NO. 118750

By John Richard Fleming, Respondent

Response to Brian Smith's response of June 17, 2005.

Mr. Smith's section IV DEPARTMENTS ANSWERS TO RESPONDENCE'S ARGUMENTS have several significant misquotes, several blatant misrepresentations, and several lapses in logic. Also significant is a complete lack of comment regarding the question of DEQ's lack of compliance with the Oregon State Constitution that I raised in my previous response.

First, under heading E. is the headline, **Respondent Admits Installing the System without a permit.** This a blatant lie! The truth is clearly stated in my last response. I have admitted assisting my sister on her project. It was not my responsibility to obtain permits because it was not my project. I did ask her if she had obtained the necessary permits, and I was told yes. The statement that I admitted being the installer is a bald faced lie! There is a very significant difference between assisting a property owner on their project and doing a project.

Second, following heading: "**D. The assimilative Capacity and longevity of the system do not demonstrate that the system will function properly, and the department's Assessment of a Moderate Magnitude is Correct.**" Is either a blatant lie or demonstrates a complete lack of understanding on the part of Mr. Smith regarding what drainfields do. Drainfields assimilate the water and nutrients. Mr. Baggetts evaluation of the system and the longevity of its functionality mean exactly this: The system will function without any risk of environmental damage for considerably longer than the minimum system meeting DEQ requirements. Lasting longer means functioning properly for a longer period of time. A system is not "lasting" if it is not functioning properly. There has never been any risk of environmental damage from this system at any time. A "Moderate Risk" is a pure fabrication on the part of Mr. Smith to increase revenue.

Third, following heading "**C. The correction notice is not relevant to this proceeding.**" While the correction notice is not relevant to what Mr.

Smith is trying to accomplish, it is relevant to what I am trying to accomplish at this hearing. The existing system is completely functional. While a Cadillac might not meet Ford Escort specifications, it is still a functional automobile. This system, by Bob Baggett's estimation has two and one half times the assimilative capacity of the required system. By my estimation, the additional trench width as installed has ten inches of trench width beyond the specifications, and three times the trench length. If there is any reduction of assimilative capacity due to the slope on the pipe, it is much less than one sixth. By my estimation, the system has capacity well in excess of **triple** the minimum required system, and **thirty times** that needed based on actual wastewater flows generated.

The sequence of events leading up to and including the repair order are well established in the documentation on this case. Debbie DeShaw at the Building Department for Baker City/Baker County issued a plumbing permit and stated that for a shop, no DEQ permit or any final inspection was required. Then 22 days before the installation began, Debbie Deshaw informed DEQ of a presumed violation. DEQ's response was to begin a documentation trail for prosecution of a violation, before the installation even began, and deliberately did not inform Jo Fleming that she had been misinformed regarding the requirements. This occurred even when Diane Naglee visited the site the day before the rock was put in the trench to document the presence of drain rock. At this point in time, notification of requirements would have eliminated all conflict, because the adjustments to the system as installed would have been insignificant before the trenches were backfilled with drain rock. When the correction order came, if followed, it would have destroyed a fully functional system.

Diane Naglee told my sister, Jo Fleming that she had no training or authority to approve any system that was not precisely in compliance with DEQ regulations. Jo's response was to ask if she could deal with someone that did have the training and authority to approve a system based on its adequacy rather than on precise compliance with guidelines. Apparently we are here because nobody under the EQC has that authority. Part of my **Alternate Proposed Order** is to declare the system adequate and issue the certificate of Completion. The repair order is very relevant to my purposes in asking for this hearing.

I consider the entire process to be a case of entrapment, followed by a correction order that was either malicious or extremely stupid. When the

DEQ orders were resisted, and a reasonable request that the existing system be evaluated by someone with training and authority, the response by DEQ was malicious prosecution of family members.

Fourth, the following heading: ***B The Department did not contribute to Respondent's Negligence.*** This is true. While the department had a reasonable responsibility to inform my sister when they were notified that she had been misinformed, they had no reason to notify me because I was not a party to the permitting process. I have made no claim regarding Diane Naglee's responsibility to contact me.

Fifth, the following heading: ***A Respondent was negligent when He installed the system without a permit.*** Mr. Smith is again presuming that I was the installer. I did nothing but assist my sister in installing her septic system. This was not my project. The accusation is stated as a fact, with the presumption that if a lie is repeated often enough, it will be presumed to be a fact. This was one of Adolph Hitler's standard operating procedures. Mr. Smith appears to be using it regularly.

Finally, I spent 15 to 20 hours helping my sister on her system. I have spent an estimated 500 hours dealing with harassment from DEQ as a result. This time has not been compensated by DEQ. I believe it should be and I have already informed the department of my compensation rate.



Oregon

Theodore R. KuLongoski, Governor

Attachment C

Department of Environmental Quality

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

July 13, 2005

John Richard Fleming
P.O. Box 447
Baker City, OR 97814

RE: Request for extension
John Richard Fleming, Respondent
OA Case No. 118750
DEQ Case No. WQ/OS-ER-04-070

Dear Mr. Fleming:

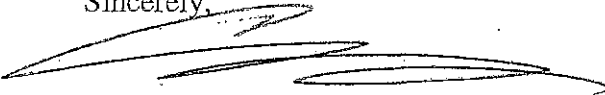
On July 7, 2005, the Environmental Quality Commission (EQC) received your timely request for an extension to file your rebuttal to the Department of Environmental Quality's reply brief, dated June 21, 2005. The Commission has granted your request. Your rebuttal is now due August 3, 2005, and will be timely if *received* by the EQC on or before that date. Please send your rebuttal to the following address:

Environmental Quality Commission
c/o Cathy Skaar, EQC Assistant
811 SW 6th Avenue
Portland, Oregon 97204.

At your request, I have enclosed an audio recording of your February 15, 2005, hearing before the Administrative Law Judge. I regret that I am unable to provide the written hearing transcript you also requested, since no transcript was created at the time of the hearing.

If you have any questions, please contact me at (503) 229-5301 or by e-mail at skaar.cathy@deq.state.or.us. Thank you.

Sincerely,



Cathy Skaar
Assistant to the Commission

Cc: ✓ Bryan Smith
Oregon Department of Environmental Quality

P.O. Box 477
Baker City, OR 97814
July 7, 2005

Environmental Quality Commission
C/O Cathy Scaar DEQ assistant to Director
811 SW 6th Avenue
Portland, OR 97204
VIA Fax 503-229-6762

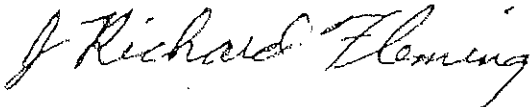
Dear Sir or Madam:

RE: In the Matter of John Richard (Dick) Fleming, OAH /Case No. 118750, Agency Case Number WQ/OS-er-04-071, Baker County and in conjunction with the case of Glenn Martin Fleming and Barbara Chapman Fleming, OAH Case No. 118751, Agency Case number WQ/OS-ER-072, Baker County.

I hereby request the following:

1. A copy of the transcript of the administrative hearing which was held here in Baker City in February of 2005.
2. A copy of the audio recording of the same hearing.
3. A time extension until three weeks after I receive the above information to responds to DEQ's Answering Brief.

Sincerely,



John Richard Fleming



Oregon

Theodore R. Kulongoski, Governor

Attachment E

Department of Environmental Quality

811 SW Sixth Avenue

Portland, OR 97204-1390

503-229-5696

TTY 503-229-6993

June 21, 2005

John Richard Fleming

P.O. Box 447

Baker City OR 97814

Environmental Quality Commission

c/o Jane Hickman, DEQ-Assistant to the Director

811 SW 6th Avenue

Portland, OR 97204

Re: Reply Brief

John Richard Fleming, Respondent

OAH Case No. 118750

DEQ Case No. WQ/OS-ER-04-070

Dear Mr. Fleming:

Enclosed please find the Department of Environmental Quality's Reply Brief regarding the appeal of the Proposed Order issued in the above case. I apologize for not sending the Reply Brief to you on June 17, the date I submitted the Brief to the Environmental Quality Commission (EQC). The Department would like to schedule your appeal in front of the EQC. The next EQC meeting that has availability for your appeal is being held in Eugene, OR on August 11 and 12, 2005. Please let me know if either of these dates will work for you. Please contact me at (541) 388-6146, extension 245, regarding the scheduling of your appeal.

Sincerely,

Bryan Smith

Environmental Law Specialist

Office of Compliance and Enforcement

Enclosure:

cc: Jane Hickman, DEQ-Assistant to the Director, Environmental Quality
Commission, HQ, DEQ

JUN 17 2005

Oregon DEQ
Office of the Director

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

1
2
3 IN THE MATTER OF:
JOHN RICHARD FLEMING,

) DEPARTMENT'S ANSWERING BRIEF
) No. WQ/OS-ER-04-071

4
5 RESPONDENT,

)
)
)
) BAKER COUNTY

6
7 The Department of Environmental Quality (Department) submits this Answering Brief to
8 the Environmental Quality Commission (Commission) for its consideration in the appeal of the
9 Proposed Order in Notice of Violation and Assessment of Civil Penalty No. WQ/OS-ER-04-071,
10 filed by John Richard Fleming (Respondent).

11 I. CASE HISTORY

12 1. On August 4, 2004, the Department issued to Respondent a Notice of Violation and
13 Assessment of Civil Penalty (the Notice) alleging two violations: (1) Respondent constructed an
14 on-site sewage disposal system without first obtaining an on-site sewage construction permit from
15 the Department, and (2) that he performed sewage disposal services without first obtaining a
16 sewage disposal service provider's license. The Notice assessed a civil penalty of \$4,200 for the
17 first violation only.

18 2. On August 11, 2004, Respondent appealed and a contested case hearing was held
19 on February 15, 2005.

20 3. On March 18, 2005, the Administrative Law Judge issued a Proposed and Final
21 Order (Proposed Order) finding that Respondent installed an on-site sewage disposal system
22 without first obtaining a permit from the Department, and performed sewage disposal services
23 without first obtaining a sewage disposal service provider's license. The Proposed Order upheld
24 the Department's assessment of a \$4,200 civil penalty for installing an on-site sewage disposal
25 system without first obtaining the permit.

26 ////

27 ////

1 II. COMMISSION ACTION REQUESTED

2 The Department requests that the Commission issue a Final Order upholding the
3 Administrative Law Judge's Proposed Order.

4 III. ADMINISTRATIVE LAW JUDGE'S CONCLUSIONS

5 The Administrative Law Judge concluded that: (1) Respondent installed an on-site sewage
6 disposal system without first obtaining a permit from the Department, (2) Respondent performed
7 sewage disposal services without first obtaining a license from the Department, and (3) Respondent
8 is subject to a civil penalty in the amount of \$4,200.

9 IV. DEPARTMENT'S ANSWERS TO RESPONDENT'S ARGUMENTS

10 A. *Respondent was Negligent When He Installed the System Without a Permit:*

11 Respondent argues in Paragraph 1 of his Exceptions and Brief that he believed he did not need a
12 permit from the Department prior to installing the on-site sewage disposal system because his
13 sister, Jo Fleming, understood from her conversation with Debbie DeShaw of the Baker County
14 Building Department that if the building to be served by the system was a "shop" and not a
15 "dwelling" that an inspection from the Department was not required. Respondent seems to imply
16 that, therefore, he acted reasonably when he installed the system without a permit. Regardless of
17 what Jo Fleming believed, the ALJ found that Respondent had applied for and obtained
18 Department permits in his capacity as Baker City's Public Works Director, and that because of
19 his employment experience he should have known of the Department's authority to regulate the
20 installation of septic systems. (Page 6 of the Proposed Order) Furthermore, the ALJ found that
21 the "fact that Respondent considered the structure a 'shop' rather than a 'dwelling' does not
22 render reasonable his belief that no DEQ permit was required to install the septic system." (Page
23 6 of the Proposed Order) Therefore, the ALJ's conclusion that Respondent's penalty should be
24 aggravated for his negligent conduct is supported in the record.

25 B. *The Department did not Contribute to Respondent's Negligence:* In Paragraph 2
26 of his Exceptions and Brief, Respondent argues that the Department's inspector, Diane Naglee,
27 was aware, prior to his installation of the septic system, that his sister Jo Fleming was under the

1 impression that no DEQ approval was needed. Respondent seems to argue, based on this fact,
2 that Ms. Naglee should have informed him that the Department's approval was required. This
3 argument is not supported by the record. First, the ALJ found, in Finding of Fact number 4 of the
4 Proposed Order, that Ms. Naglee had notified Respondent's family in writing that a permit *was*
5 required after evaluating the property in 2000, and before the system was installed. Second,
6 Respondent has not established that Ms. Naglee had any duty to stop his work, or that he
7 somehow relied on her inaction to his detriment. Furthermore, the ALJ found that that
8 Respondent's failure to become informed of and to follow the applicable rules is the result of his
9 own negligence. (Page 6 of the Proposed Order) The ALJ did not find that any act or omission
10 of the Department contributed to Respondent's negligence.

11 **C. *The Correction Notice is not Relevant to this Proceeding:*** In Paragraph 3 of his
12 Exceptions and Brief, Respondent states that the corrections ordered by the Department in the
13 Correction Notice might be difficult or impossible to perform, and that it might be less expensive
14 simply to install a new system. Respondent was not cited, penalized or ordered to take any
15 action related to the Correction Notice. This argument is not relevant to any issue in this matter.

16 **D. *The Assimilative Capacity and Longevity of the System do not Demonstrate that***
17 ***the System will Function Properly, and the Department's Assessment of a "Moderate"***
18 ***Magnitude is Correct:*** Respondent, in Paragraphs 4 and 5 of his Exceptions and Brief, argues
19 that the system has significantly more assimilative capacity than a system installed according to
20 the Department's minimum specifications for a shop, and would function longer.¹ Assumedly,
21

22 _____
23 ¹ Respondent asserts that Bob Baggett of the Department testified that the system Respondent
24 installed has significantly more assimilative capacity than a system installed according to the
25 Department's minimum specifications for a shop, and would function longer. Mr. Baggett
26 provided this testimony in a consolidated hearing where evidence was taken for two DEQ cases:
27 DEQ No. WQ/OS-ER-04-071 (Respondent's case) and DEQ case No. WQ/OS-ER-04-072
(Glenn Martin Fleming and Barbara Chapman Fleming; the property owners' case). While the
ALJ did not make a Finding of Fact concerning Mr. Baggett's testimony in the Proposed Order
for Respondent's case (Office of Administrative Hearing (OAH) no. 118750), the ALJ found, in

1 Respondent believes this relevant to the ALJ's finding that the magnitude of the violation is
2 moderate "considering the potential for adverse impact on the environment by installing an
3 unapproved sewage system" (page 6 of the Proposed Order) Whether or not the system had
4 greater assimilative capacity, that is, was larger in size than required, it had construction
5 deficiencies which rendered it unapprovable, resulting in the posting of a Correction Notice.
6 Because Respondent's construction without a permit resulted in the installation of an
7 unapprovable system, the ALJ correctly found, that the violation had potential for adverse impact
8 on the environment. (Page 6 of the Proposed Order)

9 E. *Respondent Admits Installing the System without a Permit:* Respondent states,
10 in Paragraph 6 of his Exceptions and Brief, that he was not the only individual to perform work
11 related to the installation of the system, and states that he was not paid for his work. Respondent
12 appears to be arguing that these circumstances should relieve him from liability for the violation
13 of installing a septic system without first obtaining a permit. However, the applicable rules do
14 not require that an individual must receive compensation, or work alone, in order to be held
15 liable for this violation. Ultimately, Respondent's argument is consistent with Finding of Fact
16 number 17 of the Proposed Order, which addressed a March 19, 2004, letter from Respondent to
17 the Department in which he admits taking two days of vacation time to assist on the installation
18 project, running the excavation and the pipe layout and installation. The ALJ properly concluded
19 that Respondent's activities constituted the installation of an on-site sewage disposal system
20 without first obtaining a permit.

21 ////

22 ////

24 Finding of Fact number 19 of the Proposed Order for the property owners' case (OAH no.
25 118751) that Mr. Baggett was concerned "about the grade of the septic tank effluent pipe, the
26 grade of the disposal trenches and piping and the lack of drain media (rock) over the top of the
27 distribution pipe." Mr. Baggett did not testify that the system was adequate because it had
greater assimilative capacity and longevity; rather, he testified that he was concerned about the
construction deficiencies of the system.

V. CONCLUSION

The Department requests that the Commission adopt the ALJ's Proposed Order as its Final Order. Respondent's arguments to the contrary are neither supported by the evidence in the record nor by law.

6/17/05

Bryan Smith

Date

Bryan Smith, Environmental Law Specialist



Oregon

Theodore R. Kulongoski, Governor

Attachment G

Department of Environmental Quality

811 SW Sixth Avenue

Portland, OR 97204-1390

503-229-5696

TTY 503-229-6993

June 13, 2005

Bryan Smith
Environmental Law Specialist
Oregon Department of Environmental Quality
2146 N.E. 4th, #104
Bend, Oregon 97701

Re: John Richard Fleming, No. WQ/OS-ER-04-071 and
Glenn Martin Fleming and Barbara Chapman Fleming, No. WQ/OS-ER-04-072

Dear Mr. Smith:

On June 9, 2005, the Commission received your request for a one-week extension of the June 10 deadline to submit DEQ's brief in reply to Petitioners' exceptions and briefs in the above-referenced cases. Your request for extension was filed timely, and the Commission has granted your request. The new deadline for you to submit DEQ's reply briefs is June 17, 2005.

If you have any questions, please call me at (503) 229-5555.

Sincerely,

Jane K. Hickman
Acting Assistant to the Commission

Cc: John Richard Fleming
Glenn Martin Fleming and Barbara Chapman Fleming



Oregon

Theodore R. Kulongoski, Governor

Attachment H

Department of Environmental Quality

2146 NE 4th Street, Suite 104

Bend, OR 97701

(541) 388-6146

Eastern Region

Bend Office

June 9, 2005

Jane Hickman

Assistant to the Environmental Quality Commission

Oregon Department of Environmental Quality

811 SW 6th Avenue

Portland, OR 97204

Re: John Richard Fleming
Notice of Violation and Assessment of Civil Penalty
No. WQ/OS-ER-04-071
Baker County

and

Glenn Martin Fleming and Barbara Chapman Fleming
Notice of Violation, Department Order and Assessment of Civil Penalty
No. WQ/OS-ER-04-072
Baker County

Dear Ms. Hickman:

I am writing to request a one week extension of the June 10, 2005, deadline for the Department of Environmental Quality (the Department) to submit its Brief in Reply to John Richard Fleming and Glenn and Barbara Fleming's Exceptions and Briefs.

Thank you for your consideration of this request.

Sincerely,

Bryan Smith
Environmental Law Specialist

cc: John Richard Fleming, PO Box 477, Baker City, OR 97814
Glenn Martin Fleming and Barbara Chapman Fleming, PO Box 985, Baker City, OR
97814

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OAH Case NO. 118750

By John Richard Fleming, Respondent

The findings of fact as listed in the Proposed and Final Order are accurate as far as they go. The omissions in this order from what was actually said at the hearing are significant, and several observations can be made from these findings and these omissions: First, All of the respondent's exhibits submitted to the Administrative Law Judge at the hearing and all testimony in favor of the respondents were not included in the final order.

Additional facts that are pertinent to the case are as follows:

1. Findings of Fact # 5 states that Jo Fleming understood from her conversation with Debbie DeShaw that no DEQ inspection was required for a drainfield for a shop. This understanding is supported by the phone memo of 8-19-02 documenting a call from Debbie DeShaw to Diane Naglee, which is signed by Diane and in her handwriting. Debbie DeShaw stated that "Jo Fleming" had received a sewer permit without DEQ Signoff. The purpose of this phone call was to notify DEQ of the rumor that the proposed shop was actually a residence. This rumor was based on the fact that attractive siding was being used to match the hoped for future house if such was ever allowed. The premise is still clearly implied in this memo that notification of DEQ was needed because if it was a dwelling, then DEQ would need to approve the plans and grant a permit. Also implied is the fact that Debbie De Shaw was still operating on the premise that a shop did not require a DEQ permit or DEQ inspection.
2. It is clear and documented in Diane Naglee's handwriting that she knew at least 22 days before the installation of the system that Jo Fleming had been informed by Debbie DeShaw that no DEQ approval was needed, and a sewer permit granted without DEQ signoff. Diane has stated in a preliminary hearing that a sewer permit was not to be given by the building department without DEQ signoff. See Exhibit A-1 for the memo.
Diane Naglee also visited the site on 9-12-02 to observe whether a system had been installed. She observed mounds of drainrock on the site.

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It had been delivered on the previous day. Obviously it had not been installed in the trenches. A contact with notification of DEQ requirements at this time would have meant that there would have been minimal reworking of the system. Just a little releveling of the trenches and the system could have been installed to DEQ specifications without damaging any existing work. No contact was made until after the system was completely installed. Diane stated at the hearing that she had been advised by her supervisors not to make contact at this time.

3. At the hearing under oath, Diane Naglee stated that to attempt to make changes as requested in the repair order would be difficult to impossible and would damage the existing system. It would be easier and less expensive to start with a new drainfield on a new location.
4. In a letter written on September 27, 2003 and received by DEQ on October 8, 2003, Jo Fleming wrote to Diane Naglee in response to a correction Notice given on August 11, 2003. This letter acknowledged minor variations from specifications, but made the claim that the system was three times the assimilative capacity needed for a shop. There was no response by DEQ to this letter. About six months later, Barbara Fleming received a letter from DEQ. Jo Fleming Called Diane Naglee and mentioned the lack of response to her letter. Diane stated that since no corrections had been made, Her boss had told her no response was necessary. This indicates a systemic arrogance!
5. At the hearing, under oath, Bob Baggett, DEQ's designated expert, when asked whether the existing system was superior to the minimum DEQ specification system for a shop, replied that the existing system "had significantly more assimilative capacity that the minimum system for a shop and would function much longer than the minimum DEQ specification system for a shop. There was a sketch labeled R-2 that was included as part of the record of the hearing.
6. When Jo Fleming called Dick Fleming and asked if he would help in the installation of her drainfield, she already had the septic tank, the pipe, the filter fabric and the drain rock ordered. When Dick showed up on site, she had arranged for the excavator and operator to be there and ready to work, along with several other people who were helping on a volunteer basis. Dick supplied a shovel, a cloth measuring tape, and a tamping bar. Another friend had a transit for running levels on the site. When the trenches were finished and the septic tank installed, a neighboring farmer came over with his tractor mounted front end loader to haul the gravel

and dump it into the trenches. This was also done on a volunteer basis. There was no assumption of either Jo Fleming or Dick Fleming that Dick was designated as the installer. Dick was there to assist a family member in installing a system that she did not need a license to install, because she was the permittee. She had her sewer permit and had been told by a representative of the building department that was all the permits that she needed.

OBJECTIONS

We object and except the conclusions of law and we also except the opinion of the Administrative Law Judge that an ORS can negate the Oregon State and Federal Constitutions and allow assessment of civil penalties by defining the process as not a "civil case," just an Assessment of Civil Penalties.

This entire process with the misleading information given to a citizen, by an employee of the building department, DEQ being aware of the misinformation, and deliberately not saying anything until a system is installed, and then giving orders that could only be described as arbitrary, capricious, vicious, malicious, greedy and stooopid, Is intended as a means of extorting money from people who were trying to build a building within the law as best known, and as stated by the appropriate authorities.

Proposed Conclusions of Law

1. There was no willful violation of Oregon State Regulations by the Flemings. Inquiring of the Building Department regarding requirements is reasonable due diligence regarding the requirements for building.
2. The system as installed has been examined by DEQ's designated expert. It is not going to cause a pollution problem. It has much greater assimilative capacity than a system meeting DEQ's minimum requirements, and it will last indefinitely with the waste load coming from a shop building.
3. There is no evidence that John Richard (Dick) Fleming was doing more than assisting on a project where he believed all necessary permits were obtained and where no installer's license was required, because the installer was the permittee.

She had obtained her sewer permit and had been told by the authority in the public office that it was all the permits she needed. If he was not the installer, the argument about needing a license to install in moot.

Alternate Proposed Order

Declare the existing drainfield to be adequate for the existing shop building and direct DEQ to issue the appropriate certificate of completion.

Dismiss the proposed "civil assessment" with prejudice.

Direct DEQ to discontinue activities that are best described as attempted entrapment and extortion.

John Richard Fleming
John Richard Fleming

5-10-05

Bryan



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

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

VIA CERTIFIED MAIL

April 26, 2005

John Richard Fleming
P. O. Box 477
Baker City, Oregon 97814

Re: John Richard Fleming
OAH Case No. 118750
DEQ Case No. WQ/OS-ER-04-071

Dear Mr. Fleming:

The Environmental Quality Commission (Commission) received your petition for review in the above-referenced matter on April 14, 2005. Your petition was filed in a timely manner.

The Proposed Order outlined appeal procedures, including filing of exceptions and briefs. The hearing decision and Oregon Administrative Rules (OAR 340-011-0575) state that you must file exceptions and brief within thirty days from the filing of your request for Commission review, or May 16, 2005. Your exceptions must specify the findings and conclusions in the Proposed Order that you object to, and also include proposed alternative findings of fact, conclusions of law, and an alternative order with specific references to the parts of the record upon which you rely. The brief must include the arguments supporting these alternative findings of fact, conclusions of law and order. Failure to take an exception to a finding or conclusion in the brief waives your ability to later raise that exception. Once your exceptions have been received, a representative of the Department may file an answering brief within thirty days. The Commission may extend any of the time limits contained in OAR 340-011-575(5) if an extension request is made in writing and is filed with the Commission before the expiration of the time limit. I have enclosed a copy of the applicable administrative rules for your information.

To file exceptions and briefs, please mail these documents to Jane Hickman, on behalf of the Environmental Quality Commission, at 811 S.W. 6th Avenue, Portland, Oregon 97204. If you fail to timely file the exceptions or brief, the Commission may dismiss your petition for review. At the time of dismissal, the Commission will also enter a final order upholding the proposed order.

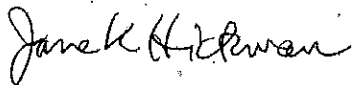
John Richard Fleming

April 26, 2005

Page Two.

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) 229-5555.

Sincerely,



Jane K. Hickman
Acting Assistant to the Commission

Cc: Bryan Smith, Oregon Department of Environmental Quality

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APR 14 2005

Oregon DEQ
Office of the Director

P.O. Box 985
Baker City, OR 97814
April 12, 2005

Environmental Quality Commission
C/O Stephanie Hallock, Director, DEQ
811 SW 6th Avenue
Portland, OR 97204

Dear Sir or Madam:

In the Matter of Glenn Martin Fleming and Barbara Chapman Fleming,
OAH Case No. 118751, Agency Case number WQ/OS-ER-072, Baker
County and in conjunction with the case of John Richard (Dick) Fleming,
OAH /Case No. 118750, Agency Case Number WQ/OS-er-04-071.

We hereby petition for review by the Oregon Environmental Quality
Commission.

Sincerely,

Barbara Chapman Fleming Glenn

Barbara Chapman Fleming

Glenn Martin Fleming

Glenn Martin Fleming

OFFICE OF COMPLIANCE AND ENFORCEMENT
DEPARTMENT OF ENVIRONMENTAL QUALITY

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MAR 21 2005

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
ENVIRONMENTAL QUALITY COMMISSION

IN THE MATTER OF:

JOHN RICHARD FLEMING,
Respondent,

) PROPOSED AND FINAL ORDER
)
) OAH Case No. 118750
) Agency Case Number WQ/OS-ER-04-071
) Baker County

HISTORY OF THE CASE

On August 4, 2004, the Department of Environmental Quality (DEQ or Department) issued a Notice of Violation and Assessment of Civil Penalty (Notice) to Respondent John Richard Fleming alleging that Respondent constructed an on-site sewage disposal system without first obtaining an on-site sewage disposal system construction permit, in violation of ORS 454.655(1)¹ and OAR 340-071-0160(1)² and that he performed sewage disposal services without first obtaining a valid sewage disposal service provider's license from the Department in violation of ORS 454.695(1) and OAR 340-071-0600(1). The Notice sought assessment of a civil penalty of \$4,200 for the violation of ORS 454.655(1) and OAR 340-071-0160(1).

On August 11, 2004, Respondent requested a hearing. The hearing was consolidated with case no. 118751, involving a Notice of Violation, Department Order and Assessment of Civil Penalty issued to Glen Martin Fleming and Barbara Chapman Fleming. The consolidated hearing was held on February 15, 2005, in Baker City, Oregon. Alison Greene Webster, from the Office of Administrative Hearings, presided as the Administrative Law Judge (ALJ). Respondent appeared in person and without counsel. Respondent's mother, Barbara Chapman Fleming and his sister, Jo Fleming testified at the hearing. Respondent also testified on his own behalf. Environmental Law Specialist Bryan Smith represented the Department. Witnesses for the Department were Diane E. Naglee and Robert Baggett, Natural Resource Specialists for the Department. The record closed at the end of the February 15, 2005 consolidated hearing.

¹ ORS 454.655(1) provides:

Except as otherwise provided in ORS 454.675, without first obtaining a permit from the Department of Environmental Quality, no person shall construct or install a subsurface sewage disposal system, alternative sewage disposal system or part thereof. However, a person may undertake emergency repairs limited to replacing minor broken components of the system without first obtaining a permit.

² OAR 340-071-0160(1) provides as follows: "Permittees. A permit for construction of a system may be issued under this rule only to the owner of the real property that the system will serve."

This hearing decision has been copied to: Anne, field person & his/her mngr; Staff Folder; EQC; DA; Business Office; Hearing Decision Notebook; West Publishing; & Lexus Nexus. Let me know if anyone else needs a copy. Deb

ISSUES

- (1) Whether Respondent constructed an on-site sewage disposal system on property located at 45491 Keating Cutoff Road in Baker County, Oregon without first obtaining a permit.
- (2) Whether Respondent performed sewage disposal services without first obtaining a valid sewage disposal service provider's license from the Department.
- (3) Whether the civil penalty assessment calculated by the Department is appropriate.

EVIDENTIARY RULINGS

Department Exhibits A1 through A19 and Respondent's Exhibits R1 through R6 were admitted into the record.

FINDINGS OF FACT

(1) Respondent's parents, Glen and Barbara Fleming, are the owners of property located at 45491 Keating Cutoff Road in Baker County, Oregon (the property). (Ex. R1.)

(2) Although the Flemings owned the property, their daughter, Jo Fleming, eventually undertook a building project on the property. In 2000, Ms. Fleming was advised by the Baker County Planning Department that she could build a "shop" or agriculture structure on the property without a building permit. The Director told Ms. Fleming that a shop/agricultural building could contain office space and a bathroom, and that the Planning Department did not need to see her building plans. (Test. of Jo Fleming.)

(3) On September 15, 2000, Ms. Fleming applied for, and was issued, a "Farm Agricultural Building Exemption Certificate" for the property. (Ex. R4.) She was advised by the Baker County Planning Department that she needed to obtain electrical and plumbing permits from the Building Department. (Test. of J. Fleming.)

(4) Diane Naglee is a Natural Resource Specialist for the Department. In November 2000, she evaluated the property to determine whether it was appropriate for an on-site sewage disposal system for a single family dwelling. In a November 9, 2000 letter to the Flemings, Ms. Naglee reported that the portion of the property she evaluated was appropriate for a standard system with a maximum flow of 450 gallons per day. The letter warned: "Note: This is NOT a permit to construct an OSSD system. To apply for a permit, please submit the enclosed permit application with the accompanying attachments. DEQ cannot sign off on any Building Codes forms until a DEQ permit is issued." (Ex. A13, emphasis in original.)

(5) On May 14, 2001, Ms. Fleming went to the City of Baker City Building Department and applied for a plumbing permit on the property. The permit, issued by Debbie DeShaw, authorized plumbing for a bathroom, water service and sanitary and storm sewer service. (Ex. R5.) Ms. Fleming talked with Ms. DeShaw about permitting requirements and building

inspections for the structure she was building. She understood from that conversation that she did not need to have her sewage disposal system inspected by DEQ. (Test. of J. Fleming.)

(6) In August 2002, Ms. DeShaw phoned DEQ and reported to Ms. Naglee that although the Flemings had received approval for an agricultural building on the property, she believed that they were building a residence instead. Ms. Naglee checked the DEQ's database and found that no permit had been issued for an on-site sewage disposal system on the Flemings' property. (Test. of Naglee; Ex. A1.)

(7) On September 11, 2002, DEQ's Pendleton Office received a complaint regarding the Flemings' property from Cameron Lane, of the Building Code Division in Salem. Mr. Lane reported that Jo Fleming was installing an on-site sewage disposal system without a permit, and that she was building a home on the property without a permit. The complaint was referred to Ms. Naglee. (Ex. A3; test. of Naglee.) That same day, Ms. Naglee had another phone conversation with Ms. DeShaw, who advised that the City of Baker City Building Department had also received word that the Flemings were installing a septic system on the property without a permit. (Ex. A2.)

(8) Ms. Naglee drove by the property on September 12, 2002. She observed mounds of gravel near the structure, which appeared consistent with the size of drain rock. (Test. of Naglee; Ex. A3.)

(9) Respondent assisted with the construction and installation of the sewage disposal system on the property. The system installed was a standard system with a maximum flow of 450 gallons per day, sufficient for a single family dwelling. At the time of the September 2002 installation, Respondent was employed by the City of Baker City as the Public Works Director. He took two days off work to run the excavation and layout and install the pipe for the system. Jo Fleming told Respondent that she had all the necessary permits and paperwork from the Building Department. (Test. of Respondent; Test. of J. Fleming; Ex. A11.)

(10) By letter dated September 26, 2002, DEQ notified the Flemings that it had received information that a house had been partially built and a septic system possibly installed on the property without permits. The letter warned that DEQ approval would be required for construction of a septic system. (Ex. A4.)

(11) In response to the September 26, 2002 letter, Barbara Fleming wrote: "This building is an agricultural shop-office. All necessary permits were obtained from the County Planning Office and Building Department." (Ex. A5.)

(12) On April 21, 2003, DEQ issued a Notice of Noncompliance (NON) to the Flemings. The NON advised that they were in violation of Oregon environmental law for installing an unapproved on-site sewage treatment and disposal system on their property. (Ex. A7.)

(13) In June 2003, the Flemings applied for, and received, a construction/installation permit for the on-site sewage disposal system. (Test. of Naglee; test. of J. Fleming; Ex. A9.)

(14) On August 11, 2003, Ms. Naglee inspected the sewage disposal system at the property. She observed construction deficiencies, which she identified in a Correction Notice posted to the property that day. (Ex. A6.)

(15) The Flemings did not correct the identified construction deficiencies within 30 days as required by the Correction Notice. (Ex. A8.)

(16) On March 3, 2004, DEQ issued a Notice of Noncompliance to Respondent. The NON asserted that Respondent installed the on site sewage disposal system on the Flemings' property without a DEQ construction/installation permit. The NON further alleged that Respondent installed the system before the Flemings obtained a permit in June 2003, and that he did not have an Oregon DEQ license to perform sewage disposal services at the time the system was installed. (Ex. A10.)

(17) In a March 19, 2004 letter to the Department, Respondent acknowledged that he assisted with the system's construction and installation:

Regarding this drainfield installation, I took two days of vacation time to assist on this project. This was a family operation on a family owned property. I received no compensation for my work. We had been informed by the building department that no permit was required by the shop building. I did run the excavation and the pipe layout and installation.

(Ex. A11.)

CONCLUSIONS OF LAW

(1) Respondent constructed an on-site sewage disposal system on Flemings' property without first obtaining a permit in violation of ORS 454.655(1) and OAR 340-071-0160(1).

(2) Respondent did not have a business license from the Department to perform sewage disposal services at the time he constructed the on-site sewage disposal system on the property.

(3) The civil penalty assessment calculated by the Department is 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). In this case, the Department has the burden to prove the alleged violations. After reviewing the record, I conclude that the Department has met its burden.

Construction of On-Site Sewage Disposal System Without A Permit

The Department alleges that on or about September 11, 2002, Respondent constructed an on-site sewage disposal system without obtaining an on-site sewage disposal system construction permit, in violation of ORS 454.655(1) and OAR 340-071-0160(1). As noted above, ORS 454.655(1) prohibits persons from constructing or installing a subsurface sewage disposal system without a DEQ permit. ORS 454.655(2) provides that a permit required by subsection (1) "shall be issued only in the name of an owner or contract purchaser in possession of the land." The administrative rule similarly requires that a permit for construction of an on-site sewer system be issued "only to the owner of the real property the system will serve." OAR 340-071-0160(1).

Respondent admits that he installed the sewage disposal system on his parents' property. In a March 2004 letter to the Department, he acknowledged that he ran the excavation and the pipe layout and installation. Respondent also concedes that, at the time the system was installed, DEQ had not issued a construction/installation permit for the project. Respondent asserts, however, that he believed his family had all the necessary permits. Respondent contends that his sister, who was in charge of the project, did not know that she needed a DEQ permit, and that he relied on her representation that she had all her paperwork and permits from the building department.

Because ORS 454.655(1) has no knowledge element, Respondent's claim that he relied on his sister who was unaware of the permit requirement provides no defense to the violation. The statute prohibits construction or installation of subsurface sewage disposal systems without a DEQ permit. Respondent violated this law by installing the system on his parents' property in the absence of a permit to do so. The Department has proven the violation.

Failure to Obtain A Sewage Disposal Service Provider License

The Department also alleges that Respondent performed sewage disposal services without first obtaining a valid sewage disposal service provider's license in violation of ORS 454.695(1) and OAR 340-071-0600(1). Both the statute and rule prohibit persons from performing sewage disposal services without first obtaining a license from the DEQ to perform such services. Because Respondent did not have a sewage disposal services license when he installed the system on his parents' property, the Department has proven this second violation as well.

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. ORS 468.140 and OAR 340-012-0042. The amount of civil penalties assessed is determined through use of a matrix and formula contained in OAR 340-012-0045. *See* OAR 340-012-0042.

In this case, the Department determined that Respondent was liable for \$4,200 in civil penalties based on the violation of ORS 454.655 and OAR 340-071-0160(1).³ The 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 level of cooperation (C), the economic benefit that Respondent gained by noncompliance with the Department's rules and statutes (EB), and the magnitude of the violation. The formula for determining civil penalties in this case is expressed as "BP + [(0.1 x BP) x (P + H + O + R + C)] + EB."

Pursuant to OAR 340-012-0060(1)(c), Respondent's installation of the on-site sewage disposal system without a permit is a Class I violation. The Department correctly determined that the magnitude of this violation was moderate, considering the potential for adverse impact on the environment by installing an unapproved sewage system. OAR 340-012-0045(1)(a)(B). The BP for a moderate Class I violation in this context is \$3,000. OAR 340-012-0042(1)(a)(A)(ii) and OAR 340-012-0042(1)(b)(B). Because Respondent had no prior significant actions, the Department appropriately assigned a value of 0 to the "P" and "H" factors. Because this violation existed for more than one day, the Department is authorized to assign a value of 2 to the "O" factor. OAR 340-012-0045(1)(c)(C)(ii).

As for the "R" factor, the Department assigned a value of 2 under OAR 340-012-0045(1)(c)(D)(ii) because it considered Respondent's conduct to be negligent. The administrative rule defines negligence as "failure to take reasonable care to avoid a foreseeable risk of committing an act or omission constituting a violation." OAR 340-012-0030(11). Citing to Respondent's position as Director of Baker City's Public Works Department and his engineering background, the Department maintains that Respondent knew, or should have known, that a DEQ permit was required before he installed the system.

Respondent, on the other hand, asserts that he was not familiar with DEQ requirements for septic systems, and therefore did not know that a permit was required. Respondent admits that he had applied for and obtained DEQ permits in his capacity as the city's Public Works Director, but he maintains that he did not know a permit would be necessary for the septic system serving the structure on his parents' property. After considering the evidence, I agree that a value of 2 for negligent conduct is appropriate. Respondent's belief that no permit was necessary to install an on-site sewage disposal system with a single family residence capacity of 450 gallons per day was not reasonable. Because of his employment experience, Respondent should have known of DEQ's policy of protecting the public health and safety with regard to subsurface sewage disposal systems, and its authority to regulate the construction, installation and maintenance of such systems. The fact that Respondent considered the structure a "shop" rather than a dwelling does not render reasonable his belief that no DEQ permit was required to install the sewage system.

The Department appropriately assigned a value of 0 for the "C" factor, because there was insufficient information to make a finding. Finally, the Department assigned a 0 for the "EB" factor, because of the lack of evidence that Respondent gained financially from the violation.

³ The Department did not seek a penalty for Respondent's violation of ORS 454.695(1) and OAR 340-071-0600(1).

Using the civil penalty formula, the Department calculated Respondent's penalty as follows:

$$\begin{aligned} \text{Penalty} &= \$3,000 \text{ [BP]} + [(0.1 \times \$3,000) \times (0 + 0 + 2 + 2 + 0)] + \$0 \text{ [EB]} \\ &= \$3,000 + (\$300 \times 4) + \$0 \\ &= \$3,000 + \$1,200 + \$0 \\ &= \$4,200 \end{aligned}$$

Based on this record, the civil penalty assessment of \$4,200 is warranted.

Citing Article I, Section 17 of the Oregon Constitution, Respondent asserts that he has an inviolate right to trial by jury in all civil cases. He then questioned the Department's authority to sanction him in the absence of a trial by jury. As set forth above, ORS 468.140 authorizes the Department to assess civil penalties for environmental law violations. While the right to a trial by jury remains inviolate in all civil cases, this DEQ enforcement action is not a "civil case" within the meaning of Article I, Section 17 of the Oregon Constitution. An administrative proceeding is not a suit in equity or action at law. Therefore, Respondent has no right to a trial by jury in this matter.

PROPOSED ORDER

I propose that the Board issue the following order:

Respondent is subject to a civil penalty in the amount of \$4,200 for installing an on-site sewage disposal system without first obtaining a permit.



Alison Greene Webster, Administrative Law Judge
Office of Administrative Hearings

ISSUANCE AND MAILING DATE:

March 18, 2005

APPEAL RIGHTS

If you are not satisfied with this decision, you have the right to have the decision reviewed by the Oregon Environmental Quality Commission. To have the decision reviewed, you must file a "Petition for Review" within 30 days of the date this order is served on you as provided in Oregon Administrative Rule (OAR) 340-011-0132(1) and (2). The Petition for Review must be filed with:

Environmental Quality Commission
c/o Stephanie Hallock, Director, DEQ
811 SW Sixth Avenue
Portland, OR 97204.

Within 30 days of filing the Petition for Review, you must also file exceptions and a brief as in provided in OAR 340-011-0132(3). If the petition, exceptions and brief are filed in a timely manner, the Commission will set the matter for oral argument and notify you of the time and place of the Commission's meeting. The requirements for filing a petition, exceptions and briefs are set out in OAR 340-011-0132.

Unless you timely and appropriately file a Petition for Review as set forth above, this Proposed Order becomes the Final Order of the Environmental Quality Commission 30 days from the date of service on you of this Proposed Order. If you wish to appeal the Final Order, you have 60 days from the date the Proposed Order becomes the Final Order to file a petition for review with the Oregon Court of Appeals. See ORS 183.400 *et. seq.*

**APPENDIX A
LIST OF EXHIBITS CITED**

- Ex. A1: Phone Memo dated 8/19/02
- Ex. A2: Phone Memo dated 9/11/02
- Ex. A3: Pollution Complaint dated 9/11/02
- Ex. A4: Letter to Glenn and Barbara Fleming dated 9/26/02
- Ex. A5: Response letter from Barbara Fleming dated 10/1/02
- Ex. A6: Correction Notice dated 8/11/03
- Ex. A7: Notice of Non Compliance (Glenn and Barbara Fleming) dated 4/21/03
- Ex. A8: Letter from Jo Fleming dated 9/27/03
- Ex. A9: Notice of Non Compliance (Glenn and Barbara Fleming) dated 3/3/04
- Ex. A10: Notice of Non Compliance (John Richard Fleming) dated 3/3/04
- Ex. A11: Letter from John Richard Fleming dated 3/19/04
- Ex. A13: Site Evaluation Report dated 11/9/00
- Ex. R1: Letter to ALJ from Barbara Chapman Fleming dated 1/20/05
- Ex. R4: Farm Agricultural Building Exemption Certificate dated 9/15/00
- Ex. R5: Plumbing Permit Application dated 5/14/01

CERTIFICATE OF SERVICE

I certify that on March ____, 2005, I served the attached Proposed and Final Order by mailing certified and/or first class mail, in a sealed envelope, with first class postage prepaid, a copy thereof addressed as follows:

DICK FLEMING
PO BOX 477
BAKER CITY OR 97814

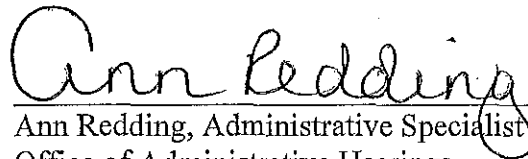
**BY FIRST CLASS MAIL AND CERTIFIED MAIL
BY CERTIFIED MAIL RECEIPT # 7004 2890 0001 8956 0139**

BRYAN SMITH
OREGON DEQ
OFFICE OF COMPLIANCE AND ENFORCEMENT
811 SW 6TH AVE
PORTLAND OR 97204

BY FIRST CLASS MAIL

DEBORAH NESBIT
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

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:) **NOTICE OF HEARING**
)
DICK FLEMING)
GLEN MARTIN FLEMING AND) **OAH Case No.: 118750 & 118751**
BARBARA CHAPMAN FLEMING) **Agency Case No.: WQ/OS-ER-04-071 &
WQ/OS-ER-04-072**

A hearing has been set in the above matter before the Office of Administrative Hearings.

Hearing Date: February 15, 2005 Hearing Time: 9:00 a.m.

**Location: Baker City Parks Office
1705 Main Street Suite 101
Baker City OR**

Your case has been assigned to **Administrative Law Judge Alison Greene Webster**, an employee of the Office of Administrative Hearings. The Office of Administrative Hearings is an impartial tribunal, and is independent of the agency proposing the action.

The agency will not be represented by an assistant attorney general

Unless otherwise notified, all correspondence, inquiries, exhibits and filings should be sent to:

ALJ Alison Greene Webster
Office of Administrative Hearings
4900 SW Griffith Drive, Suite 100
Beaverton OR 97005-4649
FAX: (503) 644-5790

OAR 137-003-0520 requires a copy of any correspondences, exhibits or other filings to be provided to all parties and the agency at the same time they are provided to the ALJ.

A request for 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.

If you are hearing impaired, need a language interpreter or require another type of accommodation to participate in or attend the hearing, immediately notify the Office of Administrative Hearings at (503) 945-5547 or TDD at 1-800-735-1232 to make the appropriate arrangements. 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.

You are required to notify the Office of Administrative Hearings at (503) 945-5547 immediately if you change your address or telephone number prior to a decision in this matter.

Notice served on all non-agency parties by: First Class Mail and Certified Mail
Certified Mail Receipt #7002 2410 0001 7410 4935 – Dick Fleming
#7002 2410 0001 7410 4447 – Glen & Barbara Fleming

Notice served on Agency by first class mail or e-mail.

MAILED this 5th day of January, 2005. Mailed by: Lucy Garcia

This Notice has been provided to the following:

DICK FLEMING
PO BOX 477
BAKER CITY OR 97814

GLEN MARTIN FLEMING
BARBARA CHAPMAN FLEMING
PO BOX 985
BAKER CITY OR 97814

BRYAN SMITH
DEPT OF ENVIRONMENTAL QUALITY
811 SW SIXTH AVE
PORTLAND OR 97204

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. Administrative law judge. The person presiding at the hearing is known as the administrative law judge. The administrative law judge is an employee of the Office of Administrative Hearings under contract with the Environmental Quality Commission. The administrative law judge 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 administrative law judge 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 administrative law judge 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 administrative law judge 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 administrative law judge 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 administrative law judge will have the opportunity to ask questions of all witnesses. DEQ or the administrative law judge 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 administrative law judge. DEQ or the administrative law judge 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 administrative law judge 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 administrative law judge 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 administrative law judge. 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 administrative law judge 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.*

John Richard Fleming
P.O. Box 477
Baker City, Oregon

August 11, A.D. 2004

Ms. Stephanie Hallock
alleged Director, "Department of Environmental Quality"
811 S.W. Sixth Avenue
Portland, OR 97204-1390

RE: Notice of Violation No. WQ/OS-ER-04-071

Dear Ms. Hallock,

I have received your Notice/Offer, with its judicial-appearing attachment and a 50-page enclosure. Such a presentment requires a good deal of time in which to study, analyze, and respond. I ask that you waive the usual 72-hour commercial time-limit on the response to your offer, and allow me ten days to consider your presentment, after you have provided me with certain necessary material facts. I shall consider that the waiver is approved by you, unless you advise me otherwise.

Several questions relating to your presumption of authority and jurisdiction immediately come to mind, and no response from me is possible until I have seen evidence of your lawful claim. I therefore agree to conditionally accept your presentment upon your validation of the following:

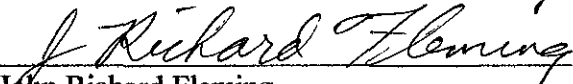
- (1) I have contacted the Oregon Secretary of State, Corporations Division, and requested a certificate validating the lawful existence of any known entity called "DEPARTMENT OF ENVIRONMENTAL QUALITY", duly registered to conduct commercial business "in this state". That office reports that no such entity exists. I shall have the certificate to show to you if you request it. Because no such entity exists, I require that you present evidence of your legal capacity and standing to make any claim against me.
- (2) A valid claim requires a sworn statement (when requested), made under penalty of perjury, as to my private liability to the statute claimed breached and the truth of the various allegations. Evidence is not properly before any court or administrative tribunal unless it is brought forward on the record by a competent third-party witness possessing first-hand knowledge, subject to cross-examination. Kindly present such evidence so I shall be able to understand the basis for the allegations and the credentials of the accuser prior to responding. As any judge well-knows, allegations of parties or counsel are NOT facts before the court.

- (3) Any administrative employee/agent/officer presenting a claim over \$600 must provide information to me on an IRS Form W-9, as set forth in 26 USC 6104. As there is no registered entity called "DEPARTMENT OF ENVIRONMENTAL QUALITY", the W-9 will identify the true identity of the party making the claim, and its tax ID Number. Kindly send me a properly completed W-9 prior to any further agreements. Also, I require a certified copy of your personal liability bond to protect you in the event of your violation of ministerial duties, making invalidated false claims, mail fraud, ultra-vires acts, etc.
- (4) Your assessment amount for alleged violations against me indicates a sum of "dollars", denominated as "\$". As you well know, a dollar is only a unit of measurement, as is a quart, yard, pound, etc. Please advise me what "units" you are requesting from me. It cannot be lawful money coin of the account of the United States, as that was removed from general circulation at the time of the 1933 bankruptcy. But, if you are demanding dollars denominated in Federal Reserve Notes (private foreign negotiable instruments of debt), then I require evidence of your foreign status as agent for a foreign principal (18 USC 219) as mandated in 22 USC 616.
- (5) Your NOTICE/ASSESSMENT so closely resembles a judicial complaint that I am not able to determine whether or not it is. Certainly it is crafted to simulate a judicial process, and its use implies a judicial act. I demand that you "SHOW CAUSE" why this presentment cannot be construed as a simulation of legal (judicial) process, as is clearly forbidden in the constitutional Separation of Powers mandate and in your ORS 162.355. I shall not be a party to a felony, and I demand evidence of your lawful intent.

My Creator and Lord admonishes me to separate from ungodly people, principles, and acts, and to live in truth and fair dealings with all. If you provide evidence of your true and honest intent and acts, I will be pleased to treat with you. It is not my intent to avoid any just penalty for any act I have knowingly committed, and I shall stand on my honor at all times. I see that your Administrative Procedures Act requires good faith and honor. I am seeking to exhaust my administrative remedies prior to judicial involvement. My intent is to validate factual matters claimed in your presentment, and I am entitled and empowered to do so. I shall make the appropriate claims of defense at the proper time at a later date, after I am first satisfied as to the issues I have here presented to you—a counter-claim to your offer—in the above 5 items.

Upon receipt of your response I shall determine the merits of your evidence as to your standing and lawful capacity, and I shall take steps to eliminate any claim to which I am lawfully liable. Please also be advised that I do not consent to any third-party involvement in this matter. I do not consent to any party making any legal determinations or exercising any power of attorney relating to myself or the ens legis entity "JOHN RICHARD FLEMING". Also take notice that I shall charge legal fees for research for my defense against malicious and fraudulent prosecution at the rate of 100 U.S. minted silver dollars per hour.

I thank you kindly for your timely response.

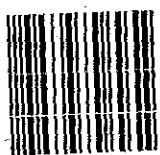

John Richard Fleming

Fleming
P.O. BOX 477
Baker City OR 97801

CERTIFIED MAIL



7003 1010 0002 8950 4404



9264

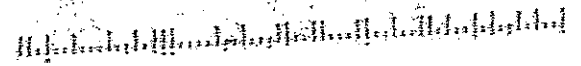
97204

U.S. POSTAGE
PAID
BAKER CITY, OR
97804
AUG 11, 2004
AMOUNT

\$4.42
00055447-07

Ms Stephanie Hallock
'DEQ'
811 SW 6th Avenue
Portland, OR 97204-1390

972041390





Oregon

Theodore R. Kulongoski, Governor

Attachment O

Department of Environmental Quality

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

August 4, 2004

CERTIFIED MAIL 7002 3150 0004 8588 4296

John Richard Fleming
PO Box 477
Baker City, OR 97814

Re: Notice of Violation and Assessment of Civil Penalty
No. WQ/OS-ER-04-071
Baker County

Dear Mr. Fleming:

On September 11, 2002, the Department of Environmental Quality (the Department) received a complaint that you had installed an on-site sewage disposal system at property located at 45491 Keating Cutoff Road in Baker County, Oregon (the Property). The complaint alleged that you installed the system without obtaining the required on-site sewage disposal permit.

On April 22, 2003, Barbara Fleming, one of the owners of the Property, told Diane Naglee of the Department that you had installed the system, and she confirmed that there was no permit obtained for the system.

On August 11, 2003, Ms. Naglee inspected the system and observed construction deficiencies such as lack of fall between the septic tank and the drainfield, unlevel piping in the trenches, and inadequate gravel in the trenches of the system. These deficiencies may result in sewage backing up into the dwelling on the Property, or the discharge of sewage to the ground surface of the Property. Ms. Naglee drafted a Correction Notice and gave a copy of the Correction Notice to Jo Fleming, the daughter of the owners of the Property, but neither you nor the owners of the Property have made the required corrections to the system.

On March 3, 2004, Diane Naglee sent you a Notice of Noncompliance (NON) informing you that the installation of an on-site sewage disposal system without a permit is a Class I violation of Oregon environmental law. The NON also informed you that at the time you installed the on-site sewage disposal system at the Property you were not licensed by the Department to provide sewage disposal services. Performing sewage disposal services without a license is a Class I violation of Oregon environmental law. The NON informed you that you were being referred to the Department's Office of Compliance and Enforcement for formal enforcement action.

Based on your previous employment as Baker City's Public Works Department Director, you should have been aware of the Department's requirements that an on-site sewage disposal permit must be obtained before a system can be installed and that persons performing sewage disposal

services must be licensed and bonded in order to ensure the protection of the public's health and the environment.

The enclosed Notice and Order assesses a civil penalty of \$4,200 for the construction of an on-site sewage disposal system without first obtaining on-site sewage disposal system construction permit. The penalty is determined by 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 No. 1.

The steps you 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 you wish to have a hearing on this matter, you must specifically request a hearing in writing. Attached to the hearing request must be your Answer in which you admit or deny each of the facts alleged in Section II of the Notice. In your Answer, you should also allege all affirmative claims or defenses and provide reasons why they apply in this matter. You will not be allowed to raise these issues at a later time, unless you can later show good cause for your failure. The applicable rules are enclosed for your review. You need to follow the rules to ensure that you do not lose your opportunity to dispute the Department's findings (see OAR 340-011-0107 and OAR 137-003-0528). If the Department does not receive your request for a hearing and Answer within 20 calendar days from the date you received the Notice, a Default Order will be entered against you and the civil penalty will become due at that time. You can fax your request for hearing and Answer to the Department at (503) 229-6762.

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

I look forward to your cooperation in complying with Oregon environmental law in the future. However, if any additional violations occur, you may be assessed additional civil penalties. Copies of referenced rules are enclosed.

If you have 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: Diane Naglee, Eastern Region, Baker City Office, DEQ

Joni Hammond, Eastern Region, Pendleton Office, DEQ
Baker County Planning Department, 1995 Third Street, Baker City, OR 97814
Baker County Building Department
Oregon Department of Justice
Environmental Quality Commission
Baker County District Attorney

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

3 IN THE MATTER OF:)
4 JOHN RICHARD FLEMING,)
5)
6 Respondent.) NOTICE OF VIOLATION
AND ASSESSMENT OF
CIVIL PENALTY
No. WQ/OS-ER-04-071
BAKER COUNTY

7 I. AUTHORITY

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

12 II. VIOLATIONS

13 1. On or about September 11, 2002, Respondent constructed an on-site sewage
14 disposal system without obtaining an on-site sewage disposal system construction permit, in
15 violation of Oregon Revised Statute 454.655(1) and Oregon Administration Rule (OAR) 340-
16 071-0160(1). Specifically, Respondent constructed an on-site sewage disposal system on
17 property located at 45491 Keating Cutoff Road in Baker County, Oregon (the Property) without
18 first obtaining a permit. According to OAR 340-012-0060(1)(c), this is a Class I violation.

19 2. On or about September 11, 2002, Respondent performed sewage disposal services
20 without first obtaining a valid sewage disposal service provider's license from the Department, in
21 violation of ORS 454.695(1) and OAR 340-071-0600(1). Specifically, Respondent installed an
22 on-site sewage disposal system at the Property without first obtaining a sewage disposal services
23 provider's license with an installer endorsement. This is a Class I violation, pursuant to OAR
24 340-012-0060(1)(b).

25 ////

26 ////

27 ////

1 III. ASSESSMENT OF CIVIL PENALTIES

2 The Director imposes a civil penalty of \$4,200 for Violation 1 cited in Section II. The
3 findings and determination of Respondent's civil penalty pursuant to OAR 340-012-0045 are
4 attached and 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 \$4,200 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
25 8-4-04
26 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: The construction of an on-site sewage disposal system without obtaining an on-site sewage disposal system permit, in violation of Oregon Revised Statute (ORS) 454.655(1) and Oregon Administration Rule (OAR) 340-071-0160(1).

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

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0045(1)(a)(B), as there is no selected magnitude for this violation and there is insufficient information to make a finding of major or minor magnitude.

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

"BP" is the base penalty, which is \$3,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0042(1)(a)(A) and applicable pursuant to OAR 340-012-0042(1)(b)(B).

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

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

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

"R" is the cause of the violation and receives a value of 2, according 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 constructing an on-site sewage disposal system without first obtaining the required permit. Respondent was Baker City's Public Works Department's Director at the time of the installation, and as a registered engineer knew or should have known that an on-site sewage disposal permit must be obtained before a system can be installed.

"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 evidence upon which to base a finding that Respondent gained economically from the violation.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 2 + 2 + 0)] + \$0 \\ &= \$3,000 + (\$300 \times 4) + \$0 \\ &= \$3,000 + \$1,200 + \$0 \\ &= \$4,200 \end{aligned}$$



State of Oregon
Department of
Environmental
Quality

Attachment P

File: ~~8-42-00~~¹⁷-3400
45491 Keating
Cutoff Rd

Phone Memo

10/18/2000

COPY

Department of Environmental Quality
Eastern Region - Baker City Office

Project: Joe Fleming
Date: 8/19/02 Time: 8:00
Call To/From: Debbie (ret'd hrs)
Title & Company: Baker City Building Dept.
Address: _____ Phone: 523-0535
Subject: _____

Summary of Call: Debbie stated that owners of this property
received planning approval for an Ag Building. They
allegedly have turned the building into a residence.
Evidently a residence is not allowed on this property.
Baker City building dept. issued plumbing permits about a
year ago for Bathroom, water, + sewer, no DEQ signoff.
Also they issued electrical permit. No other dwelling
on property. An inspection was done for mold + plumbing
rough-in + approved by Bldg. inspector. Bldg. Dept.
did site visit in July + took photos.

11:15 I left message on Baker City answering machine,
I found out record that a site eval. was done on
Nov. 1, 2000 + approved - don't see that a permit was
issued, but may not be in database.

By: [Signature] cc: _____

ATTACHMENT D

Ex. A1



State of Oregon
Department of
Environmental
Quality

File: 8-42-00-3400

Phone Memo

Department of Environmental Quality
Eastern Region - Baker City Office

Project: _____
Date: 9/11/02 Time: am
Call To / From: Debbie
Title & Company: B.C. Building Dept.
Address: _____ Phone: _____
Subject: Fleming Complaint

Summary of Call: Debbie stated that her office has received word that Fleming has installed a septic system w/in the last week - no permit? Debbie requested that I check into it.

2:45 Debbie called & said that the Building Codes State Compliance Officer is going to visit the site next Wednesday, Sept. 18th (Cameron Lane)

By: [Signature] cc: _____

ATTACHMENT E
Ex. A2

State of Oregon
Department of Environmental Quality
700 SE Emigrant, Suite 330
Pendleton, OR 97801
(541) 276-4063

Complaint Number: ERP-2002-0200
Year Number

Received By: Mary Lou Campbell

POLLUTION COMPLAINT

COMPLAINT INFORMATION

Date Received 9/11/02 Time Received 3pm When Observed Currently
Pollution Source Jo Fleming
Address (Number) 45491 (Quadrant) _____ (Street Name) Keating Cutoff (Type) Rd
City Name Baker City Zip Code 97814 County Baker
Pollution Location Same

Description Installing OSSD w/out permits also built home w/out permits

continued

REFERRAL

Referred to Diane Naglee
Responsible Program AQ/AB AQ/AC AQ/D AQ/FB AQ/MISC AQ/OB AQ/V AQ/VR NA
WMC/E WMC/HW WMC/RC WMC/SP WMC/SW WMC/T
WQ/D WQ/I WQ/M WQ/MISC WQ/O WQ/OI WQ/SW

DEQ Program Contact _____

COMPLAINANT

Name Lane, Camron (Please call w/ follow up) Confidential?
Address Bldg Codes New Anonymous?
City Salem State OR Zip Code _____
Home Phone _____ Work Phone 503-373-1239 Ext _____
cell 503-508-5673

POTENTIAL RESPONSIBLE PARTY

Same as Source? Confirmed as Responsible Party?

Name _____ Phone _____ Ext _____
Address _____
City _____ State _____ Zip Code _____

COMPLAINT ACTION

Follow-up Action SITE VISIT 9/12/02: Unable to access SITE: Observed what appeared to be mounds of gravel back of house consistent with SITE of drain rock
NON issued 4/21/03 see attached

Complainant Contacted? Y N Complainant Contact Date 9/19/02
Site Visit? Y N Site Visit Date 9/12/02 Site Inspector D Naglee, RS
Resolution Date _____ Staff Hours _____
NON Issue Date _____ NON Number _____
Enf Referral Date _____ Permit No. _____ Facility/Site-ID _____

ATTACHMENT F
EX A3



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

Eastern Region

700 SE Emigrant

Suite 330

Pendleton, OR 97801

(541) 276-4063 Voice/TTY

FAX (541) 278-0168

September 26, 2002

Glenn & Barbara Fleming
PO Box 985
Baker City, OR 97814

COPY

Re: DEQ Requirements
T09S -R42 -S19: TL-1000
Baker County 17 3400

Dear Mr. & Mrs. Fleming:

Recently, this Department received information indicating you have further developed the above described property. Specifically, we understand that a house has been partially built and a septic system possibly installed without permits.

If you plan to connect to an existing septic system or construct a new one, DEQ approval is needed prior to doing so. Our records indicate there has been no application received or permit issued for sewage disposal at the above property. The Department requests you respond to this letter by October 03, 2002

Please call DEQ at (541) 276-4063 to discuss the appropriate application procedure. The Pendleton toll free number is 1-800-304-3513.

Sincerely,

Robert "Bob" Marshall Jr.
Administrative Specialist
Eastern Region Pendleton

cc: Baker County Building Department, PO Box 650, Baker City, OR 97814
Oregon State Building Codes Department, 700 SE Emigrant, Pendleton, OR 97801



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

Eastern Region
700 SE Emigrant
Suite 330
Pendleton, OR 97801
(541) 276-4063 Voice/TTY
FAX (541) 278-0168

September 26, 2002

RECEIVED
OCT 01 2002

State of Oregon
Dept. of Environmental Quality
Eastern Region - Pendleton

Glenn & Barbara Fleming
PO Box 985
Baker City, OR 97814

Re: DEQ Requirements
6 T09S -R42 -S19: TL-1000
Baker County 17 3400

Dear Mr. & Mrs. Fleming:

Recently, this Department received information indicating you have further developed the above described property. Specifically, we understand that a house has been partially built and a septic system possibly installed without permits.

If you plan to connect to an existing septic system or construct a new one, DEQ approval is needed prior to doing so. Our records indicate there has been no application received or permit issued for sewage disposal at the above property. The Department requests you respond to this letter by October 03, 2002 (5 days)

Please call DEQ at (541) 276-4063 to discuss the appropriate application procedure. The Pendleton toll free number is 1-800-304-3513.

Sincerely,

Robert "Bob" Marshall Jr.
Administrative Specialist
Eastern Region Pendleton

COPY

cc: Baker County Building Department, PO Box 650, Baker City, OR 97814
Oregon State Building Codes Department, 700 SE Emigrant, Pendleton, OR 97801

This building is an agricultural shop-office, all necessary permits were obtained from the County Planning office and building department.

Barbara Fleming
ATTACHMENT H
A5

TANK at ground surface - no riser required

Framing

④ Please verify that there is at LEAST 4 feet of SOLID pipe out of distribution Box Before start of perf pipe

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
ON-SITE SEWAGE SYSTEM INSTALLATION

(fabric is over pipe, not enough uncovered to verify)

CORRECTION NOTICE

An inspection of this On-Site Sewage System has identified the following deficiencies:

OAR 340-071-0220(11)

① There is not a minimum of 6 inches of FALL for effluent line Between TANK AND DISTRIBUTION Box (is approx. 1 1/2 inches) Raise tank or lower lines

② Disposal (perforated) pipe is not LEVEL to within + or - one inch (approx. 3 1/4" out of level) in areas observed
OAR 340-071-0220(10)b

③ There is not gravel around perforated piping, and not 2 inches of gravel over top of pipe, as required
OAR 340-071-0220(7)e

• 4ft. 10" Between tank and distribution Box will BE OK

• Gravel size observed in uncovered spots OK

• FILTER FABRIC OK - it will be placed over top of gravel when placed over piping

COPY

Under the provisions of the OREGON ADMINISTRATIVE RULES, all deficiencies listed above must be corrected within 30 days, and a CERTIFICATE OF SATISFACTORY COMPLETION must be issued prior to use of this system. When corrections have been completed, call for inspection.

PERMIT NO. 01-66998 83 47 17 3400
Township Range Section Tax Lot / Acct. No.

INSPECTION: PLEASE submit new as-BUILT PLAN (w/ elevations) when ready for reinspection

TIME 3:00

DATE Aug. 11, 2003

CONTACT: DEQ - Pendleton
276-4063

BY [Signature]
(Signature) DIANE WAGLEE

DO NOT REMOVE THIS NOTICE FROM SITE

ATTACHMENT LL
E1 A6



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality
Eastern Region
700 SE Emigrant
Suite 330

April 21, 2003

Glenn & Barbara Fleming
P.O. Box 985
Baker City, OR 97814

COPY Pendleton, OR 97801
(541) 276-4063 Voice/TTY
FAX (541) 278-0168

RE: ERP-03-024 17 3400
T09S - R42E -Sec. 19: Tax Lot 1000
45491 Keating Cutoff Road
Baker County

NOTICE OF NON COMPLIANCE ERP-03-024

Dear Mr. and Mrs. Fleming:

Our Department has recently received documentation confirming that plumbing has been installed in a structure located at the above referenced property. As of this date, our Department has no record that an approved On-Site Sewage Disposal and Treatment (OSSTD) system has been installed on the property to receive sewage from the structure. This lack of an approved OSSTD system is a violation of Oregon Administrative Rule (OAR) 340-071-0120(2)b; the preceding referenced rule is enclosed.

In accordance with Oregon Administrative Rule (OAR) 340-071-0120(2)b, each and every owner of real property is jointly and severally responsible for connecting all plumbing fixtures on that property, from which sewage is or may be discharged, to a sewerage facility or on-site sewage disposal system approved by the Oregon Department of Environmental Quality (the Department). OAR 340-071-0100(133) defines sewage as water-carried human and animal wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, or other places.

COMPLIANCE SCHEDULE

To resolve this violation you must dispose of your sewage in a manner approved by the Oregon Department of Environmental Quality. The following action is required to eliminate the violation:

1. Apply for and obtain a *Construction/Installation Permit* to install an approved on-site sewage treatment and disposal system. Upon DEQ approval of your application, a construction permit will be issued. If you wish to install a system in an area other than the area approved by DEQ (via Site Evaluation) on October 18, 2000, you must apply for and obtain a new site evaluation approval prior to application for a Construction/Installation Permit. You must submit a complete, approvable application for a Construction/Installation Permit or Site Evaluation by May 5, 2003.

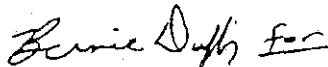
COPY

2. Construct the OSSTD system in accordance with permit requirements. Prior to system backfill, contact our Department for a pre-cover inspection of the construction. Note that construction of the system shall be performed by the property owner or an Oregon DEQ licensed sewage disposal service (OAR 340-071-0160)7.
3. Upon receipt of a Certificate of Satisfactory Completion (CSC) by our Department for construction of the OSSTD system, connect all structural plumbing to the system. *You must obtain a CSC and have all plumbing connected to a DEQ approved OSSTD system by June 1, 2003.*

This is a Class II violation and is considered to be a significant violation of Oregon environmental law. Should you fail to correct the violation in accordance with the schedule set forth above, we will refer your file to the Department's Enforcement Section with a recommendation to proceed with a formal enforcement action which may result in a civil penalty assessment. Civil penalties can be assessed for each day of violation.

Your cooperation in resolving this matter is appreciated. If you have any questions concerning this matter, please call the DEQ Pendleton office at 541-276-4063. You may also contact me directly at 541-523-9097.

Sincerely,



Diane E. Naglee, R.S.
Natural Resource Specialist
Water Quality Program - Eastern Region

cc: Joni Hammond - DEQ Eastern Region Administrator
Anne Price - DEQ Enforcement Section
Baker County Building Department
Baker County Planning Department

enc: Construction/Installation Permit Application Guide
OAR 340-0120(2)
OAR 340-71-0133
OAR 340-71-0160(7)
Fee Schedule

ATTACHMENT R²

RECEIVED

OCT 08 2003

State of Oregon
Dept. of Environmental Quality
Eastern Region - Portland

Scanned to DEN 10/03/03

Receipt 108 323

Jo Fleming

SEPT 27-03

I KNOW THAT I AM LATE WITH THIS CORRECTION THING BUT I AM STILL BUSY GETTING READY FOR WINTER — BUT AFTER CAREFUL READING OF THE 105 PAGES ON OREGON STATE SEPTIC SYSTEMS - I WOULD SAY LEAVE WELL ENOUGH ALONE. THIS IS NOT THE TIME OF YEAR TO EXPOSE EVERYTHING TO FREEZING TEMPS ALSO.

① FROM THE SEPTIC TANK TO THE CROSS ARMS FROM THE DISTRIBUTION BOX ~~WE~~ REQUIRE MIN OF 8" IS TO BE THE DROP, - BEING THAT THE LINE LEAVE THE BOX AT A SIX' INCH DROP SHOULD MAKE THE FALL ADEQUATE.

② I RECOGNIZE THAT THE PIPE IS NOT WITHIN THE REQUIRED ONE INCH - ALTHOUGH IF ONE HOLE IS MORE THAN $\frac{1}{8}$ " LOWER THAN THE NEXT LOWEST HOLE - ALL OF THE WATER WILL DRAIN OUT OF THE LOW HOLE AT THE VERY LOW FLOW RATE THAT COME OUT OF THE SEPTIC TANK — THE WATER WILL STILL SPREAD OUT ON THE BOTTOM OF THE TRENCH AND INFILTRATE AT A RATE WELL IN EXCESS OF THE PRODUCTION OF WASTEWATER IN THIS SHOP BUILDING

③ WE BEDDED THE PIPE DOWN IN THE GRAVEL BUT NOT COVERING THE PIPE - BECAUSE IN THIS SOIL WATER TRAVELS DOWN NOT UP. OREGON SEEMS TO BE CONCERNED WITH THE VOLUME OF THE DRAIN TRENCH RATHER THAN THE ABILITY OF THE WATER TO RISE 2" IN THE TRENCH OVER THE TOP OF THE PIPE OUR SEEPAGE TRENCHES ARE 32"

85-42-17-3400 EX. A8
ATTACHMENT 1
NN

~~WIDE~~ AND OVER 12" DEEP OF (DRAIN MEDIA)
SO THE TRENCH VOLUME IS ADEQUATE,

THE BOOK SAYS 3' MINIMUM FOR LENGTH OF PIPE
BETWEEN SEPTIC TANK AND DROP BOX,

I HAD A SEPTIC SYSTEM INSTALLED THAT IS 3X
OVER KILL FOR WHAT WILL EVER BE NEEDED FOR
THIS BUILDING. I WOULD HAVE TO RUN MY WELL
DRY BEFORE I WOULD FILL THE LINES, TRENCHES
AND TANK IN ORDER TO BACK IT UP INTO THE SHOP.

④ THE ONLY THING I CANNOT VERIFY IS THAT
THERE IS 4' OF SOLID PIPE ON THE CENTER
LINE OUT OF THE DISTRIBUTION BOX.

J Fleming

PERMIT # 01-66998

ATTACHMENT UN²

F



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

Eastern Region

700 SE Emigrant

Suite 330

Pendleton, OR 97801

(541) 276-4063 Voice/TTY

FAX (541) 278-0168

March 3, 2004

Glenn and Barbara Fleming
P.O. Box 985
Baker City, OR 97814

RE: ERP-04-028
T08S - R42E - Sec. 17: Tax Lot 3400
45491 Keating Cutoff Road
Baker County

NOTICE OF NON COMPLIANCE ERP-04-028

Dear Mr. and Mrs. Fleming:

On April 21, 2003 our Department sent you a Notice of Noncompliance (NON) for failing to connect plumbing fixtures from the structure located at the above referenced property to an approved Department of Environmental Quality (DEQ) on-site sewage disposal (OSSD) system. A separate letter also sent to you on April 21, 2003 described additional requirements for obtaining approval to use an OSSD system if an OSSD system was installed without a permit. Information submitted by you and Jo Fleming confirmed that an OSSD system had been installed without a permit. A construction permit application was eventually submitted to our Department, and permit #01-66998 was issued to you on June 11, 2003. The permit application was submitted by Jo Fleming.

On August 11, 2003 I inspected uncovered portions of the installed OSSD system to determine if the system was installed according to Construction Permit #01-66998 and Oregon Administrative Rules. The system was found to have construction deficiencies and a Correction Notice was issued and given to Jo Fleming at the site. As of this date, our Department has not received notification from you that the corrections have been completed. On October 8, 2003 Jo Fleming submitted a letter to our Department stating that the required corrections had not been completed (copy enclosed). Therefore, as of this date, a Certificate of Satisfactory Completion (CSC) has not been issued for installation of the OSSD system.

The April 21, 2003 Notice of Noncompliance (NON) included a compliance schedule that required the OSSD system to have a Certificate of Satisfactory Completion for system construction prior to placing the system into service. The NON further stated that if the compliance schedule was not followed, our Department would refer your file to the Department's Enforcement Section with a recommendation to proceed with formal enforcement action.

VIOLATION I

Installing or causing to install an on-site sewage disposal system without appropriate permits is a violation of Oregon Administrative Rule (OAR) 340-071-0160(1), pursuant to Oregon Revised Statute (ORS) 454.655, and a Class I violation of Oregon's environmental rules.

VIOLATION II

Failing to connect all plumbing fixtures to, or failing to discharge waste water or sewage into, a Department approved on-site system is a violation of OAR 340-071-0120(2) and a Class II violation of Oregon's environmental rules.

ATTACHMENT 22
EX. A9

Glenn and Barbara Fleming
NON ERP-04-028
Page 2 of 2

VIOLATION III

Installing or causing to be installed an on-site sewage disposal system, or any part thereof, or the repairing of any part thereof, which fails to meet the requirements for satisfactory completion within thirty (30) days after written notification or posting of a Correction Notice at the site is a violation of OAR 340-071-0175(5), pursuant to ORS 454.605 to 454.745. This is a Class II violation of Oregon's environmental rules.

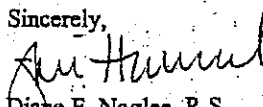
VIOLATION IV

Operating or using a newly constructed, altered or repaired on-site sewage disposal system, or part thereof, without first obtaining a Certificate of Satisfactory Completion for the installation is a violation of OAR 340-071-0175(6) and a Class II violation of Oregon's environmental rules.

The above violations contain a Class I violation and are considered to be serious violations of Oregon environmental law. Therefore, we are referring these violations to the Department's Enforcement Section with a recommendation to initiate a formal enforcement action. A formal enforcement action may include a civil penalty assessment for each day of violation.

If you have questions concerning this matter, please contact the DEQ Pendleton office at (541)276-4063. You may also contact me directly at (541) 523-9097.

Sincerely,


Diane E. Naglee, R.S.
Natural Resource Specialist
Water Quality Program - Eastern Region

Enc. OAR 340-071-0120(2)
OAR 340-071-016 (1)
OAR 340-071-0175
ORS 454.605-454.745
ORS 454.655
Copy of NON ERP-03-024
Copy of 04/21/03 letter
Copy of August 11, 2003 Correction Notice
Copy of October 8, 2003 letter from Jo Fleming

cc: Joni Hammond, ODEQ Eastern Region Administrator
Anne Price, ODEQ Enforcement Section
Bryan Smith, ODEQ Enforcement Section
Diane Naglee, ODEQ Baker City
Baker County Planning Department
City of Baker City Building Department

ATTACHMENT 22²



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

Eastern Region

700 SE Emigrant

Suite 330

Pendleton, OR 97801

(541) 276-4063 Voice/TTY

FAX (541) 278-0168

March 3, 2004

John Richard Fleming
~~955 Park~~ POB 477
Baker City, OR 97814

RE: T08S - R42E - Sec. 17: Tax Lot 3400
45491 Keating Cutoff Road
Baker County

NOTICE OF NON COMPLIANCE ERP-04-030

Dear Mr. Fleming:

On September 11, 2002 our Department received information that you installed an on-site sewage disposal (OSSD) system at the above referenced property without an Oregon Department of Environmental Quality (DEQ) Construction Installation permit. Additional information obtained by our Department also confirmed that you installed the system prior to permit issuance. A construction permit was eventually issued on June 11, 2003 to Barbara and Glenn Fleming, who are the property owners of record.

A review of Department records further indicates that you did not possess an Oregon DEQ license to perform sewage disposal services at the time the OSSD system was installed. Installation of an OSSD system must be performed by either a property owner or a licensed DEQ installer.

VIOLATION I

The installation of an on-site sewage disposal system without appropriate permits is a violation of Oregon Administrative Rule (OAR) 340-071-0160(1), pursuant to Oregon Revised Statute (ORS) 454.655. The preceding referenced rule is enclosed for your use.

This is a Class I violation and is considered to be a serious violation of Oregon environmental law. Therefore, we are referring this violation to the Department's Enforcement Section with a recommendation to initiate a formal enforcement action. A formal enforcement action may include a civil penalty assessment for each day of violation.

VIOLATION II

Performing sewage disposal services without first obtaining a business license from the Department is a violation of OAR 340-0600(1), pursuant to ORS 454.695. The preceding referenced rule is enclosed.

COMPLIANCE SCHEDULE FOR VIOLATION II

To resolve this violation, you must apply to the Department for a sewage disposal service license by March 19, 2004 or submit, in writing, a statement that you do not intend to install additional OSSD systems, and therefore will not pursue licensing.

This is a class I violation and is considered to be a significant violation of Oregon environmental law. Should you fail to correct the violation in accordance with the schedule set forth above, we will refer your file to the Department's Enforcement Section with a recommendation to proceed with a formal enforcement action which may result in a civil penalty assessment. Civil penalties can be assessed for each day of violation.

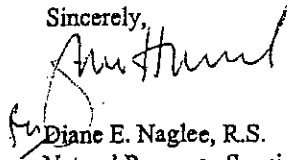
If you have questions concerning this matter, please contact the DEQ Pendleton office at (541)276-4063. You may also contact me directly at (541) 523-9097.

ATTACHMENT PP

EX. A 410

John Richard Fleming
NON-ERP 04-030
Page 2 of 2

Sincerely,



Diane E. Naglee, R.S.
Natural Resource Specialist
Water Quality Program - Eastern Region

Enc. OAR 340-071-0160(1)
OAR 340-071-0600(1)
ORS 454.655
ORS 454.695
Sewage Disposal Service License Application

cc: Joni Hammond, ODEQ Eastern Region Administrator
Anne Price, ODEQ Enforcement Section
Bryan Smith, ODEQ Enforcement Section
Diane Naglee, ODEQ Baker City

ATTACHMENT PP²

P.O. Box 477
Baker City, OR 97814
March 19, 2004

Oregon DEQ
700 SE Immigrant Suite 330
Pendleton, OR 97801

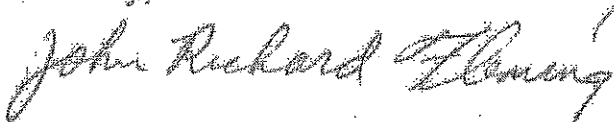
Notice of Non-compliance ERP-04-030

Dear Sir:

Regarding this drainfield installation, I took two days of vacation time to assist on this project. This was a family operation on a family owned property. I received no compensation for my work. We had been informed by the building department that no permit was required for a shop building. I did run the excavation and the pipe layout and installation.

I have no intention to install any additional sewage disposal systems until I build my own house. That will not require a license, just like the one referenced above did not require a license because it was done by the family of ownership.

Sincerely,



John Richard Fleming

RECEIVED
MAR 23 2004

State of Oregon
Dept. of Environmental Quality
Eastern Region - Pendleton

EX A11

Ⓜ



City of Baker City, Oregon

P.O. Box 650 • Baker City, OR 97814-0650

541-523-6541 Voice/TDD • 541-524-2049 FAX

"The Northwest's Premier
Rural Living Experience"

DATE: October 1, 2004

NAME/ADDRESS: Diane Naglee, R.S.
DEQ Eastern Region
1705 Main Street, Suite 100
Baker City, OR 97814

SUBJECT: Jo Fleming

Dear Ms. Naglee,

In a telephone conversation that I had with you today, you asked me to respond to a comment made by Jo Fleming. Jo Fleming's statement to you was that I had told her (Jo Fleming) that she did not need to contact DEQ regarding her project.

Quite frankly, I have no recollection of this conversation. Our office policy is to inform our customers that they need to make contact not only with DEQ but Baker County Planning Department (if their project is outside of a municipality) for approvals regarding their project; if they have not already done so by the time they come to our office.

If you have any other questions, please call me.

Sincerely,

Debra DeShaw, Inspection Clerk
Building Department
City of Baker City, Oregon
Voice: (541) 524-2054
Fax: (541) 524-2065

C: File

Ex. A12



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

Eastern Region

1705 Main Street

Suite 100

Baker City, OR 97814

(541) 523-7998 Voice/TTY

FAX (541) 523-9198

November 9, 2000

Glen & Barbara Fleming
PO Box 985 477
Baker City OR 97814

Re: Site Evaluation Report
T8S-R42-S17: TL 3400
Baker County

Dear Mr. & Mrs. Fleming:

On November 1, 2000, an evaluation of the above mentioned property was made to determine if an on-site sewage disposal system (for a single family dwelling) could be located on the parcel and be in compliance with the State of Oregon On-Site Sewage Disposal Rules. Note: **This is NOT a permit to construct an OSSD system. To apply for a permit, please submit the enclosed permit application with the accompanying attachments. DEQ cannot sign off on any Building Codes forms until a DEQ permit is issued.**

The area indicated on the enclosed plot plan is approved for a **Standard** system with a maximum flow of 450 gallons per day, **Equal** distribution and disposal field size of **225** linear feet.

Requirements for a 450 gallon design flow are as follows:

1. A minimum of 225 linear feet of disposal trenches;
2. Maximum trench depth 36 inches; minimum depth 18 inches;
3. A 1000 gallon septic tank with maintenance riser (minimum 20 inch diameter); and,
4. An equally-sized drainfield replacement area.
5. Filter fabric is required over drain media if gravel trenches are utilized.
6. A minimum distance of 50 feet is required between drainfields and escarpment.

Please refer to the enclosed field worksheet for more detailed information.

Fleming - Site Evaluation Report

November 9, 2000

Page 2

A Construction Permit is required to install the proposed sewage disposal system only within the portion of the parcel marked as 'acceptable area'. The application should include a detailed

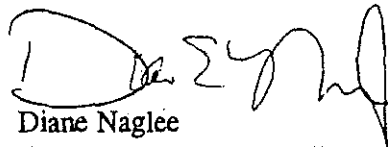
plan of the proposed system showing that all criteria for system construction and required setbacks are met. The plan must identify ground and pipe elevations throughout for both the initial and replacement systems, all materials to be used, and cross section detail of the disposal area or trenches.

Sites for both initial and replacement disposal areas must be kept free of development. Please review the attached field worksheet and plot plan. A construction permit guide is enclosed for your use in plan preparation. We recommend a DEQ-licensed and bonded sewage disposal business or consultant familiar with this type of work be retained to expedite the permitting process.

This approval is given on the basis that the lot or parcel described above will not be further partitioned or subdivided and conditions on subject or adjacent properties have not been altered in any manner that would prohibit issuance of permit in accordance with ORS 454.605 through 454.755 and Oregon Administrative Rules (OAR) of the Environmental Quality Commission.

If you have any questions regarding this matter, please call this office. The Eastern Region-Baker City office number is (541) 523-7998.

Sincerely,



Diane Naglee
Natural Resource Specialist
Eastern Region

DEN:raq

enc: Construction Permit Application/Guide
Field Worksheet w/plan
Fee Schedule

cc: Baker County Planning Department
Jo Fleming, 15660 Keno Worden Road, Klamath Falls, OR 97603

ATTACHMENT C²

State of Oregon

Department of Environmental Quality

Memorandum

Date: June 23, 2004
To: File
From: Susan M. Greco, Environmental Law Specialist, Office of Compliance and Enforcement
Subject: Ben calculation for Glenn Martin Fleming and Barbara Chapman

General Purpose and Authority

The economic benefit portion of the civil penalty formula is simply the monetary benefit that an entity gained by not complying with the law. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance.

Oregon Revised Statute 468.130(2)(c,h) directs the Environmental Quality Commission to consider economic conditions of the entity in assessing a penalty as well as other factors that Commission makes relevant by rule. Accordingly, the Commission specified in Oregon Administrative Rule (OAR) 340-012-0045(1)(c)(F) that the penalty will contain an "approximated dollar sum of the economic benefit." That rule also specifies that, "[i]n determining the economic benefit component of a civil penalty, the Department may use the U.S. Environmental Protection Agency's BEN computer model . . ." and must use it on request of a respondent.

Theory of Economic Benefit

Compliance with environmental regulations may require an entity to expend financial resources. These expenditures support the public goal of better environmental quality, but often do not yield direct financial return to the entity. "Economic benefit" represents the financial gain that a violating entity accrues by delaying and/or avoiding such expenditures. Funds not spent on environmental compliance are available for other profit-making activities or, alternatively, the entity avoids the costs associated with obtaining additional funds for environmental compliance (opportunity cost). Economic benefit is the amount by which an entity is financially better off from not having complied with environmental requirements in a timely manner.

Economic benefit is "no fault" in nature. An entity need not have deliberately chosen to delay compliance (for financial or any other reasons), or in fact even have been aware of its noncompliance, for it to have accrued the economic benefit of noncompliance.

An appropriate economic benefit calculation represents the amount of money that would make the entity indifferent between compliance and noncompliance. If DEQ does not recover, through a civil penalty, at least this economic benefit, then the entity will retain a gain.

Ex. A14

Because of the precedent of this retained gain, other regulated companies may see an economic advantage in similar noncompliance, and the penalty will fail to deter potential violators. Economic benefit is designed to be neither punitive nor tort damage, but instead is the minimum amount by which the entity must be penalized so as to return it to the position it would have been in had it complied on time.

Basis of the Costs Considered

Mr. Fleming and Ms. Chapman should have conducted repairs to the on-site sewage disposal system by adding more gravel to the system by September 11, 2002. The gravel would cost approximately \$150. By avoiding this cost, Mr. Fleming and Ms. Chapman benefited by \$263.

Applicability of Standard Rates Presumed by Rule

The BEN model relies on income tax rates, inflation rates, and discount rates. The model allows the operator to input particular rates, but in the absence of operator input, the BEN model uses standard values based on the entity's corporate status, whether it acted for profit, and the state where the violations occurred. It calculates inflation rates from the Plant Cost Index (PCI) published by the magazine *Chemical Engineering* and from the Consumer Price Index. Alternative inflation indices include:

Abbreviation and Full Name	Description	Typical Applications
BCI Building Cost Index	building costs; based on 1.128 tons Portland cement, 1,088 bd. ft. 2x4 lumber, 68.38 hrs. skilled labor	general construction costs, especially structures
BEN current BEN model's constant inflation rate	average of PCI's last 10 years; i.e., a constant 1.8% increase each year	replication of results from current BEN model version
CCI Construction Cost Index	construction costs; same as BCI, except 200 hrs. common labor	general construction projects, especially where labor costs are a high proportion of total costs
CPI Consumer Price Index	representative consumer goods	compliance somehow involves consumer goods
ECIM Employment Cost Index: Manufacturing	employment costs for the manufacturing industry	one-time nondepreciable expenditures or annual costs that comprise mainly labor
ECIW Employment Cost Index: White Collar	employment costs for white collar labor	same as ECIM, except professional labor (e.g., permits)
PCI Plant Cost Index	plant equipment costs	standard value

Pursuant to OAR 340-012-0045(1)(c)(F)(iii), the "model's standard values for income tax rates, inflation rate and discount rate shall be presumed to apply to all Respondents unless a specific Respondent can demonstrate that the standard value does not reflect the Respondent's actual circumstance."

Description of the Attached Run

BEN calculates the economic benefits gained from delaying and avoiding required environmental expenditures. Such expenditures can include: (1) capital investments (*e.g.*, larger pollution control or monitoring equipment, costs of design and installation), (2) one-time nondepreciable expenditures (*e.g.*, permit fees, clean-up costs, setting up a reporting system, acquiring land needed for a capital improvement), (3) annually recurring costs (*e.g.*, routine operating and maintenance costs, utilities). Each of these expenditures can be either delayed or avoided. BEN's baseline assumption is that capital investments and one-time nondepreciable expenditures are merely delayed over the period of noncompliance, whereas annual costs are avoided entirely over this period.

The calculation incorporates the economic concept of the "time value of money." Stated simply, a dollar today is worth more than a dollar tomorrow, because you can invest today's dollar to start earning a return immediately. Thus, the further in the future the dollar is, the less it is worth in "present-value" terms. Similarly, the greater the time value of money (*i.e.*, the greater the "discount" or "compound" rate used to derive the present value), the lower the present value of future costs. To calculate an entity's economic benefit, BEN uses standard financial cash flow and net-present-value analysis techniques based on modern and generally accepted financial principles, which were subjected to extensive national notice-and-comment processes.¹

Inputs to the model include costs specific to the situation of the entity as well as the presumed standard indexes and rates described in the section above. These values are listed in the lower

¹ See Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Request for comment, 61 Fed. Reg. 53025-53030 (Oct. 9, 1996); Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Extension of time for request for comment, 61 Fed. Reg. 65391 (Dec. 12, 1996); Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Advance notice of proposed action, response to comment, and request for additional comment, 64 Fed. Reg. 32947-32972 (June 18, 1999); Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Advance notice of proposed action, response to comment, and request for additional comment, 64 Fed. Reg. 39135-39136 (July 21, 1999).

three-quarters of the table. Using these values, BEN makes a series of calculations listed at the top of the table as follows:

- A) On-Time Capital & One-Time Costs. What compliance would have cost had the entity complied on-time, adjusted for inflation and tax deductibility. The number is a present value as of the date of initial noncompliance. BEN derives this value by discounting the annual cash flows at an average of the cost of capital throughout this time period.
- B) Delay Capital & One Time Costs. What late compliance did cost, adjusted for inflation and tax deductibility. The number is a present value as of the date of initial noncompliance. BEN derives this value by discounting the annual cash flows at an average of the cost of capital throughout this time period. This value will be zero if the costs were avoided.
- C) Avoided Annually Recurring Costs. This sum is a present value as of the date of initial noncompliance. BEN derives this value by discounting the annual cash flows at an average of the cost of capital throughout this time period.
- D) Initial Economic Benefit (A - B+C). The delayed-case present value is subtracted from the on-time-case present value plus the sum of the avoided costs to determine the initial economic benefit as of the noncompliance date.
- E) Final Economic Benefit at Penalty Payment Date. BEN compounds the initial economic benefit forward to the penalty payment date at the same cost of capital to determine the final economic benefit of noncompliance.

Calculated Economic Benefit Likely an Underestimate

The economic benefit calculated above may underestimate the total economic benefit that the respondent received to date because it does not address uncertain indirect financial benefits, including:

- *Advantage-of-risk* - the value of (1) the risk of never getting caught and (2) keeping future options open by delaying a decision to institute a process or purchase capital.
- *Competitive advantage* - (1) beginning production earlier than would be possible if in compliance; (2) attracting clients by avoiding compliance costs, having a higher profit margin and therefore being able to offer goods or services at a lower cost than competitors; (3) keeping those clients attracted by lower prices because of brand loyalty or high switching costs; or (4) using the time or money saved to increase production.
- *Illegal profits* - selling illegal products or services.

However, I consider these other economic benefits to be "de minimis" in light of the difficulties in calculation. Pursuant to OAR 340-012-0045(1)(c)(F)(ii), the Department need not calculate an economic benefit if that benefit is de minimis.

Run Name = on-site correct	
Present Values as of Noncompliance Date (NCD),	11-Sep-2002
A) On-Time Capital & One-Time Costs	\$239
B) Delay Capital & One-Time Costs-	\$0
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$239
E) Final Econ. Ben. at Penalty Payment Date,	
	30-Jul-2004
	\$263
<i>Not-For-Profit, which pays no taxes</i>	
Discount/Compound Rate	5.1%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	30-Jul-2004
Capital Investment:	avoided
Cost Estimate	\$150
Cost Estimate Date	04-Mar-2004
Cost Index for Inflation	BCI
# of Replacement Cycles; Useful Life	1; 15
Projected Rate for Future Inflation	N/A
One-Time, Nondepreciable Expenditure:	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Tax Deductible?	N/A
Annually Recurring Costs:	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
User-Customized Specific Cost Estimates:	N/A
On-Time Compliance Capital Investment	
Delay Compliance Capital Investment	
On-Time Compliance Replacement Capital	
Delay Compliance Replacement Capital	
One-Time Compliance Nondepreciable	
Delay Compliance Nondepreciable	



Oregon

Theodore R. Kulengoski, Governor

Department of Environmental Quality

2146 NE 4th Street, Suite 104

Bend, OR 97701

(541) 388-6146

November 2, 2004

CERTIFIED MAIL # 7000 0520 0017 1762 4964 Eastern Region

Bend Office

RECEIVED
NOV 04 2004
OFFICE OF COMPLIANCE
AND ENFORCEMENT
DEPARTMENT OF ENVIRONMENTAL QUALITY

Mr. John Richard (Dick) Fleming
PO Box 447
Baker City, OR 97814

Re: T8S, R42E, S17, TL 3400;
45491 Keating Cutoff Road
Baker County

Dear Mr. Fleming

At your request, I met with you and your sister Jo, the morning of Wednesday, October 20th, on property located at 45491 Keating Cutoff Road east of Baker City. The purpose of my visit was to discuss the septic system on the property that you installed without a permit in September, 2002.

On August 11, 2003, the Department's inspector, Diane Naglee, inspected the system and determined that this system was not installed to design criteria as specified in rule. This determination was based on both detailed information you provided, and observations and measurements made by Diane.

During my visit we discussed the following items with regard to the septic system:

1) **Grade of septic tank effluent pipe:** The design criteria or "code" requires a minimum 6 inch elevation difference between the invert of the effluent sewer pipe exiting the septic tank and the invert of the header pipe exiting the distribution box. This pipe invert elevation difference or drop is necessary for proper effluent flow between the septic tank and drainfield. If the pipe invert elevation is less than 6 inches, there is concern that during peak or surge flows into the system, reverse flow back into the septic tank can cause solids within the tank to pass over top of the sanitary "tee" fitting in the tank. Solids would then enter the drainfield which can cause blockage in system plumbing, or failure of the drainlines.

We discussed that the existing trenches, as constructed with no rock over the pipe and 12 inches of rock below the pipe, make back surge into the septic tank less likely. However, this would depend on whether or not the disposal trenches were ever to become full of effluent, in which case there would be more concern for reverse flow.

2) **The grade of the disposal trenches and piping.** The code requires that all trenches and piping be level within a tolerance of plus or minus one (1) inch, with a target of being level. The trenches of this system were excavated and constructed with a 0.5 percent slope. In a 75 ft. length trench this would calculate to a 4.5 inch difference in elevation from one end of the trench to the other end. With code plus or minus one (1) inch, this is 3.5 times the code tolerance.

Ex. A15

The concept of "level" is an important factor for proper system function. We talked about bio-mat formation along both the bottom and sidewalls of the trenches. As effluent enters the trench, this mat first develops exclusively along the bottom of the trench. Once the bottom mat has formed, the effluent then begins to absorb into the soils along the trench sidewalls. Mat formation is accelerated under conditions of saturated flow where effluent and conditions can become anaerobic (without atmospheric oxygen).

Because of how you installed this system, bio-mat formation along the sidewall, particularly at the lower end of each trench, will be accelerated. With the formation of this mat, the lower ends of the trenches will become saturated (full) of effluent. This effluent will also be under a hydrostatic head, due to the minus slope of the trench and gravity. This will cause a greater potential for effluent to break out onto the ground surface at the end of the trenches.

Over time this accelerated sidewall mat formation will reduce the amount of effective sidewall absorption in the system. This will then reduce the operational capacity of the system.

We then discussed the possibility of adding additional "level" disposal trench to the ends of the existing trenches to overcome the reduction in sidewall infiltrative surface and to minimize the hydrostatic pressures. We discussed a minimum amount of 25 feet of additional trench on each lateral trench, bringing the total system to 300 lineal feet. You also mentioned the use of a blower unit to maintain an aerobic condition and to minimize bio-mat development. Though these changes would enhance the long term function of the system and overcome some of the concerns, the system would still not be to code. If the system is not to code, a Certificate of Satisfactory Completion cannot be issued unless the changes were allowed through the formal variance process.

3) Under drain media (rock) over top of drainpipe: Code requires that there be at least 2 inches of drain media (rock) over the top of the distribution pipe. The need for rock cover over the pipe is to keep the upper soil cover from becoming saturated or being washed into the void spaces of the drain media. I mentioned how this is more important in a serial distribution system or where something other than filter fabric is used to cover the rock before backfilling the system. This system is an equal distribution type system and filter fabric was used, so there would be less of a chance for this to happen.

4) Projected Daily Sewage Flow or Design Flow: We discussed the different projected daily sewage flows values for a "shop" (150 gpd - gallons per day) and a single family residence (450 gpd). Both you and Jo wanted to make the point that flow going into the system, which was designed for a residence at 450 gpd, was considerably less. I explained that a shop would only have a restroom with a sink and toilet where as a single family residence would have bathroom(s) with sink(s), tub(s) and/or shower(s), a kitchen with a sink and dishwasher, and a laundry room with a clothes washer hookup. I mentioned that the rules call for sizing all single family residences with up to 4 bedrooms at 450 gpd because flows from one residence can be substantially different than from another residence. Additionally the design flow includes a safety factor for occasional peak flow days.

Because the trench laterals were not installed level and the functional capacity overtime will diminish more rapidly, this system may prematurely fail if subjected to average flows from a single family residence.

Another concern would be changes in uses of the property which could include the addition of more bedrooms or having a larger family with 2 individuals per bedroom for a total of 8 individuals in a 4 bedroom residence. Again, this system may prematurely fail if subjected to these kinds of flows.

5) The Variance Process:

You asked why reasonable deviation from the code requirements is not allowed. I mentioned that variances from any rule or standard contained in the overall rules may be allowed through a formal variance process. I explained the variance process and that the fee for a formal variance request is \$1,340.00.

6) Your Options:

A. Obtain a Certificate of Satisfactory Completion (CSC) by making the corrections to the existing system as noted on the Correction Notice issued on August 11, 2003. To receive a CSC and make the corrections, you will need to reinstate your permit. The fee for reinstatement of the permit is \$135.00.

B. Apply for a Formal Variance from the rules and standards. This is not an automatic variance. You will need to submit a proposal with your application. A special variance officer will then review your proposal, visit the site, and hold an information gathering hearing. Adjacent land owners and DEQ staff will be invited to attend and give comments. In order to grant a variance, the variance officer must determine:

- 1) strict compliance with the rule or standard is inappropriate for cause; or
- 2) special physical conditions render strict compliance unreasonable, burdensome, or impractical

The fee for a formal variance is \$1,340.00. There are other accommodations in rule for low income elderly and hardship cases. I have enclosed copies of the rule sections for variances.

C. Decommission the on-site system.

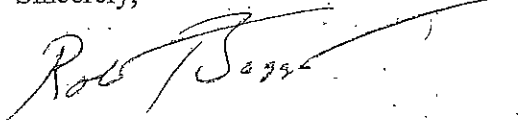
D. Schedule a contested case hearing.

Please call Bryan Smith with the Department's Office of Compliance and Enforcement at 503-229-5692 by November 10, 2004, to inform him of your decision. If you do not contact Mr. Smith by that date, then he will schedule a contested case hearing for you.

Mr. John Richard (Dick) Fleming
November 2, 2004
Page 4

If I can be of any further assistance in explaining system function, rule requirements, or administrative processes, please feel free to contact me at 541-388-6146, ext. 230.

Sincerely,



Robert Baggett, REHS
Natural Resource Specialist 4 & Special Variance Officer
On-Site Sewage Treatment & Disposal Program
Water Quality Section, Bend Oregon Office

RB/ns

cc: Jo Fleming, Property Resident & Addresses Sister
Joni Hammond, ER Administrator, DEQ Pendleton
Bryan Smith, Office of Compliance & Enforcement, DEQ HQ Portland
Diane Naglee, NRS-3, DEQ Baker City
Baker County Planning Department
City of Baker City Building Department

SELF INSTALLER HANDOUT

Standard - Equal Distribution



PREPARATIONS:

A sewage disposal system must be installed by either the owner of the property or a licensed, bonded sewage disposal system installer. A permit is required before beginning construction. The permit will specify construction requirements that are "customized" to your proposed development and site conditions. This will include the size of the septic tank, the type of system, total amount of disposal line required, minimum and maximum trench depth from the original ground surface, depth of gravel in the trenches, and other specific requirements. Trench depth is critical because of water tables and restrictive layers that may be present. Lines installed at improper depths may have to be reinstalled.

Stake out the corners of the home, the septic tank, the disposal trenches, and the curtain drain if one is required. In staking out the system, the following setbacks must be observed:

1. REQUIRED SETBACK	SEPTIC TANK	DISPOSAL LINES
Any building foundation	5'	10'
All wells	50'	100'
Rivers, streams, lakes	50'	100'
Intermittent streams	50'	50'
Property lines	5'	10'
Water lines	10'	10'
Other underground utilities	5'	10'

Any other required setbacks will be noted in the site evaluation report and/or on the installation permit.

2. You will need to consider the way in which your house or manufactured home will be plumbed, keeping in mind that there must be a minimum building sewer line fall of 1/4 inch per 1 foot (Check with your local Building/Plumbing official for other acceptable standards) between the house and the septic tank. There should be as few angles as possible in the line between the house and the tank to prevent clogging of plumbing.

Be sure the tank you purchase is approved for use in the State of Oregon. Look for the required DEQ assigned number or label. Manufactured tanks must be at least 1,000 gallons in volume and may be constructed of concrete, steel, polyethylene, or fiberglass. Contact this office for a list of approved manufacturers if you have questions. Find out from the septic tank manufacturer or installer the following dimensions: (a) length, (b) width, (c) height, and (d) distance from the top of the tank to the bottom of the outlet fitting. There are no DEQ required minimum installation depths or depth of soil cover over the top of the tank. However, you must follow minimum and maximum soil cover depths as prescribed by the tank manufacturer but in no case shall a tank be covered with more than 36 inches of soil without prior approval from DEQ. Tank manufactures are required to provide installation instructions when the tank is purchased. Follow the instructions carefully. All septic tanks must have a securely fastened or weighted watertight manhole riser extending to ground surface or above. This is to facilitate locating and pumping the tank. If site conditions require tank floatation protection, get specific procedures from the manufacturer for anti-buoyancy.

3. The bottom of the disposal trenches and the drainlines in the trenches must be level to within plus or minus one inch. The perforated pipe must be centered and laid level on 6 inches of bedded gravel with the drain-holes oriented downward in the 4 o'clock and 8 o'clock position. Proper orientation of the perforated pipes can be achieved by installing the pipe with the centerline markings up.

EX. A16

INSTALLATION OF THE SYSTEM:

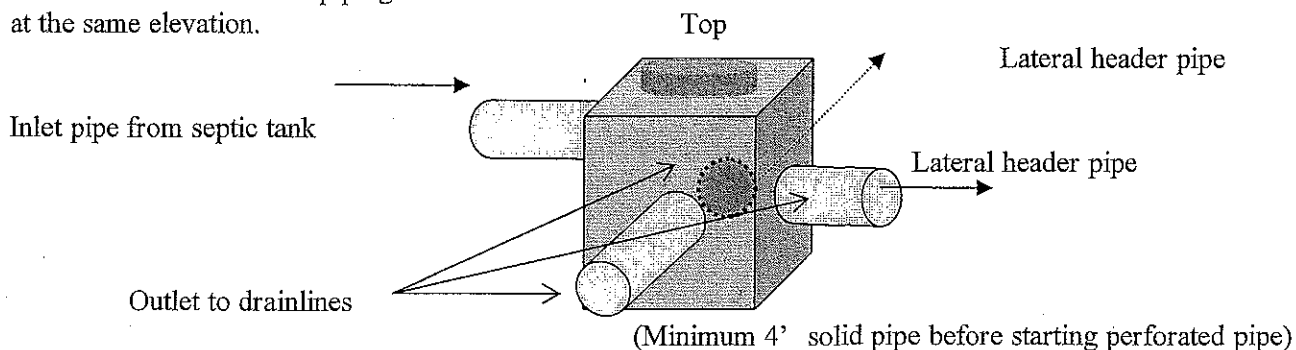
1. First, the entire system should be surveyed to ensure that there will be adequate fall between the structure and the septic tank, and that all other required minimum/maximum pipe grades and trench depths can be maintained. Install the septic tank first. Be sure that the tank inlet is lower in elevation than the building's plumbing outlet. Remember the suggested building sewer line must drop at least 1" per 4 linear feet of sewer line. For example: a septic tank located 10' from the house will require 2 1/2" of drop in the building sewer line (10 x 0.25" per foot = 2.5"). Less drop may result in clogged plumbing. Contact the local Building/Plumbing official within your county if you have questions concerning the plumbing both within the house or between the house and the septic tank. For depth of the septic tank take into account the approved location and the maximum and minimum trench depths allowed for your drainlines. The lowest portion of the septic tank outlet must be 2 inches higher in elevation than the top of the drain media. Read all installation requirements supplied by the manufacturer. After installation, each tank shall be water tested by filling to a point at least two (2) inches above the point of riser connection to the top of the tank. Be sure not to over fill and float the lid off a concrete tank. During the test there shall be no more than a one (1) gallon (vertical drop of 1/2 inch in a 24 inch diameter riser, 5/8 inch in a 30 inch riser) of leakage over a 24 hour period.

2. There must be a minimum of 5' of solid building sewer pipe between both the house and the septic tank, and the septic tank and the equal distribution box. The septic tank effluent sewer line between the tank and distribution box shall be installed with a minimum fall of 4" per one hundred (100) feet, but in no instance shall there be less than 2" of fall (as measured between the lowest portion of the septic tank outlet and the top of the drain media). The effluent sewer pipe material must be heavyweight, 3 or 4 inch, effluent sewer pipe (see attached page of "Acceptable Building and Effluent Sewer Materials"). Your tank manufacturer should provide you with the necessary materials and directions for making proper joints between the tank fittings and the sewer pipes.

3. For gravel type systems installed on relatively flat ground, equal distribution boxes are typically utilized (see below, Figure 1). The equal distribution box must be lower in elevation than the septic tank outlet. The distribution box must be level, seated on undisturbed soil, and be oriented such that the highest fitting is on the inlet side. The lower fittings are used for the outlets to the disposal trenches (drainfield). The joints between the pipes and boxes must be watertight and the boxes must be level. A builder's level or a water test can be used to determine if the box is level. Water testing of the boxes and the pipe joint seals is recommended before backfilling around the box with soil.

Figure 1.

Equal Distribution boxes are used on level ground. Effluent fills all lines equally from the box. Portholes for lateral piping are all at the same elevation.



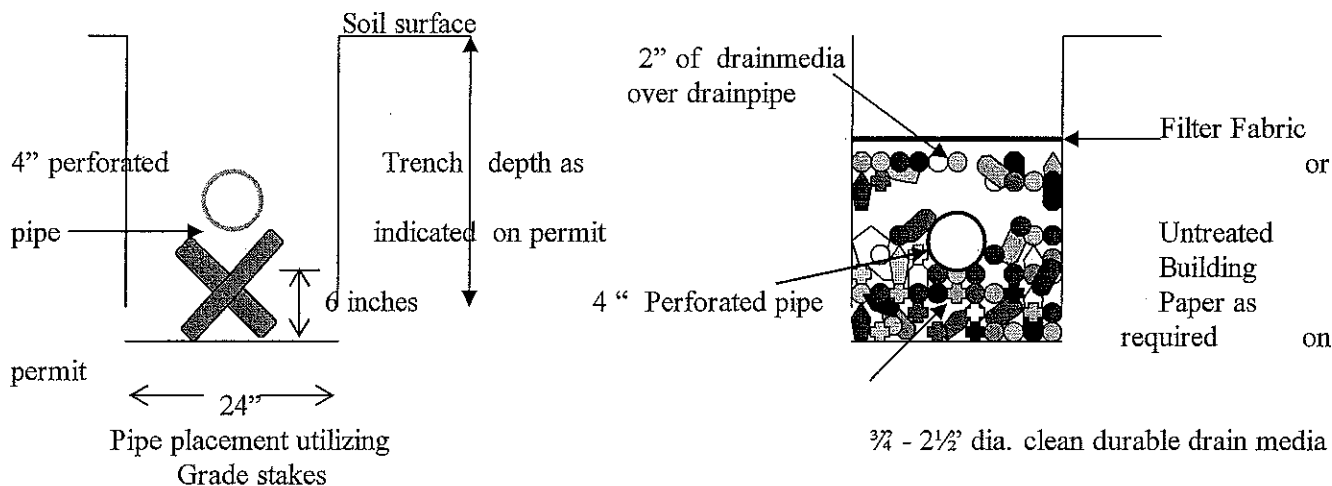
4. All systems utilizing an equal distribution box must have approved solid (non-perforated) piping that is bedded on undisturbed earth extending a minimum of 4' prior to starting perforated pipe. No gravel is to be placed around any of the solid header pipe or beneath the distribution box.

5. Disposal trenches must be dug such that the bottom of the trench is level, plus or minus 1 inch. **Hand levels are not adequate to assure that drainlines or trench bottoms are level.** Your permit will specify the proper maximum and minimum depths for the trenches. These trench depths are based on the site/soil conditions encountered during the site evaluation. Any deviation needs to be approved by your DEQ agent; otherwise trenches may have to be re-installed. A string tied to stakes or a laser transit is a useful reference tool for achieving a level trench of the proper depth. Again, any more than 1" rise or fall in a line is not acceptable.

6. For those systems utilizing gravel-less trench methods such as Infiltrator 24 or EEE ZZZ Drain, installation must follow DEQ requirements and the manufacturer installation requirements. If any questions arise, you will need to contact **both** the manufacturer and the permitting agent.

7. After the trench is dug grade stakes or 2 x 6s are positioned to keep the drainpipe 6" above the bottom of the trench during drainmedia (drainrock) placement (see below, figures 2,3 &4).

Figure 2:

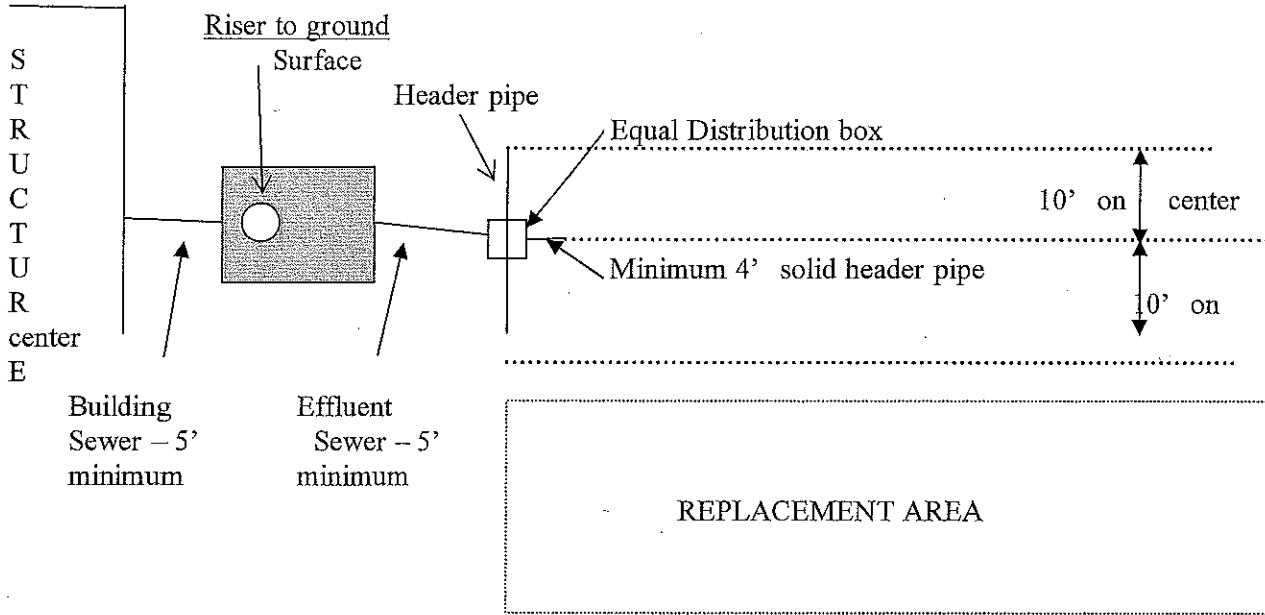


8. The disposal field rock (drainmedia) must be **clean**, washed gravel or crushed rock ranging in size from 3/4 to 2 1/2 inches. Place rock in the trench so that it is level with the top of the grade stakes or 2 x 6s. Perforated piping is then placed on the rock, with the holes positioned downward and orientated at the 4 o'clock and 8 o'clock positions (centerline markings up). Check to be certain that all piping is level and centered in the trenches. Place the remaining 6" of rock around and over the piping taking care that the pipes remain centered and that the joints are not dislodged. You should have 2" of rock cover over the top of the pip, for a total of 12 inches of rock in the disposal trench.

9. Prior to backfilling the trench, the drainmedia shall be covered with DEQ approved non-biodegradable filter fabric, untreated building paper, or other material approved by the Agent. When trenches are installed in sandy-loam or coarser soils, filter fabric or other non-degradable material approved by the Agent shall be used to cover the drain media. Refer to the Permit to Construct for specific requirements.

TYPICAL EQUAL DISTRIBUTION SYSTEM
(with equal distribution box)
LEVEL GROUND

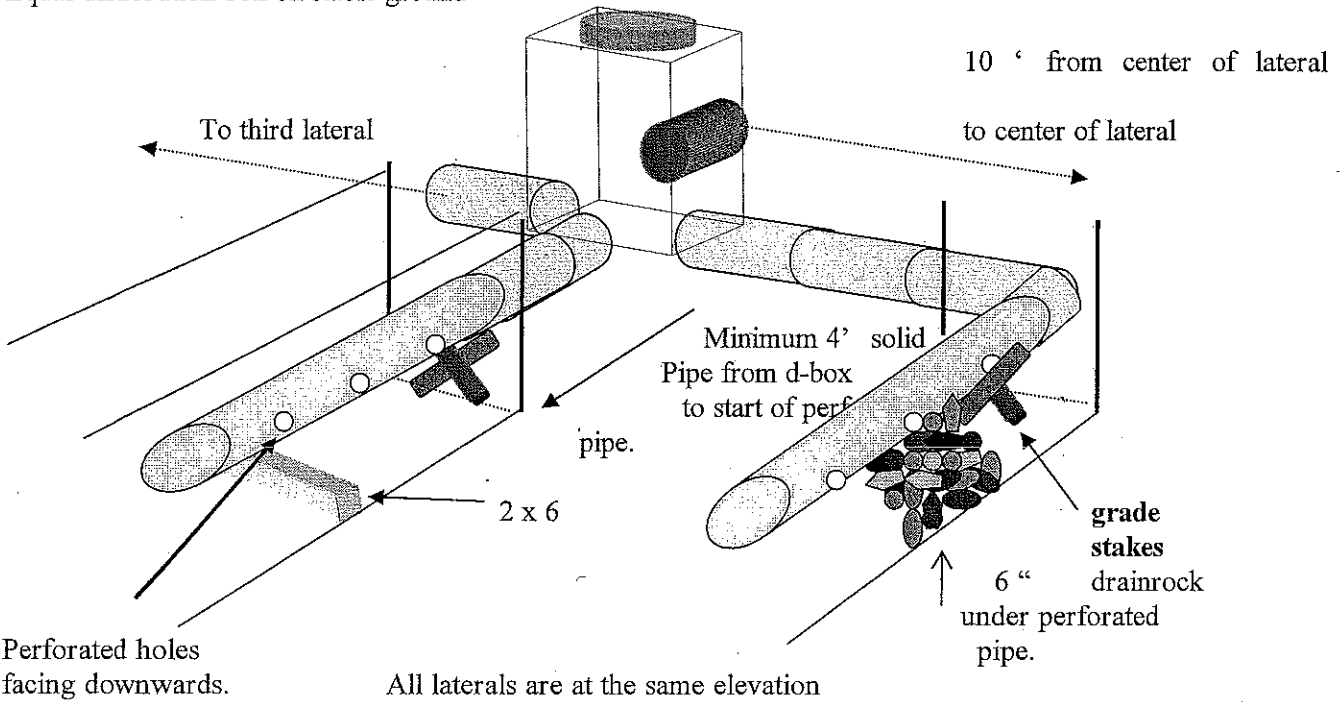
Figure 3:



All header pipes to be level from distribution box to end of trench.

Figure 4

Equal distribution box on stable ground



FINAL INSPECTION/BACK FILLING

At this point, before back filling the system with soil, a pre-cover inspection is to be conducted. To request a pre-cover inspection, the Department's inspection request form, which includes an as-built plan and materials list, must be completed then sent or faxed to the regional DEQ office that issued the permit. Once the request form is received and verified complete by DEQ, the pre-cover inspection will be completed within seven (7) days. If after the seven (7) days an inspection has not been conducted, the system can be backfilled. Should you want an inspection and wish to keep the system uncovered for a longer period of time, you'll need to notify the regional DEQ office.

Regional DEQ Offices:

For Baker, Grant, Union, and Wallowa Counties For Gilliam, Morrow and Umatilla Counties

Baker City DEQ Office
2034 Auburn Avenue
Baker City, OR 97814
Ph# 541-523-7998
Fax # 541-523-9198

Pendleton DEQ Office
700 SE Emigrant, Suite 330
Pendleton, OR 97801
Ph# 541-276-4063
Fax# 541-278-0168

For Harney, Wheeler and Lake Counties Lake County, pre-cover inspections only

Bend DEQ Office,
2146 NE 4th, #104
Bend, OR 97701
Ph# 541-388-6146
Fax # 541-388-8283

Dave Lewis at the Lake County Building Dept.
513 Center Street
Lakeview, OR 97630
Ph# 541-947-6033
Fax # 541-947-6015

During the pre-cover inspection, staff will check for proper construction, location of the system, setback distances, construction materials used, and elevations of inlets, outlets, trenches, ..etc. When the installation is approved, a "**Certificate of Satisfactory Completion**" will be issued. The system can then be back filled and connected to for use. If deficiencies are found, a "**Correction Notice**" will be issued and placed at the site. If a "Correction Notice" is issued, another inspection may be necessary before the system can be back filled and placed into service. At the discretion of the Agent, the permittee may be assessed a re-inspection fee.

Backfill shall be carefully placed to prevent damage to the system. The backfill shall be free of large stones, frozen clumps of earth, masonry, stumps, waste construction materials, or other materials that could damage the system.

CARE AND MAINTENANCE

There are several things that you can do to protect your system and prolong its life:

1. Have your septic tank checked and, if needed, pumped out by a licensed septic tank pumper every 3-5 years. Depending on the size of your household, water usage, characteristics of waste and types of appliances, the amount of time between pumping may vary. Refer to your phone book "Yellow Pages" or request a list of licensed "Sewage Disposal Service Businesses" (pumper) from this office.
2. Do not plant trees or deep-rooted shrubs in the area of the disposal field. However, do seed the disposal field area with grasses or other landscaping. The vegetation uptakes moisture from the drainfield and contributes to longevity of the system. Cut the vegetation throughout the growing season to enhance moisture uptake. Keep in mind that system operation requires both evapotranspiration, as well as, infiltration.
3. Protect the system from livestock, vehicular traffic, and heavy machinery. Such activities can compact the soil and seal the drainfield, crush or damage system components, and eventually lead to system failure.
4. A few other warnings include the following: do not flush excessive amounts of oil, grease, and household cleaning/sanitizing products down the drains. Keep plumbing of faucets and toilets leak-free and in good repair. If you use a garbage disposal, consider installing a septic tank effluent filter to reduce suspended solids from entering the drainfield. Solids accumulate more quickly with the use of a garbage disposal and you may need to pump your septic tank on a more frequent basis. Plastics, rubber, chewing gum, and some paper products do not breakdown in a septic tank; therefore, use caution when disposing of them.

GENERAL:

The septic tank system is designed to dispose of all household wastes. This includes laundry, bath and kitchen wastewater. To work satisfactorily the system must be located in suitable soil conditions, be properly designed, installed correctly and adequately maintained. The septic system must be constructed in accordance with guidelines outlined in the Oregon Administrative Rules, Chapter 340, Divisions 71&73. This is to prevent construction of faulty systems that could cause contamination of groundwater or the discharge of sewage onto the ground surface. Both of which can create health concerns by exposing individuals to disease or illness causing organisms and agents.

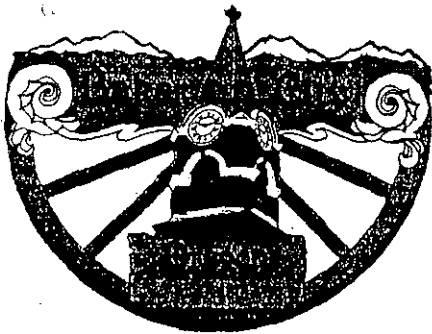
As sewage waste enters the tank, solid matter settles out, scum rises to the top, and primary treatment begins. The liquid effluent then flows into disposal trenches. Over time solids will accumulate within the septic tank and the liquid capacity of the tank is reduced. As this occurs, turbulent flow through the septic tank occurs instead of stagnation and settling of the fine solids. When this happens, fine solids

are flushed out of the septic tank and into the leach lines. These fine solids then plug the natural soil pores and eventually cause entire drainfield to fail. Liquid wastes may also back flow into the residence. This is why a system may work well for years and then suddenly fail which then costs thousands of dollars to repair. To prolong the longevity of your sewage disposal and treatment system one should have the septic tank checked and pumped as needed or at least once every four (4) years.

When the effluent leaves a functional septic tank, it is relatively free of solids. However, it is not free from organisms that can cause disease, such as typhoid fever, dysentery, and diphtheria, to name a few. As the effluent leaves the perforated drainage pipe it is rapidly dispersed throughout the gravel below. The void space between the gravel retains the waste and allows for storage capacity until it can enter the soil to be treated. In the soil, microorganisms further decompose, filter and cleanse the liquid effluent thus preventing bacterial contamination of groundwater. However, some chemical wastes receive little or no treatment before coming in contact with groundwater, particularly in rapidly draining soils such as sandy and gravelly soils. In this case, the typical household use amounts and dilution is the variable that is considered. This is another reason why it is so important not to use excessive amounts of such products.

IMPORTANT NOTE

This pamphlet is intended to be a guide, to help homeowners to comply with construction and installation requirements and maintain their on-site sewage disposal system. It is not a substitute for knowing the codes. If you encounter problems or have questions during or after installation of your system, please do not hesitate to contact one of the DEQ Regional offices. Our offices are open Monday through Friday, 8:00 a.m. to 5:00 p.m. and you can leave messages on our phone voice mail systems during non-working hours. A statewide toll free phone number for the DEQ is 1-800-452-4011.



City of Baker City, Oregon

P.O. Box 650 • Baker City, OR 97814-0650

541-523-6541 Voice/TDD • 541-524-2049 FAX

"The Northwest's Premier
Rural Living Experience"

March 10, 2003

Mr. Mark Bennett
Baker County Planning Director
1995 Third Street
Baker City, OR 97814

COPY

STATE OF OREGON
DEPT OF ENVIRONMENTAL QUALITY
RECEIVED
MAR 12 2003

BAKER CITY OFFICE

RE: Agricultural Exemption for Jo Fleming, Citation #01962

Dear Mr. Bennett:

I have reviewed the file regarding the structure built at 45491 Keating Cutoff Rd, related to Baker County File #AG-00-20. Included are photographs taken on February 28, 2003 by Vicky Foland of our staff.

Oregon Revised Statute (ORS) 455.315 defines an agricultural building as; "a structure located on a farm and used in the operation of such farm for the storage, maintenance or repair of farm machinery and equipment or for the raising, harvesting and selling of crops or in the feeding, breeding, management and sale of or the produce of livestock, poultry, fur bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof, including the preparation and storage of the produce raised on such farm for human use and animal use and disposal by marketing or otherwise."

The photographs included do not indicate any agricultural use as defined above. The photographs do indicate kitchen facilities, garage with 2 passenger cars, laundry facilities and a bedroom with closets. These appurtenances indicate those typically associated with a dwelling and as such would require this structure to undergo a change of use. A building permit for change of use will require a completed building permit application, payment of associated permit and plan review fees, submittal of plans for review and subsequent building inspections.

If you have any questions regarding these finding, please feel free to contact me at 524-2052 or by e-mail at jsayers@bakercity.com and I will be happy to discuss them with you.

Sincerely,

Jim Sayers
Building Official

cc: Gordon Zimmerman, City Manager
Jo Fleming, owner
Gary Potter, Electrical Inspector
Allen Aschim, State of Oregon Building Codes, Compliance Division

JS:vsf

ATTACHMENT I

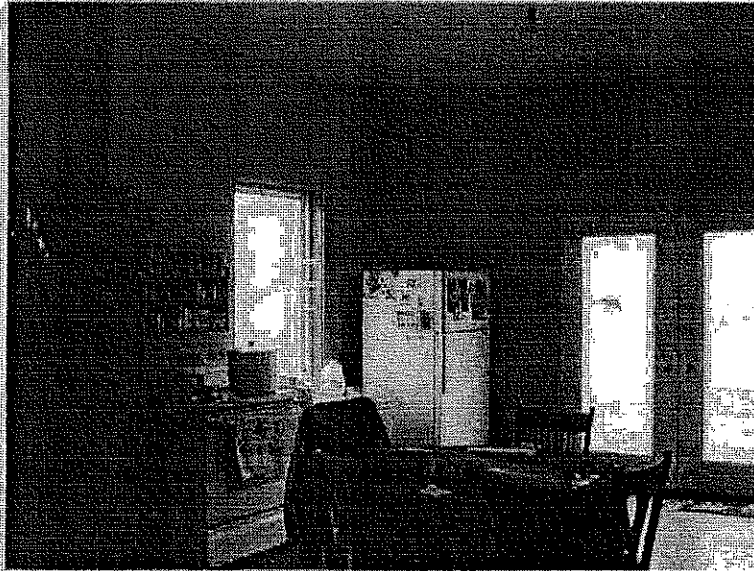
Jofleming.com

EX. A17

JO FLEMING
45491 Keating Cutoff Road
Baker City, OR 97814

Date of Photo(s): February 28, 2003, unless otherwise specified.

CITY OF BAKER CITY Building Dept.



Page 3

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MAR 12 2003

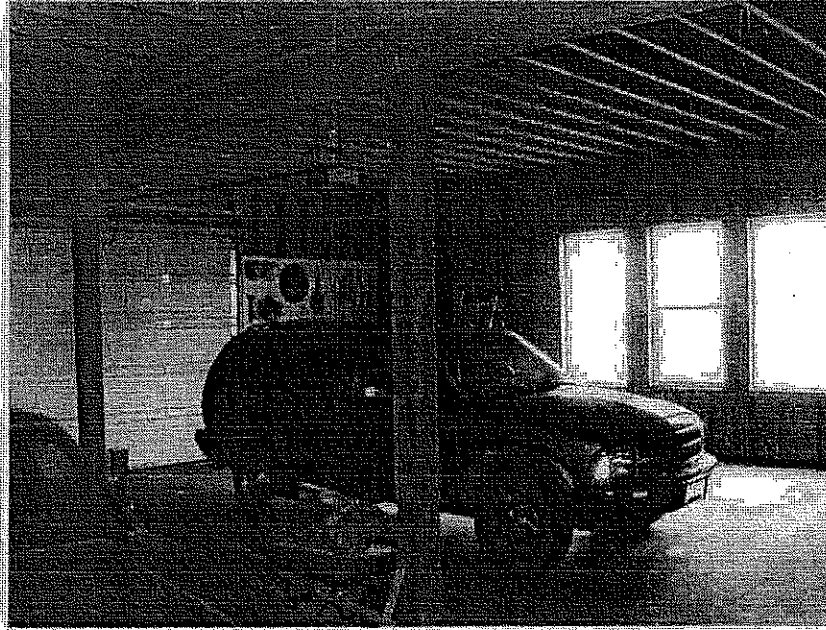
BAKER CITY OFFICE

ATTACHMENT 0

Ex. A18

JO FLEMING
45491 Keating Cutoff Road
Baker City, OR 97814

Date of Photo(s): February 28, 2003, unless otherwise specified.
CITY OF BAKER CITY BUILDING DEPT.



Page 4

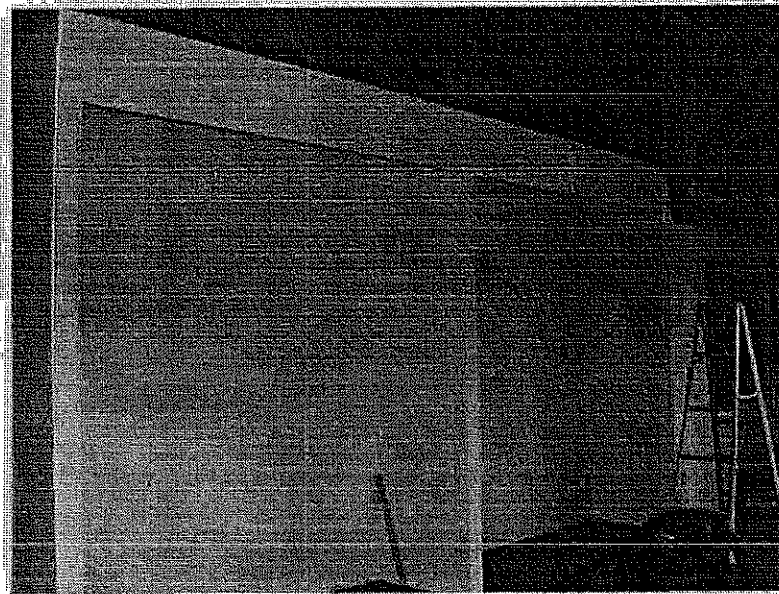
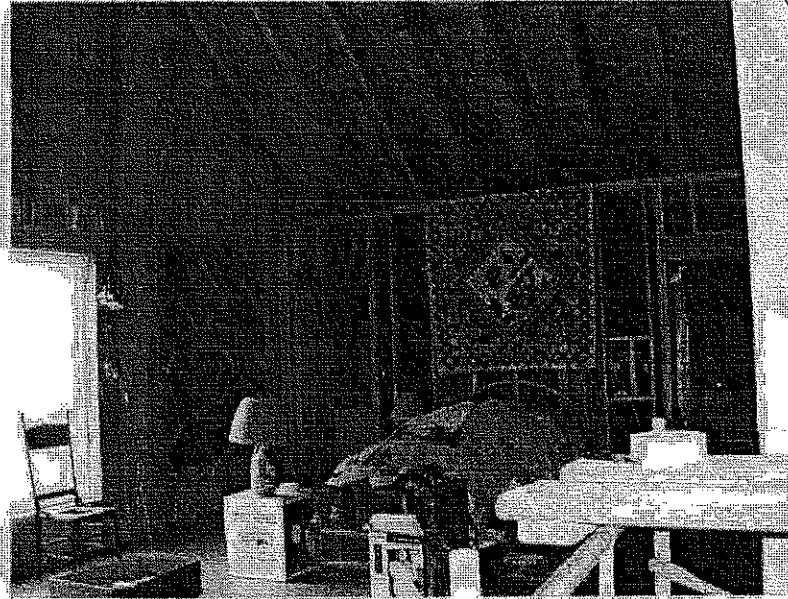
STATE OF OREGON
DEPT OF ENVIRONMENTAL QUALITY
RECEIVED
MAR 12 2003

BAKER CITY OFFICE

ATTACHMENT P

JO FLEMING
45491 Keating Cutoff Road
Baker City, OR 97814

Date of Photo(s): February 28, 2003, unless otherwise specified.
CITY OF BAKER CITY Building Dept.



Page 5

STATE OF OREGON
DEPT OF ENVIRONMENTAL QUALITY
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MAR 12 2003

BAKER CITY OFFICE

ATTACHMENT Q



Notice: The information provided here is for convenience ONLY. The records located at Baker County Assessor's office are the one and only legal instruments for Assessment purposes. Although reasonable attempts are made to maintain this information as accurate as possible, these documents are being provided as an informational convenience ONLY. Baker County is not, in any way, liable for any inaccuracies, inconsistencies, errors, omissions, or other deviations in these documents from the original copies maintained and filed at the Baker County Assessor Office, Baker City, Oregon.

Date Web Site was last updated 11/07/2003

Tax Year:2003 Ref#:7578

MAP#	TAX LOT#	A NUM	CODE	PROPERTY CLASS/DESC
08S4200	3400	0	514	551 FARM USE/EFU ZONE/IM

OWNER FLEMING, GLENN M & BARBARA C
 CONTRACT
 MAILING ADDRESS:
 P O BOX 985
 CITY/ST: BAKER CITY, OR ,97814
 PROPERTY ADDRESS: 45491 KEATING CUTOFF RD COUNTY

NOTES:
 ZONED FARM USE-POTENTIAL ADD. TAX
 3800 OLD 3400 NEW

	REAL MKT VALUE	ASSESSED(TAXABLE) VALUE
LAND	\$140900	
STRUCTURES	\$75610	
SUBTOT	\$216510	\$83753
TOTAL	\$216510	\$83753

TOTAL	\$210310	\$65755
-------	----------	---------

PROPERTY TAX INFORMATION

TAX	\$944.12
SPECIAL ASSESSMENTS	
L.P. IRR O&M	\$654.50
TOTAL TAX & SPECIAL ASSESSMENTS	\$1598.62

(Original tax lien, does not show tax owed or paid)

STRUCTURES

LINE #	BLDG CLASS	DESCRIPTION	SQ FT	YEAR BLT	YEAR APPRAISED	MARKET VALUE
1	141	CLASS 4 SINGLE FAMILY DWELLING	2604	0	2003	\$55570
2	142	GARAGE ATTACHED	0	0	2003	\$19840
3	305	DRC BUILDING	0	0	2003	\$200

LAND DESCRIPTIONS

LINE #	ACRES	LAND CODE	DESCRIPTION	DIMENSIONS	MARKET VALUE
1	0.00	OSD3	OSD S/W MIN LScape		\$14000
2	76.41	HS2	HOME SITE 2		\$126900

**SEARCH AGAIN**

P.O. Box 985
Baker City OR 97814

January 20, 2005

ALJ Alison Greene Webster
Office of Administrative Hearings
4900 SW Griffin Drive, Suite 100
Beaverton, OR 97005-4649

RECEIVED

JAN 24 2005

by Office of
Administrative Hearings

Dear Alison Greene Webster,

Thank you for coming to Baker City for OAH Case No: 118750 & 118751. Agency case No: WQ/OS-ER-04-071 & WQ/OS-ER-04-072. I feel I need to let you know the history of our case ahead of the hearing. Interruptions and others speaking can divert the issues.

Both Glenn and Barbara are hearing impaired, but I feel as long as you know that and direct your questions to us we would be able to understand you without an interpreter. It is hard to know what to tell you. I don't want to bring in irrelevant information but some background seems necessary.

In February 1993 we closed escrow on the 80 acres under concern. At the time we were in our seventies. Jo had planned to move to Baker to help us. We could build two houses on the 80 acres. We planned to do that. First, the place needed cleaning of one familie's near 100 years of accumulations. The house had burned several years before and not replaced. We also needed to get the irrigation system ready by a July 1 deadline. Then in October, the Legislature ruled only one home on 80 acres. We felt we could comply with different plans. Then the following April we found out we needed 180 acres to build one house. I had told Jo and Glen that we needed to get a permit to build the day we close escrow. At that time it meant a trip to Pendleton in winter. I did not know they opened the Baker office in July of that year.

We irrigated for two summers. Sometimes that meant more than one trip a day. It was too costly to do when not able to live on the place. Thirty to ninety miles a day made it too expensive and time consuming. We let the neighbors use it the following year. It didn't pay for them either. Another neighbor took it over until Dick moved to help us also and took over irrigating in exchange for horse pasture.

Both Jo and Dick gave up nice country properties to move to Baker to help with their fathers Parkinsons Disease which showed up around 1994. Neither one has been able to duplicate what they left behind.

Jo had a house plan she was hoping to use on the 80 acres. The acting Planning Director was aware of our plight and sympathetic. Jo had also drawn up plans for a shop building. It was designed to go along with her house in use and design. She was told she could build the shop. She was told she could have a bathroom and a bed. If she put the ag exempt permit on her fence no one would bother her. They did not need to see her plans.

Ex. R1

Her next step was to the city and county building departments. The secretary there, Debbie DeShaw, told her that since she was building a shop she would not need a DEQ permit. Jo had no reason to doubt her word. She was given electrical, plumbing and sewer permits.

When the boss of this secretary, Larry Rockenbrant, came to inspect the foundation he said it was over built for a farm shop. Jo confronted him to try to find out his reasoning. He would not talk to her about it and left the property. We were mystified. How could a foundation be over built? It is in a very windy location and anything else would have been long gone. The main beam was blown down during construction.

While Larry would not talk to Jo, he did complain to the County Planning Department. He didn't like missing out on the building fees. He had two years to do whatever he wanted to do. He did nothing more until the week he retired. He then turned seventeen people in to have his successor prosecute them. You would think under the circumstances his successors would drop the matter, but no, they all want the fees for their departments.

The next Baker County Planning director seemed to think Baker County only considered pole barns farm exempt. Jo visited a friend in Klamath County who had recently built a new barn on a farm exempt permit. It had a concrete foundation, a concrete floor with drain to wash his horses inside, it was also pine paneled. Jo liked it enough to get his plans in case she can build a barn.

Somewhere along the way the building inspector alerted the Consumer Affairs Department. I would think they would be in a position to help the consumer, but that doesn't seem to be the way it worked. He came to the property when no one was there and later contacted the DEQ about the septic system.

After that came the threat of liens, ect. I feel all liens should be withdrawn. Especially Dick's excessive one. He was merely helping his sister complete her project, not a contractor as such. He had asked her if her paper work was in order - she had her permit. I asked him where he got the specs for the system. From Diane Naglee when she okayed the perk hole. He also suggested to Jo that DEQ would like to see the system before it was covered. However, Jo felt since they need not be involved and her helper with a little tractor wanted to cover it before going back to Idaho, she let him cover the system.

Later, when Jo went back to tell Debbie De Shaw that she did need a DEQ permit, she told Jo that "She couldn't begin to understand all of the rules and regulations." If someone earning her livelihood can't learn all the laws and rules, can a lowly citizen be expected to know them all?

There was no plan or thought of trying to beat the system, Jo went through the process that should have been right for her needs. For that reason, we asked for a hearing. The ground is high and dry and no environmental problems should develop from the system that is in place. I feel that we are promoting world freedom while our freedom and dreams are being taken away from us. I think that measure 37 passed in November because too many people have experienced a like episode.

I have always felt we should care for the Earth that God has given to us and to leave whatever part of this world we inhabit better than we found it. I am not against caring for the environment, but with changing laws, rules, personnel that sees things differently than the last person in office makes it hard to comply.

According to DEQ's own rules, if they do not respond to an inspection call in 7 days, the system is automatically approved. It took 2 ½ weeks after Jo called to get the system inspected. They need to respect their own rules.

I don't know how all of this would stand up in a court of law. We do not feel that we can afford an attorney to represent us, all we can do is plead for mercy and forgiveness, trusting that you will do what you know is right.

Sincerely,

Barbara Chapman Fleming
Barbara Chapman Fleming

Bryan Smith

P.O. Box 985
Baker City OR 97814

March 7, 2004

Diane E. Naglee, RS
Natural Resource Specialist
Water Quality Program - Eastern Region

Dear Diane,

I am writing in response to your March 3, 2004 letter and packet concerning the 4549 Keating Cutoff Road RE: ERP-04-028. Since it has been most of five months since Jo Fleming sent you her letter we all felt you concurred with her on the usefulness of her septic system. You did not remark on the substance of her letter. As she said, she read the 105 pages on the Oregon septic systems, and felt hers was adequate. She was told by the secretary (in 2000) of the Baker City Building Department that an ag shop building did not need a septic permit. Because of that, her helper wanted to cover the system before taking his little tractor back to Idaho, she let him do it. This helper had recently installed his own system in Idaho, so he knew how it should be done. The project had been engineered and overseen by the two engineers. The trench was done by a neighbor that has excavated for other local systems. This shop does not produce a lot of sewage. The ground is high and dry and should be able to handle the load. If we have to re-do, I suppose we can, but it should not really be necessary. My husband is the final stages of Parkinson's disease. I have neither the time nor money for letter writing and bureaucratic decisions, as I am his full time caregiver. Jo paid \$490.00 for the site evaluation. I paid a \$670.00 fee. This is a lot of money for what the D.E.Q. describes as efficiently conducted minimum services

Sincerely

Barbara C. Fleming

I had no response to this letter. When I mentioned it at our pre-hearing with Bryan Smith both Bryan and Diane said it was too late.

RECEIVED

OCT 06 2003

State of Oregon
Dept. of Environmental Quality
Eastern Region - Pendleton

Scanned to DEN 10/03/

Receipt 108 323

Jo Fleming

SEPT 27-03

I KNOW THAT I AM LATE WITH THIS CORRECTION THING BUT I AM STILL BUSY GETTING READY FOR WINTER — BUT AFTER CAREFUL READING OF THE 105 PAGES ON OREGON STATE SEPTIC SYSTEMS - I WOULD SAY LEAVE WELL ENOUGH ALONE. THIS IS NOT THE TIME OF YEAR TO EXPOSE EVERYTHING TO FREEZING TEMPS ALSO.

① FROM THE SEPTIC TANK TO THE CROSS ARMS FROM THE DISTRIBUTION BOX ~~IS~~ REQUIRE MIN OF 8" IS TO BE THE DROP, — BEING THAT THE LINE LEAVE THE BOX AT A SIX' INCH DROP SHOULD MAKE THE FALL ADEQUATE.

② I RECOGNIZE THAT THE PIPE IS NOT WITHIN THE REQUIRED ONE INCH — ALTHOUGH IF ONE HOLE IS MORE THAN $\frac{1}{8}$ " LOWER THAN THE NEXT LOWEST HOLE: ALL OF THE WATER WILL DRAIN OUT OF THE LOW HOLE, AT THE VERY LOW FLOW RATE THAT COME OUT OF THE SEPTIC TANK — THE WATER WILL STILL SPREAD OUT ON THE BOTTOM OF THE TRENCH AND INFILTRATE AT A RATE WELL IN EXCESS OF THE PRODUCTION OF WASTEWATER IN THIS SHOP BUILDING.

③ WE BEDDED THE PIPE DOWN IN THE GRAVEL BUT NOT COVERING THE PIPE — BECAUSE IN THIS SOIL WATER TRAVELS DOWN NOT UP. OREGON SEEMS TO BE CONCERNED WITH THE VOLUME OF THE DRAIN TRENCH RATHER THAN THE ABILITY OF THE WATER TO RISE 2" IN THE TRENCH OVER THE TOP OF THE PIPE. OUR SEEPAGE TRENCHES ARE 32"

~~WIDE~~ AND OVER 12" DEEP OF (DRAIN MEDIA)
SO THE TRENCH VOLUME IS ADEQUATE,

THE BOOK SAYS 5' MINIMUM FOR LENGTH OF PIPE
BETWEEN SEPTIC TANK AND DROP BOX,

I HAD A SEPTIC SYSTEM INSTALLED THAT IS 3X
OVER KILL FOR WHAT WILL EVER BE NEEDED FOR
THIS BUILDING. I WOULD HAVE TO RUN MY WELL
DRY BEFORE I WOULD FILL THE LINES, TRENCHES
AND TANK IN ORDER TO BACK IT UP INTO THE SHOP.

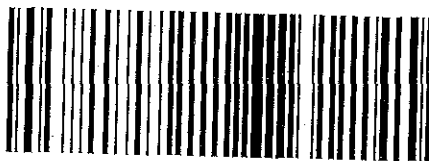
④ THE ONLY THING I CANNOT VERIFY IS THAT
THERE IS 4' OF SOLID PIPE ON THE CENTER
LINE OUT OF THE DISTRIBUTION BOX.

J Fleming

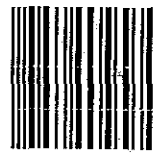
PERMIT # 01-66998

P.O. Box 985
Baker City, OR 97814

CERTIFIED MAIL



7003 1010 0002 8948 6700



9264

97005

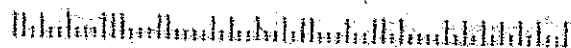
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BAKER CITY, OR
97814
JAN 21, 05
AMOUNT

\$4.65

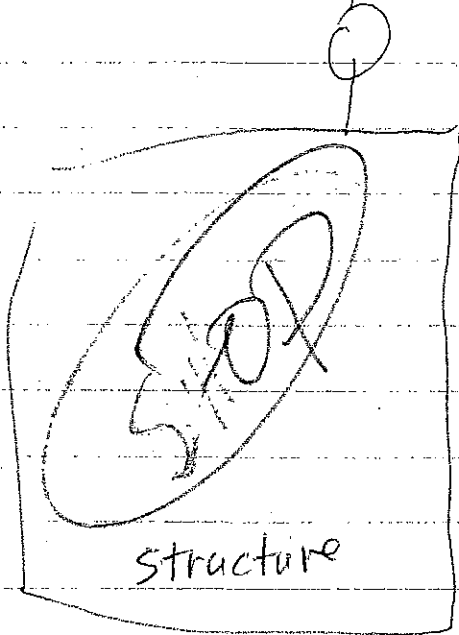
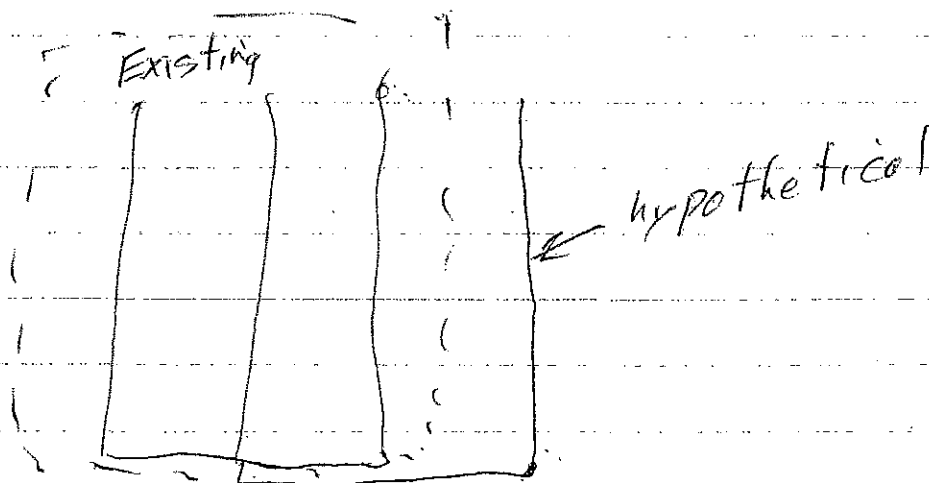
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ALJ Alison Greene Webster
Office of Administrative Hearings
4900 SW Griffin Drive, Suite 100
Beaverton, OR 97005-4649

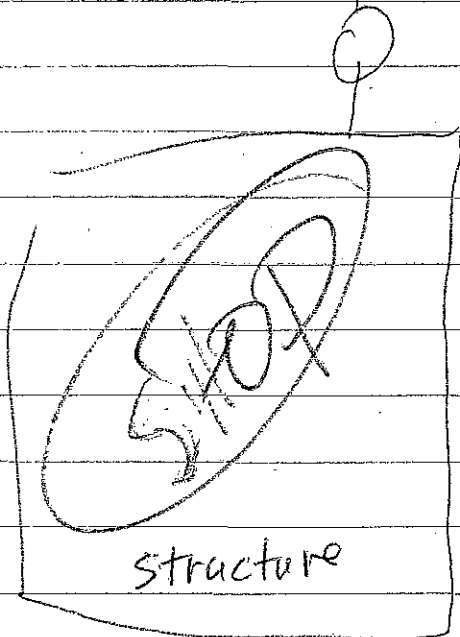
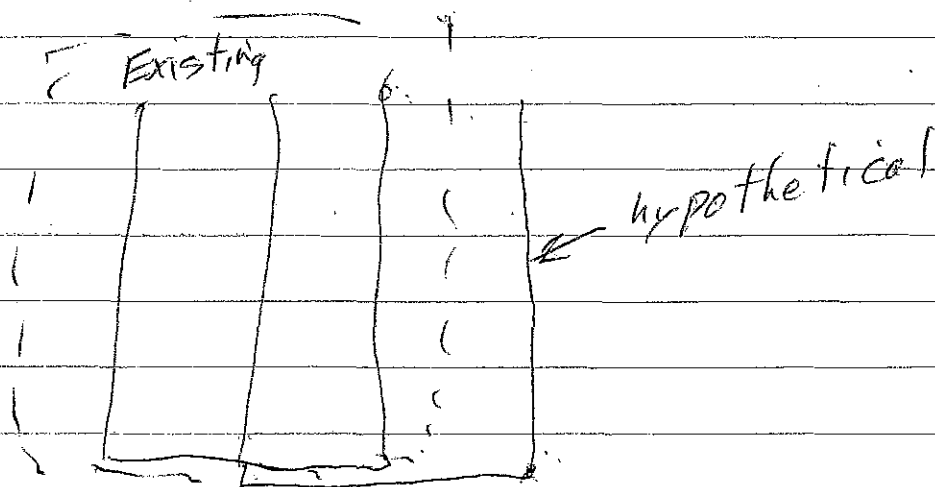
970054649



$$4506 \text{ PPK} \frac{5}{6} =$$



4506 PPK $\frac{5}{6}$



Barbara/Olen

Violation of OAR 340-071-0175(6)

① used system w/o obtaining CSC
Class II violation

② violation of OAR 340-071-0175(5)

didn't meet reqts for satisfactory
completion w/in 30 days

Richard

① violation of ORS 454.655(1)

OAR 340-071-160(1)

perform sewage disposal services w/o license
constructed on-site sewage system w/o
permit

② violation of 454.695(1)

OAR 340-071-0600(1)

sewage disposal services w/o valid provider/
installer's license

April 3, 2003

Mark Bennett
1995 Third Street
Baker City, OR 97814

Re: Glenn & Barbara Fleming Trust

Dear Mr. Bennett:

This is in correspondence with your letter on March 26, 2003. We would like to tell our story regarding the building located on 8S-42-00 Tax Lot 3400, that does not meet the requirement as outlined in ORS 455.315 (Agricultural Building Exemption Certification).

Please feel free to contact me if there are any questions.

Sincerely yours,

Barbara Fleming

R3

20

Glenn felt we needed irrigated pasture to go with our range land on Virtue Flat. While Jo was supervising logging on our California property. Glenn found the 80 acres in Keating. On February 1, 1993 we closed escrow on the 80 acres in Keating. I told Jo and Glenn that the day we closed escrow we need to get two building permits. We needed forty acres for each permit, we both planned to build on ~~40~~ 80 acres.

It was winter and we had to drive to Pendleton for building permits at that time. We were also low on cash and the irrigation system had to be completed by July 1, 1993. That was Glenn's first priority.

That October a friend mentioned that we needed 80 acres to build one house. I checked that out with a realtor friend. True. We decided we could handle that. Then in April 1994 neighbors asked if we would like to buy their place. They went to the planning office and found that neither of us could build. We now needed 160 acres to build one house. The neighbors had an older home on their property. The older home on our 80 had burned several years before we bought and had not been replaced. The fact that this last change was a bureaucratic ruling made Glenn felt especially victimized. Our property was not worth what we had paid for it 13 months before.

We irrigated the summers of 1993 and 1994. We found it necessary to sometimes drive out to Keating up to three times a day if the sprinkler went off or something went awry. Ninety miles a day- even thirty adds up to more than profit. The next year we let the neighbors just use the land to save those trips. It wasn't worth it even to next door neighbors. The following year the rancher that leases our range land on Virtue Flat took over the 80 in Keating as well.

It was that way until it didn't fit into his plans either. Dick was here by then and took over the responsibility of irrigating and using the property. In the meantime Glenn's Parkinson's disease manifested itself and he knew he could no longer manage on his own. We had received permission to build if we added some of our Virtue property to the request. I wanted to take them up on that, but Glenn didn't want to be hampered in that way.

When we told Grant and Barbara in the Planning Office here that we had permission, but the two years were up they were both very surprised. They did not think that would be possible at that time. Now I am told it is possible again. Jo was in Klamath Falls trying to figure out how she could get back to Baker to be with her family. When her job folded in Klamath Falls she felt the time had come. When Jo wanted to build a house Grant would not even take Glenn's money because he was sure he could not get a house building permit. He told Jo we had to have 160 contiguous acres. He even said we could buy from Lowry's then resell it back to them as long as we had the 80 acres. What an expensive hassle!

People from the Planning office and the Assessor's office and even a planning office employee from Salem have expressed dismay over our inability to build on that piece of property.

With our best interest at heart and still doing the job they felt they had to do Jo was given a permit for an Ag shop. Jo asked for a shop. Jo asked if she could have a bathroom. Yes. Bed? Yes. Do you need to see my plans? No. So she got her permit for an Ag. shop and was then told the Planning Office was through with her. The rest of her permits would be from Baker City Planning Department. She went to them and received the electrical and plumbing and sewer permits.

No one said she had to build a floorless pole building with tin. You cannot work in such a building in Baker County winters. The wind out in Keating could blow you and it away. Neighbors on Virtue Flat had a pole equipment shed that was taken by wind.

If she was able to build a bathroom it precludes a septic tank. I saved the boards from the outdoor toilet, but feel you would appreciate that even less. No one gave anymore counsel. No one had advised her so she went ahead with the plans she had drawn up before. She has had her house plans for years-she keeps fine tuning them. She had also drawn up plans for a shop to go with her house. She wants them to match. This woman is an artist and a neat freak who likes a place for everything. Without a house she had to do what she could do. She appreciates beauty. That is what she wants to create.

When she was in the planning stages I told her to build a shop as beautiful as the one often shown in the White Flower Farm catalogue. I am not the only lover of beautiful old barns or the Wallowa old barn tour would not be a yearly event. There is a large white barn up the hill from a house as you leave Elgin for Wallowa. I always gaze longingly at it as we pass. Ever since we first planned to ranch over 55 years ago I have asked for coordinated and beautiful buildings. Please, no tin/ metal buildings.

This building is still in process. Who would leave their possessions in storage and pay \$80 a month or more when they had a way to store them in their own shop? Again, most ranches have a house to hold most of their possessions. Who would plan a house where you would have to go through an unheated garage to go to the bathroom or upstairs? It was planned for the convenience of a rancher as he works there throughout the day.

Hali feels if Jo were not out there to keep her eyes on the horses that she would have to be there. She does not want to raise her family in the inconvenient shop. What we have out there now are horses. They need supervision. More can be done with the property when someone is there. You really can't prove up on a piece of property when you have to drive out from town. Your time is spent in the vehicle instead of farming.

All the plans are not in place. Hali has talked of foaling in the shop. The colts have been in the Ag. shop as part of their training to learn to enter a building. I have been saving chicken articles as well as the Extension Office mailings on calves and cattle etc. We want goats to eat weeds. Our children grew up with goats and learned to love them. The baby goats or chicks might spend a short time in the shop before being housed elsewhere but their supplies could be stored there.

Even before the building was built we found we needed a telephone to save on trips to town. A cell phone will not work in the valley. Much travel was averted after one was installed. Electricity is needed for today's telephone. It seems to me both would be needed in an Ag. building to save steps. Dick and Hali have been helped in caring for the irrigation and the horses by having this building to use.

Hali has plans in her head for washer and dryer in her ideal barn. The washer and dryer in the Ag. Shop would be left for horse blankets and ranch clothes in the event a house is built. Jo was told she would have no trouble with her Ag. shop unless a school bus stopped by her door. So Zayda did not go to Keating this third grade year. She lives in town, but her mother is out at the 80 most everyday.

Jo is doing what she has to do to use the property. With personnel changing and laws changing, personal conception differences it makes it hard to know how to conform. We should not really be pressured into conforming to others ideas on our own land. Property rights were the basics for our government. They are challenged at this time.

When Larry made his first inspection he mentioned that the foundation was over qualified as an Ag. building foundation. We were mystified by this remark. How could any building have too good of a foundation? We felt if the old barn on the property had had a foundation it would be in much better condition than it is now.

It seems to me, due to subsequent actions, that Jo was not adequately advised by the Planning Office. There was only an acting director here at the time and he did what he thought would work. Jo told Grant that she would have to make quilted saddle blankets. He put his head on the counter. People have responded to that joke enough that you can see her first two at the Ranch Art Gallery on Broadway in Baker City.

If this building is considered a dwelling then we probably would not be able to get a permit to build a house, not to mention the money is now tied up in the Ag. shop. A house has always been the ultimate goal. Our property has been used by planners and cheapened and in a sense confiscated.

I suppose you can call it what you will, but to the Fleming family it will always be "the shop".

Sincerely yours,

Barbara Fleming



White Flower Farm

PLANTSMEN SINCE 1930

SPRING 2003

Our well-stocked garden store is staffed by knowledgeable and helpful gardeners and surrounded by gardens offering ideas from spring to fall.



My Story

I have been a rancher and a property owner in Baker County since 1971. We have 3,402 acres of good rangeland in Virtue Flat, but we had no hay ground or irrigated pasture. We were looking for such on which to build our ranch headquarters.

In January, 1993, we closed a deal on an irrigated eighty acres in Keating Valley. There was a barn, well, garage, outbuildings, and fences. It would fulfill our needs. The house had burned a few years earlier.

My wife and I were both in our seventies. Our daughter thought she should come to Baker and look after us. She wanted to build a house for herself, and we wanted to build a house for ourselves. At that time the eighty acres fit the bill nicely.

We didn't immediately apply for building permits. We were busy cleaning the place up and putting in a new irrigation system. Then, without warning, in October, 1993, we learned that the legislature had changed the law to require eighty acres to build one house.

My comment was, "Well, we can still build one house."

Then, in January, 1994 (I think) some bureaucrat in Salem issued an administrative rule requiring one hundred sixty acres in order to build a house. An administrative rule carries as much weight as a law, but is not passed by a duly elected law making body.

We applied for a building permit, anyway. We received a letter from the planning commission stating that if we threw the rangeland into the pot, we could get a permit to build one one-family dwelling. I didn't want to tie up the rangeland that way, so we dropped the matter.

About this time I was stricken with Parkinson's disease. It was very debilitating, so we let the matter lie.

We paid \$88,000 for the land and spent another \$25,000 on the irrigation system all before our friend in Salem, with the stroke of the pen reduced the value of our property by 50%. There is no market for property that you can't build on.

What good thing would a nice house on the property do?

- a. Provide a place to live so someone can live there and take care of the property.
- b. Beautify the countryside.
- c. Increase the tax base in the community.

What harm would a nice house on the property do?

- a. None whatsoever
- b. Might step on the toes of some fat cat bureaucrat.

In reading the portion of the Oregon State Constitution that may correspond to our National Bill of Rights, I read what I will paraphrase as:

Neither the State of Oregon nor any subdivision thereof shall pass any law restricting the normal use of private property. Art. XVIII Par. 10.

I feel that my rights as a citizen have been violated throughout this whole affair.

Thank you,

Glenn M. Fleming

Please submit in triplicate

STATE OF OREGON
BUILDING CODES AGENCY

FARM
AGRICULTURAL
BUILDING
EXEMPTION
CERTIFICATE

For Agency Use Only: ZONING AUTHORIZATION:			
No.:	<u>AG-00-20</u>		
Zone:	<u>EFU</u>	Area:	<u>Keating</u>
By:	<u>D Stanley</u>	Title:	<u>Office Mgr.</u>
County:	<u>Baker</u>	Date:	<u>9-15-00</u>



Name: Jo Fleming - (Glean Fleming)
 Address: P.O. Box 985 Baker City, OR 97814
 Directions to Site: Section 17 (40 acres) section 20 (40 acres) - off Hwy 86
 Telephone No.: 541-884-7356 Use of Building: Farm Equip. Storage Office

I am the owner/lessee of the above-noted structure to be erected, located on Tax Lot 3400 Township 8
 Range 72 Section 00 and do hereby declare said structure is an agriculture building as defined in
 section 402, State Structural Specialty Code (definition on back of this form) and is exempt from the State Structural
 specialty Code. Plans will not be required to be submitted and a Building Permit will not be required. Electrical, plumbing,
 mechanical, elevator, and boiler permits are required. (Reference ORS 455.315)

declare that said building is not:

- a. A dwelling.
- b. A structure used for a purpose other than growing plants in which persons perform more than 144 man-hours of labor a week.
- c. A structure regulated by the State Fire Marshal pursuant to ORS Chapter 476.
- d. A place used by the public.
- e. Located in a designated Flood Zone.

further declare that prior to any change in use of said structure that would remove said structure from the exemption, a
 building permit will be obtained and the structure will be made to conform to all requirements of the State Structural
 specialty Code as required for the new use.

STATE OF OREGON

County of Baker

Jo FLEMING, do hereby swear and affirm under the penalty of perjury that
 the above statement is true and correct.

Date: 9-15-00 Signature of Applicant: Jo Fleming

Subscribed and sworn to before me on this 15th day of September, 2000

Judith K. Dunn
 Notary Public of State of Oregon

My commission expires July 11, 2003

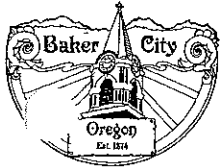
City Office

- Applicant
- BCA
- Local Zoning

DA 11/88



RA



Plumbing Permit Application

FOR DEPARTMENT USE ONLY

City of Baker City Building Department
 1655 First Street, P.O. Box 650
 Baker City, OR 97814
 541-523-0535, Fax 541-524-2049

Permit number: P01-039
 Date Pd. & Received: May 14, 2001
 Date Issued: May 14, 2001
 Issued By: Debbie Deshaun

JOB SITE INFORMATION	OWNER INFORMATION
Address: <u>45491 Keating Cutoff Rd.</u>	Name: <u>Jo Fleming</u>
City: <u>Baker City</u> Directions: _____	Address: <u>PO Box 985</u>
_____	City: <u>Baker City</u> State: <u>OR</u> Zip: <u>97814</u>
_____	Phone: <u>523-3373</u> Work: () _____

PLUMBING PERMIT FEES

	COST (EACH)	NO. OF ITEMS	SUM
(1) 1 & 2 Family Dwellings			
(a) Per each bathroom(new construction).....	\$60.00	<u>1</u>	<u>60.00</u>
(b) Per each 1/2 bathroom(new construction).....	\$30.00		
(c) Water Service.....	\$28.00	<u>1</u>	<u>28.00</u>
(d) Sanitary and storm sewer service.....	\$28.00	<u>1</u>	<u>28.00</u>
(e) Minor installation(per fixture).....	\$15.00		
(f) Special equipment or DWV alteration.....	\$40.00		
(2) Manufactured Dwellings and Prefabricated Structures (circle one)			
(a) Connection to existing drain, sewer and water(initial installation).....	\$40.00		
(b) New sanitary and storm sewer.....	\$28.00		
(c) New water service.....	\$28.00		
(3) Commercial, Industrial and Dwellings Other Than One or Two Family			
(a) 3 or less fixtures.....	\$50.00		
(b) Base fee(includes 4 to 10 fixtures).....	\$123.00		
(c) 11 or more fixtures(base fee plus cost per fixture).....	\$15.00		
(d) Water Service(first 100').....	\$40.00		
(e) Building sanitary sewer(first 100').....	\$40.00		
(f) Building storm sewer(first 100').....	\$40.00		
(g) Additional 100' or part thereof(water or sewer).....	\$22.00		
(4) Miscellaneous Fees			
(a) Reinspection.....	\$40.00		
(b) Specially requested inspections(per hour).....	\$40.00/hr		
(5) Total of Fees Collected:			
(a) Enter total of above fees(minimum permit fee \$40).....			<u>606</u>
(b) Enter 5% Surcharge (.05 x (a)).....			<u>605</u>
GRAND TOTAL.....			<u>116.00</u> <u>8.12</u> <u>124.12</u>

Applicant must hold an Oregon registration to conduct a plumbing business or be exempt from this requirement. I hereby certify that, to my knowledge the above information is true and correct. All work to be performed shall be in accordance with all governing laws and rules.

PERMIT EXPIRES IF WORK IS NOT STARTED WITHIN 180 DAYS OF ISSUANCE OR IF WORK IS SUSPENDED FOR 180 DAYS. IT IS THE RESPONSIBILITY OF THE PERMIT HOLDER TO REQUEST INSPECTIONS.

I am the property owner doing my own work.
 Contractor name: Danmann Plumbing Address: 46278 Pocahontas Phone No. 541-519-5176
 CCB# 14330 Expires: 8/16/01 License No.: 1-24PB Expires: 8/31/01 Business license no. R3418JP Expires: 4/01/02

Signature: Jo Fleming Date: May 14, 2001
 White-Applicant Yellow-Office Pink-Fille

R5

2/15/05

12:55 2005

IMPROVEMENT COST ELEMENTS

INQUIRY

YE A10122

REF/LN CODE MAP/LOT NAME AA VA PCL MCL
 7578 1 0514 08S42 03400 000 FLEMING, JO & BARBARA 3 551 551
 RK 2003 BC 326 GENERAL PURPOSE BLDG - CLASS 6 APPR GY YRAP 2003 BEGTR 2003
 RBL 2002 YRREM SITUS 45491 KEATING CUTOFF RD COUNTY

P ↓ ENDTR C=Cost, I=Income C INCOME APPROACH:

ELEM	UNITS	UTYP	D	DESCRIPTION	W/C	CST/UN.xx	ADJUSTMENT	AMOUNT						
0002	2100	SQFT	U	SECOND FLOOR AREA		2137	CMP 50	22439						
0050	2116	SQFT	S	BUILDING AREA		1210	100	25604						
2452	2116	SQFT	-	WALL HGT 12' - AVG		24	100	508						
2500	504	SQFT	-	INSULATION-FBLG 1.5"		30	100	151						
4207	504	SQFT	-	FULL FIN DRYWL TP TX		370	100	1865						
4705	2	EACH	-	GARAGE DOOR OPENER		32000	100	640						
5502	1	EACH	-	ELEC PANEL -200 AMP		110000	100	1100						
5505	25	EACH	-	ELEC OUTLET-110 VOLT		3500	100	875						
6001	1	EACH	-	BATH FULL (3 FIXT)		185000	100	1850						
ECL	%	DES	%	DES	%	DES	%	DES	%	ADJUSTED BASE:	56,692			
		LCM	100	PHY	100	FNC	100	+C-	100	USE	100	100 =	56,692	
MAIN	SQFT	2,116	COND	=		ADJUDICATED VALUE:	YEAR	AMT						
TRENDING:	YEAR	2003	2004			=	MKT	56,690						
	%	100	X	100	X	100	X	100	X	100	X	100 =	RMV	56,690

2-M/S 3-RM 5-DFT 6-INV 7-E0J 8-CLR 9-PRV 10-NXT 11-COM 14-DEL

R6

2/15/05
12:58

COMMENTS-APPRAISAL

YE

A10111

MAP/LOT

NAME

MAR VAR PCL MCL

REF# 7578 08S42

03400 000 FLEMING, JO & BARBARA

3 551 551

COMMENTS

Pg 1

GARAGE, OFFICE AND BX ON 1ST FLOOR. OFFICE IS INSULATED WITH S/R BUT NO
T/T. BX FIXTURES ARE NOT HOOKED UP. GARAGE AND 2ND FLOOR ARE UNFINISHED.
GY 9/10/02.

2005 NC - UNIT IS BEING LIVED IN - EST 75% CMP - FUNCTIONAL GIVEN FOR LIVAB
ILITY. 10/05/04 TL

JV75962 ORS 308.242 & 309.110(2) APPEAL #10 DISMISSED, VALUE STIPULATED
PRIOR TO BOPTA CONVENING KS 2/2/05

7-E0J 8-CLR 9-PRV 10-NXT

19-MENU



State of Oregon
Department of
Environmental
Quality

Attachment P

File: 8-42-¹⁷~~05~~-3400
45491 Keating
Cutoff Rd

Phone Memo

10/18/2000

COPY

Department of Environmental Quality
Eastern Region - Baker City Office

Project: Joe Fleming
Date: 8/14/02 Time: 8:00
Call To / From: Debbie (ret'd hrs)
Title & Company: Baker City Building Dept.
Address: _____ Phone: 523-0535
Subject: _____

Summary of Call: Debbie stated that owners of this property
received planning approval for an Ag Building. They
allegedly have turned the building into a residence.
Evidently a residence is not allowed on this property.
Baker City building dept. issued plumbing permits about a
year ago for Bathroom, water + sewer, no DEQ sign-off.
Also were issued electrical permit. No other dwelling
on property. An inspection was done for underslab plumbing
rough-in & approved by Bldg. inspector, Bldg. Dept.
did site visit in July & took photos.

11:15 I left message on Baker City answering machine,
I found out record that a site eval. was done on
Nov. 1, 2000 & approved - don't see that a permit was
issued, but may not be in database.

By: [Signature] cc: _____

ATTACHMENT D

State of Oregon
Department of Environmental Quality

Memorandum

Date: September 12, 2005
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Agenda Item D: Contested Case No. WQ/OS-ER-04-072 in the Matter of Glenn Martin Fleming and Barbara Chapman Fleming regarding October 21, 2005, EQC Meeting.

Appeal to the Environmental Quality Commission (EQC)

On April 14, 2005, Glenn Martin Fleming and Barbara Chapman Fleming (Respondents) appealed the Proposed Order (Attachment J), which assessed them a \$1,263 civil penalty for connecting to or using an on-site sewage disposal system without first obtaining a Certificate of Satisfactory Completion.

Key people involved

Glenn Fleming and Barbara Chapman Fleming Respondents, property owners.
Jo Fleming Daughter of Respondents. Oversaw building project on Respondent's property.
John Richard Fleming Son of Respondents. Assisted with installation of on-site sewage disposal system on Respondents' property.
Diane Naglee Inspector, Department of Environmental Quality (DEQ).
Robert Baggett Natural Resource Specialist, Special Variance Officer, DEQ On-site Sewage Treatment and Disposal Program.
Debbie DeShaw Baker City Building Department

Overview of events

Date	Facts	Cite
Aug.4, 2004	DEQ issued Glenn and Barbara Fleming (Respondents) a Notice of Violation, Department Order and Civil Penalty Assessment, which:	Notice and Order [Attachment M]

Date	Facts	Cite
	<ul style="list-style-type: none"> • Alleged that Respondents violated Oregon Administrative Rule (OAR) 340-071-0175(6) by connecting to or using an on-site sewage disposal system without first obtaining a Certificate of Satisfactory Completion. • Assessed a civil penalty of \$1,263. • Ordered Respondents to apply for a construction permit within 14 days of receipt of the Notice and Order. • Ordered the Respondents to—within 14 days of receiving the permit—correct construction of the on-site sewage disposal system or decommission it. • Alleged that Respondents failed to meet the requirements within 30 days after written notification or posting of a Correction Notice, but did not penalize the Respondents for this alleged violation. 	
Aug. 11, 2004	Respondents appealed the Notice and Order.	Appeal [Attachment I]
Feb. 15, 2005	Contested case hearing was held.	
Mar. 18, 2005	Administrative Law Judge (ALJ) issued a Proposed Order holding Respondents liable for the violation, and upholding DEQ's \$1,263 civil penalty.	Proposed Order [Attachment J]
April 14, 2005	Respondents filed a petition for Environmental Quality Commission (EQC) review of the Proposed Order.	

Summary of ALJ Findings of Fact—see ALJ Proposed Order [Attachment J]

Date	Facts	Cite
2000	Jo Fleming, undertook a building project on Property owned by her parents (the Respondents) in Baker County, Oregon (the Property). Jo Fleming does not own the property.	Findings of Fact (FOF) 3 [Attachment J]
Nov. 2000	Diane Naglee, DEQ, evaluated whether the Property was appropriate for an on-site sewage disposal system (OSSD system) for a single-family dwelling	FOF 5 [Attachment J]

Date	Facts	Cite
Nov. 9, 2000	Ms. Naglee wrote Respondents that the Property was appropriate for such a system, but warned "this is NOT a permit to construct an OSSD system." Ms. Naglee enclosed a permit application with the letter.	FOF 5 [Attachment J]
May 14, 2001	Jo Fleming applied for a plumbing permit at the City of Baker Building Department (the Building Department) and understood, from a discussion with Debbie DeShaw of the Building Department that no DEQ inspection of her OSSD system was required.	FOF 6 [Attachment J]
Sept. 11, 2002	Ms. Naglee received a complaint from the Salem Building Code Division that Jo Fleming was installing an OSSD system without a permit.	FOF 8 [Attachment J]
Sept. 12, 2002	Ms. Naglee observed mounds of gravel on the Property that looked like drain rock.	FOF 9 [Attachment J]
Sept. 2002	The Respondents' son, John Richard Fleming, assisted with the installation of the OSSD system.	FOF 10 [Attachment J]
Sept. 26, 2002	DEQ notified Respondents it had received information that a house had been partially built and a septic system possibly installed on the property without permits. The letter stated that construction of a septic system required DEQ approval.	FOF 11 [Attachment J]
Oct. 1, 2002	Barbara Fleming stated in a letter to DEQ: "This building is an agricultural shop-office. All necessary permits were obtained from the County Planning Office and Building Department."	FOF 12 [Attachment J]
April 21, 2003	<p>DEQ sent Respondents a Notice of Noncompliance informing them that they violated environmental law by installing an unapproved OSSD system and advising them to:</p> <ul style="list-style-type: none"> • Obtain a construction/installation permit to install an approved OSSD system on the property. 	FOF 13 [Attachment J] Notice of Noncompliance (NON) [Attachment N, Exhibit A7]

Date	Facts	Cite
	<ul style="list-style-type: none"> • Build in accordance with permit requirements. • Contact DEQ for a pre-cover construction inspection. • Obtain a DEQ Certificate of Satisfactory Completion (CSC) before connecting plumbing to the system. 	
Aug. 11, 2003	<p>Ms. Naglee inspected and observed the following construction deficiencies in the OSSD system, which she identified in a Correction Notice posted to the Property that day:</p> <p>(1) System lacked the minimum six inches of fall for the effluent line between the tank and distribution box. (2) Disposal (perforated) pipe was not level to within plus or minus one inch. (3) Insufficient gravel surrounded the perforated piping. (4) Because the pipe was partially covered, she could not verify that there was at least four feet of solid pipe out of the distribution box before the start of the perforated pipe.</p>	FOF 15 [Attachment J]
Sept. 2003	Respondents did not correct the identified deficiencies within 30 days as required by the Correction Notice.	FOF 16 [Attachment J]
Sept. 27, 2003	Jo Fleming wrote DEQ, "I know that I am late with this correction thing but I am still busy getting ready for winter." She asked that DEQ "leave well enough alone" and noted that because winter was approaching, it was not an appropriate time to uncover the piping to make corrections to the system.	Jo Fleming letter [Attachment N, Exhibit A8] FOF 16 [Attachment J]
March 3, 2004	DEQ sent Respondents a second NON identifying violations relating to system construction, failure to correct violations within 30 days of written notice and operating a system without first obtaining a CSC.	2 nd NON [Attachment N, Exhibit A9] FOF 17 [Attachment J]
Oct 20, 2004	Robert Baggett, Natural Resource Specialist 1, Special Variance Officer, DEQ On-site Sewage Treatment and Disposal Program, met with Jo Fleming and John Richard	FOF 18 [Attachment J]

Date	Facts	Cite
	Fleming at the Property to evaluate the OSSD system. Mr. Baggett was not able to physically inspect the system; however his findings were consistent with Ms. Naglee's determination that the system did not comply with DEQ requirements.	
Nov. 2, 2004	In a letter to John Richard Fleming, Mr. Baggett noted concerns about the grade of the septic tank effluent pipe and disposal trenches and piping and the lack of drain rock over the distribution pipe.	FOF 19 [Attachment J]
	DEQ determined that the cost for adding more gravel to the OSSD system would be approximately \$150. The U.S. Environmental Protection Agency's BEN computer model calculates that the Respondents benefited by \$263 by avoiding this cost.	FOF 21 [Attachment J]

ALJ Conclusions of Law

In her Conclusions of Law, the ALJ found that:

1. Respondents connected to or used an on-site sewage disposal system without first obtaining a Certificate of Satisfactory Completion.
2. Respondents failed to meet the requirements for satisfactory completion of construction deficiencies in the on-site sewage disposal system within 30 days after written notice or posting of a Correction Notice.
3. DEQ's civil penalty assessment is appropriate.

Issues On Appeal

In their Exceptions and Brief (Attachment G), Respondents request that the Commission adopt alternate findings of fact and alternate conclusions of law, and reverse the Administrative Law Judge's conclusion that Respondents are liable for the violation.

In its Answering Brief (Attachment D), DEQ requests that the Commission uphold the Proposed Order.

Summary of Exceptions and Response

Respondents' first exception

Respondents argue that Jo Fleming, understood from her conversation with Debbie DeShaw of the Baker County Building Department that a DEQ inspection was not required if the system would serve a "shop," rather than a "dwelling."

DEQ response to first exception

Respondents appear to argue that Jo Fleming's misunderstanding of the inspection requirement should relieve them of liability for connecting their structure to an unapproved system. The ALJ found that Jo Fleming's "alleged ignorance of the DEQ's requirements does not relieve Respondents of liability for the violation of OAR 340-071-0175(6). Indeed, even if Ms. [Jo] Fleming believed when the system was installed in September 2002 that she did not need a permit for the installation, both she and Respondents knew, or should have known, by April 22, 2003, that they were required to obtain a CSC before using the system." (Pages 6-7 of the Proposed Order, Attachment J) The ALJ also found that "Respondents acted intentionally in connecting and continuing to use the on-site sewage disposal system without first obtaining a CSC," as "Respondents were notified in writing of the CSC requirement in April 2003, August, 2003 and March 2004." (Page 8 of the Proposed Order)

Respondents' second exception

Respondents argue that DEQ Inspector Diane Naglee was aware, before the system was installed, that Jo Fleming had been informed by Debbie DeShaw that no DEQ approval of the septic system was needed. They also argue that Diane Naglee observed mounds of drain rock on the site on September 12, 2002, and should have been aware that the system had not yet been installed in the trenches. They argue that notice from DEQ at this time would have allowed them to build a compliant system without damaging any existing work.

DEQ response to second exception

The Respondents seem to imply that Ms. Naglee should have intervened and informed them that DEQ approval was required prior to the installation of the system. DEQ argues that whether or not Ms. Naglee could or should have intervened before the system was installed is immaterial, because the Respondents' alleged violations relate to connecting to or using an on-site sewage disposal system without first obtaining a Certificate of Satisfactory Completion (CSC). Additionally, the ALJ found that DEQ informed Respondents in writing on April 21, 2003, that a CSC would be necessary before connecting plumbing to the system, yet Respondents continued to operate the system without a CSC. (FOF 13)

Respondents' third exception

Respondents argue that Ms. Naglee testified that to attempt to make changes as requested in DEQ's Correction Notice would be difficult or impossible and would damage the existing system.

DEQ response to third exception

DEQ first responds that the difficulty of making the required changes is immaterial because it does not change Respondents' legal obligation to make those changes in order to obtain a CSC. Second, DEQ responds that Respondents are largely responsible for any alleged difficulties in making the repairs. As the ALJ found, Respondents did not obtain DEQ approval of the engineering plans before they installed the system (FOF 8), and then failed to respond to the Correction Notice until two weeks after the thirty day deadline for making the corrections had elapsed. (FOF 15)

Respondents' fourth, fifth and eighth exceptions

In these exceptions, Respondents argue that the system installed at their property has significantly more assimilative capacity than a system installed according to DEQ's minimum specifications for a shop, and would function longer. Based on this claim, they challenge the Department's assessment of a violation magnitude of "moderate."

Specifically, in their fifth exception they argue that Robert Baggett, DEQ, testified that the system "had significantly more assimilative capacity than the minimum system for a shop and would function much longer than the minimum DEQ specification for a shop." In their eighth exception, they refer to the "magnitude" factor and argue that, based on Mr. Baggett's testimony, "there is less probability of damage to the environment than with a minimum system meeting DEQ requirements. The factor should be a negative number."

DEQ response to fourth, fifth and eighth exceptions

DEQ responds that whether or not the system had greater assimilative capacity, meaning "larger in size than required," it had construction deficiencies which rendered it unapprovable, resulting in the posting of a Correction Notice and preventing DEQ from issuing a Certificate of Satisfactory Completion. Second, the Respondents' characterization of Mr. Baggett's testimony is not supported by the record or the findings of fact. The ALJ found that Mr. Baggett "noted concerns about the grade of the septic tank effluent pipe, the grade of the disposal trenches and piping and the lack of drain media (rock) over the top of the distribution pipe." (FOF 19) Mr. Baggett's concerns, identical to Ms. Naglee's concerns, relate to the construction deficiencies of

the system, which render the system defective and unapprovable regardless of its assimilative capacity or potential longevity.

Regarding the “magnitude” of the violation, the ALJ weighed the evidence in the record and concluded that the magnitude of the violation is moderate “considering the potential for adverse impact on the environment by using an unapproved sewage system.” (Page 7 of Proposed Order). Finally, greater assimilative capacity and longevity are immaterial to the violation of connecting to or using an on-site sewage disposal system without first obtaining a Certificate of Satisfactory Completion.

Respondents’ sixth exception

Respondents argue that “making these corrections was not within our physical or financial capabilities and to dig up the system with winter approaching and subjecting the system to freezing temperatures would have been very unwise.”

Respondents also argue that Diane Naglee stated to Jo Fleming that Ms. Naglee did not have the capability or authority to certify a system that was in noncompliance with the applicable regulations, and so Jo Fleming requested that someone with the education and authority should look at the system and determine if it was adequate.

DEQ response to sixth exception

DEQ addressed the alleged difficulties of making the required changes in its response to Respondents’ third exception above. In addition, DEQ argued that the difficulties allegedly caused by the arrival of winter were caused by Respondents’ delays in responding to the Correction Notice.

In addition, DEQ responds that DEQ’s Robert Baggett inspected the system at Jo Fleming’s request, and Mr. Baggett’s observations were consistent with Ms. Naglee’s. (FOF 18) Mr. Baggett did not approve the system, and he sent a letter to Dick Fleming outlining his concerns about the septic system. (FOF 19)

Respondents’ seventh exception

Respondents argue that the DEQ-calculated economic benefit of \$150, which the Respondents received by avoiding the cost of adding more gravel over the pipe ignores the fact that they initially used a quantity of gravel at least four times the amount required for a design meeting the minimum DEQ requirements for a shop. Respondents also argue that “the only variation from specifications is that the pipe is higher in the gravel bed than the specifications. Ms. Naglee’s

negligence in contacting us when she became aware of the misinformation we received cost us based on your calculations, at least \$1,200.00 on this item alone.”

DEQ response to seventh exception

DEQ responds to Respondents’ argument that they used an excessive quantity of gravel over the pipe, by pointing out that this argument is inconsistent with the ALJ’s conclusion that Respondents must “make the required construction corrections.” (Page 8 of Proposed Order) The required construction corrections are those in the Correction Notice, which specifies that the system had “insufficient gravel around the perforated piping and over the top of the pipe as required by OAR 340-071-0220(7).” (Exhibit A6) Respondents’ argument is also inconsistent with the ALJ’s conclusion that the DEQ assessment of a \$263 economic benefit is correct (Page 8 of Proposed Order).

With respect to Respondents’ apparent claim that Ms. Naglee’s negligence has cost them \$1,200.00, DEQ responds that Respondents have not stated any legal theory that would allow or necessitate this payment and the Department is unaware of such a legal theory. Additionally, Respondents have not shown that Ms. Naglee acted negligently.

Respondents’ ninth exception

Respondents argue that the ALJ could make no “judgments in equity,” and therefore “had no knowledge or authority to make any judgment other than to determine if there were violations of the regulations or an order issued by any member of the DEQ staff.” Respondents then conclude that following DEQ orders would have required them to spend resources to replace an existing system with a system having reduced assimilative capacity and a shorter life span.

DEQ response to ninth exception

DEQ did not address Respondents’ comments concerning the ALJ’s inability to make “judgments in equity.” However, DEQ argued, in response to Respondents’ fifth and eighth exceptions, that, whether or not the system had greater assimilative capacity, it had construction deficiencies which rendered it unapprovable.

EQC authority

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

The Department's contested case hearings must be conducted by an ALJ.¹ The Proposed Order was issued under current statutes and rules governing the ALJ Panel.²

Under ORS 183.600 to 183.690, the Commission's authority to change or reverse an ALJ's proposed order is limited.

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.³
- (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.⁴ 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.

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.⁵

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 ALJ unless it is necessary to prevent a manifest injustice.
- (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.

¹ ORS 183.635.

² ORS 183.600 to 183.690 and OAR 137-003-0501 to 137-003-0700.

³ ORS 183.650(2).

⁴ ORS 183.650(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.

⁵ OAR 137-003-0655(7), referring to ORS Chapter 244; OAR 137-003-0660.

Alternatives

The Commission may:

1. As requested by Respondents, reverse the ALJ's decision, based on the reasoning offered by Respondents. Making this determination would require the Commission to make a finding that Respondents' Exceptions are supported by the record and do not constitute new evidence.
2. As requested DEQ, uphold the ALJ's Proposed Order that Respondents connected to or used an on-site sewage disposal system without first obtaining a Certificate of Satisfactory Completion and are liable for the \$1,263 civil penalty.
3. Uphold the ALJ's decision, but adopt different reasoning.
4. Determine that the case cannot be decided without considering the new evidence, and therefore remand the case to the ALJ for a further proceeding to consider new evidence.

Attachments

- A. Letter from Cat Skaar to Respondents, dated August 2, 2005.
- B. Letter from Petitioner's son, John Richard Fleming, to Cat Skaar, received July 7, 2005.
- C. Letter from Bryan Smith (signed by Deb Nesbit) to Respondents, dated June 21, 2005.
- D. Department's Answering Brief, dated June 17, 2005.
- E. Letter from Jane Hickman to Bryan Smith, dated June 13, 2005.
- F. Letter from Bryan Smith to Jane Hickman, dated June 9, 2005.
- G. Respondents' Exceptions and Brief, dated May 10, 2005.
- H. Letter from Jane Hickman to Respondents, dated April 26, 2005
- I. Respondents' Petition for Commission Review, dated April 14, 2005.
- J. Proposed Order for Assessment of Civil Penalty, dated March 18, 2005.
- K. Notice of Hearing and Contested Case Rights, dated January 5, 2005.
- L. Respondents' Answer and Request for Hearing, received August 18, 2004.
- M. Notice of Violation, Department Order and Civil Penalty Assessment, dated August 4, 2004.
- N. Exhibits from Hearing of February 15, 2005.
 - A1. Phone memo drafted by Diane Naglee, dated August 19, 2002.
 - A2. Phone memo drafted by Diane Naglee, dated September 11, 2002.
 - A3. Pollution Complaint, dated September 11, 2002.
 - A4. Letter from Robert Marshall to Glenn and Barbara Fleming, dated September 26, 2002.
 - A5. Handwritten note from Barbara Fleming, written on a copy of the letter from Robert Marshall to Glenn and Barbara Fleming, dated September 26, 2002.
 - A6. Correction Notice, dated August 11, 2003.
 - A7. Notice of Noncompliance, drafted by Diane Naglee and sent to Glenn and Barbara Fleming, dated April 21, 2003.
 - A8. Handwritten note from Jo Fleming to DEQ, received October 8, 2003.

- A9. Notice of Noncompliance, drafted by Diane Naglee and sent to Glenn and Barbara Fleming, dated March 3, 2004.
- A10. Notice of Noncompliance, drafted by Diane Naglee and sent to John Richard Fleming, dated March 3, 2004.
- A11. Handwritten note from John Richard Fleming to DEQ, received March 23, 2004.
- A12. Letter from Debra DeShaw of the City of Baker City Building Department to the Department, dated October 1, 2004.
- A13. Site Evaluation Report, drafted by Diane Naglee and sent to Glen and Barbara Fleming, dated November 9, 2000.
- A14. Economic Benefit Calculation, drafted by Susan Greco of DEQ, dated June 23, 2004.
- A15. Letter from Robert Baggett of DEQ to John Richard Fleming, dated November 2, 2004.
- A16. Self Installer Handout, prepared by the Department.
- A17. Letter from Jim Sayers, Building Official with the City of Baker City, sent to Mark Bennett, Baker County Planning Director, dated March 10, 2003.
- A18. Photographs of the interior of the Property, taken by Vicky Foland of the Baker County Planning Department on February 28, 2003, and received by the Department on March 12, 2003.
- A19. Baker County Tax Assessor information for the Property, dated March 2, 2004.
- R1. Letter from Barbara Fleming to ALJ Alison Greene Webster, dated January 20, 2005.
- R1-4. Letter from Barbara Fleming to Diane Naglee, dated March 7, 2004 (handwritten note from Jo Fleming to DEQ, received October 8, 2003, enclosed)
- R2. Drawings of OSSD system, and handwritten notes pertaining to alleged violations, by John Richard Fleming.
- R3. Letter from Barbara Fleming to Mark Bennett (including multiple enclosures), dated April 3, 2003.
- R4. Phone memo written by Tom Hack, dated June 30, 2003.
- R5. Jo Fleming's Plumbing Permit Application, signed on May 14, 2001.
- R6. Document titled "Improvement Cost Elements" and "Appraisal" pertaining to the Property.

Report Prepared by: Cat Skaar
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

August 2, 2005

Via Certified Mail

Glenn Martin Fleming and Barbara Chapman Fleming
PO Box 985
Baker City, OR 97814

RE: Proposed EQC appeal dates
Glenn Martin Fleming and Barbara Chapman Fleming, Respondents
OAH Case No. 118751
DEQ Case No. WQ/OS-ER-04-072

The Department of Environmental Quality would like to schedule your appeal to the EQC for the October 21-22, 2005, EQC meeting in Gresham, Oregon. *Please contact me by August 15 at the number or e-mail address below if you have a conflict with either of those possible meeting dates.* If you express no objections, I will send you confirmation of your meeting date, time and location as soon as the meeting agenda is established. I will also send you the Commission record for this case as soon as it is available.

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 or by e-mail at skaar.cathy@deq.state.or.us. Thank you.

Sincerely,

Cat Skaar
Assistant to the Commission

c: Bryan Smith, Oregon Department of Environmental Quality
Larry Knudsen, Oregon Department of Justice

RECEIVED

AUG 04 2005

Eastern Region - Bend

P.O. Box 477
Baker City, OR 97814
July 7, 2005

Environmental Quality Commission
C/O Cathy Scaar DEQ assistant to Director
811 SW 6th Avenue
Portland, OR 97204
VIA Fax 503-229-6762

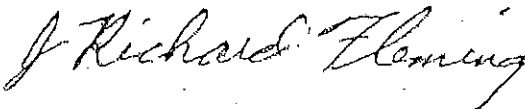
Dear Sir or Madam:

RE: In the Matter of John Richard (Dick) Fleming, OAH /Case No. 118750, Agency Case Number WQ/OS-er-04-071, Baker County and in conjunction with the case of Glenn Martin Fleming and Barbara Chapman Fleming, OAH Case No. 118751, Agency Case number WQ/OS-ER-072, Baker County.

I hereby request the following:

1. A copy of the transcript of the administrative hearing which was held here in Baker City in February of 2005.
2. A copy of the audio recording of the same hearing.
3. A time extension until three weeks after I receive the above information to responds to DEQ's Answering Brief.

Sincerely,



John Richard Fleming



Oregon

Theodore R. Kulongoski, Governor

Attachment C

Department of Environmental Quality

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

June 21, 2005

Glenn Martin Fleming and Barbara Chapman Fleming
PO Box 985
Baker City, OR 97814

Environmental Quality Commission
c/o Jane Hickman, DEQ-Assistant to the Director
811 SW 6th Avenue
Portland, OR 97204

Re: Reply Brief
Glenn Martin Fleming and Barbara Chapman Fleming, Respondents
OAH Case No. 118751
DEQ Case No. WQ/OS-ER-04-072

Dear Mr. and Mrs. Fleming:

Enclosed please find the Department of Environmental Quality's Reply Brief regarding the appeal of the Proposed Order issued in the above case. I apologize for not sending the Reply Brief to you on June 17, the date I submitted the Brief to the Environmental Quality Commission (EQC). The Department would like to schedule your appeal in front of the EQC. The next EQC meeting that has availability for your appeal is being held in Eugene, OR on August 11 and 12, 2005. Please let me know if either of these dates will work for you. Please contact me at (541) 388-6146, extension 245, regarding the scheduling of your appeal.

Sincerely,

Bryan Smith
Environmental Law Specialist
Office of Compliance and Enforcement

Enclosure:

cc: Jane Hickman, DEQ-Assistant to the Director, Environmental Quality
Commission, HQ, DEQ

JUN 17 2005

Oregon DEQ
Office of the Director

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

1
2
3 IN THE MATTER OF:
4 GLENN MARTIN FLEMING AND
5 BARBARA CHAPMAN FLEMING,

) DEPARTMENT'S ANSWERING BRIEF
) No. WQ/OS-ER-04-072

6
7 RESPONDENTS,

)
)
)
) BAKER COUNTY

8 The Department of Environmental Quality (Department) submits this Answering Brief to
9 the Environmental Quality Commission (Commission) for its consideration in the appeal of the
10 Proposed Order in Notice of Violation, Department Order, and Assessment of Civil Penalty No.
11 WQ/OS-ER-04-072, filed by Glenn Martin Fleming and Barbara Chapman Fleming
(Respondents).

12 I. CASE HISTORY

13 1. On August 4, 2004, the Department issued to Respondents a Notice of Violation,
14 Department Order and Assessment of Civil Penalty (the Notice and Order) alleging two violations:
15 (1) Respondents connected to or used an on-site sewage disposal system without first obtaining a
16 Certificate of Satisfactory Completion, and (2) Respondents failed to meet the requirements for
17 satisfactory completion within 30 days after written notification or posting of a Correction
18 Notice. The Notice and Order assessed a civil penalty of \$1,263 for the first violation only. The
19 Notice and Order also ordered Respondents to apply for a construction permit within 14 days of
20 receipt of the Notice and Order, and within 14 days of issuance of the permit, make the required
21 construction corrections to the on-site sewage disposal system serving their property; or,
22 alternatively, decommission the system at the property in accordance with Oregon
23 Administrative Rule (OAR) 340-071-0185.

24 2. On August 18, 2004, Respondents appealed and a contested case hearing was held
25 on February 15, 2005.

26 3. On March 18, 2005, the Administrative Law Judge issued a Proposed and Final
27 Order (Proposed Order) finding that Respondents connected to or used an on-site sewage disposal
Page 1 DEPARTMENT'S ANSWERING BRIEF

1 system without first obtaining a Certificate of Satisfactory Completion, and failed to meet the
2 requirements for satisfactory completion within 30 days after written notification or posting of a
3 Correction Notice. The Proposed Order upheld the Department's assessment of a \$1,263 civil
4 penalty for connecting to or using an on-site sewage disposal system without first obtaining a
5 Certificate of Satisfactory Completion. The Notice and Order also ordered Respondents to apply
6 for a construction permit and, within 14 days of issuance of the permit, make the required
7 construction corrections to the on-site sewage disposal system serving their property; or,
8 alternatively, decommission the system at the property in accordance with OAR 340-071-0185.

9 II. COMMISSION ACTION REQUESTED

10 The Department requests that the Commission issue a Final Order upholding the
11 Administrative Law Judge's Proposed and Final Order.

12 III. ADMINISTRATIVE LAW JUDGE'S CONCLUSIONS

13 The Administrative Law Judge concluded that: (1) Respondents connected to or used an on-
14 site sewage disposal system without first obtaining a Certificate of Satisfactory Completion, (2)
15 Respondents failed to meet the requirements for satisfactory completion within 30 days after
16 written notification or posting of a Correction Notice, (3) Respondents are required to apply for a
17 construction permit and, within 14 days of issuance of the permit, make the required construction
18 corrections to the on-site sewage disposal system serving the Property, and (4) Respondents are
19 subject to a civil penalty in the amount of \$1,263.

20 IV. ARGUMENTS

21 A. ***Respondents were Informed that an Inspection and a Certificate of Satisfactory***
22 ***Completion were Required:*** Respondents argue in Paragraph 1 of their Exceptions and Brief
23 that their daughter, Jo Fleming, understood from her conversation with Debbie DeShaw of the
24 Baker County Building Department that if the building to be served by the system was a "shop"
25 and not a "dwelling" that an inspection from the Department was not required. Respondents
26 appear to be re-alleging an argument they previously argued at the hearing; that is, their
27 daughter's mistaken belief about whether they needed the Department's approval or a permit

1 should relieve them of liability. The ALJ specifically addressed their argument on pages 6 and 7
2 of the Proposed Order, finding that Jo Fleming's "alleged ignorance of the DEQ's requirements
3 does not relieve Respondents of liability for the violation of OAR 340-071-0175(6). Indeed,
4 even if Ms. [Jo] Fleming believed when the system was installed in September 2002 that she did
5 not need a permit for the installation, both she and Respondents knew, or should have known, by
6 April 22, 2003, that they were required to obtain a CSC before using the system." Furthermore,
7 the ALJ found that "Respondents acted intentionally in connecting and continuing to use the on-
8 site sewage disposal system without first obtaining a CSC," as "Respondents were notified in
9 writing of the CSC requirement in April 2003, August, 2003 and March 2004." (Page 8 of the
10 Order) Therefore, the ALJ's conclusion that Respondents were informed of the inspection
11 requirement, and intentionally violated this rule, is supported in the record.

12 B. *Whether the Department could have Intervened to Prevent the Installation is*
13 *Immaterial:* In Paragraph 2 of their Exceptions and Brief, Respondents argue that the
14 Department's inspector, Diane Naglee, was aware, prior to the installation of their septic system,
15 that their daughter, Jo Fleming, was under the impression that no DEQ approval was needed.
16 Respondents seem to argue, based on this fact, that Ms. Naglee should have informed them that
17 the Department's approval was required. This argument is not supported by the record. First,
18 whether or not Ms. Naglee could or should have intervened before the system was installed is
19 immaterial to whether Respondents connected to or used an on-site sewage disposal system
20 without first obtaining a Certificate of Satisfactory Completion (CSC), which is the violation for
21 which Respondents have been penalized. Second, the ALJ found in Finding of Fact number 11
22 of the Proposed Order that Ms. Naglee informed Respondents in writing on September 26, 2002,
23 that DEQ approval would be required for construction of the system. In addition, the ALJ found,
24 in Finding of Fact number 13, that Ms. Naglee informed Respondents in writing on April 21,
25 2003, that a CSC would be necessary prior to connecting the structural plumbing to the system.
26 Whether or not the Department could have intervened to prevent the installation is immaterial
27 because the violations at issue relate to Respondents' continued operation of the system **after** it
Page 3 DEPARTMENT'S ANSWERING BRIEF

1 was installed.

2 C. ***Respondents' Argument that the Changes Required by the Correction Notice***

3 ***Might be Difficult to Make is Immaterial:*** In Paragraphs 3 and 6 of their Exceptions and Brief,
4 Respondents argue that the required changes stated in the Department's Correction Notice might
5 be difficult to make, and seem to imply that the potential difficulties should relieve them of the
6 responsibility of making the changes. First, the difficulty of making the required changes is
7 immaterial because it does not change Respondents' legal obligation pursuant to OAR 340-071-
8 0175(5) to make those changes in order to obtain a Certificate of Satisfactory Completion (CSC).
9 Second, Respondents are largely responsible for the difficulties. As the ALJ found in Finding of
10 Fact number 8, Respondents did not obtain Department approval of the engineering plans before
11 they installed the system as required. Having avoided DEQ approval of the pre-installation
12 plans, Respondents received an August 11, 2003 Correction Notice, laying out the system's
13 construction deficiencies and noting that Oregon law required correction within 30 days, as the
14 ALJ found in Finding of Fact number 15. Respondents then failed to respond to the Correction
15 Notice until September 27, 2003, two weeks after the thirty day deadline for making the
16 corrections had elapsed. Their response implied that they would not be making the required
17 corrections, stating that winter was approaching and it was not an appropriate time to uncover the
18 piping to make corrections to the system. Their decision to delay their response allowed the
19 colder temperatures to arrive, causing the potential difficulties they allege. In addition, nearly
20 two years later, the system has not been corrected (Page 8 of Proposed Order).

21 D. ***Respondents' Argument that the Changes Required by the Correction Notice***

22 ***Might Damage the Existing System is Immaterial:*** In Paragraph 3 of their Exceptions and
23 Brief, Respondents argue that Diane Naglee testified that making the required changes stated in
24 the Department's Correction Notice would damage the existing system. First, the Department is
25 unaware that Ms. Naglee gave any such testimony, and the ALJ made no findings related to this
26 alleged testimony. The Commission should not give this argument any weight as it is not
27 supported by the record before the Commission. Second, Respondents' argument is immaterial

1 to their legal obligation to make those corrections and obtain a Certificate of Satisfactory
2 Completion. The Department could not issue a Certificate of Satisfactory Completion for the
3 existing system as installed because it was defective. The Correction Notice lays out the changes
4 needed for the system to meet legal standards. While it is often the case that a septic system may
5 be rendered temporarily unusable while the necessary corrections are made, this is simply part of
6 the normal process of repairing or altering a septic system. If those changes are made, the
7 Department may then issue a Certificate of Satisfactory Completion, indicating that the changes
8 have ultimately improved, rather than damaged, the system.

9 E. *The Assimilative Capacity and Longevity of the System do not Demonstrate that*
10 *the System will Function Properly, and the Department's Assessment of a "Moderate"*

11 *Magnitude is Correct:* In Paragraphs 4, 5, 8 and 9 of their Exceptions and Brief, Respondents
12 argue that Bob Baggett of the Department testified that the system installed at Respondents'
13 property has significantly more assimilative capacity than a system installed according to the
14 Department's minimum specifications for a shop, and would function longer. First, whether or
15 not the system had greater assimilative capacity, meaning larger in size than required, it had
16 construction deficiencies which rendered it unapprovable, resulting in the posting of a Correction
17 Notice and preventing the Department from issuing a Certificate of Satisfactory Completion.
18 Second, Respondents' characterization of Mr. Baggett's testimony is not supported by the record
19 or the findings of fact. The ALJ found, in Finding of Fact number 19 of the Order, that Mr.
20 Baggett "noted concerns about the grade of the septic tank effluent pipe, the grade of the disposal
21 trenches and piping and the lack of drain media (rock) over the top of the distribution pipe." Mr.
22 Baggett's concerns, identical to Ms. Naglee's concerns, relate to the construction deficiencies of
23 the system, which render the system defective and unapprovable regardless of its assimilative
24 capacity or potential longevity (see Findings of Fact 15 and 19 of the Proposed Order). The ALJ
25 weighed the evidence in the record and, on page 7 of the Proposed Order, concluded that the
26 magnitude of the violation is moderate "considering the potential for adverse impact on the
27 environment by using an unapproved sewage system," thus contradicting Respondents'

1 argument. Finally, greater assimilative capacity and longevity are immaterial to the violation of
2 connecting to or using an on-site sewage disposal system without first obtaining a Certificate of
3 Satisfactory Completion.

4 F. ***The Department's Assessment of a \$263.00 Economic Benefit Component was***
5 ***Correct:*** In Paragraph 7 of their Exceptions and Brief, Respondents argue that the Department's
6 economic benefit assessment is incorrect. Respondents now argue that they used more gravel
7 than necessary. First, this is inconsistent with the ALJ's Proposed Order in which she concludes
8 that Respondents must "make the required construction corrections." The required construction
9 corrections are those in the Correction Notice which specifies that the system had "insufficient
10 gravel around the perforated piping and over the top of the pipe as required by OAR 340-071-
11 0220(7)." Second, this is inconsistent with the ALJ's Finding of Fact number 21, which supports
12 the Department's assessment of a \$263 economic benefit.

13 G. ***Respondents' Request for Damages is Unfounded:*** In Paragraph 7 of their
14 Exceptions and Brief, Respondents seem to be requesting that the Department pay them
15 \$1,200.00, as they state that "Ms. Naglee's negligence" has cost them \$1,200.00. First,
16 Respondents have not stated any legal theory that would allow or necessitate this payment and
17 the Department is unaware of such. Second, as described in Paragraph IV.B above, Respondents
18 have not shown that Ms. Naglee acted negligently.

19 V. CONCLUSION

20 The Department requests that the Commission adopt the ALJ's Proposed Order as
21 its Final Order. Respondent's arguments to the contrary are neither supported by the evidence in
22 the record nor by law.

23
24
25 Date

6/17/05

Bryan Smith
Bryan Smith, Environmental Law Specialist



Oregon

Theodore R. Kulongoski, Governor

Attachment E

Department of Environmental Quality

811 SW Sixth Avenue

Portland, OR 97204-1390

503-229-5696

TTY 503-229-6993

June 13, 2005

Bryan Smith
Environmental Law Specialist
Oregon Department of Environmental Quality
2146 N.E. 4th, #104
Bend, Oregon 97701

Re: John Richard Fleming, No. WQ/OS-ER-04-071 and
Glenn Martin Fleming and Barbara Chapman Fleming, No. WQ/OS-ER-04-072

Dear Mr. Smith:

On June 9, 2005, the Commission received your request for a one-week extension of the June 10 deadline to submit DEQ's brief in reply to Petitioners' exceptions and briefs in the above-referenced cases. Your request for extension was filed timely, and the Commission has granted your request. The new deadline for you to submit DEQ's reply briefs is June 17, 2005.

If you have any questions, please call me at (503) 229-5555.

Sincerely,

Jane K. Hickman
Acting Assistant to the Commission

Cc: John Richard Fleming
Glenn Martin Fleming and Barbara Chapman Fleming



Oregon

Theodore R. Kulongoski, Governor

Attachment F

Department of Environmental Quality
2146 NE 4th Street, Suite 104
Bend, OR 97701
(541) 388-6146
Eastern Region
Bend Office

June 9, 2005

Jane Hickman
Assistant to the Environmental Quality Commission
Oregon Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

Re: John Richard Fleming
Notice of Violation and Assessment of Civil Penalty
No. WQ/OS-ER-04-071
Baker County

and

Glenn Martin Fleming and Barbara Chapman Fleming
Notice of Violation, Department Order and Assessment of Civil Penalty
No. WQ/OS-ER-04-072
Baker County

Dear Ms. Hickman:

I am writing to request a one week extension of the June 10, 2005, deadline for the Department of Environmental Quality (the Department) to submit its Brief in Reply to John Richard Fleming and Glenn and Barbara Fleming's Exceptions and Briefs.

Thank you for your consideration of this request.

Sincerely,

Bryan Smith
Environmental Law Specialist

cc: John Richard Fleming, PO Box 477, Baker City, OR 97814
Glenn Martin Fleming and Barbara Chapman Fleming, PO Box 985, Baker City, OR
97814

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OAH Case NO. 118751

By Barbara C. Fleming, Respondent

The findings of fact as listed in the Proposed and Final Order are accurate as far as they go. Finding # 21 is excepted and is discussed below. The omissions in this order from what was actually said at the hearing are significant, and several observations can be made from these findings and these omissions: First, All of the respondent's exhibits submitted to the Administrative Law Judge at the hearing and all testimony in favor of the respondents were not included in the final order.

Additional facts that are pertinent to the case are as follows:

1. Findings of Fact # 6 states that Jo Fleming understood from her conversation with Debbie DeShaw that no DEQ inspection was required for a drainfield for a shop. This understanding is supported by the phone memo of 8-19-02 from Debbie DeShaw to Diane Naglee, which is signed by Diane and in her handwriting. Debbie DeShaw stated that "Jo Fleming" had received a sewer permit without DEQ Signoff. The purpose of this phone call was to notify DEQ of the rumor that the proposed shop was actually a residence. This rumor was based on the fact that attractive siding was being used to match the hoped for future house if such was ever allowed. The premise is still clearly implied in this memo that notification of DEQ was needed because if it was a dwelling, then DEQ would need to approve the plans and grant a permit. Also implied is the fact that Debbie De Shaw was still operating on the premise that a shop did not require a DEQ permit or DEQ inspection.
2. It is clear and documented in Diane Naglee's handwriting that she knew at least 22 days before the installation of the system that Jo Fleming had been informed by Debbie DeShaw that no DEQ approval was needed, and a sewer permit granted without DEQ signoff. Diane has stated in a preliminary hearing that a sewer permit was not to be given by the building department without DEQ signoff. See Exhibit A-1 for the memo.
Diane Naglee also visited the site on 9-12-02 to observe whether a system had been installed. She observed mounds of drainrock on the site. It had been delivered on the previous day, Obviously it had not been installed in the trenches, so a contact by DEQ with notification of DEQ requirements at

this time would have meant that there would have been minimal reworking of the system. Just a little releveling of the trenches and the system could have been installed to DEQ specifications without damaging any existing work. No contact was made until after the system was completely installed. Diane stated at the hearing that she had been advised by her supervisors not to make contact at this time.

3. At the hearing under oath, Diane Naglee stated that to attempt to make changes as requested in the Correction Notice would be difficult or impossible and would damage the existing system. It would be easier and less expensive to start with a new drainfield on a new location.
4. In a letter written on September 27, 2003 and received by DEQ on October 8, 2003, Jo Fleming wrote to Diane Naglee in response to a correction Notice given on August 11, 2003. This letter acknowledged minor variations from specifications, but made the claim that the system was three times the assimilative capacity needed for a shop. There was no response by DEQ to this letter. About six months later, Barbara Fleming received a Notice of Non Compliance from DEQ. Jo Fleming Called Diane Naglee and mentioned the lack of response to her letter. Diane stated that since no corrections had been made, Her boss had told her no response was necessary. This indicates a systemic arrogance on the part of DEQ.
5. At the hearing, under oath, Bob Baggett, DEQ's designated expert, when asked whether the existing system was superior to the minimum DEQ specification system for a shop, replied that the existing system "had significantly more assimilative capacity than the minimum system for a shop and would function much longer than the minimum DEQ specification system for a shop. There was a sketch labeled R-2 that was included as part of the record of the hearing.
6. Findings of Fact # 16 Stated "Respondents did not correct the identified construction deficiencies within 30 Days.... "Making these corrections was not within our physical or financial capabilities and to dig up the system with winter approaching and subjecting the system to freezing temperatures would have been very unwise. As stated in #4 and # 6 above, the easiest way to fix the system would be to abandon a functioning system and replace it with an inferior one. This did not make sense until someone could evaluate the system and determine that it was actually necessary. Ms. Naglee stated to Jo Fleming on the phone that she did not have the capability or authority to certify any system on any basis other than exact compliance with all provisions of the regulations.

This statement was in response to Jo's contact following the NON of April 21, 2003. Jo Fleming's request was to get someone with the education and authority to take a look at it and determine if the existing system was actually adequate, as Jo Fleming contended. Bob Baggett finally answered that question at the formal hearing on February 15, 2005. This was hardly a timely response and until this request was fulfilled, any efforts to change the system would have been inappropriate.

7. Findings of Fact # 21 places an economic benefit of \$150.00 on the cost of adding more gravel over the pipe. This statement completely ignores the fact that the trench length is triple the length required for a shop, the depth of gravel is a full foot thick as required by the regulations, and the trench width is 32 inches rather than 24 inches as required by DEQ regulations. Thus the quantity of gravel is at least four times the amount required for a design meeting the minimum DEQ requirements for a shop. The only variation from specifications is that the pipe is higher in the gravel bed than the specifications. Ms. Naglee's negligence in contacting us when she became aware of the misinformation that we received cost us based on your calculations, at least \$1200.00 on this item alone.
8. Under assessment of Civil Penalty, the statement is made that "The department correctly determined the magnitude of this violation was moderate, considering the potential for adverse impact on the environment by using an unapproved system. Based on Bob Baggett's assessment under oath, there is less probability of damage to the environment than with a minimum system meeting DEQ requirements. The factor should be a negative number.
9. The information provided by the Administrative Law Judge before the formal hearing stated that she could make no "judgements in equity." In other words, she like Diane Naglee had no knowledge or authority to make any judgement other than to determine if there were violations of the regulations or an order issued by any member of the DEQ staff. It appears that the EQC is the first level of appeal where a decision can be made that an overbuilt and extremely competent system can be declared adequate. Following DEQ orders would have spent precious resources to replace an existing system with a system with much reduced assimilative capacity and a shorter life span. This is why we are here. To see if a system that DEQ's designated expert stated was much superior to the minimum DEQ Requirements for a shop will be allowed to remain, or if it must be replaced with an inferior one.

OBJECTIONS

We object to and except the conclusions of law.

This entire process with the misleading information given to a citizen, DEQ being aware of the misinformation, and deliberately not saying anything until a system is installed, and then giving orders that could only be described as arbitrary and capricious, is intended as a means of extorting money from people trying to build a building within the law as best known, and as stated by the appropriate people to ask about the law. DEQ has become offensive and arbitrary instead of helpful and sustaining.

Proposed Conclusions of Law

1. There was no willful violation of Oregon State Regulations by the Flemings. Inquiring of the Building Department regarding requirements is reasonable due diligence regarding the requirements for building.
2. The system as installed has been examined by DEQ's designated expert. It is not going to cause a pollution problem. It has much greater assimilative capacity than a system meeting DEQ's minimum requirements, and it will function indefinitely with the waste load coming from a shop building.

Alternate Proposed Order

Declare the existing drainfield to be adequate for the existing shop building and direct DEQ to issue the appropriate certificate of completion.

Dismiss the proposed "civil assessment" with prejudice.

Direct DEQ to discontinue activities that are best described as attempted entrapment and extortion.

Barbara C. Fleming
Barbara C. Fleming

5-10-05

Glenn M. Fleming
Glenn M. Fleming

5-10-05

Byran

Attachment H



Oregon

Theodore R. Kulongoski, Governor
VIA CERTIFIED MAIL

Department of Environmental Quality

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

April 26, 2005

Barbara Chapman Fleming
Glenn Martin Fleming
P. O. Box 985
Baker City, Oregon 97814

Re: Glenn Martin Fleming and Barbara Chapman Fleming
OAH Case No. 118751
DEQ Case No. WQ/OS-ER-04-072

Dear Mr. and Ms. Fleming:

The Environmental Quality Commission (Commission) received your petition for review in the above-referenced matter on April 14, 2005. Your petition was filed in a timely manner.

The Proposed Order outlined appeal procedures, including filing of exceptions and briefs. The hearing decision and Oregon Administrative Rules (OAR 340-011-0575) state that you must file exceptions and brief within thirty days from the filing of your request for Commission review, or May 16, 2005. Your exceptions must specify the findings and conclusions in the Proposed Order that you object to, and also include proposed alternative findings of fact, conclusions of law, and an alternative order with specific references to the parts of the record upon which you rely. The brief must include the arguments supporting these alternative findings of fact, conclusions of law and order. Failure to take an exception to a finding or conclusion in the brief waives your ability to later raise that exception. Once your exceptions have been received, a representative of the Department may file an answering brief within thirty days. The Commission may extend any of the time limits contained in OAR 340-011-575(5) if an extension request is made in writing and is filed with the Commission before the expiration of the time limit. I have enclosed a copy of the applicable administrative rules for your information.

To file exceptions and briefs, please mail these documents to Jane Hickman, on behalf of the Environmental Quality Commission, at 811 S.W. 6th Avenue, Portland, Oregon 97204. If you fail to timely file the exceptions or brief, the Commission may dismiss your petition for review. At the time of dismissal, the Commission will also enter a final order upholding the proposed order.

Barbara Chapman Fleming
Glenn Martin Fleming

April 26, 2005
Page Two.

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) 229-5555.

Sincerely,



Jane K. Hickman
Acting Assistant to the Commission

Cc: Bryan Smith, Oregon Department of Environmental Quality

Attachment I
RECEIVED

P.O. Box 985
Baker City, OR 97814
April 12, 2005

APR 14 2005
Oregon DEQ
Office of the Director

Environmental Quality Commission
C/O Stephanie Hallock, Director, DEQ
811 SW 6th Avenue
Portland, OR 97204

Dear Sir or Madam:

In the Matter of Glenn Martin Fleming and Barbara Chapman Fleming,
OAH Case No. 118751, Agency Case number WQ/OS-ER-072, Baker
County and in conjunction with the case of John Richard (Dick) Fleming,
OAH /Case No. 118750, Agency Case Number WQ/OS-er-04-071.

We hereby petition for review by the Oregon Environmental Quality
Commission.

Sincerely,

Barbara Chapman Fleming Glenn

Barbara Chapman Fleming

Glenn Martin Fleming
Glenn Martin Fleming

This hearing decision has been copied to: Anne, field person & his/her mngr; Staff Folder; EQC; DA; Business Office; Hearing Decision Notebook; West Publishing; & Lexus Nexus. Let me know if anyone else needs a copy. Deb

Attachment J

RECEIVED
MAR 21 2005

OFFICE OF COMPLIANCE AND ENFORCEMENT
DEPARTMENT OF ENVIRONMENTAL QUALITY

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
ENVIRONMENTAL QUALITY COMMISSION

IN THE MATTER OF:) PROPOSED AND FINAL ORDER
)
GLEN MARTIN FLEMING and)
BARBARA CHAPMAN FLEMING,) OAH Case No. 118751
Respondents,) Agency Case Number WQ/OS-ER-04-072
) Baker County

HISTORY OF THE CASE

On August 4, 2004, the Department of Environmental Quality (DEQ or Department) issued a Notice of Violation, Department Order and Assessment of Civil Penalty (Notice) to Respondents Glen Martin Fleming and Barbara Chapman Fleming. The Notice alleged that Respondents connected to or used an on-site sewage disposal system without first obtaining a Certificate of Satisfactory Completion, in violation of OAR 340-071-0175(6),¹ and that they failed to meet the requirements for satisfactory completion within 30 days after receiving a Correction Notice in violation of OAR 340-071-075(5).² The Notice sought assessment of a civil penalty of \$1,263 for the violation of OAR 340-071-0175(6), and an order directing Respondents to make construction corrections to bring the on-site sewage disposal system into compliance with Oregon's laws and rules or decommission the system in accordance with OAR 340-071-0185.

On August 18, 2004, Respondents requested a hearing. The hearing was consolidated with case no. 118750, involving a Notice of Violation and Assessment of Civil Penalty issued to John Richard (Dick) Fleming. The consolidated hearing was held on February 15, 2005, in Baker City, Oregon. Alison Greene Webster, from the Office of Administrative Hearings, presided as the Administrative Law Judge (ALJ). Respondents appeared in person and without counsel. Respondent Barbara Chapman Fleming, Jo Fleming and John Richard Fleming testified at the hearing on Respondents' behalf. Environmental Law Specialist Bryan Smith represented the Department. Witnesses for the Department were Diane E. Naglee and Robert Baggett, Natural Resource Specialists for the Department. The record closed at the end of the February 15, 2005 consolidated hearing.

¹ OAR 340-071-0175(6) provides as follows: "A person may not connect to or use any system completed after January 1, 1974, unless a Certificate of Satisfactory Completion has been issued for the installation or deemed issued by operation of law in accordance with this rule."

² OAR 340-071-075(5) provides: "The permittee must ensure satisfactory completion of a system installation within 30 days after written notification or posting of a Correction Notice in accordance with section 2 of this rule unless the agent agrees to a later time."

ISSUES

(1) Whether Respondents connected to or used an on-site sewage disposal system on their property without first obtaining a Certificate of Satisfactory Completion for the installation of the system. OAR 340-071-0175(6).

(2) Whether Respondents failed to meet the requirements for satisfactory completion of construction deficiencies in the on-site sewage disposal system on their property within 30 days after written notice or posting of an August 11, 2003 Correction Notice. OAR 340-071-0175(5).

(3) Whether the civil penalty assessment calculated by the Department is appropriate.

EVIDENTIARY RULINGS

Department Exhibits A1 through A19 and Respondents' Exhibits R1 through R6 were admitted into the record.

FINDINGS OF FACT

(1) Respondents are the owners of property located at 45491 Keating Cutoff Road in Baker County, Oregon (the property). (Ex. R1.)

(2) Respondents purchased the property, consisting of 80 acres in rural Baker County, in 1993. At the time of their purchase, Respondents hoped to build one or possibly two houses on the property. A series of zoning changes during the 1990s prevented Respondents from doing so. (Ex. R1; test. of J. Fleming.)

(3) Although Respondents owned the property, their daughter, Jo Fleming, eventually undertook a building project on the property. In 2000, after her application to build a single family dwelling on the property was denied, Ms. Fleming was advised by the Baker County Planning Department that she could build a "shop" or agriculture structure without a building permit. She explained to the then-Planning Department Director that the structure she hoped to build would be more than a pole barn. She advised that she planned to use "2x6 construction," and had designed the structure to match her house plans, in the event she was later permitted to build a dwelling on the property. The Director told Ms. Fleming that a shop/agricultural building could contain office space and a bathroom, and that the Planning Department did not need to see her building plans. (Test. of J. Fleming.)

(4) On September 15, 2000, Ms. Fleming applied for, and was issued, a "Farm Agricultural Building Exemption Certificate" for the property. (Ex. R4.) She was advised by the Baker County Planning Department that she needed to obtain electrical and plumbing permits from the Building Department. (Test. of J. Fleming.)

(5) Diane Naglee is a Natural Resource Specialist for the Department. In November 2000, she evaluated the property to determine whether it was appropriate for an on-site sewage disposal system for a single family dwelling. In a November 9, 2000 letter to Respondents,

Ms. Naglee reported that the portion of the property she evaluated was appropriate for a standard system with a maximum flow of 450 gallons per day. The letter warned: "Note: This is NOT a permit to construct an OSSD system. To apply for a permit, please submit the enclosed permit application with the accompanying attachments. DEQ cannot sign off on any Building Codes forms until a DEQ permit is issued." (Ex. A13, emphasis in original.)

(6) On May 14, 2001, Ms. Fleming went to the City of Baker City Building Department and applied for a plumbing permit on the property. The permit, issued by Debbie DeShaw, authorized plumbing for a bathroom, water service and sanitary and storm sewer service. (Ex. R5.) Ms. Fleming talked with Ms. DeShaw about permitting requirements and building inspections for the structure she was building. She understood from that conversation that she did not need to have her sewage disposal system inspected by DEQ. (Test. of J. Fleming.)

(7) In August 2002, Ms. DeShaw phoned DEQ and reported to Ms. Naglee that although Respondents had received approval for an agricultural building on the property, she believed that they were building a residence instead. Ms. Naglee checked the DEQ's database and found that no permit had been issued for an on-site sewage disposal system on the property. (Test. of Naglee; Ex. A1.)

(8) On September 11, 2002, DEQ's Pendleton Office received a complaint regarding the property from Cameron Lane of the Building Code Division in Salem. Mr. Lane reported that Jo Fleming was installing an on-site sewage disposal system without a permit, and that she was building a home on the property without a permit. The complaint was referred to Ms. Naglee. (Ex. A3; test. of Naglee.) That same day, Ms. Naglee had another phone conversation with Ms. DeShaw, who advised that the City of Baker City Building Department had also received word that Respondents were installing a septic system on the property without a permit. (Ex. A2.)

(9) Ms. Naglee drove by the property on September 12, 2002. She observed mounds of gravel near the structure, which appeared consistent with the size of drain rock. (Test. of Naglee; Ex. A3.)

(10) Respondents' son, John Richard (Dick) Fleming, assisted with the installation of the sewage disposal system on the property. The system installed was a standard sewage disposal system with a maximum flow of 450 gallons per day, sufficient for a single family dwelling. At the time of the September 2002 installation, Mr. Fleming was employed by the City of Baker City as the Public Works Director. He took two days off work to run the excavation and layout and install the pipe for the system. Jo Fleming told Mr. Fleming that she had all the necessary permits and paperwork from the Building Department. (Test. of R. Fleming; Test. of J. Fleming; Ex. A11.)

(11) By letter dated September 26, 2002, DEQ notified Respondents that it had received information that a house had been partially built and a septic system possibly installed on the property without permits. The letter warned that DEQ approval would be required for construction of a septic system. (Ex. A4.)

(12) In response to the September 26, 2002 letter, Respondent Barbara Fleming wrote: "This building is an agricultural shop-office. All necessary permits were obtained from the County Planning Office and Building Department." (Ex. A5.)

(13) On April 21, 2003, DEQ issued a Notice of Noncompliance (NON) to Respondents. The NON advised that Respondents were in violation of Oregon environmental law for installing an unapproved on-site sewage treatment and disposal system on their property. The NON advised that to be in compliance with the law, Respondents must: (1) apply for and obtain a construction/installation permit to install an approved on-site sewage disposal system on the property; (2) construct the system in accordance with permit requirements and contact the DEQ for a pre-cover inspection of the construction; and (3) obtain a Certificate of Satisfactory Completion (CSC) before connecting the structural plumbing to the system. (Ex. A7.)

(14) In June 2003, Respondents applied for, and received, a construction/installation permit for the on-site sewage disposal system. (Test. of Naglee; test. of J. Fleming; Ex. A9.)

(15) On August 11, 2003, Ms. Naglee inspected the sewage disposal system at the property. She observed construction deficiencies, which she identified in a Correction Notice posted to the property that day. Specifically, Ms. Naglee found as follows: (1) the system lacked the minimum six inches of fall for the effluent line between the tank and distribution box in violation of OAR 340-071-0220(11); (2) the disposal (perforated) pipe was not level to within plus or minus one inch, in violation of OAR 340-071-0220(10); (3) there was not sufficient gravel around the perforated piping and over the top of the pipe as required by OAR 340-071-0220(7); and (4) because the pipe was partially covered, she could not verify that there was at least four feet of solid pipe out of the distribution box before the start of the perforated pipe. (Ex. A6; test. of Naglee.) The Correction Notice also stated:

Under the provisions of the OREGON ADMINISTRATIVE RULES, all deficiencies listed above must be corrected within 30 days, and a CERTIFICATE OF SATISFACTORY COMPLETION must be issued prior to use of the system. When corrections have been completed, call for inspection.

(16) Respondents did not correct the identified construction deficiencies within 30 days. In a letter dated September 27, 2003 and received by the Department on October 8, 2003, Ms. Fleming wrote: "I know that I am late with this correction thing but I am still busy getting ready for winter." Ms. Fleming addressed the deficiencies and asserted that the sewage system was more than adequate to meet the building's needs. She also asked that the Department "leave well enough alone" and noted that because winter was approaching, it was not an appropriate time to uncover the piping to make corrections to the system. (Ex. A8.)

(17) On March 3, 2004, DEQ issued a second NON to Respondents. This NON identified four violations arising out of the installation of the on-site sewage disposal system on the property, including installing a system that failed to meet the requirements for satisfactory completion within 30 days after written notice or posting of a Correction Notice and operating a newly installed system without first obtaining a CSC. (Ex. A9.)

(18) Robert Baggett is a Natural Resource Specialist 4 and Special Variance Officer in the Department's On-Site Sewage Treatment and Disposal Program. On October 20, 2004, he met with Jo and Dick Fleming to evaluate the septic system on Respondents' property in light of the construction deficiencies listed in the August 1, 2003 Corrections Notice. Although Mr. Baggett was not able to physically inspect the system (because it had been covered following its installation), his findings were consistent with Ms. Naglee's determination that it did not comply with DEQ requirements. (Test. of Baggett.)

(19) In a November 2, 2004 letter to Dick Fleming, Mr. Baggett outlined his concerns about the sewage system. He noted concerns about the grade of the septic tank effluent pipe, the grade of the disposal trenches and piping and the lack of drain media (rock) over the top of the distribution pipe. (Ex. A15.)

(20) The structure that Ms. Fleming built on the property has two stories. According to the Baker County Assessors Office, it is more than 2600 square feet. (Ex. A19.) There is a bathroom, an office with a kitchen area, a washer/dryer and a garage on the first floor. The downstairs office area is insulated, but the upstairs is not. The garage and upstairs are unfinished at this point. (Ex. A18; Ex. R6 and test. of J. Fleming.)

(21) The U.S. Environmental Protection Agency's BEN computer model calculates the economic benefits gained from delaying and avoiding required environmental expenditures. Using the BEN model to calculate Respondents' economic benefit in this case, DEQ determined that the cost for adding more gravel to the system would be approximately \$150. By avoiding this cost, Respondents benefited by \$263 under the US EPA BEN computer model. (Ex. A14.)

CONCLUSIONS OF LAW

(1) Respondents connected to or used an on-site sewage disposal system on their property without first obtaining a Certificate of Satisfactory Completion for the installation of the system in violation of OAR 340-071-0175(6).

(2) Respondents failed to meet the requirements for satisfactory completion of construction deficiencies in the on-site sewage disposal system on their property within 30 days after written notice or posting of an August 11, 2003 Correction Notice in violation of OAR 340-071-0175(5).

(3) The civil penalty assessment calculated by the Department is 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). In this case, the Department has the burden to prove the alleged violations. After reviewing the record, I conclude that the Department has met its burden.

Failure to Obtain a Certificate of Satisfactory Completion

The Department alleges that from April 22, 2003, and through the present, Respondents connected to or used an on-site sewage disposal system without first obtaining a CSC, in violation of OAR 340-071-0175(6). As noted above, this rule prohibits persons from connecting to or using any system completed after January 1, 1974, unless a Certificate of Satisfactory Completion has been issued for the installation or deemed issued by operation of law.

Respondents do not dispute that, by April 22, 2003, the on-site sewage system on their property was connected, and that they did not first obtain a CSC. The evidence also establishes this fact. Therefore, the Department has proven the violation. Respondents contend, however, that they should not be liable for the violation because it was Ms. Jo Fleming's project and Ms. Fleming did not know that she needed a DEQ permit to install the system or an inspection prior to using it.

Although Ms. Fleming was the person responsible for the construction project, Respondents are the owners of the real property that the sewage system serves. As the real property owners, Respondents are liable for the construction, repair and operation of that system. OAR 340-071-0120(2).³ Therefore, notwithstanding Ms. Fleming's responsibility for the project, Respondents' remain liable for any violations that occurred as part of the construction, installation and use of the on-site sewage disposal system on their property.

Moreover, Ms. Fleming's alleged ignorance of the DEQ's requirements does not relieve Respondents' of liability for the violation of OAR 340-071-0175(6). Indeed, even if Ms. Fleming believed when the system was installed in September 2002 that she did not need a permit for the installation, both she and Respondents knew, or should have known, by April 22, 2003 that they

³ The rule provides, in pertinent part, as follows:

- (2) Each owner of real property is jointly and severally liable for:
 - (a) Treating wastewater generated on that property in conformance with rules adopted by the commission;
 - (b) Connecting all plumbing fixtures from which wastewater is or may be discharges to a sewerage facility or onsite system approved by the department or an agent;
 - (c) Maintaining, repairing, and replacing the onsite system on that property as necessary to ensure proper operation of the system; and
 - (d) Complying with all requirements for construction, installation, maintenance, replacement and repair of onsite systems required in this division and OAR chapter 340, division 073.

were required to obtain a CSC before using the system. The April 21, 2003 NON specifically set forth the actions required to bring the sewer system into compliance with DEQ's rules. It directed Respondents to: (1) apply for and obtain a construction/installation permit; (2) obtain a pre-cover inspection of the construction; and (3) obtain a CSC before connecting plumbing to the system. The NON further advised: "You must obtain a CSC and have all plumbing connected to a DEQ approved OSSTD system by June 1, 2003." In addition, the August 11, 2003 Correction Notice stated that "a Certificate of Satisfactory Completion must be issued prior to use of the system." Consequently, neither Ms. Fleming nor Respondents can claim ignorance of the CSC requirement.

Failure to Make Corrections Within 30 Days

The Department also alleges that Respondents failed to meet the requirements for satisfactory completion within 30 days after written notification or posting of a Correction Notice, in violation of OAR 340-071-0175(5). This rule requires a permittee to ensure satisfactory completion of a system installation within 30 days of the posting of a Correction Notice. Here, Respondents did not respond to the August 11, 2003 Correction Notice or make corrections to the system within the 30 day window. Indeed, Ms. Fleming acknowledged as much in her September 27, 2003 letter to DEQ. Thus, the Department has proven this second violation as well.

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 Respondents were liable for \$1,263 in civil penalties based on the violation of OAR 340-071-0175(6).⁴ The 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 level of cooperation (C), the economic benefit that Respondent gained by noncompliance with the Department's rules and statutes (EB), and the magnitude of the violation. The formula for determining civil penalties in this case is expressed as "BP + [(0.1 x BP) x (P + H + O + R + C)] + EB."

Pursuant to OAR 340-012-0060(2)(c), Respondents' violation of OAR 340-071-0175(6) is a Class II violation. The Department correctly determined that the magnitude of this violation was moderate, considering the potential for adverse impact on the environment by using an unapproved sewage system. The BP for a moderate Class II on-site sewage disposal violation is \$500. OAR 340-012-0042(3)(a)(B)(ii). Because Respondents had no prior significant actions, the Department appropriately assigned a value of 0 to the "P" and "H" factors. Because this violation existed for more than one day, the Department is authorized to assign a value of 2 to the "O" factor.

⁴ The Department did not seek a penalty for Respondents' violation of OAR 340-071-0175(5).

As for the "R" factor, the Department assigned a value of 6 under OAR 340-012-0045(1)(c)(D)(iii) because Respondents acted intentionally in connecting and continuing to use the on-site sewage disposal system without first obtaining a CSC. This value is appropriate under the circumstances, as Respondents were notified in writing of the CSC requirement in April 2003, August 2003 and March 2004. The Department also appropriately assigned a value of 2 for the "C" factor, as Respondents have not taken reasonable efforts to correct the violation.

Finally, the Department has established that, based on the US EPA BEN computer model, Respondents gained an economic benefit of \$263 through noncompliance with the Department's rules.

Using the civil penalty formula, the Department calculated Respondents' penalty as follows:

$$\begin{aligned} \text{Penalty} &= \$500 [\text{BP}] + [(0.1 \times \$500) \times (0 + 0 + 2 + 6 + 2)] + \$263 [\text{EB}] \\ &= \$500 + (50 \times 10) + \$263 \\ &= \$500 + \$500 + \$263 \\ &= \$1,263 \end{aligned}$$

Based on this record, the civil penalty assessment of \$1,263 is warranted.

PROPOSED ORDER

I propose that the Board issue the following order:

(1) Respondents are subject to a civil penalty in the amount of \$1,263 for connecting or using the on-site sewer system on their property without first obtaining a Certificate of Satisfactory Completion.

(2) Respondents are required to apply for a construction permit and, within 14 days of issuance of the permit, make the required construction corrections to the on-site sewage disposal system serving the property at 45491 Keating Cutoff Road in Baker County, Oregon; or, alternatively, decommission the system on the property in accordance with OAR 340-071-0185.



Alison Greene Webster, Administrative Law Judge
Office of Administrative Hearings

ISSUANCE AND MAILING DATE:

March 18, 2005

APPEAL RIGHTS

If you are not satisfied with this decision, you have the right to have the decision reviewed by the Oregon Environmental Quality Commission. To have the decision reviewed, you must file a "Petition for Review" within 30 days of the date this order is served on you as provided in Oregon Administrative Rule (OAR) 340-011-0132(1) and (2). The Petition for Review must be filed with:

Environmental Quality Commission
c/o Stephanie Hallock, Director, DEQ
811 SW Sixth Avenue
Portland, OR 97204.

Within 30 days of filing the Petition for Review, you must also file exceptions and a brief as in provided in OAR 340-011-0132(3). If the petition, exceptions and brief are filed in a timely manner, the Commission will set the matter for oral argument and notify you of the time and place of the Commission's meeting. The requirements for filing a petition, exceptions and briefs are set out in OAR 340-011-0132.

Unless you timely and appropriately file a Petition for Review as set forth above, this Proposed Order becomes the Final Order of the Environmental Quality Commission 30 days from the date of service on you of this Proposed Order. If you wish to appeal the Final Order, you have 60 days from the date the Proposed Order becomes the Final Order to file a petition for review with the Oregon Court of Appeals. See ORS 183.400 *et. seq.*

**APPENDIX A
LIST OF EXHIBITS CITED**

- Ex. A1: Phone Memo dated 8/19/02
- Ex. A2: Phone Memo dated 9/11/02
- Ex. A3: Pollution Complaint dated 9/11/02
- Ex. A4: Letter to Glenn and Barbara Fleming dated 9/26/02
- Ex. A5: Response letter from Barbara Fleming dated 10/1/02
- Ex. A6: Correction Notice dated 8/11/03
- Ex. A7: Notice of Non Compliance (Glenn and Barbara Fleming) dated 4/21/03
- Ex. A8: Letter from Jo Fleming dated 9/27/03
- Ex. A9: Notice of Non Compliance (Glenn and Barbara Fleming) dated 3/3/04
- Ex. A11: Letter from John Richard Fleming dated 3/19/04
- Ex. A13: Site Evaluation Report dated 11/9/00
- Ex. A14: Memorandum to File dated 6/23/04
- Ex. A15: Letter to John Richard Fleming dated 11/2/04
- Ex. A18: Photos dated 2/28/03
- Ex. A19: Site Information for Tax Year 2003
- Ex. R1: Letter to ALJ from Barbara Chapman Fleming dated 1/20/05
- Ex. R4: Farm Agricultural Building Exemption Certificate dated 9/15/00
- Ex. R5: Plumbing Permit Application dated 5/14/01
- Ex. R6: Improvement Cost Elements and Appraisal dated 2/15/05

CERTIFICATE OF SERVICE

I certify that on March _____, 2005, I served the attached Proposed and Final Order by mailing certified and/or first class mail, in a sealed envelope, with first class postage prepaid, a copy thereof addressed as follows:

GLEN MARTIN & BARBARA CHAPMAN FLEMING
PO BOX 985
BAKER CITY OR 97814


**BY FIRST CLASS MAIL AND CERTIFIED MAIL
BY CERTIFIED MAIL RECEIPT # 7004 2890 0001 8956 0146**

BRYAN SMITH
OREGON DEQ
OFFICE OF COMPLIANCE AND ENFORCEMENT
811 SW 6TH AVE
PORTLAND OR 97204

BY FIRST CLASS MAIL

DEBORAH NESBIT
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

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:) NOTICE OF HEARING
)
DICK FLEMING)
GLEN MARTIN FLEMING AND) OAH Case No.: 118750 & 118751
BARBARA CHAPMAN FLEMING) Agency Case No.: WQ/OS-ER-04-071 &
WQ/OS-ER-04-072

A hearing has been set in the above matter before the Office of Administrative Hearings.

Hearing Date: February 15, 2005 Hearing Time: 9:00 a.m.

Location: Baker City Parks Office
1705 Main Street Suite 101
Baker City OR

Your case has been assigned to Administrative Law Judge Alison Greene Webster, an employee of the Office of Administrative Hearings. The Office of Administrative Hearings is an impartial tribunal, and is independent of the agency proposing the action.

The agency will not be represented by an assistant attorney general

Unless otherwise notified, all correspondence, inquiries, exhibits and filings should be sent to:

ALJ Alison Greene Webster
Office of Administrative Hearings
4900 SW Griffith Drive, Suite 100
Beaverton OR 97005-4649
FAX: (503) 644-5790

OAR 137-003-0520 requires a copy of any correspondences, exhibits or other filings to be provided to all parties and the agency at the same time they are provided to the ALJ.

A request for 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.

If you are hearing impaired, need a language interpreter or require another type of accommodation to participate in or attend the hearing, immediately notify the Office of Administrative Hearings at (503) 945-5547 or TDD at 1-800-735-1232 to make the appropriate arrangements. 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.

You are required to notify the Office of Administrative Hearings at (503) 945-5547 immediately if you change your address or telephone number prior to a decision in this matter.

Notice served on all non-agency parties by: First Class Mail and Certified Mail
Certified Mail Receipt #7002 2410 0001 7410 4935 – Dick Fleming
#7002 2410 0001 7410 4447 – Glen & Barbara Fleming

Notice served on Agency by first class mail or e-mail.

MAILED this 5th day of January, 2005. Mailed by: Lucy Garcia

This Notice has been provided to the following:

DICK FLEMING
PO BOX 477
BAKER CITY OR 97814

GLEN MARTIN FLEMING
BARBARA CHAPMAN FLEMING
PO BOX 985
BAKER CITY OR 97814

BRYAN SMITH
DEPT OF ENVIRONMENTAL QUALITY
811 SW SIXTH AVE
PORTLAND OR 97204

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. Administrative law judge. The person presiding at the hearing is known as the administrative law judge. The administrative law judge is an employee of the Office of Administrative Hearings under contract with the Environmental Quality Commission. The administrative law judge 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 administrative law judge 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 administrative law judge 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 administrative law judge 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 administrative law judge 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 administrative law judge will have the opportunity to ask questions of all witnesses. DEQ or the administrative law judge 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 administrative law judge. DEQ or the administrative law judge 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 administrative law judge 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 administrative law judge 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 administrative law judge. 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 administrative law judge 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.*

Attachment L

P. O. Box 985
Baker City, OR 97814
August 15, 2004

Bryan Smith ODEQ Enforcement Section
DEQ 811 SW 6th Ave.
Portland, OR 97204-1390

RE: ERP-03-024
45491 Keating Cutoff Road
Baker County

Dear Bryan Smith,

If a hearing is our only recourse,
then I request a hearing in conjunction
with Dick Fleming's hearing

We will need time to tell our story,
and someone with the authority to
sign off on minor deviations if that
is the determination.

Sincerely,
Barbara C. Fleming

RECEIVED
AUG 18 2004
OFFICE OF COMPLIANCE
AND ENFORCEMENT
DEPARTMENT OF ENVIRONMENTAL QUALITY

P.O. Box 985
Baker City OR 97814

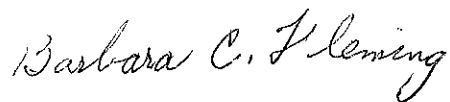
March 7, 2004

Diane E. Naglee, RS
Natural Resource Specialist
Water Quality Program - Eastern Region

Dear Diane,

I am writing in response to your March 3, 2004 letter and packet concerning the 45491 Keating Cutoff Road RE: ERP-04-028. Since it has been most of five months since Jo Fleming sent you her letter we all felt you concurred with her on the usefulness of her septic system. You did not remark on the substance of her letter. As she said, she read the 105 pages on the Oregon septic systems, and felt hers was adequate. She was told by the secretary (in 2000) of the Baker City Building Department that an ag shop building did not need a septic permit. Because of that, her helper wanted to cover the system before taking his little tractor back to Idaho, she let him do it. This helper had recently installed his own system in Idaho, so he knew how it should be done. The project had been engineered and overseen by the two engineers. The trench was done by a neighbor that has excavated for other local systems. This shop does not produce a lot of sewage. The ground is high and dry and should be able to handle the load. If we have to re-do, I suppose we can, but it should not really be necessary. My husband is in the final stages of Parkinson's disease. I have neither the time nor money for letter writing and bureaucratic decisions, as I am his full time caregiver. Jo paid \$490.00 for the site evaluation. I paid a \$670.00 fee. This is a lot of money for what the D.E.Q. describes as efficiently conducted minimum services

Sincerely



Barbara C. Fleming

B. Fleming
Box 985
Baker City, OR 97814

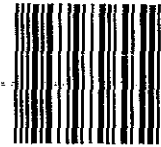
RETURN RECEIPT
REQUESTED



7003 1010 0002 8950 2585



UNITED STATES
POSTAL SERVICE



9264

97204

U.S. POSTAGE
PAID
BAKER CITY, OR
97814
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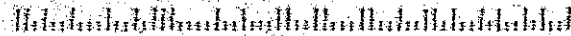
\$4.05

00013881-09



Bryan Smith
ODEQ Enforcement Section
811 SW 6th Ave.
Portland, OR 97204-1390

01204 81333





Oregon

Theodore R. Kulongoski, Governor

Attachment M

Department of Environmental Quality

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

August 4, 2004

CERTIFIED MAIL 7002 3150 0004 8588 4258

Glenn Martin Fleming and Barbara Chapman Fleming
PO Box 985
Baker City, OR 97814

Re: Notice of Violation, Department Order, and Assessment of Civil Penalty
No. WQ/OS-ER-04-072
Baker County

Dear Mr. and Mrs. Fleming:

On September 11, 2002, the Department of Environmental Quality (the Department) received a complaint that you had arranged for an on-site sewage disposal system to be installed at property you own, located at 45491 Keating Cutoff Road in Baker County, Oregon (the Property). The on-site sewage disposal system was connected to a building containing plumbing fixtures. The complaint alleged that you had the system installed without obtaining the required on-site sewage disposal permit.

On September 26, 2002, Bob Marshall of the Department sent you a letter informing you that if you wish to connect to an existing septic system, or to construct a new one, the Department must approve the system. Mr. Marshall requested that you respond to the letter by October 3, 2002. You did not respond to the letter.

On April 21, 2003, Diane Naglee sent you a Notice of Noncompliance (NON) informing you that the Department received documentation confirming that plumbing was installed at the property. The NON also informed you that the Department has no record that you obtained the required permit before having the system installed. The NON informed you that you must apply for and obtain a permit, and then have the Department approve the system, by issuing a Certificate of Satisfactory Completion (CSC), before you could connect the structural plumbing to the system. The NON also informed you that failure to connect plumbing fixtures to a Department-approved on-site sewage disposal system is a Class II violation of Oregon's environmental law.

On June 11, 2003, you obtained a permit, and on August 11, 2003, Ms. Naglee inspected the on-site sewage disposal system at the Property. Ms. Naglee observed construction deficiencies such as lack of fall between the septic and the drainfield, unlevel piping in the trenches, and inadequate gravel in the trenches of the system. These deficiencies may result in sewage backing up into the dwelling on the Property, or the discharge of sewage to the ground surface of the Property.

Ms. Naglee drafted a Correction Notice and provided a copy of the Correction Notice to your daughter, Jo Fleming, at the Property. The Correction Notice stated that you must complete system

PI

corrections within thirty (30) days, and that a CSC must be issued by the Department prior to your usage of the system. You did not make the corrections or request another inspection within thirty days.

On October 8, 2003, the Department received a letter from Jo Fleming. The letter disputed Ms. Naglee's findings in the Correction Notice. The letter did not state that the corrections had been made, and did not request another inspection. Because you did not request an inspection, the Department was unable to inspect your system and determine whether or not a CSC should be issued. However, you continued to operate your on-site sewage disposal system without a CSC, and this is a violation of Oregon's environmental laws.

On March 3, 2004, Ms. Naglee sent you a NON informing you that because you failed to make the corrections to your on-site sewage disposal system, and you continued to operate the system without first obtaining a CSC, you were being referred to the Department's Office of Compliance and Enforcement for formal enforcement action.

The enclosed Notice and Order assesses a civil penalty of \$1,263, jointly and severally, against both of you for operating an on-site sewage disposal system without first obtaining a Certificate of Satisfactory Completion. The penalty is determined by using the procedures set forth in OAR 340-012-0045. The Department's findings and civil penalty determination are attached to the Notice and Order as Exhibit No. 1.

In addition to the civil penalty assessment, Section V of the enclosed Order requires you to within fourteen (14) days of receipt of the Order either:

- 1) apply for and obtain a renewed Construction Permit, make the required construction corrections to the on-site sewage disposal system serving the Property, and request the required inspection from the Department; or
- 2) decommission the on-site sewage disposal system on the Property in accordance with OAR 340-071-0185.

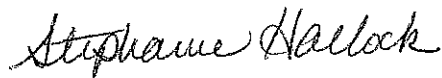
The steps you must follow to request a review of the Department's allegations and determinations in this matter are set forth in Section VI of the enclosed Notice and Order. If you wish to have a hearing on this matter, you must specifically request a hearing in writing. Attached to the hearing request must be your Answer in which you admit or deny each of the facts alleged in Sections II and III of the Notice and Order. In your Answer, you should also allege all affirmative claims or defenses and provide reasons why they apply in this matter. You will not be allowed to raise these issues at a later time, unless you can later show good cause for your failure. The applicable rules are enclosed for your review. You need to follow the rules to ensure that you do not lose your opportunity to dispute the Department's findings (see OAR 340-011-0107 and OAR 137-003-0528). If the Department does not receive your request for a hearing and Answer within 20 calendar days from the date you received the Notice and Order, a Default Order will be entered against you and the civil penalty will become due at that time. You can fax your request for hearing and Answer to the Department at (503) 229-6762.

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

I look forward to your cooperation in complying with Oregon environmental law in the future. However, if any additional violations occur, you may be assessed additional civil penalties. Copies of referenced rules are enclosed.

If you have 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: Diane Naglee, Eastern Region, Baker City Office, DEQ
Joni Hammond, Eastern Region, Pendleton Office, DEQ
Baker County Planning Department, 1995 Third Street, Baker City, OR 97814
Baker County Building Department
Oregon Department of Justice
Environmental Quality Commission
Baker County District Attorney

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

3 IN THE MATTER OF:) NOTICE OF VIOLATION,
4 GLENN MARTIN FLEMING AND BARBARA) DEPARTMENT ORDER,
5 CHAPMAN FLEMING,) AND ASSESSMENT OF
6 Respondents.) CIVIL PENALTY
7) No. WQ/OS-ER-04-072
8) BAKER COUNTY

8 I. AUTHORITY

9 This Notice of Violation, Department Order, and Assessment of Civil Penalty (Notice
10 and Order) is issued jointly and severally to Respondents, Glenn Martin Fleming and Barbara
11 Chapman Fleming, by the Department of Environmental Quality (Department) pursuant to
12 Oregon Revised Statutes (ORS) 468.126 through 468.140, ORS Chapter 183; and Oregon
13 Administrative Rules (OAR) Chapter 340, Divisions 11 and 12.

14 II. FINDINGS OF FACT

- 15 1. Respondents own property located at 45491 Keating Cutoff Road in Baker
16 County, Oregon (the Property).
- 17 2. Respondents operate an on-site sewage disposal system at the Property.
- 18 3. On September 11, 2002, the Department of Environmental Quality (the
19 Department) received a complaint that Respondents arranged for an on-site sewage disposal
20 system to be installed at the Property without obtaining the required on-site sewage disposal
21 permit.
- 22 4. On September 26, 2002, Bob Marshall of the Department sent Respondents a letter
23 informing them that the Department must approve their on-site sewage disposal system before
24 they connect plumbing to it.
- 25 5. On April 21, 2003, Diane Naglee of the Department sent Respondents a Notice of
26 Noncompliance (NON) informing Respondents that they must apply for and obtain a permit
27 before installing an on-site sewage disposal system at the Property. The NON also informed

1 Respondents that they must have the Department approve the system through obtaining a
2 Certificate of Satisfactory Completion (CSC), before connecting the structural plumbing to the
3 system.

4 6. On or about April 22, 2003, Respondent Barbara Chapman Fleming informed Ms.
5 Naglee that Dick Fleming, who is not licensed to install on-site sewage disposal systems, had
6 already installed an on-site sewage disposal system at the Property.

7 7. On or about August 11, 2003, Ms. Naglee inspected the system at the property.
8 Ms. Naglee observed construction deficiencies in the system and drafted a Correction Notice.
9 Ms. Naglee gave a copy of the Correction Notice to Jo Fleming, Respondents' daughter, at the
10 Property.

11 8. Respondents did not make the corrections to their on-site sewage disposal system
12 within thirty (30) days of the August 11, 2003 Correction Notice.

13 9. On or about October 8, 2003, the Department received a letter from Jo Fleming.
14 The letter disputed Ms. Naglee's findings in the Correction Notice. The letter did not state that
15 the corrections had been made, and did not request another inspection.

16 10. On or about March 3, 2004, Ms. Naglee sent Respondents a NON informing
17 Respondents that because they had not made the required corrections, and because they operated
18 their on-site sewage disposal system without first obtaining a CSC for that system, they were
19 being referred to the Department's Office of Compliance and Enforcement with a
20 recommendation to proceed with a formal enforcement action.

21 11. Respondents have not made the corrections to their on-site sewage disposal
22 system, and Respondents have not obtained a CSC for their system.

23 III. VIOLATIONS

24 1. On or about April 22, 2003, and through the present, Respondents connected to or
25 used an on-site sewage disposal system without first obtaining a CSC, in violation of OAR 340-
26 071-0175(6). Specifically, Respondents connected to or used an on-site sewage disposal system
27 at property they own, located at 45491 Keating Cutoff Road in Baker County, Oregon (the

1 Property) without first obtaining a CSC, and Respondents still have not obtained a CSC.

2 According to OAR 340-012-0060(2)(c), this is a Class II violation.

3 2. On or about September 11, 2003, Respondents failed to meet requirements for
4 satisfactory completion within thirty (30) days after written notification or posting of a
5 Correction Notice, in violation of OAR 340-071-0175(5). Specifically, Respondents failed to
6 meet requirements for satisfactory completion of construction deficiencies in their on-site
7 sewage disposal system within thirty (30) days after written notification or posting of a
8 Correction Notice on August 11, 2003, at the Property. According to OAR 340-012-0060(2)(h),
9 this is a Class II violation.

10 IV. ASSESSMENT OF CIVIL PENALTY

11 The Director imposes a civil penalty of \$1,263 for the Violation cited in Section III,
12 paragraph 1. The findings and determination of Respondents' civil penalty pursuant to OAR
13 340-012-0045 are attached and incorporated as Exhibit No 1.

14 V. DEPARTMENT ORDER

15 Based upon the foregoing FINDINGS AND VIOLATIONS, Respondents are
16 hereby ORDERED TO:

17 1. Immediately initiate actions necessary to correct all of the above-cited violations
18 and come into full compliance with Oregon's laws and rules.

19 2. Within fourteen (14) days of receipt of this Order, take one of the following
20 actions:

21 A. apply for a Construction Permit by submitting a completed application to
22 the Department's Pendleton Office, and within fourteen (14) days of
23 issuance of the Permit, make the required construction corrections to the
24 on-site sewage disposal system serving the Property; or

25 B. decommission the on-site sewage disposal system on the Property in
26 accordance with OAR 340-071-0185.

27 ////

1 VI. OPPORTUNITY FOR CONTESTED CASE HEARING

2 Respondents have the right to have a contested case hearing before the Environmental
3 Quality Commission (Commission) or its hearings officer regarding the matters contained in this
4 Notice, provided Respondents file a written request for a hearing and an Answer within twenty
5 (20) calendar days from the date of service of this Notice. If Respondents fail to file either a
6 timely request for a hearing, a late filing will not be allowed unless the reason for the late filing
7 was beyond Respondents' reasonable control. If Respondents fail to file a timely Answer, the
8 late filing will not be allowed unless Respondents can show good cause for the late filing. (See
9 OAR 340-011-0107 and OAR 137-003-0528)

10 The request for a hearing must either specifically request a hearing or state that
11 Respondents wish to appeal this Notice. In the written Answer, Respondents shall admit or deny
12 each allegation of fact contained in this Notice, and shall specifically state all affirmative claims
13 or defenses to the assessment of the civil penalty that Respondents may have and the reasoning
14 in support of any claims or defenses. The contested case hearing will be limited to those issues
15 raised in this Notice and Order and in the Answer. Unless Respondents are able to show good
16 cause:

- 17 1. Factual matters not disputed in a timely manner shall be presumed to be admitted;
- 18 2. Failure to timely raise a claim or defense will waive the ability to raise that claim
19 or defense at a later time;
- 20 3. New matters alleged in the Answer will be presumed to be denied by the
21 Department unless admitted in subsequent pleading or stipulation by the Department or
22 Commission.

23 Send the request for hearing and Answer to: **Deborah Nesbit, Oregon Department of**
24 **Environmental Quality, 811 S.W. 6th Avenue, Portland, Oregon 97204 or via fax at (503)**
25 **229-6762.** Following the Department's receipt of a request for hearing and an Answer,

26 Respondents will be notified of the date, time and place of the hearing.

27 ////

1 If Respondents fail to file a timely request for hearing and Answer, the Notice and Order
2 shall become a final and enforceable Order of the Environmental Quality Commission by
3 operation of law without any further action or proceeding. If the Order becomes final by
4 operation of law, the right to judicial review, if any, is outlined within ORS 183.480.

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 and Order.

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

9 Failure to appear at a scheduled hearing may result in an entry of a Default Order.

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

12 VII. OPPORTUNITY FOR INFORMAL DISCUSSION

13 In addition to filing a request for a contested case hearing, Respondents may also request an
14 informal discussion with the Department by attaching a written request to the hearing request and
15 Answer.

16 VIII. PAYMENT OF CIVIL PENALTY

17 The civil penalty is due and payable ten (10) days after an Order imposing the civil penalty
18 becomes final by operation of law or on appeal. Respondents may pay the penalty before that time.
19 Respondents' check or money order in the amount of \$1,263 should be made payable to "State
20 Treasurer, State of Oregon" and sent to the **Business Office, Department of Environmental
21 Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.**

22
23 8-4-04
24 Date

23 Stephanie Hallock
24 Stephanie Hallock, Director

EXHIBIT 1

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

VIOLATION 1: Connecting to or using an on-site sewage disposal system without first obtaining a Certificate of Satisfactory Completion, in violation of OAR 340-071-0175(6).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0060(2)(c).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0045(1)(a)(B), as there is no selected magnitude for this violation and there is insufficient information to support a finding of major or minor.

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 \$500 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0042(1)(a)(A) and applicable pursuant to OAR 340-012-0042(3)(b)(A).

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

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

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

"R" is the cause of the violation and receives a value of 6, according to OAR 340-012-0045(1)(c)(D)(iii), because the violation resulted from the Respondents' intentional conduct. Respondents acted with a conscious objective to cause the result of their conduct because the Department informed Respondents in writing on September 26, 2002, April 21, 2003, August 11, 2003, and March 3, 2004, that connecting to or using an on-site sewage disposal system without first obtaining a Certificate of Satisfactory Completion (CSC) is a violation, yet Respondents continued to remain connected to their system and did not obtain a CSC.

"C" is Respondents' cooperativeness in correcting the violation and receives a value of 2 according to OAR 340-012-0045(1)(e)(iii), because the Respondents were uncooperative and did not take reasonable efforts to correct the violation or minimize the effects of the violation. Respondents were notified in writing on September 26, 2002, April 21, 2003, August 11, 2003, and March 3, 2004, that they must correct the violation, yet Respondents have failed to take any action 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 Respondents gained through noncompliance and receives a value of \$263 which represents the amount Respondents saved by operating their on-site sewage disposal system without taking the necessary steps to satisfactorily complete the construction of their on-site sewage disposal system and obtain a CSC. The economic benefit is calculated by the US EPA BEN computer model, pursuant to OAR 340-012-0045(1)(c).

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{R} + \text{C})] + \text{EB} \\ &= \$500 + [(0.1 \times \$500) \times (0 + 0 + 2 + 6 + 2)] + \$263 \\ &= \$500 + (\$50 \times 10) + \$263 \\ &= \$500 + \$500 + \$263 \\ &= \$1,263 \end{aligned}$$



State of Oregon
Department of
Environmental
Quality

File: 9-42¹⁷-3400
45491 Keating
Cutoff Rd

Phone Memo

10/18/2000

COPY

Department of Environmental Quality
Eastern Region - Baker City Office

Project: Joe Fleming
Date: 8/19/02 Time: 8:00
Call To/From: Debbie (ret'd hrs)
Title & Company: Baker City Building Dept.
Address: _____ Phone: 523-0535
Subject: _____

Summary of Call: Debbie stated that owners of this property
received planning approval for an Ag Building. They
allegedly have turned the building into a residence.
Evidently a residence is not allowed on this property.
Baker City building dept. issued plumbing permits about a
year ago for Bathroom, water, + sewer, no DEQ signoff.
Also were issued electrical permit. No other dwelling
on property. An inspection was done for underslab plumbing
rough-in + approved by Bldg. inspector, Bldg. Dept.
did site visit in July + took photos.

11:15 I left message on Baker City answering machine,
I found out record that a site eval. was done on
Nov. 1, 2000 + approved - don't see that a permit was
issued, but may not be in database.

By: [Signature] cc: _____

ATTACHMENT D

Ex. A1



State of Oregon
Department of
Environmental
Quality

File: 8-42-00-3400

Phone Memo

Department of Environmental Quality
Eastern Region - Baker City Office

Project: _____
Date: 9/11/02 Time: am
Call To / From: Debbie
Title & Company: B.C. Building Dept.
Address: _____ Phone: _____
Subject: Fleming Complaint

Summary of Call: Debbie stated that her office has received word that Fleming has installed a septic system w/in the last week - no permit - Debbie requested that I check into it.

2:45 Debbie called & said that the Building Codes state compliance officer is going to visit the site next wednesday, Sept. 18th (Cameron Lane)

By: [Signature] cc: _____

ATTACHMENT E
Ex. A2

State of Oregon
Department of Environmental Quality
700 SE Emigrant, Suite 330
Pendleton, OR 97801
(541) 276-4063

Complaint Number: ERP-200 2-0200
Year Number

Received By: Mary Lou Campbell

POLLUTION COMPLAINT

COMPLAINT INFORMATION

Date Received 9/11/02 Time Received 3pm When Observed Currently
Pollution Source Joe Fleming
Address (Number) 45491 (Quadrant) _____ (Street Name) Keating Cutoff (Type) Rd
City Name Baker City Zip Code 97814 County Baker
Pollution Location Same

Description Installing SSD w/out permits also built home w/out permits

continued

REFERRAL

Referred to Diane Naglee
Responsible Program AQ/AB AQ/AC AQ/D AQ/FB AQ/MISC AQ/OB AQ/V AQ/VR NA
WMC/E WMC/HW WMC/RC WMC/SP WMC/SW WMC/T
WQ/D WQ/I WQ/M WQ/MISC WQ/O WQ/OI WQ/SW

DEQ Program Contact _____

COMPLAINANT

Name Lene, Camron (Please call w/ follow up) Confidential?
Address Bldg Corder New Anonymus?
City Salem State OR Zip Code _____
Home Phone _____ Work Phone 503-373-1239 Ext _____
cell 503-508-5673

POTENTIAL RESPONSIBLE PARTY

Same as Source? Confirmed as Responsible Party?

Name _____ Phone _____ Ext _____
Address _____
City _____ State _____ Zip Code _____

COMPLAINT ACTION

Follow-up Action Site Visit 9/12/02: Unable to access site: Observed what appeared to be mounds of gravel back of house consistent with site of drain rock
NON issued 4/21/03 see attached

Complainant Contacted? Y N Complainant Contact Date 9/19/02
Site Visit? Y N Site Visit Date 9/12/02 Site Inspector D Naglee, RS
Resolution Date _____ Staff Hours _____
NON Issue Date _____ NON Number _____
Enf Referral Date _____ Permit No. _____ Facility/Site-ID _____

ATTACHMENT F
EX A3



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

Eastern Region

700 SE Emigrant

Suite 330

Pendleton, OR 97801

(541) 276-4063 Voice/TTY

FAX (541) 278-0168

September 26, 2002

Glenn & Barbara Fleming
PO Box 985
Baker City, OR 97814

COPY

Re: DEQ Requirements
T09S -R42 -S19: TL1000
Baker County 17 3400

Dear Mr. & Mrs. Fleming:

Recently, this Department received information indicating you have further developed the above described property. Specifically, we understand that a house has been partially built and a septic system possibly installed without permits.

If you plan to connect to an existing septic system or construct a new one, DEQ approval is needed prior to doing so. Our records indicate there has been no application received or permit issued for sewage disposal at the above property. The Department requests you respond to this letter by October 03, 2002

Please call DEQ at (541) 276-4063 to discuss the appropriate application procedure. The Pendleton toll free number is 1-800-304-3513.

Sincerely,

Robert "Bob" Marshall Jr.
Administrative Specialist
Eastern Region Pendleton

cc: Baker County Building Department, PO Box 650, Baker City, OR 97814
Oregon State Building Codes Department, 700 SE Emigrant, Pendleton, OR 97801



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

Eastern Region
700 SE Emigrant
Suite 330
Pendleton, OR 97801
(541) 276-4063 Voice/TTY
FAX (541) 278-0168

September 26, 2002

RECEIVED
OCT 01 2002

State of Oregon
Dept. of Environmental Quality
Eastern Region - Pendleton

Glenn & Barbara Fleming
PO Box 985
Baker City, OR 97814

Re: DEQ Requirements
6 F095 -R42 -S19: TL-1000
Baker County 17 3400

Dear Mr. & Mrs. Fleming:

Recently, this Department received information indicating you have further developed the above described property. Specifically, we understand that a house has been partially built and a septic system possibly installed without permits.

If you plan to connect to an existing septic system or construct a new one, DEQ approval is needed prior to doing so. Our records indicate there has been no application received or permit issued for sewage disposal at the above property. The Department requests you respond to this letter by October 03, 2002 (5 days)

Please call DEQ at (541) 276-4063 to discuss the appropriate application procedure. The Pendleton toll free number is 1-800-304-3513.

Sincerely,

Robert "Bob" Marshall Jr.
Administrative Specialist
Eastern Region Pendleton

COPY

cc: Baker County Building Department, PO Box 650, Baker City, OR 97814
Oregon State Building Codes Department, 700 SE Emigrant, Pendleton, OR 97801

This building is an agricultural shop office, all necessary permits were obtained from the County Planning office and building department.

Barbara Fleming ATTACHMENT H
15

TANK at ground surface - no riser required

Framing

④ Please verify that there is at LEAST 4 feet of SOLID pipe out of distribution Box Before start of perf pipe

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
ON-SITE SEWAGE SYSTEM INSTALLATION

(Fabric is over pipe, not enough uncovered to verify)

CORRECTION NOTICE

An Inspection of this On-Site Sewage System has identified the following deficiencies:

0AR 340-071-0220(11)

① There is not a minimum of 6 inches of FALL for effluent Line Between TANK AND DISTRIBUTION Box (is approx. 1 1/2 inches) Raise tank or Lower Lines

② Disposal (perforated) pipe is not LEVEL to within + or - one inch (approx. 3 1/4" out of level) in areas observed
0AR 340-071-0220(10)b

③ There is not gravel around perforated piping, and not 2 inches of gravel over top of pipe, as required
0AR 340-071-0220(7)e

• 4ft. 10" Between tank and distribution Box will BE OK

• Gravel size observed in uncovered spots OK

• FILTER FABRIC OK - it will be placed over top of gravel when placed over piping

COPY

Under the provisions of the OREGON ADMINISTRATIVE RULES, all deficiencies listed above must be corrected within 30 days, and a CERTIFICATE OF SATISFACTORY COMPLETION must be issued prior to use of this system. When corrections have been completed, call for inspection.

PERMIT NO. 01-66998 83 47 17 3406
Township Range Section Tax Lot / Acct. No.

INSPECTION: - PLEASE submit new as-BUILT PLAN (w/elevations) when ready for reinspection

TIME 3:00

DATE Aug. 11, 2003

CONTACT: DEQ - Pendleton
276-4063

BY [Signature]
(Signature) DIANE WAGLEE

DO NOT REMOVE THIS NOTICE FROM SITE



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality
Eastern Region
700 SE Emigrant
Suite 330

April 21, 2003

Glenn & Barbara Fleming
P.O. Box 985
Baker City, OR 97814

COPY Pendleton, OR 97801
(541) 276-4063 Voice/TTY
FAX (541) 278-0168

RE: ERP-03-024 17 3450
T09S - R42E - Sec. 19: Tax Lot 1000
45491 Keating Cutoff Road
Baker County

NOTICE OF NON COMPLIANCE ERP-03-024

Dear Mr. and Mrs. Fleming:

Our Department has recently received documentation confirming that plumbing has been installed in a structure located at the above referenced property. As of this date, our Department has no record that an approved On-Site Sewage Disposal and Treatment (OSSTD) system has been installed on the property to receive sewage from the structure. This lack of an approved OSSTD system is a violation of Oregon Administrative Rule (OAR) 340-071-0120(2)b; the preceding referenced rule is enclosed.

In accordance with Oregon Administrative Rule (OAR) 340-071-0120(2)b, each and every owner of real property is jointly and severally responsible for connecting all plumbing fixtures on that property, from which sewage is or may be discharged, to a sewerage facility or on-site sewage disposal system approved by the Oregon Department of Environmental Quality (the Department). OAR 340-071-0100(133) defines sewage as water-carried human and animal wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, or other places.

COMPLIANCE SCHEDULE

To resolve this violation you must dispose of your sewage in a manner approved by the Oregon Department of Environmental Quality. The following action is required to eliminate the violation:

1. Apply for and obtain a *Construction/Installation Permit* to install an approved on-site sewage treatment and disposal system. Upon DEQ approval of your application, a construction permit will be issued. If you wish to install a system in an area other than the area approved by DEQ (via Site Evaluation) on October 18, 2000, you must apply for and obtain a new site evaluation approval prior to application for a Construction/Installation Permit. You must submit a complete, approvable application for a Construction/Installation Permit or Site Evaluation by May 5, 2003.

COPY

2. Construct the OSSTD system in accordance with permit requirements. Prior to system backfill, contact our Department for a pre-cover inspection of the construction. Note that construction of the system shall be performed by the property owner or an Oregon DEQ licensed sewage disposal service (OAR 340-071-0160)7.
3. Upon receipt of a Certificate of Satisfactory Completion (CSC) by our Department for construction of the OSSTD system, connect all structural plumbing to the system. *You must obtain a CSC and have all plumbing connected to a DEQ approved OSSTD system by June 1, 2003.*

This is a Class II violation and is considered to be a significant violation of Oregon environmental law. Should you fail to correct the violation in accordance with the schedule set forth above, we will refer your file to the Department's Enforcement Section with a recommendation to proceed with a formal enforcement action which may result in a civil penalty assessment. Civil penalties can be assessed for each day of violation.

Your cooperation in resolving this matter is appreciated. If you have any questions concerning this matter, please call the DEQ Pendleton office at 541-276-4063. You may also contact me directly at 541-523-9097.

Sincerely,



Diane E. Naglee, R.S.
Natural Resource Specialist
Water Quality Program - Eastern Region

cc: Joni Hammond - DEQ Eastern Region Administrator
Anne Price - DEQ Enforcement Section
Baker County Building Department
Baker County Planning Department

enc: Construction/Installation Permit Application Guide
OAR 340-0120(2)
OAR 340-71-0133
OAR 340-71-0160(7)
Fee Schedule

ATTACHMENT R²

RECEIVED

OCT 08 2003

State of Oregon
Dept. of Environmental Quality
Eastern Region - Portland

Scanned to DEN 10/03/03

Receipt 108 323

Jo Fleming

SEPT 27-03

I KNOW THAT I AM LATE WITH THIS CORRECTION THING BUT I AM STILL BUSY GETTING READY FOR WINTER — BUT AFTER CAREFUL READING OF THE 105 PAGES ON OREGON STATE SEPTIC SYSTEMS - I WOULD SAY LEAVE WELL ENOUGH ALONE. THIS IS NOT THE TIME OF YEAR TO EXPOSE EVERYTHING TO FREEZING TEMPS ALSO.

- ① FROM THE SEPTIC TANK TO THE CROSS ARMS FROM THE DISTRIBUTION BOX ~~WE~~ REQUIRE MIN OF 8" IS TO BE THE DROP, - BEING THAT THE LINE LEAVE THE BOX AT A SIX' INCH DROP SHOULD MAKE THE FALL ADEQUATE.
- ② I RECOGNIZE THAT THE PIPE IS NOT WITHIN THE REQUIRED ONE INCH - ALTHOUGH IF ONE HOLE IS MORE THAN $\frac{1}{8}$ " LOWER THAN THE NEXT LOWEST HOLE - ALL OF THE WATER WILL DRAIN OUT OF THE LOW HOLE AT THE VERY LOW FLOW RATE THAT COME OUT OF THE SEPTIC TANK — THE WATER WILL STILL SPREAD OUT ON THE BOTTOM OF THE TRENCH AND INFILTRATE AT A RATE WELL IN EXCESS OF THE PRODUCTION OF WASTEWATER IN THIS SHOP BUILDING
- ③ WE BEDDED THE PIPE DOWN IN THE GRAVEL BUT NOT COVERING THE PIPE - BECAUSE IN THIS SOIL WATER TRAVELS DOWN NOT UP. OREGON SEEMS TO BE CONCERNED WITH THE VOLUME OF THE DRAIN TRENCH RATHER THAN THE ABILITY OF THE WATER TO RISE 2" IN THE TRENCH OVER THE TOP OF THE PIPE OUR SEEPAGE TRENCHES ARE 32"

85-42-17-3400 EX. A8
ATTACHMENT #1
NN

WIDE AND OVER 12" DEEP OF (DRAIN MEDIA)
SO THE TRENCH VOLUME IS ADEQUATE,

THE BOOK SAYS 5' MINIMUM FOR LENGTH OF PIPE
BETWEEN SEPTIC TANK AND DROP BOX,

I HAD A SEPTIC SYSTEM INSTALLED THAT IS 3X
OVER KILL FOR WHAT WILL EVER BE NEEDED FOR
THE BUILDING. I WOULD HAVE TO RUN MY WELL
DRY BEFORE I WOULD FILL THE LINES, TRENCHES
AND TANK IN ORDER TO BACK IT UP INTO THE SHOP.

④ THE ONLY THING I CANNOT VERIFY IS THAT
THERE IS 4" OF SOLID PIPE ON THE CENTER
LINE OUT OF THE DISTRIBUTION BOX.

J Fleming

PERMIT # 01-66998

ATTACHMENT UN²

F



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

Eastern Region

700 SE Emigrant

Suite 330

Pendleton, OR 97801

(541) 276-4063 Voice/TTY

FAX (541) 278-0168

March 3, 2004

Glenn and Barbara Fleming
P.O. Box 985
Baker City, OR 97814

RE: ERP-04-028
T08S - R42E -Sec. 17: Tax Lot 3400
45491 Keating Cutoff Road
Baker County

NOTICE OF NON COMPLIANCE ERP-04-028

Dear Mr. and Mrs. Fleming:

On April 21, 2003 our Department sent you a Notice of Noncompliance (NON) for failing to connect plumbing fixtures from the structure located at the above referenced property to an approved Department of Environmental Quality (DEQ) on-site sewage disposal (OSSD) system. A separate letter also sent to you on April 21, 2003 described additional requirements for obtaining approval to use an OSSD system if an OSSD system was installed without a permit. Information submitted by you and Jo Fleming confirmed that an OSSD system had been installed without a permit. A construction permit application was eventually submitted to our Department, and permit #01-66998 was issued to you on June 11, 2003. The permit application was submitted by Jo Fleming.

On August 11, 2003 I inspected uncovered portions of the installed OSSD system to determine if the system was installed according to Construction Permit #01-66998 and Oregon Administrative Rules. The system was found to have construction deficiencies and a Correction Notice was issued and given to Jo Fleming at the site. As of this date, our Department has not received notification from you that the corrections have been completed. On October 8, 2003 Jo Fleming submitted a letter to our Department stating that the required corrections had not been completed (copy enclosed). Therefore, as of this date, a Certificate of Satisfactory Completion (CSC) has not been issued for installation of the OSSD system.

The April 21, 2003 Notice of Noncompliance (NON) included a compliance schedule that required the OSSD system to have a Certificate of Satisfactory Completion for system construction prior to placing the system into service. The NON further stated that if the compliance schedule was not followed, our Department would refer your file to the Department's Enforcement Section with a recommendation to proceed with formal enforcement action.

VIOLATION I

Installing or causing to install an on-site sewage disposal system without appropriate permits is a violation of Oregon Administrative Rule (OAR) 340-071-0160(1), pursuant to Oregon Revised Statute (ORS) 454.655, and a Class I violation of Oregon's environmental rules.

VIOLATION II

Failing to connect all plumbing fixtures to, or failing to discharge waste water or sewage into, a Department approved on-site system is a violation of OAR 340-071-0120(2) and a Class II violation of Oregon's environmental rules.

ATTACHMENT 22
EX. A9

Glenn and Barbara Fleming
NON ERP-04-028
Page 2 of 2

VIOLATION III

Installing or causing to be installed an on-site sewage disposal system, or any part thereof, or the repairing of any part thereof, which fails to meet the requirements for satisfactory completion within thirty (30) days after written notification or posting of a Correction Notice at the site is a violation of OAR 340-071-0175(5), pursuant to ORS 454.605 to 454.745. This is a Class II violation of Oregon's environmental rules.

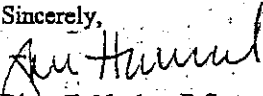
VIOLATION IV

Operating or using a newly constructed, altered or repaired on-site sewage disposal system, or part thereof, without first obtaining a Certificate of Satisfactory Completion for the installation is a violation of OAR 340-071-0175(6) and a Class II violation of Oregon's environmental rules.

The above violations contain a Class I violation and are considered to be serious violations of Oregon environmental law. Therefore, we are referring these violations to the Department's Enforcement Section with a recommendation to initiate a formal enforcement action. A formal enforcement action may include a civil penalty assessment for each day of violation.

If you have questions concerning this matter, please contact the DEQ Pendleton office at (541)276-4063. You may also contact me directly at (541) 523-9097.

Sincerely,


Diane E. Naglee, R.S.
Natural Resource Specialist
Water Quality Program - Eastern Region

Enc. OAR 340-071-0120(2)
OAR 340-071-016 (1)
OAR 340-071-0175
ORS 454.605-454.745
ORS 454.655
Copy of NON ERP-03-024
Copy of 04/21/03 letter
Copy of August 11, 2003 Correction Notice
Copy of October 8, 2003 letter from Jo Fleming

cc: Joni Hammond, ODEQ Eastern Region Administrator
Anne Price, ODEQ Enforcement Section
Bryan Smith, ODEQ Enforcement Section
Diane Naglee, ODEQ Baker City
Baker County Planning Department
City of Baker City Building Department

ATTACHMENT 22²



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

Eastern Region

700 SE Emigrant

Suite 330

Pendleton, OR 97801

(541) 276-4063 Voice/TTY

FAX (541) 278-0168

March 3, 2004

John Richard Fleming
955 Park POB 477
Baker City, OR 97814

RE: T08S - R42E - Sec. 17: Tax Lot 3400
45491 Keating Cutoff Road
Baker County

NOTICE OF NON COMPLIANCE ERP-04-030

Dear Mr. Fleming:

On September 11, 2002 our Department received information that you installed an on-site sewage disposal (OSSD) system at the above referenced property without an Oregon Department of Environmental Quality (DEQ) Construction Installation permit. Additional information obtained by our Department also confirmed that you installed the system prior to permit issuance. A construction permit was eventually issued on June 11, 2003 to Barbara and Glenn Fleming, who are the property owners of record.

A review of Department records further indicates that you did not possess an Oregon DEQ license to perform sewage disposal services at the time the OSSD system was installed. Installation of an OSSD system must be performed by either a property owner or a licensed DEQ installer.

VIOLATION I

The installation of an on-site sewage disposal system without appropriate permits is a violation of Oregon Administrative Rule (OAR) 340-071-0160(1), pursuant to Oregon Revised Statute (ORS) 454.655. The preceding referenced rule is enclosed for your use.

This is a Class I violation and is considered to be a serious violation of Oregon environmental law. Therefore, we are referring this violation to the Department's Enforcement Section with a recommendation to initiate a formal enforcement action. A formal enforcement action may include a civil penalty assessment for each day of violation.

VIOLATION II

Performing sewage disposal services without first obtaining a business license from the Department is a violation of OAR 340-0600(1), pursuant to ORS 454.695. The preceding referenced rule is enclosed.

COMPLIANCE SCHEDULE FOR VIOLATION II

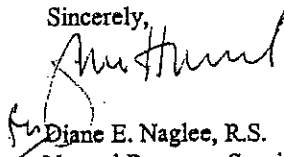
To resolve this violation, you must apply to the Department for a sewage disposal service license by March 19, 2004 or submit, in writing, a statement that you do not intend to install additional OSSD systems, and therefore will not pursue licensing.

This is a class I violation and is considered to be a significant violation of Oregon environmental law. Should you fail to correct the violation in accordance with the schedule set forth above, we will refer your file to the Department's Enforcement Section with a recommendation to proceed with a formal enforcement action which may result in a civil penalty assessment. Civil penalties can be assessed for each day of violation.

If you have questions concerning this matter, please contact the DEQ Pendleton office at (541)276-4063. You may also contact me directly at (541) 523-9097.

John Richard Fleming
NON-ERP 04-030
Page 2 of 2

Sincerely,



Diane E. Naglee, R.S.
Natural Resource Specialist
Water Quality Program - Eastern Region

Enc. OAR 340-071-0160(1)
OAR 340-071-0600(1)
ORS 454.655
ORS 454.695
Sewage Disposal Service License Application

cc: Joni Hammond, ODEQ Eastern Region Administrator
Anne Price, ODEQ Enforcement Section
Bryan Smith, ODEQ Enforcement Section
Diane Naglee, ODEQ Baker City

ATTACHMENT PP²

P.O. Box 477
Baker City, OR 97814
March 19, 2004

Oregon DEQ
700 SE Immigrant Suite 330
Pendleton, OR 97801

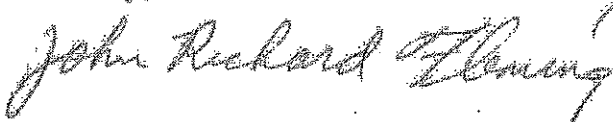
Notice of Non-compliance ERP-04-030

Dear Sir:

Regarding this drainfield installation, I took two days of vacation time to assist on this project. This was a family operation on a family owned property. I received no compensation for my work. We had been informed by the building department that no permit was required for a shop building. I did run the excavation and the pipe layout and installation.

I have no intention to install any additional sewage disposal systems until I build my own house. That will not require a license, just like the one referenced above did not require a license because it was done by the family of ownership.

Sincerely,

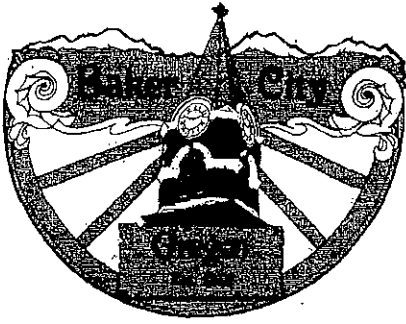


John Richard Fleming

RECEIVED
MAR 23 2004

State of Oregon
Dept. of Environmental Quality
Eastern Region - Pendleton

EX A11



City of Baker City, Oregon

P.O. Box 650 • Baker City, OR 97814-0650

541-523-6541 Voice/TDD • 541-524-2049 FAX

"The Northwest's Premier
Rural Living Experience"

DATE: October 1, 2004

NAME/ADDRESS: Diane Naglee, R.S.
DEQ Eastern Region
1705 Main Street, Suite 100
Baker City, OR 97814

SUBJECT: Jo Fleming

Dear Ms. Naglee,

In a telephone conversation that I had with you today, you asked me to respond to a comment make by Jo Fleming. Jo Fleming's statement to you was that I had told her (Jo Fleming) that she did not need to contact DEQ regarding her project.

Quite frankly, I have no recollection of this conversation. Our office policy is to inform our customers that they need to make contact not only with DEQ but Baker County Planning Department (if their project is outside of a municipality) for approvals regarding their project; if they have not already done so by the time they come to our office.

If you have any other questions, please call me.

Sincerely,

Debra DeShaw, Inspection Clerk
Building Department
City of Baker City, Oregon
Voice: (541) 524-2054
Fax: (541) 524-2065

C: File

Ex. A12



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

Eastern Region

1705 Main Street

Suite 100

Baker City, OR 97814

(541) 523-7998 Voice/TTY

FAX (541) 523-9198

November 9, 2000

Glen & Barbara Fleming
PO Box ~~985~~ 477
Baker City OR 97814

Re: Site Evaluation Report
T8S-R42-S17: TL 3400
Baker County

Dear Mr. & Mrs. Fleming:

On November 1, 2000, an evaluation of the above mentioned property was made to determine if an on-site sewage disposal system (for a single family dwelling) could be located on the parcel and be in compliance with the State of Oregon On-Site Sewage Disposal Rules. Note: **This is NOT a permit to construct an OSSD system. To apply for a permit, please submit the enclosed permit application with the accompanying attachments. DEQ cannot sign off on any Building Codes forms until a DEQ permit is issued.**

The area indicated on the enclosed plot plan is approved for a **Standard** system with a maximum flow of 450 gallons per day, **Equal** distribution and disposal field size of **225** linear feet.

Requirements for a 450 gallon design flow are as follows:

1. A minimum of 225 linear feet of disposal trenches;
2. Maximum trench depth 36 inches; minimum depth 18 inches;
3. A 1000 gallon septic tank with maintenance riser (minimum 20 inch diameter): and,
4. An equally-sized drainfield replacement area.
5. Filter fabric is required over drain media if gravel trenches are utilized.
6. A minimum distance of 50 feet is required between drainfields and escarpment.

Please refer to the enclosed field worksheet for more detailed information.

Fleming - Site Evaluation Report
November 9, 2000
Page 2

A Construction Permit is required to install the proposed sewage disposal system only within the portion of the parcel marked as 'acceptable area'. The application should include a detailed

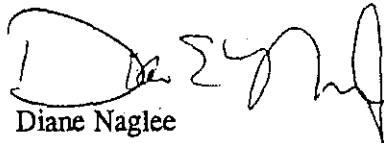
plan of the proposed system showing that all criteria for system construction, and required setbacks are met. The plan must identify ground and pipe elevations throughout for both the initial and replacement systems, all materials to be used, and cross section detail of the disposal area or trenches.

Sites for both initial and replacement disposal areas must be kept free of development. Please review the attached field worksheet and plot plan. A construction permit guide is enclosed for your use in plan preparation. We recommend a DEQ-licensed and bonded sewage disposal business or consultant familiar with this type of work be retained to expedite the permitting process.

This approval is given on the basis that the lot or parcel described above will not be further partitioned or subdivided and conditions on subject or adjacent properties have not been altered in any manner that would prohibit issuance of permit in accordance with ORS 454.605 through 454.755 and Oregon Administrative Rules (OAR) of the Environmental Quality commission.

If you have any questions regarding this matter, please call this office. The Eastern Region-Baker City office number is (541) 523-7998.

Sincerely,



Diane Naglee
Natural Resource Specialist
Eastern Region

DEN:raq

enc: Construction Permit Application/Guide
Field Worksheet w/plan
Fee Schedule

cc: Baker County Planning Department
Jo Fleming , 15660 Keno Worden Road, Klamath Falls, OR 97603

ATTACHMENT C²

State of Oregon

Department of Environmental Quality

Memorandum

Date: June 23, 2004
To: File
From: Susan M. Greco, Environmental Law Specialist, Office of Compliance and Enforcement
Subject: Ben calculation for Glenn Martin Fleming and Barbara Chapman

General Purpose and Authority

The economic benefit portion of the civil penalty formula is simply the monetary benefit that an entity gained by not complying with the law. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance.

Oregon Revised Statute 468.130(2)(c,h) directs the Environmental Quality Commission to consider economic conditions of the entity in assessing a penalty as well as other factors that Commission makes relevant by rule. Accordingly, the Commission specified in Oregon Administrative Rule (OAR) 340-012-0045(1)(c)(F) that the penalty will contain an "approximated dollar sum of the economic benefit." That rule also specifies that, "[i]n determining the economic benefit component of a civil penalty, the Department may use the U.S. Environmental Protection Agency's BEN computer model . . ." and must use it on request of a respondent.

Theory of Economic Benefit

Compliance with environmental regulations may require an entity to expend financial resources. These expenditures support the public goal of better environmental quality, but often do not yield direct financial return to the entity. "Economic benefit" represents the financial gain that a violating entity accrues by delaying and/or avoiding such expenditures. Funds not spent on environmental compliance are available for other profit-making activities or, alternatively, the entity avoids the costs associated with obtaining additional funds for environmental compliance (opportunity cost). Economic benefit is the amount by which an entity is financially better off from not having complied with environmental requirements in a timely manner.

Economic benefit is "no fault" in nature. An entity need not have deliberately chosen to delay compliance (for financial or any other reasons), or in fact even have been aware of its noncompliance, for it to have accrued the economic benefit of noncompliance.

An appropriate economic benefit calculation represents the amount of money that would make the entity indifferent between compliance and noncompliance. If DEQ does not recover, through a civil penalty, at least this economic benefit, then the entity will retain a gain.

Ex. A14

Because of the precedent of this retained gain, other regulated companies may see an economic advantage in similar noncompliance, and the penalty will fail to deter potential violators. Economic benefit is designed to be neither punitive nor tort damage, but instead is the minimum amount by which the entity must be penalized so as to return it to the position it would have been in had it complied on time.

Basis of the Costs Considered

Mr. Fleming and Ms. Chapman should have conducted repairs to the on-site sewage disposal system by adding more gravel to the system by September 11, 2002. The gravel would cost approximately \$150. By avoiding this cost, Mr. Fleming and Ms. Chapman benefited by \$263.

Applicability of Standard Rates Presumed by Rule

The BEN model relies on income tax rates, inflation rates, and discount rates. The model allows the operator to input particular rates, but in the absence of operator input, the BEN model uses standard values based on the entity's corporate status, whether it acted for profit, and the state where the violations occurred. It calculates inflation rates from the Plant Cost Index (PCI) published by the magazine *Chemical Engineering* and from the Consumer Price Index. Alternative inflation indices include:

Abbreviation and Full Name	Description	Typical Applications
BCI Building Cost Index	building costs; based on 1.128 tons Portland cement, 1,088 bd. ft. 2x4 lumber, 68.38 hrs. skilled labor	general construction costs, especially structures
BEN current BEN model's constant inflation rate	average of PCI's last 10 years; i.e., a constant 1.8% increase each year	replication of results from current BEN model version
CCI Construction Cost Index	construction costs; same as BCI, except 200 hrs. common labor	general construction projects, especially where labor costs are a high proportion of total costs
CPI Consumer Price Index	representative consumer goods	compliance somehow involves consumer goods
ECIM Employment Cost Index: Manufacturing	employment costs for the manufacturing industry	one-time nondepreciable expenditures or annual costs that comprise mainly labor
ECIW Employment Cost Index: White Collar	employment costs for white collar labor	same as ECIM, except professional labor (e.g., permits)
PCI Plant Cost Index	plant equipment costs	standard value

Pursuant to OAR 340-012-0045(1)(c)(F)(iii), the "model's standard values for income tax rates, inflation rate and discount rate shall be presumed to apply to all Respondents unless a specific Respondent can demonstrate that the standard value does not reflect the Respondent's actual circumstance."

Description of the Attached Run

BEN calculates the economic benefits gained from delaying and avoiding required environmental expenditures. Such expenditures can include: (1) capital investments (*e.g.*, larger pollution control or monitoring equipment, costs of design and installation), (2) one-time nondepreciable expenditures (*e.g.*, permit fees, clean-up costs, setting up a reporting system, acquiring land needed for a capital improvement), (3) annually recurring costs (*e.g.*, routine operating and maintenance costs, utilities). Each of these expenditures can be either delayed or avoided. BEN's baseline assumption is that capital investments and one-time nondepreciable expenditures are merely delayed over the period of noncompliance, whereas annual costs are avoided entirely over this period.

The calculation incorporates the economic concept of the "time value of money." Stated simply, a dollar today is worth more than a dollar tomorrow, because you can invest today's dollar to start earning a return immediately. Thus, the further in the future the dollar is, the less it is worth in "present-value" terms. Similarly, the greater the time value of money (*i.e.*, the greater the "discount" or "compound" rate used to derive the present value), the lower the present value of future costs. To calculate an entity's economic benefit, BEN uses standard financial cash flow and net-present-value analysis techniques based on modern and generally accepted financial principles, which were subjected to extensive national notice-and-comment processes.¹

Inputs to the model include costs specific to the situation of the entity as well as the presumed standard indexes and rates described in the section above. These values are listed in the lower

¹ See Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Request for comment, 61 Fed. Reg. 53025-53030 (Oct. 9, 1996); Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Extension of time for request for comment, 61 Fed. Reg. 65391 (Dec. 12, 1996); Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Advance notice of proposed action, response to comment, and request for additional comment, 64 Fed. Reg. 32947-32972 (June 18, 1999); Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Advance notice of proposed action, response to comment, and request for additional comment, 64 Fed. Reg. 39135-39136 (July 21, 1999).

three-quarters of the table. Using these values, BEN makes a series of calculations listed at the top of the table as follows:

- A) On-Time Capital & One-Time Costs. What compliance would have cost had the entity complied on-time, adjusted for inflation and tax deductibility. The number is a present value as of the date of initial noncompliance. BEN derives this value by discounting the annual cash flows at an average of the cost of capital throughout this time period.
- B) Delay Capital & One Time Costs. What late compliance did cost, adjusted for inflation and tax deductibility. The number is a present value as of the date of initial noncompliance. BEN derives this value by discounting the annual cash flows at an average of the cost of capital throughout this time period. This value will be zero if the costs were avoided.
- C) Avoided Annually Recurring Costs. This sum is a present value as of the date of initial noncompliance. BEN derives this value by discounting the annual cash flows at an average of the cost of capital throughout this time period.
- D) Initial Economic Benefit (A - B + C). The delayed-case present value is subtracted from the on-time-case present value plus the sum of the avoided costs to determine the initial economic benefit as of the noncompliance date.
- E) Final Economic Benefit at Penalty Payment Date. BEN compounds the initial economic benefit forward to the penalty payment date at the same cost of capital to determine the final economic benefit of noncompliance.

Calculated Economic Benefit Likely an Underestimate

The economic benefit calculated above may underestimate the total economic benefit that the respondent received to date because it does not address uncertain indirect financial benefits, including:

- *Advantage-of-risk* - the value of (1) the risk of never getting caught and (2) keeping future options open by delaying a decision to institute a process or purchase capital.
- *Competitive advantage* - (1) beginning production earlier than would be possible if in compliance; (2) attracting clients by avoiding compliance costs, having a higher profit margin and therefore being able to offer goods or services at a lower cost than competitors; (3) keeping those clients attracted by lower prices because of brand loyalty or high switching costs; or (4) using the time or money saved to increase production.
- *Illegal profits* - selling illegal products or services.

However, I consider these other economic benefits to be "de minimis" in light of the difficulties in calculation. Pursuant to OAR 340-012-0045(1)(c)(F)(ii), the Department need not calculate an economic benefit if that benefit is de minimis.

Run Name = on-site correct	
Present Values as of Noncompliance Date (NCD),	11-Sep-2002
A) On-Time Capital & One-Time Costs	\$239
B) Delay Capital & One-Time Costs-	\$0
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$239
E) Final Econ. Ben. at Penalty Payment Date,	
	30-Jul-2004
	\$263
<i>Not-For-Profit, which pays no taxes</i>	
Discount/Compound Rate	5.1%
Discount/Compound Rate Calculated By:	BEN
Compliance Date	30-Jul-2004
Capital Investment:	avoided
Cost Estimate	\$150
Cost Estimate Date	04-Mar-2004
Cost Index for Inflation	BCI
# of Replacement Cycles; Useful Life	1; 15
Projected Rate for Future Inflation	N/A
One-Time, Nondepreciable Expenditure:	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
Tax Deductible?	N/A
Annually Recurring Costs:	
Cost Estimate	\$0
Cost Estimate Date	N/A
Cost Index for Inflation	N/A
User-Customized Specific Cost Estimates:	N/A
On-Time Compliance Capital Investment	
Delay Compliance Capital Investment	
On-Time Compliance Replacement Capital	
Delay Compliance Replacement Capital	
One-Time Compliance Nondepreciable	
Delay Compliance Nondepreciable	



Oregon

Theodore R. Kulungoski, Governor

Department of Environmental Quality

2146 NE 4th Street, Suite 104

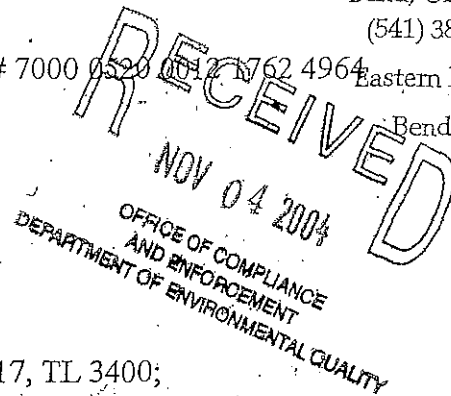
Bend, OR 97701

(541) 388-6146

November 2, 2004

CERTIFIED MAIL # 7000 0520 0512 762 4964 Eastern Region

Bend Office



Mr. John Richard (Dick) Fleming
PO Box 447
Baker City, OR 97814

Re: T8S, R42E, S17, TL 3400;
45491 Keating Cutoff Road
Baker County

Dear Mr. Fleming

At your request, I met with you and your sister Jo, the morning of Wednesday, October 20th, on property located at 45491 Keating Cutoff Road east of Baker City. The purpose of my visit was to discuss the septic system on the property that you installed without a permit in September, 2002.

On August 11, 2003, the Department's inspector, Diane Naglee, inspected the system and determined that this system was not installed to design criteria as specified in rule. This determination was based on both detailed information you provided, and observations and measurements made by Diane.

During my visit we discussed the following items with regard to the septic system:

1) **Grade of septic tank effluent pipe:** The design criteria or "code" requires a minimum 6 inch elevation difference between the invert of the effluent sewer pipe exiting the septic tank and the invert of the header pipe exiting the distribution box. This pipe invert elevation difference or drop is necessary for proper effluent flow between the septic tank and drainfield. If the pipe invert elevation is less than 6 inches, there is concern that during peak or surge flows into the system, reverse flow back into the septic tank can cause solids within the tank to pass over top of the sanitary "tee" fitting in the tank. Solids would then enter the drainfield which can cause blockage in system plumbing, or failure of the drainlines.

We discussed that the existing trenches, as constructed with no rock over the pipe and 12 inches of rock below the pipe, make back surge into the septic tank less likely. However, this would depend on whether or not the disposal trenches were ever to become full of effluent, in which case there would be more concern for reverse flow.

2) **The grade of the disposal trenches and piping.** The code requires that all trenches and piping be level within a tolerance of plus or minus one (1) inch, with a target of being level. The trenches of this system were excavated and constructed with a 0.5 percent slope. In a 75 ft. length trench this would calculate to a 4.5 inch difference in elevation from one end of the trench to the other end. With code plus or minus one (1) inch, this is 3.5 times the code tolerance.

Ev A15

The concept of "level" is an important factor for proper system function. We talked about bio-mat formation along both the bottom and sidewalls of the trenches. As effluent enters the trench, this mat first develops exclusively along the bottom of the trench. Once the bottom mat has formed, the effluent then begins to absorb into the soils along the trench sidewalls. Mat formation is accelerated under conditions of saturated flow where effluent and conditions can become anaerobic (without atmospheric oxygen).

Because of how you installed this system, bio-mat formation along the sidewall, particularly at the lower end of each trench, will be accelerated. With the formation of this mat, the lower ends of the trenches will become saturated (full) of effluent. This effluent will also be under a hydrostatic head, due to the minus slope of the trench and gravity. This will cause a greater potential for effluent to break out onto the ground surface at the end of the trenches.

Over time this accelerated sidewall mat formation will reduce the amount of effective sidewall absorption in the system. This will then reduce the operational capacity of the system.

We then discussed the possibility of adding additional "level" disposal trench to the ends of the existing trenches to overcome the reduction in sidewall infiltrative surface and to minimize the hydrostatic pressures. We discussed a minimum amount of 25 feet of additional trench on each lateral trench, bringing the total system to 300 lineal feet. You also mentioned the use of a blower unit to maintain an aerobic condition and to minimize bio-mat development. Though these changes would enhance the long term function of the system and overcome some of the concerns, the system would still not be to code. If the system is not to code, a Certificate of Satisfactory Completion cannot be issued unless the changes were allowed through the formal variance process.

3) **Under drain media (rock) over top of drainpipe:** Code requires that there be at least 2 inches of drain media (rock) over the top of the distribution pipe. The need for rock cover over the pipe is to keep the upper soil cover from becoming saturated or being washed into the void spaces of the drain media. I mentioned how this is more important in a serial distribution system or where something other than filter fabric is used to cover the rock before backfilling the system. This system is an equal distribution type system and filter fabric was used, so there would be less of a chance for this to happen.

4) **Projected Daily Sewage Flow or Design Flow:** We discussed the different projected daily sewage flows values for a "shop" (150 gpd - gallons per day) and a single family residence (450 gpd). Both you and Jo wanted to make the point that flow going into the system, which was designed for a residence at 450 gpd, was considerably less. I explained that a shop would only have a restroom with a sink and toilet where as a single family residence would have bathroom(s) with sink(s), tub(s) and/or shower(s), a kitchen with a sink and dishwasher, and a laundry room with a clothes washer hookup. I mentioned that the rules call for sizing all single family residences with up to 4 bedrooms at 450 gpd because flows from one residence can be substantially different than from another residence. Additionally the design flow includes a safety factor for occasional peak flow days.

Because the trench laterals were not installed level and the functional capacity overtime will diminish more rapidly, this system may prematurely fail if subjected to average flows from a single family residence.

Another concern would be changes in uses of the property which could include the addition of more bedrooms or having a larger family with 2 individuals per bedroom for a total of 8 individuals in a 4 bedroom residence. Again, this system may prematurely fail if subjected to these kinds of flows.

5) The Variance Process:

You asked why reasonable deviation from the code requirements is not allowed. I mentioned that variances from any rule or standard contained in the overall rules may be allowed through a formal variance process. I explained the variance process and that the fee for a formal variance request is \$1,340.00.

6) Your Options:

A. Obtain a Certificate of Satisfactory Completion (CSC) by making the corrections to the existing system as noted on the Correction Notice issued on August 11, 2003. To receive a CSC and make the corrections, you will need to reinstate your permit. The fee for reinstatement of the permit is \$135.00.

B. Apply for a Formal Variance from the rules and standards. This is not an automatic variance. You will need to submit a proposal with your application. A special variance officer will then review your proposal, visit the site, and hold an information gathering hearing. Adjacent land owners and DEQ staff will be invited to attend and give comments. In order to grant a variance, the variance officer must determine:

- 1) strict compliance with the rule or standard is inappropriate for cause; or
- 2) special physical conditions render strict compliance unreasonable, burdensome, or impractical

The fee for a formal variance is \$1,340.00. There are other accommodations in rule for low income elderly and hardship cases. I have enclosed copies of the rule sections for variances.

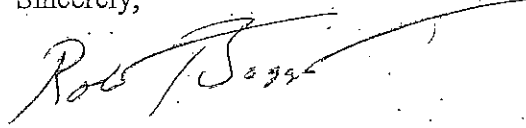
C. Decommission the on-site system.

D. Schedule a contested case hearing.

Please call Bryan Smith with the Department's Office of Compliance and Enforcement at 503-229-5692 by November 10, 2004, to inform him of your decision. If you do not contact Mr. Smith by that date, then he will schedule a contested case hearing for you.

If I can be of any further assistance in explaining system function, rule requirements, or administrative processes, please feel free to contact me at 541-388-6146, ext. 230.

Sincerely,



Robert Baggett, REHS
Natural Resource Specialist 4 & Special Variance Officer
On-Site Sewage Treatment & Disposal Program
Water Quality Section, Bend Oregon Office

RB/ns

cc: Jo Fleming, Property Resident & Addresses Sister
Joni Hammond, ER Administrator, DEQ Pendleton
Bryan Smith, Office of Compliance & Enforcement, DEQ HQ Portland
Diane Nagleé, NRS-3, DEQ Baker City
Baker County Planning Department
City of Baker City Building Department

SELF INSTALLER HANDOUT

Standard - Equal Distribution



PREPARATIONS:

A sewage disposal system must be installed by either the owner of the property or a licensed, bonded sewage disposal system installer. A permit is required before beginning construction. The permit will specify construction requirements that are "customized" to your proposed development and site conditions. This will include the size of the septic tank, the type of system, total amount of disposal line required, minimum and maximum trench depth from the original ground surface, depth of gravel in the trenches, and other specific requirements. Trench depth is critical because of water tables and restrictive layers that may be present. Lines installed at improper depths may have to be reinstalled.

Stake out the corners of the home, the septic tank, the disposal trenches, and the curtain drain if one is required. In staking out the system, the following setbacks must be observed:

1. REQUIRED SETBACK	SEPTIC TANK	DISPOSAL LINES
Any building foundation	5'	10'
All wells	50'	100'
Rivers, streams, lakes	50'	100'
Intermittent streams	50'	50'
Property lines	5'	10'
Water lines	10'	10'
Other underground utilities	5'	10'

Any other required setbacks will be noted in the site evaluation report and/or on the installation permit.

2. You will need to consider the way in which your house or manufactured home will be plumbed, keeping in mind that there must be a minimum building sewer line fall of 1/4 inch per 1 foot (Check with your local Building/Plumbing official for other acceptable standards) between the house and the septic tank. There should be as few angles as possible in the line between the house and the tank to prevent clogging of plumbing.

Be sure the tank you purchase is approved for use in the State of Oregon. Look for the required DEQ assigned number or label. Manufactured tanks must be at least 1,000 gallons in volume and may be constructed of concrete, steel, polyethylene, or fiberglass. Contact this office for a list of approved manufacturers if you have questions. Find out from the septic tank manufacturer or installer the following dimensions: (a) length, (b) width, (c) height, and (d) distance from the top of the tank to the bottom of the outlet fitting. There are no DEQ required minimum installation depths or depth of soil cover over the top of the tank. However, you must follow minimum and maximum soil cover depths as prescribed by the tank manufacturer but in no case shall a tank be covered with more than 36 inches of soil without prior approval from DEQ. Tank manufactures are required to provide installation instructions when the tank is purchased. Follow the instructions carefully. All septic tanks must have a securely fastened or weighted watertight manhole riser extending to ground surface or above. This is to facilitate locating and pumping the tank. If site conditions require tank floatation protection, get specific procedures from the manufacturer for anti-buoyancy.

3. The bottom of the disposal trenches and the drainlines in the trenches must be level to within plus or minus one inch. The perforated pipe must be centered and laid level on 6 inches of bedded gravel with the drain-holes oriented downward in the 4 o'clock and 8 o'clock position. Proper orientation of the perforated pipes can be achieved by installing the pipe with the centerline markings up.

Ex. A16

INSTALLATION OF THE SYSTEM:

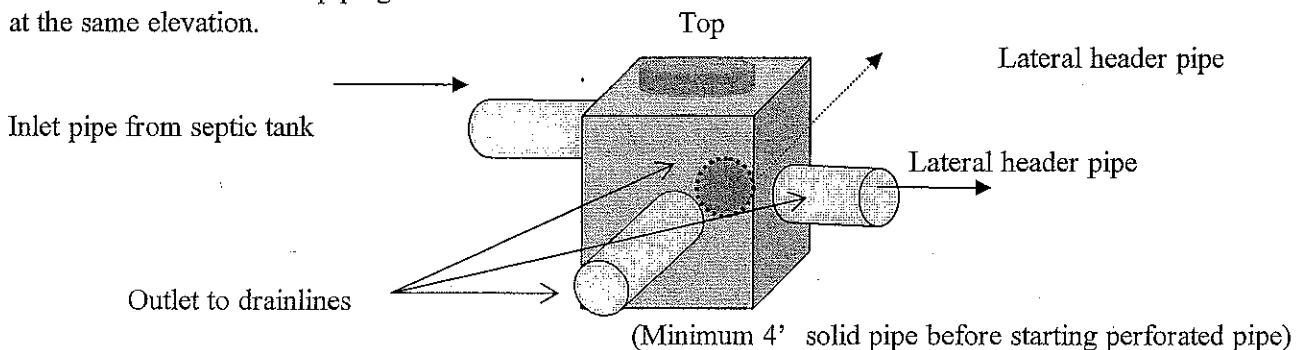
1. First, the entire system should be surveyed to ensure that there will be adequate fall between the structure and the septic tank, and that all other required minimum/maximum pipe grades and trench depths can be maintained. Install the septic tank first. Be sure that the tank inlet is lower in elevation than the building's plumbing outlet. Remember the suggested building sewer line must drop at least 1" per 4 linear feet of sewer line. For example: a septic tank located 10' from the house will require 2 1/2" of drop in the building sewer line (10×0.25 " per foot = 2.5"). Less drop may result in clogged plumbing. Contact the local Building/Plumbing official within your county if you have questions concerning the plumbing both within the house or between the house and the septic tank. For depth of the septic tank take into account the approved location and the maximum and minimum trench depths allowed for your drainlines. The lowest portion of the septic tank outlet must be 2 inches higher in elevation than the top of the drain media. Read all installation requirements supplied by the manufacturer. After installation, each tank shall be water tested by filling to a point at least two (2) inches above the point of riser connection to the top of the tank. Be sure not to over fill and float the lid off a concrete tank. During the test there shall be no more than a one (1) gallon (vertical drop of 1/2 inch in a 24 inch diameter riser, 5/8 inch in a 30 inch riser) of leakage over a 24 hour period.

2. There must be a minimum of 5' of solid building sewer pipe between both the house and the septic tank, and the septic tank and the equal distribution box. The septic tank effluent sewer line between the tank and distribution box shall be installed with a minimum fall of 4" per one hundred (100) feet, but in no instance shall there be less than 2" of fall (as measured between the lowest portion of the septic tank outlet and the top of the drain media). The effluent sewer pipe material must be heavyweight, 3 or 4 inch, effluent sewer pipe (see attached page of "Acceptable Building and Effluent Sewer Materials"). Your tank manufacturer should provide you with the necessary materials and directions for making proper joints between the tank fittings and the sewer pipes.

3. For gravel type systems installed on relatively flat ground, equal distribution boxes are typically utilized (see below, Figure 1). The equal distribution box must be lower in elevation than the septic tank outlet. The distribution box must be level, seated on undisturbed soil, and be oriented such that the highest fitting is on the inlet side. The lower fittings are used for the outlets to the disposal trenches (drainfield). The joints between the pipes and boxes must be watertight and the boxes must be level. A builder's level or a water test can be used to determine if the box is level. Water testing of the boxes and the pipe joint seals is recommended before backfilling around the box with soil.

Figure 1:

Equal Distribution boxes are used on level ground. Effluent fills all lines equally from the box. Portholes for lateral piping are all at the same elevation.



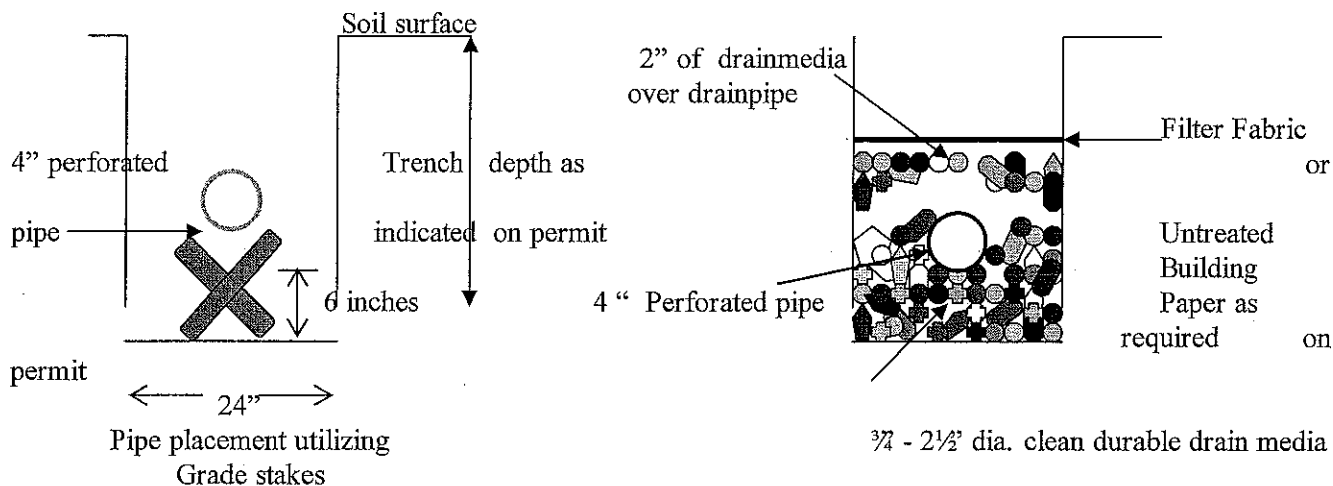
4. All systems utilizing an equal distribution box must have approved solid (non-perforated) piping that is bedded on undisturbed earth extending a minimum of 4' prior to starting perforated pipe. No gravel is to be placed around any of the solid header pipe or beneath the distribution box.

5. Disposal trenches must be dug such that the bottom of the trench is level, plus or minus 1 inch. **Hand levels are not adequate to assure that drainlines or trench bottoms are level.** Your permit will specify the proper maximum and minimum depths for the trenches. These trench depths are based on the site/soil conditions encountered during the site evaluation. Any deviation needs to be approved by your DEQ agent; otherwise trenches may have to be re-installed. A string tied to stakes or a laser transit is a useful reference tool for achieving a level trench of the proper depth. Again, any more than 1" rise or fall in a line is not acceptable.

6. For those systems utilizing gravel-less trench methods such as Infiltrator 24 or EEE ZZZ Drain, installation must follow DEQ requirements and the manufacturer installation requirements. If any questions arise, you will need to contact **both** the manufacturer and the permitting agent.

7. After the trench is dug grade stakes or 2 x 6s are positioned to keep the drainpipe 6" above the bottom of the trench during drainmedia (drainrock) placement (see below, figures 2,3 &4).

Figure 2:

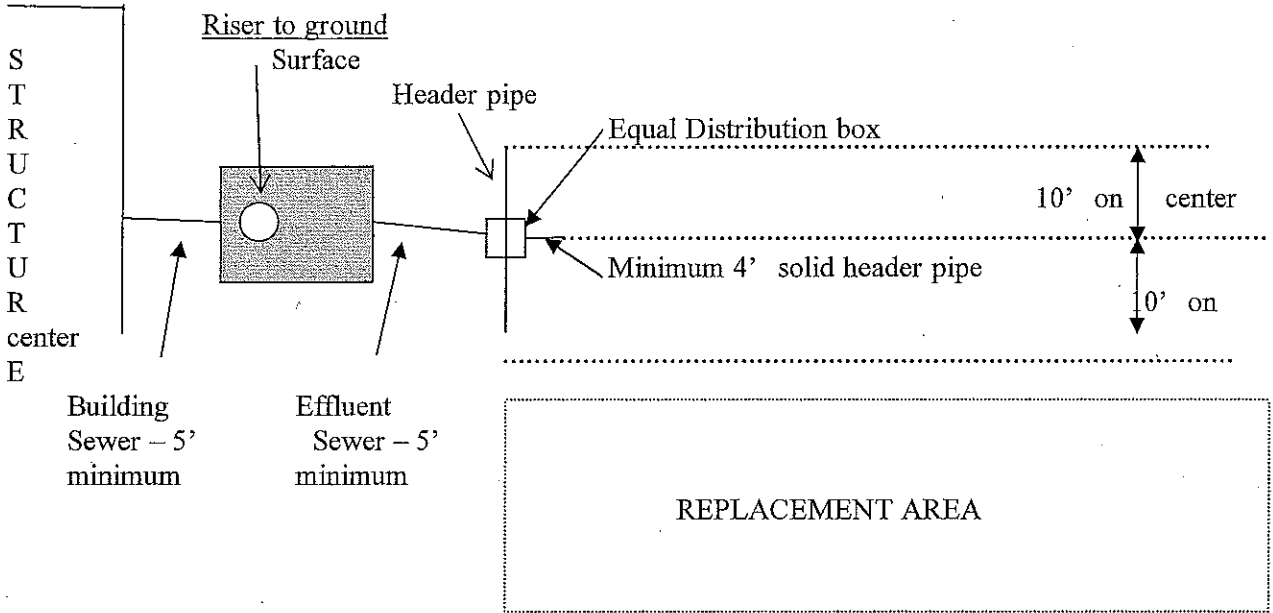


8. The disposal field rock (drainmedia) must be **clean**, washed gravel or crushed rock ranging in size from 3/4 to 2 1/2 inches. Place rock in the trench so that it is level with the top of the grade stakes or 2 x 6s. Perforated piping is then placed on the rock, with the holes positioned downward and orientated at the 4 o'clock and 8 o'clock positions (centerline markings up). Check to be certain that all piping is level and centered in the trenches. Place the remaining 6" of rock around and over the piping taking care that the pipes remain centered and that the joints are not dislodged. You should have 2" of rock cover over the top of the pip, for a total of 12 inches of rock in the disposal trench.

9. Prior to backfilling the trench, the drainmedia shall be covered with DEQ approved non-biodegradable filter fabric, untreated building paper, or other material approved by the Agent. When trenches are installed in sandy-loam or coarser soils, filter fabric or other non-degradable material approved by the Agent shall be used to cover the drain media. Refer to the Permit to Construct for specific requirements.

TYPICAL EQUAL DISTRIBUTION SYSTEM
(with equal distribution box)
LEVEL GROUND

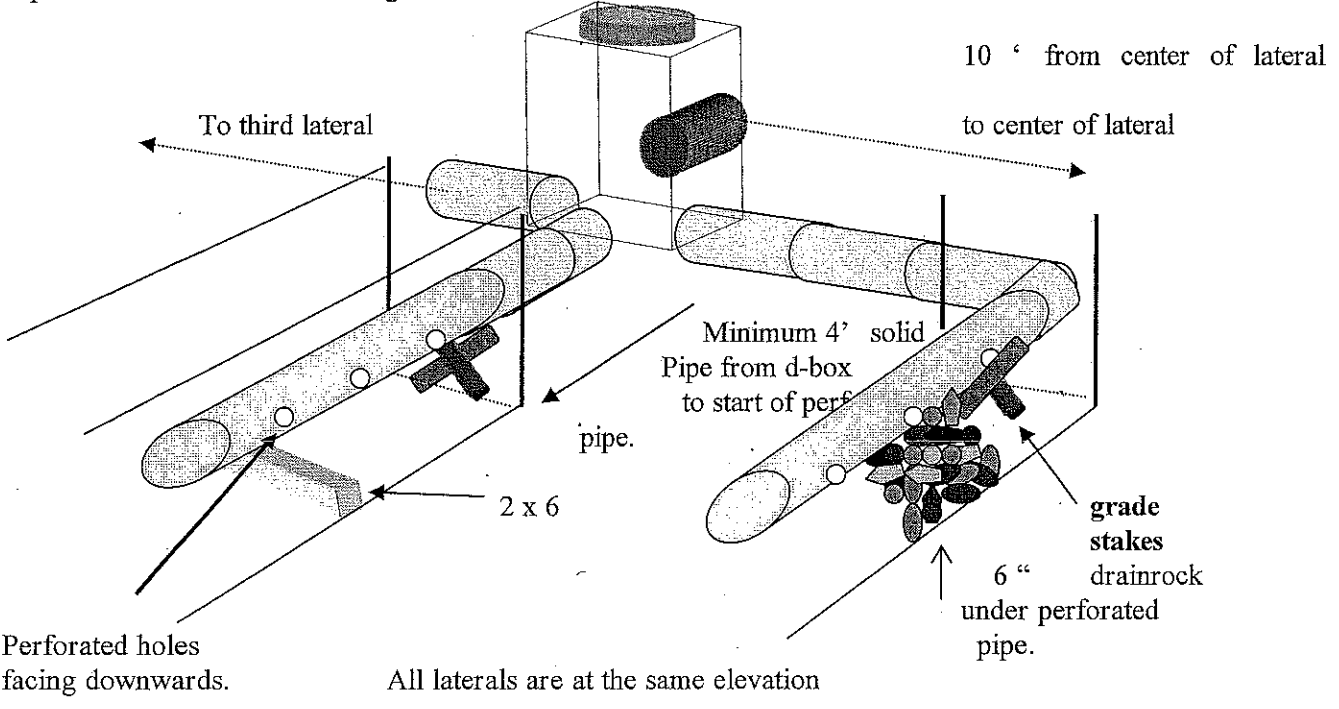
Figure 3:



All header pipes to be level from distribution box to end of trench.

Figure 4

Equal distribution box on stable ground



FINAL INSPECTION/BACK FILLING

At this point, before back filling the system with soil, a pre-cover inspection is to be conducted. To request a pre-cover inspection, the Department's inspection request form, which includes an as-built plan and materials list, must be completed then sent or faxed to the regional DEQ office that issued the permit. Once the request form is received and verified complete by DEQ, the pre-cover inspection will be completed within seven (7) days. If after the seven (7) days an inspection has not been conducted, the system can be backfilled. Should you want an inspection and wish to keep the system uncovered for a longer period of time, you'll need to notify the regional DEQ office.

Regional DEQ Offices:

For Baker, Grant, Union, and Wallowa Counties For Gilliam, Morrow and Umatilla Counties

Baker City DEQ Office
2034 Auburn Avenue
Baker City, OR 97814
Ph# 541-523-7998
Fax # 541-523-9198

Pendleton DEQ Office
700 SE Emigrant, Suite 330
Pendleton, OR 97801
Ph# 541-276-4063
Fax# 541-278-0168

For Harney, Wheeler and Lake Counties Lake County, pre-cover inspections only

Bend DEQ Office,
2146 NE 4th, #104
Bend, OR 97701
Ph# 541-388-6146
Fax # 541-388-8283

Dave Lewis at the Lake County Building Dept.
513 Center Street
Lakeview, OR 97630
Ph# 541-947-6033
Fax # 541-947-6015

During the pre-cover inspection, staff will check for proper construction, location of the system, setback distances, construction materials used, and elevations of inlets, outlets, trenches, ..etc. When the installation is approved, a "**Certificate of Satisfactory Completion**" will be issued. The system can then be back filled and connected to for use. If deficiencies are found, a "**Correction Notice**" will be issued and placed at the site. If a "Correction Notice" is issued, another inspection may be necessary before the system can be back filled and placed into service. At the discretion of the Agent, the permittee may be assessed a re-inspection fee.

Backfill shall be carefully placed to prevent damage to the system. The backfill shall be free of large stones, frozen clumps of earth, masonry, stumps, waste construction materials, or other materials that could damage the system.

CARE AND MAINTENANCE

There are several things that you can do to protect your system and prolong its life:

1. Have your septic tank checked and, if needed, pumped out by a licensed septic tank pumper every 3-5 years. Depending on the size of your household, water usage, characteristics of waste and types of appliances, the amount of time between pumping may vary. Refer to your phone book "Yellow Pages" or request a list of licensed "Sewage Disposal Service Businesses" (pumper) from this office.
2. Do not plant trees or deep-rooted shrubs in the area of the disposal field. However, do seed the disposal field area with grasses or other landscaping. The vegetation uptakes moisture from the drainfield and contributes to longevity of the system. Cut the vegetation throughout the growing season to enhance moisture uptake. Keep in mind that system operation requires both evapotranspiration, as well as, infiltration.
3. Protect the system from livestock, vehicular traffic, and heavy machinery. Such activities can compact the soil and seal the drainfield, crush or damage system components, and eventually lead to system failure.
4. A few other warnings include the following: do not flush excessive amounts of oil, grease, and household cleaning/sanitizing products down the drains. Keep plumbing of faucets and toilets leak-free and in good repair. If you use a garbage disposal, consider installing a septic tank effluent filter to reduce suspended solids from entering the drainfield. Solids accumulate more quickly with the use of a garbage disposal and you may need to pump your septic tank on a more frequent basis. Plastics, rubber, chewing gum, and some paper products do not breakdown in a septic tank; therefore, use caution when disposing of them.

GENERAL:

The septic tank system is designed to dispose of all household wastes. This includes laundry, bath and kitchen wastewater. To work satisfactorily the system must be located in suitable soil conditions, be properly designed, installed correctly and adequately maintained. The septic system must be constructed in accordance with guidelines outlined in the Oregon Administrative Rules, Chapter 340, Divisions 71&73. This is to prevent construction of faulty systems that could cause contamination of groundwater or the discharge of sewage onto the ground surface. Both of which can create health concerns by exposing individuals to disease or illness causing organisms and agents.

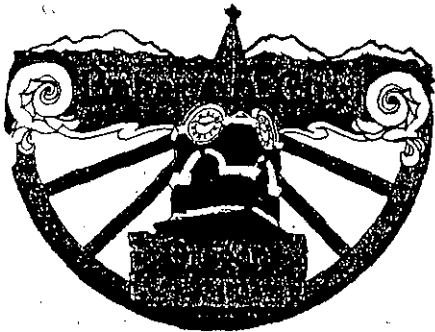
As sewage waste enters the tank, solid matter settles out, scum rises to the top, and primary treatment begins. The liquid effluent then flows into disposal trenches. Over time solids will accumulate within the septic tank and the liquid capacity of the tank is reduced. As this occurs, turbulent flow through the septic tank occurs instead of stagnation and settling of the fine solids. When this happens, fine solids

are flushed out of the septic tank and into the leach lines. These fine solids then plug the natural soil pores and eventually cause entire drainfield to fail. Liquid wastes may also back flow into the residence. This is why a system may work well for years and then suddenly fail which then costs thousands of dollars to repair. To prolong the longevity of your sewage disposal and treatment system one should have the septic tank checked and pumped as needed or at least once every four (4) years.

When the effluent leaves a functional septic tank, it is relatively free of solids. However, it is not free from organisms that can cause disease, such as typhoid fever, dysentery, and diphtheria, to name a few. As the effluent leaves the perforated drainage pipe it is rapidly dispersed throughout the gravel below. The void space between the gravel retains the waste and allows for storage capacity until it can enter the soil to be treated. In the soil, microorganisms further decompose, filter and cleanse the liquid effluent thus preventing bacterial contamination of groundwater. However, some chemical wastes receive little or no treatment before coming in contact with groundwater, particularly in rapidly draining soils such as sandy and gravelly soils. In this case, the typical household use amounts and dilution is the variable that is considered. This is another reason why it is so important not to use excessive amounts of such products.

IMPORTANT NOTE

This pamphlet is intended to be a guide, to help homeowners to comply with construction and installation requirements and maintain their on-site sewage disposal system. It is not a substitute for knowing the codes. If you encounter problems or have questions during or after installation of your system, please do not hesitate to contact one of the DEQ Regional offices. Our offices are open Monday through Friday, 8:00 a.m. to 5:00 p.m. and you can leave messages on our phone voice mail systems during non-working hours. A statewide toll free phone number for the DEQ is 1-800-452-4011.



City of Baker City, Oregon

P.O. Box 650 • Baker City, OR 97814-0650

541-523-6541 Voice/TDD • 541-524-2049 FAX

"The Northwest's Premier
Rural Living Experience"

March 10, 2003

Mr. Mark Bennett
Baker County Planning Director
1995 Third Street
Baker City, OR 97814

RE: Agricultural Exemption for Jo Fleming, Citation #01962

Dear Mr. Bennett:

I have reviewed the file regarding the structure built at 45491 Keating Cutoff Rd, related to Baker County File #AG-00-20. Included are photographs taken on February 28, 2003 by Vicky Foland of our staff.

Oregon Revised Statute (ORS) 455.315 defines an agricultural building as; "a structure located on a farm and used in the operation of such farm for the storage, maintenance or repair of farm machinery and equipment or for the raising, harvesting and selling of crops or in the feeding, breeding, management and sale of or the produce of livestock, poultry, fur bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof, including the preparation and storage of the produce raised on such farm for human use and animal use and disposal by marketing or otherwise."

The photographs included do not indicate any agricultural use as defined above. The photographs do indicate kitchen facilities, garage with 2 passenger cars, laundry facilities and a bedroom with closets. These appurtenances indicate those typically associated with a dwelling and as such would require this structure to undergo a change of use. A building permit for change of use will require a completed building permit application, payment of associated permit and plan review fees, submittal of plans for review and subsequent building inspections.

If you have any questions regarding these finding, please feel free to contact me at 524-2052 or by e-mail at jsayers@bakercity.com and I will be happy to discuss them with you.

Sincerely,

Jim Sayers
Building Official

cc: Gordon Zimmerman, City Manager
Jo Fleming, owner
Gary Potter, Electrical Inspector
Allen Aschim, State of Oregon Building Codes, Compliance Division

JS:vsf

ATTACHMENT I

JoFleming.com

EX. A17

COPY

STATE OF OREGON
DEPT OF ENVIRONMENTAL QUALITY
RECEIVED
MAR 12 2003

BAKER CITY OFFICE

JO FLEMING
45491 Keating Cutoff Road
Baker City, OR 97814

Date of Photo(s): February 28, 2003, unless otherwise specified.

CITY OF BAKER CITY Building Dept.



Page 3

STATE OF OREGON
DEPT OF ENVIRONMENTAL QUALITY
RECEIVED
MAR 12 2003

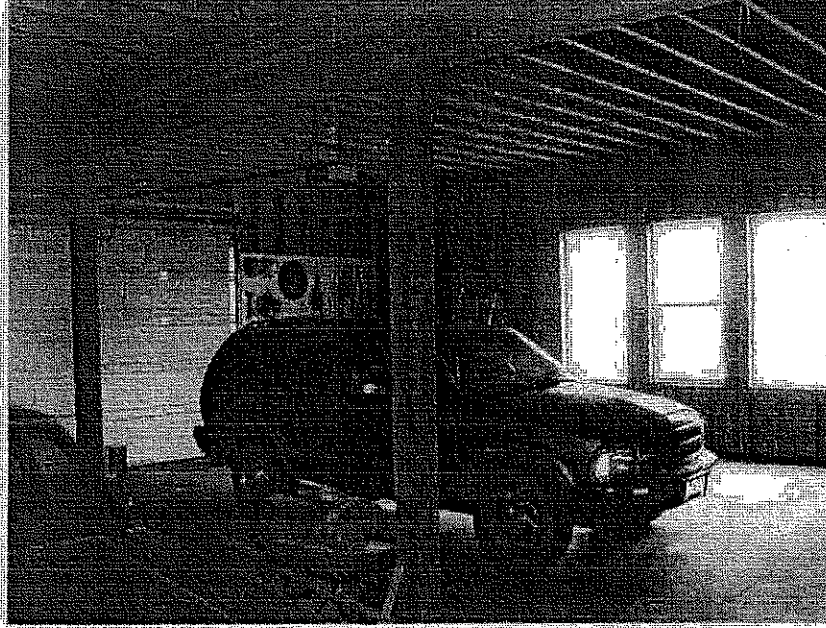
BAKER CITY OFFICE

ATTACHMENT 0

EX. A18

JO FLEMING
45491 Keating Cutoff Road
Baker City, OR 97814

Date of Photo(s): February 28, 2003, unless otherwise specified.
CITY OF Baker CITY Building Dept.



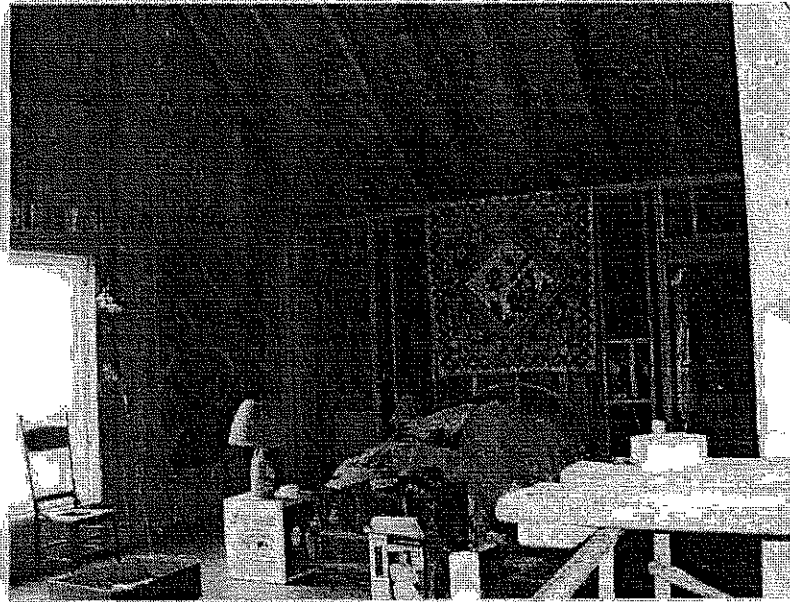
STATE OF OREGON
DEPT OF ENVIRONMENTAL QUALITY
RECEIVED
MAR 12 2003

BAKER CITY OFFICE

ATTACHMENT P

JO FLEMING
45491 Keating Cutoff Road
Baker City, OR 97814

Date of Photo(s): February 28, 2003, unless otherwise specified.
CITY OF Baker CITY Building Dept.



Page 5

STATE OF OREGON
DEPT OF ENVIRONMENTAL QUALITY
RECEIVED
MAR 12 2003

BAKER CITY OFFICE

ATTACHMENT Q



Notice: The information provided here is for convenience ONLY. The records located at Baker County Assessor's office are the one and only legal instruments for Assessment purposes. Although reasonable attempts are made to maintain this information as accurate as possible, these documents are being provided as an informational convenience ONLY. Baker County is not, in any way, liable for any inaccuracies, inconsistencies, errors, omissions, or other deviations in these documents from the original copies maintained and filed at the Baker County Assessor Office, Baker City, Oregon.

Date Web Site was last updated 11/07/2003

Tax Year:2003 Ref#:7578

MAP#	TAX LOT#	A NUM	CODE	PROPERTY CLASS/DESC
08S4200	3400	0	514	551 FARM USE/EFU ZONE/IM

OWNER FLEMING, GLENN M & BARBARA C
CONTRACT
MAILING ADDRESS:
 P O BOX 985
CITY/ST: BAKER CITY, OR ,97814
PROPERTY ADDRESS: 45491 KEATING CUTOFF RD COUNTY

NOTES:
 ZONED FARM USE-POTENTIAL ADD. TAX
 3800 OLD 3400 NEW

	REAL MKT VALUE	ASSESSED(TAXABLE) VALUE
LAND	\$140900	
STRUCTURES	\$75610	
SUBTOT	\$216510	\$83753
TOTAL	\$216510	\$83753

Ex. A19

TOTAL \$210310 \$03733

PROPERTY TAX INFORMATION

TAX	\$944.12
SPECIAL ASSESSMENTS	
L.P. IRR O&M	\$654.50
TOTAL TAX & SPECIAL ASSESSMENTS	\$1598.62

(Original tax lien, does not show tax owed or paid)

STRUCTURES

LINE #	BLDG CLASS	DESCRIPTION	SQ FT	YEAR BLT	YEAR APPRAISED	MARKET VALUE
1	141	CLASS 4 SINGLE FAMILY DWELLING	2604	0	2003	\$55570
2	142	GARAGE ATTACHED	0	0	2003	\$19840
3	305	DRC BUILDING	0	0	2003	\$200

LAND DESCRIPTIONS

LINE #	ACRES	LAND CODE	DESCRIPTION	DIMENSIONS	MARKET VALUE
1	0.00	OSD3	OSD S/W MIN LSCAPE		\$14000
2	76.41	HS2	HOME SITE 2		\$126900



SEARCH AGAIN

P.O. Box 985
Baker City OR 97814

January 20, 2005

ALJ Alison Greene Webster
Office of Administrative Hearings
4900 SW Griffin Drive, Suite 100
Beaverton, OR 97005-4649

RECEIVED

JAN 24 2005

by Office of
Administrative Hearings

Dear Alison Greene Webster,

Thank you for coming to Baker City for OAH Case No: 118750. & 118751. Agency case No: WQ/OS-ER-04-071 & WQ/OS-ER-04-072. I feel I need to let you know the history of our case ahead of the hearing. Interruptions and others speaking can divert the issues.

Both Glenn and Barbara are hearing impaired, but I feel as long as you know that and direct your questions to us we would be able to understand you without an interpreter. It is hard to know what to tell you. I don't want to bring in irrelevant information but some background seems necessary.

In February 1993 we closed escrow on the 80 acres under concern. At the time we were in our seventies. Jo had planned to move to Baker to help us. We could build two houses on the 80 acres. We planned to do that. First, the place needed cleaning of one familie's near 100 years of accumulations. The house had burned several years before and not replaced. We also needed to get the irrigation system ready by a July 1 deadline. Then in October, the Legislature ruled only one home on 80 acres. We felt we could comply with different plans. Then the following April we found out we needed 180 acres to build one house. I had told Jo and Glen that we needed to get a permit to build the day we close escrow. At that time it meant a trip to Pendleton in winter. I did not know they opened the Baker office in July of that year.

We irrigated for two summers. Sometimes that meant more than one trip a day. It was too costly to do when not able to live on the place. Thirty to ninety miles a day made it too expensive and time consuming. We let the neighbors use it the following year. It didn't pay for them either. Another neighbor took it over until Dick moved to help us also and took over irrigating in exchange for horse pasture.

Both Jo and Dick gave up nice country properties to move to Baker to help with their fathers Parkinsons Disease which showed up around 1994. Neither one has been able to duplicate what they left behind.

Jo had a house plan she was hoping to use on the 80 acres. The acting Planning Director was aware of our plight and sympathetic. Jo had also drawn up plans for a shop building. It was designed to go along with her house in use and design. She was told she could build the shop. She was told she could have a bathroom and a bed. If she put the ag exempt permit on her fence no one would bother her. They did not need to see her plans.

Ex. R1

Her next step was to the city and county building departments. The secretary there, Debbie DeShaw, told her that since she was building a shop she would not need a DEQ permit. Jo had no reason to doubt her word. She was given electrical, plumbing and sewer permits.

When the boss of this secretary, Larry Rockenbrant, came to inspect the foundation he said it was over built for a farm shop. Jo confronted him to try to find out his reasoning. He would not talk to her about it and left the property. We were mystified. How could a foundation be over built? It is in a very windy location and anything else would have been long gone. The main beam was blown down during construction.

While Larry would not talk to Jo, he did complain to the County Planning Department. He didn't like missing out on the building fees. He had two years to do whatever he wanted to do. He did nothing more until the week he retired. He then turned seventeen people in to have his successor prosecute them. You would think under the circumstances his successors would drop the matter, but no, they all want the fees for their departments.

The next Baker County Planning director seemed to think Baker County only considered pole barns farm exempt. Jo visited a friend in Klamath County who had recently built a new barn on a farm exempt permit. It had a concrete foundation, a concrete floor with drain to wash his horses inside, it was also pine paneled. Jo liked it enough to get his plans in case she can build a barn.

Somewhere along the way the building inspector alerted the Consumer Affairs Department. I would think they would be in a position to help the consumer, but that doesn't seem to be the way it worked. He came to the property when no one was there and later contacted the DEQ about the septic system.

After that came the threat of liens, ect. I feel all liens should be withdrawn. Especially Dick's excessive one. He was merely helping his sister complete her project, not a contractor as such. He had asked her if her paper work was in order - she had her permit. I asked him where he got the specs for the system. From Diane Naglee when she okayed the perk hole. He also suggested to Jo that DEQ would like to see the system before it was covered. However, Jo felt since they need not be involved and her helper with a little tractor wanted to cover it before going back to Idaho, she let him cover the system.

Later, when Jo went back to tell Debbie De Shaw that she did need a DEQ permit, she told Jo that "She couldn't begin to understand all of the rules and regulations." If someone earning her livelihood can't learn all the laws and rules, can a lowly citizen be expected to know them all?

There was no plan or thought of trying to beat the system, Jo went through the process that should have been right for her needs. For that reason, we asked for a hearing. The ground is high and dry and no environmental problems should develop from the system that is in place. I feel that we are promoting world freedom while our freedom and dreams are being taken away from us. I think that measure 37 passed in November because too many people have experienced a like episode.

I have always felt we should care for the Earth that God has given to us and to leave whatever part of this world we inhabit better than we found it. I am not against caring for the environment, but with changing laws, rules, personnel that sees things differently than the last person in office makes it hard to comply.

According to DEQ's own rules, if they do not respond to an inspection call in 7 days, the system is automatically approved. It took 2 ½ weeks after Jo called to get the system inspected. They need to respect their own rules.

I don't know how all of this would stand up in a court of law. We do not feel that we can afford an attorney to represent us, all we can do is plead for mercy and forgiveness, trusting that you will do what you know is right.

Sincerely,

Barbara Chapman Fleming
Barbara Chapman Fleming

Bryan Smith

P.O. Box 985
Baker City OR 97814

March 7, 2004

Diane E. Naglee, RS
Natural Resource Specialist
Water Quality Program - Eastern Region

Dear Diane,

I am writing in response to your March 3, 2004 letter and packet concerning the 4549 Keating Cutoff Road RE: ERP-04-028. Since it has been most of five months since Jo Fleming sent you her letter we all felt you concurred with her on the usefulness of her septic system. You did not remark on the substance of her letter. As she said, she read the 105 pages on the Oregon septic systems, and felt hers was adequate. She was told by the secretary (in 2000) of the Baker City Building Department that an ag shop building did not need a septic permit. Because of that, her helper wanted to cover the system before taking his little tractor back to Idaho, she let him do it. This helper had recently installed his own system in Idaho, so he knew how it should be done. The project had been engineered and overseen by the two engineers. The trench was done by a neighbor that has excavated for other local systems. This shop does not produce a lot of sewage. The ground is high and dry and should be able to handle the load. If we have to re-do, I suppose we can, but it should not really be necessary. My husband is the final stages of Parkinson's disease. I have neither the time nor money for letter writing and bureaucratic decisions, as I am his full time caregiver. Jo paid \$490.00 for the site evaluation. I paid a \$670.00 fee. This is a lot of money for what the D.E.Q. describes as efficiently conducted minimum services

Sincerely

Barbara C. Fleming

I had no response to this letter. When I mentioned it at our pre-hearing with Bryan Smith both Bryan and Diane said it was too late.

RECEIVED

OCT 06 2003

State of Oregon
Dept. of Environmental Quality
Eastern Region - Pendleton

Scanned to DEN 10/03/

Receipt 108 323

Jo Fleming

SEPT 27-03

I KNOW THAT I AM LATE WITH THIS CORRECTION THING BUT I AM STILL BUSY GETTING READY FOR WINTER — BUT AFTER CAREFUL READING OF THE 105 PAGES ON OREGON STATE SEPTIC SYSTEMS - I WOULD SAY LEAVE WELL ENOUGH ALONE. THIS IS NOT THE TIME OF YEAR TO EXPOSE EVERYTHING TO FREEZING TEMPS ALSO.

① FROM THE SEPTIC TANK TO THE CROSS ARMS FROM THE DISTRIBUTION BOX ~~IS~~ REQUIRE MIN OF 8" IS TO BE THE DROP, — BEING THAT THE LINE LEAVE THE BOX AT A SIX' INCH DROP SHOULD MAKE THE FALL ADEQUATE.

② I RECOGNIZE THAT THE PIPE IS NOT WITHIN THE REQUIRED ONE INCH — ALTHOUGH IF ONE HOLE IS MORE THAN 8" LOWER THAN THE NEXT LOWEST HOLE - ALL OF THE WATER WILL DRAIN OUT OF THE LOW HOLE AT THE VERY LOW FLOW RATE THAT COME OUT OF THE SEPTIC TANK — THE WATER WILL STILL SPREAD OUT ON THE BOTTOM OF THE TRENCH AND INFILTRATE AT A RATE WELL IN EXCESS OF THE PRODUCTION OF WASTEWATER IN THIS SHOP BUILDING.

③ WE BEDDED THE PIPE DOWN IN THE GRAVEL BUT NOT COVERING THE PIPE - BECAUSE IN THIS SOIL WATER TRAVELS DOWN NOT UP. OREGON SEEMS TO BE CONCERNED WITH THE VOLUME OF THE DRAIN TRENCH RATHER THAN THE ABILITY OF THE WATER TO RISE 2" IN THE TRENCH OVER THE TOP OF THE PIPE. OUR SEEPAGE TRENCHES ARE 32"

~~WIDE~~ AND OVER 12" DEEP OF (DRAIN MEDIA)
SO THE TRENCH VOLUME IS ADEQUATE,

THE BOOK SAYS 5' MINIMUM FOR LENGTH OF PIPE
BETWEEN SEPTIC TANK AND DROP BOX,

I HAD A SEPTIC SYSTEM INSTALLED THAT IS 3X
OVER KILL FOR WHAT WILL EVER BE NEEDED FOR
THIS BUILDING. I WOULD HAVE TO RUN MY WELL
DRY BEFORE I WOULD FILL THE LINES, TRENCHES
AND TANK IN ORDER TO BACK IT UP INTO THE SHOP.

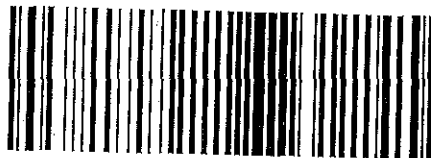
④ THE ONLY THING I CANNOT VERIFY IS THAT
THERE IS 4' OF SOLID PIPE ON THE CENTER
LINE OUT OF THE DISTRIBUTION BOX.

J Fleming

PERMIT # 06-66998

P.O. Box 985
Baker City, OR 97814

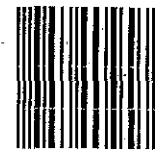
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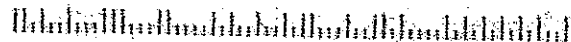
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97814
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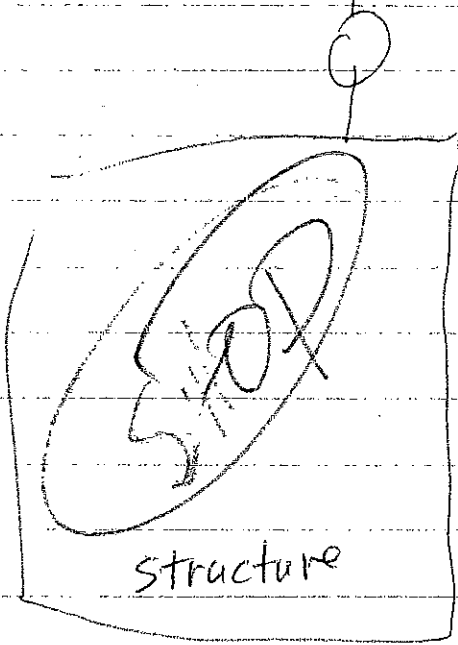
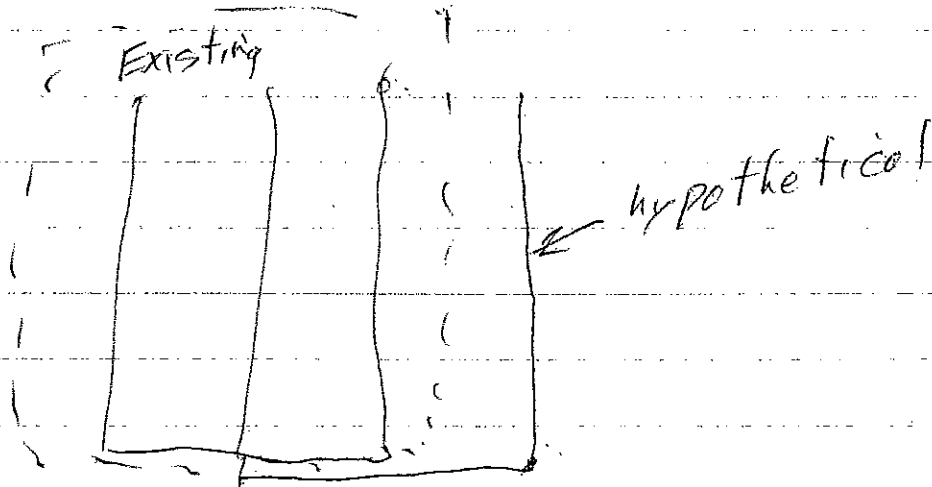
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ALJ Alison Greene Webster
Office of Administrative Hearings
4900 SW Griffin Drive, Suite 100
Beaverton, OR 97005-4649

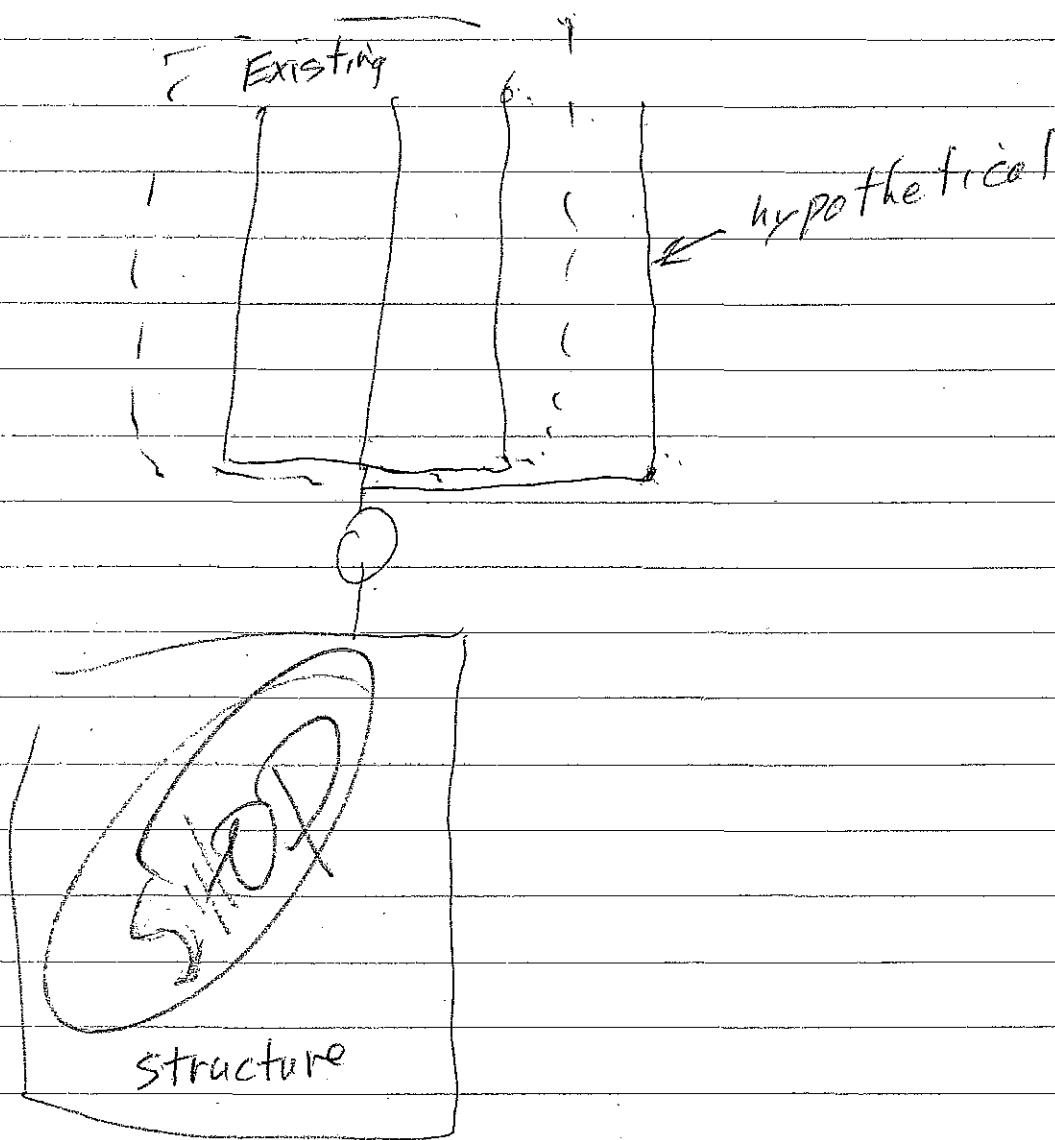
97005 4649



4506 PPT $\frac{5}{6}$



$$4506 \text{ PPK} \frac{5}{6} =$$



Bartma/Glen

Violation of OAR 340-071-0175(6)

① used system w/o obtaining CSC
Class II violation

② violation of OAR 340-071-0175(5)

didn't meet reqts for satisfactory
completion w/in 30 days

Richard

① violation of ORS 454.655(1)

OAR 340-071-160(1)

perform sewage disposal services w/o ~~license~~
constructed on-site sewage system w/o
permit

② violation of 454.695(1)

OAR 340-071-0602(1)

~~sewage disposal services w/o valid provider/
installer's license~~

April 3, 2003

Mark Bennett
1995 Third Street
Baker City, OR 97814

Re: Glenn & Barbara Fleming Trust

Dear Mr. Bennett:

This is in correspondence with your letter on March 26, 2003. We would like to tell our story regarding the building located on 8S-42-00 Tax Lot 3400, that does not meet the requirement as outlined in ORS 455.315 (Agricultural Building Exemption Certification).

Please feel free to contact me if there are any questions.

Sincerely yours,

Barbara Fleming

R3

10

Glenn felt we needed irrigated pasture to go with our range land on Virtue Flat. While Jo was supervising logging on our California property. Glenn found the 80 acres in Keating. On February 1, 1993 we closed escrow on the 80 acres in Keating. I told Jo and Glenn that the day we closed escrow we need to get two building permits. We needed forty acres for each permit, we both planned to build on ~~80~~ 80 acres.

It was winter and we had to drive to Pendleton for building permits at that time. We were also low on cash and the irrigation system had to be completed by July 1, 1993. That was Glenn's first priority.

That October a friend mentioned that we needed 80 acres to build one house. I checked that out with a realtor friend. True. We decided we could handle that. Then in April 1994 neighbors asked if we would like to buy their place. They went to the planning office and found that neither of us could build. We now needed 160 acres to build one house. The neighbors had an older home on their property. The older home on our 80 had burned several years before we bought and had not been replaced. The fact that this last change was a bureaucratic ruling made Glenn felt especially victimized. Our property was not worth what we had paid for it 13 months before.

We irrigated the summers of 1993 and 1994. We found it necessary to sometimes drive out to Keating up to three times a day if the sprinkler went off or something went awry. Ninety miles a day- even thirty adds up to more than profit. The next year we let the neighbors just use the land to save those trips. It wasn't worth it even to next door neighbors. The following year the rancher that leases our range land on Virtue Flat took over the 80 in Keating as well.

It was that way until it didn't fit into his plans either. Dick was here by then and took over the responsibility of irrigating and using the property. In the meantime Glenn's Parkinson's disease manifested itself and he knew he could no longer manage on his own. We had received permission to build if we added some of our Virtue property to the request. I wanted to take them up on that, but Glenn didn't want to be hampered in that way.

When we told Grant and Barbara in the Planning Office here that we had permission, but the two years were up they were both very surprised. They did not think that would be possible at that time. Now I am told it is possible again. Jo was in Klamath Falls trying to figure out how she could get back to Baker to be with her family. When her job folded in Klamath Falls she felt the time had come. When Jo wanted to build a house Grant would not even take Glenn's money because he was sure he could not get a house building permit. He told Jo we had to have 160 contiguous acres. He even said we could buy from Lowry's then resell it back to them as long as we had the 80 acres. What an expensive hassle!

People from the Planning office and the Assessor's office and even a planning office employee from Salem have expressed dismay over our inability to build on that piece of property.

With our best interest at heart and still doing the job they felt they had to do Jo was given a permit for an Ag shop. Jo asked for a shop. Jo asked if she could have a bathroom. Yes. Bed? Yes. Do you need to see my plans? No. So she got her permit for an Ag. shop and was then told the Planning Office was through with her. The rest of her permits would be from Baker City Planning Department. She went to them and received the electrical and plumbing and sewer permits.

No one said she had to build a floorless pole building with tin. You cannot work in such a building in Baker County winters. The wind out in Keating could blow you and it away. Neighbors on Virtue Flat had a pole equipment shed that was taken by wind.

If she was able to build a bathroom it precludes a septic tank. I saved the boards from the outdoor toilet, but feel you would appreciate that even less. No one gave anymore counsel. No one had advised her so she went ahead with the plans she had drawn up before. She has had her house plans for years-she keeps fine tuning them. She had also drawn up plans for a shop to go with her house. She wants them to match. This woman is an artist and a neat freak who likes a place for everything. Without a house she had to do what she could do. She appreciates beauty. That is what she wants to create.

When she was in the planning stages I told her to build a shop as beautiful as the one often shown in the White Flower Farm catalogue. I am not the only lover of beautiful old barns or the Wallowa old barn tour would not be a yearly event. There is a large white barn up the hill from a house as you leave Elgin for Wallowa. I always gaze longingly at it as we pass. Ever since we first planned to ranch over 55 years ago I have asked for coordinated and beautiful buildings. Please, no tin/ metal buildings.

This building is still in process. Who would leave their possessions in storage and pay \$80 a month or more when they had a way to store them in their own shop? Again, most ranches have a house to hold most of their possessions. Who would plan a house where you would have to go through an unheated garage to go to the bathroom or upstairs? It was planned for the convenience of a rancher as he works there throughout the day.

Hali feels if Jo were not out there to keep her eyes on the horses that she would have to be there. She does not want to raise her family in the inconvenient shop. What we have out there now are horses. They need supervision. More can be done with the property when someone is there. You really can't prove up on a piece of property when you have to drive out from town. Your time is spent in the vehicle instead of farming.

All the plans are not in place. Hali has talked of foaling in the shop. The colts have been in the Ag. shop as part of their training to learn to enter a building. I have been saving chicken articles as well as the Extension Office mailings on calves and cattle etc. We want goats to eat weeds. Our children grew up with goats and learned to love them. The baby goats or chicks might spend a short time in the shop before being housed elsewhere but their supplies could be stored there.

Even before the building was built we found we needed a telephone to save on trips to town. A cell phone will not work in the valley. Much travel was averted after one was installed. Electricity is needed for today's telephone. It seems to me both would be needed in an Ag. building to save steps. Dick and Hali have been helped in caring for the irrigation and the horses by having this building to use.

Hali has plans in her head for washer and dryer in her ideal barn. The washer and dryer in the Ag. Shop would be left for horse blankets and ranch clothes in the event a house is built. Jo was told she would have no trouble with her Ag. shop unless a school bus stopped by her door. So Zayda did not go to Keating this third grade year. She lives in town, but her mother is out at the 80 most everyday.

Jo is doing what she has to do to use the property. With personnel changing and laws changing, personal conception differences it makes it hard to know how to conform. We should not really be pressured into conforming to others ideas on our own land. Property rights were the basics for our government. They are challenged at this time.

When Larry made his first inspection he mentioned that the foundation was over qualified as an Ag. building foundation. We were mystified by this remark. How could any building have too good of a foundation? We felt if the old barn on the property had had a foundation it would be in much better condition than it is now.

It seems to me, due to subsequent actions, that Jo was not adequately advised by the Planning Office. There was only an acting director here at the time and he did what he thought would work. Jo told Grant that she would have to make quilted saddle blankets. He put his head on the counter. People have responded to that joke enough that you can see her first two at the Ranch Art Gallery on Broadway in Baker City.

If this building is considered a dwelling then we probably would not be able to get a permit to build a house, not to mention the money is now tied up in the Ag. shop. A house has always been the ultimate goal. Our property has been used by planners and cheapened and in a sense confiscated.

I suppose you can call it what you will, but to the Fleming family it will always be "the shop".

Sincerely yours,

Barbara Fleming

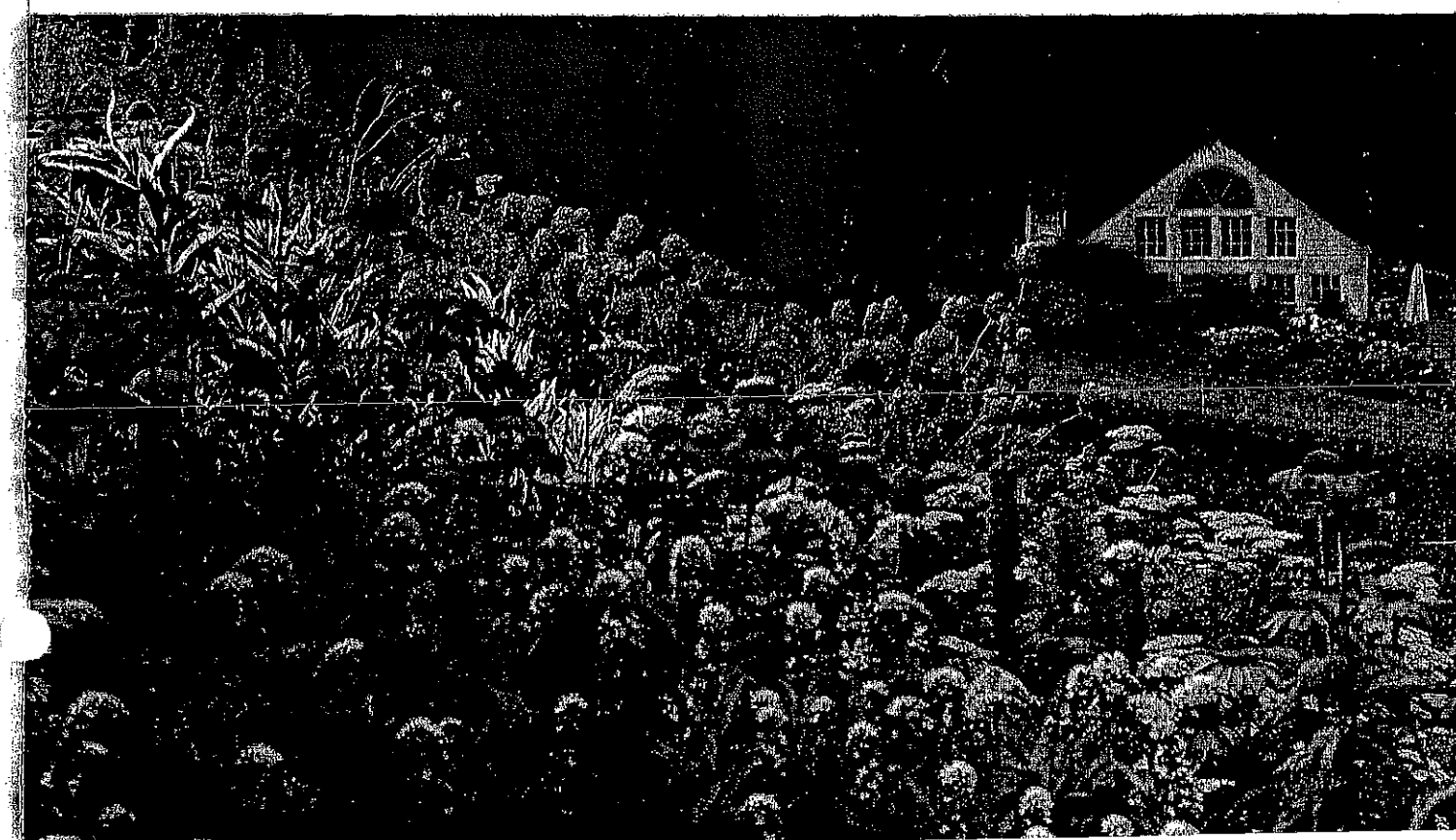


White Flower Farm

PLANTSMEN SINCE 1930

SPRING 2003

Our well-stocked garden store is staffed by knowledgeable and helpful gardeners and surrounded by gardens offering ideas from spring to fall.



My Story

I have been a rancher and a property owner in Baker County since 1971. We have 3,402 acres of good rangeland in Virtue Flat, but we had no hay ground or irrigated pasture. We were looking for such on which to build our ranch headquarters.

In January, 1993, we closed a deal on an irrigated eighty acres in Keating Valley. There was a barn, well, garage, outbuildings, and fences. It would fulfill our needs. The house had burned a few years earlier.

My wife and I were both in our seventies. Our daughter thought she should come to Baker and look after us. She wanted to build a house for herself, and we wanted to build a house for ourselves. At that time the eighty acres fit the bill nicely.

We didn't immediately apply for building permits. We were busy cleaning the place up and putting in a new irrigation system. Then, without warning, in October, 1993, we learned that the legislature had changed the law to require eighty acres to build one house.

My comment was, "Well, we can still build one house."

Then, in January, 1994 (I think) some bureaucrat in Salem issued an administrative rule requiring one hundred sixty acres in order to build a house. An administrative rule carries as much weight as a law, but is not passed by a duly elected law making body.

We applied for a building permit, anyway. We received a letter from the planning commission stating that if we threw the rangeland into the pot, we could get a permit to build one one-family dwelling. I didn't want to tie up the rangeland that way, so we dropped the matter.

About this time I was stricken with Parkinson's disease. It was very debilitating, so we let the matter lie.

We paid \$88,000 for the land and spent another \$25,000 on the irrigation system all before our friend in Salem, with the stroke of the pen reduced the value of our property by 50%. There is no market for property that you can't build on.

What good thing would a nice house on the property do?

- a. Provide a place to live so someone can live there and take care of the property.
- b. Beautify the countryside.
- c. Increase the tax base in the community.

What harm would a nice house on the property do?

- a. None whatsoever
- b. Might step on the toes of some fat cat bureaucrat.

In reading the portion of the Oregon State Constitution that may correspond to our National Bill of Rights, I read what I will paraphrase as:

Neither the State of Oregon nor any subdivision thereof shall pass any law restricting the normal use of private property. Art. XVIII Par. 10.

I feel that my rights as a citizen have been violated throughout this whole affair.

Thank you,

Glenn M. Fleming

Please submit in triplicate

STATE OF OREGON
BUILDING CODES AGENCY

FARM
AGRICULTURAL
BUILDING
EXEMPTION
CERTIFICATE

For Agency Use Only: ZONING AUTHORIZATION:			
No:	AG-00-20		
Zone:	EFU	Area:	Heating
By:	D. Stanley	Title:	Office Mgr.
County:	Baker	Date:	9-15-00



Name: Jo Fleming - (Glenn Fleming)
 Address: P.O. Box 985 Baker City, OR 97804
 Directions to Site: Section 17 (40 acres) section 20 (40 acres) - off Hwy 86
 Telephone No.: 541-884-7356 Use of Building: Farm Equip. Storage Office

I am the owner/lessee of the above-noted structure to be erected, located on Tax Lot 3400 Township 8
 Range 72 Section 00 and do hereby declare said structure is an agriculture building as defined in
 Section 402, State Structural Specialty Code (definition on back of this form) and is exempt from the State Structural
 Specialty Code. Plans will not be required to be submitted and a Building Permit will not be required. Electrical, plumbing,
 mechanical, elevator, and boiler permits are required. (Reference ORS 455.315)

- declare that said building is not:
- a. A dwelling.
 - b. A structure used for a purpose other than growing plants in which persons perform more than 144 man-hours of labor a week.
 - c. A structure regulated by the State Fire Marshal pursuant to ORS Chapter 476.
 - d. A place used by the public.
 - e. Located in a designated Flood Zone.

further declare that prior to any change in use of said structure that would remove said structure from the exemption, a
 building permit will be obtained and the structure will be made to conform to all requirements of the State Structural
 specialty Code as required for the new use.

STATE OF OREGON
 County of Baker

Jo Fleming, do hereby swear and affirm under the penalty of perjury that
 the above statement is true and correct.

Date: 9-15-00 Signature of Applicant: Jo Fleming

Subscribed and sworn to before me on this 15th day of September, 2000

Judith K. Dunn
 Notary Public of State of Oregon

My commission expires July 11, 2003

City Office

- Applicant BCA Local Zoning



RA



Plumbing Permit Application

FOR DEPARTMENT USE ONLY

City of Baker City Building Department
1655 First Street, P.O. Box 650
Baker City, OR 97814
541-523-0535, Fax 541-524-2049

Permit number:	<u>PO1-039</u>
Date Pd. & Received:	<u>May 14, 2001</u>
Date Issued:	<u>May 14, 2001</u>
Issued By:	<u>Public Review</u>

JOB SITE INFORMATION

Address: 45491 Keating Cutoff Rd.
City: Baker City Directions: _____

OWNER INFORMATION

Name: Jo Fleming
Address: PO Box 985
City: Baker City State: OR Zip: 97814
Phone: 523-3373 Work: () _____

PLUMBING PERMIT FEES

	COST (EACH)	NO. OF ITEMS	SUM
(1) 1 & 2 Family Dwellings			
(a) Per each bathroom(new construction).....	\$60.00	<u>1</u>	<u>60.00</u>
(b) Per each 1/2 bathroom(new construction).....	\$30.00		
(c) Water Service.....	\$28.00	<u>1</u>	<u>28.00</u>
(d) Sanitary and storm sewer service.....	\$28.00	<u>1</u>	<u>28.00</u>
(e) Minor installation(per fixture).....	\$15.00		
(f) Special equipment or DWV alteration.....	\$40.00		
(2) Manufactured Dwellings and Prefabricated Structures (circle one)			
(a) Connection to existing drain, sewer and water(initial installation).....	\$40.00		
(b) New sanitary and storm sewer.....	\$28.00		
(c) New water service.....	\$28.00		
(3) Commercial, Industrial and Dwellings Other Than One or Two Family			
(a) 3 or less fixtures.....	\$50.00		
(b) Base fee(includes 4 to 10 fixtures).....	\$123.00		
(c) 11 or more fixtures(base fee plus cost per fixture).....	\$15.00		
(d) Water Service(first 100').....	\$40.00		
(e) Building sanitary sewer(first 100').....	\$40.00		
(f) Building storm sewer(first 100').....	\$40.00		
(g) Additional 100' or part thereof(water or sewer).....	\$22.00		
(4) Miscellaneous Fees			
(a) Reinspection.....	\$40.00		
(b) Specially requested inspections(per hour).....	\$40.00/hr		
(5) Total of Fees Collected:			
(a) Enter total of above fees(minimum permit fee \$40).....			<u>606</u>
(b) Enter 5% Surcharge ($.05 \times (a)$).....			<u>30.3</u>
GRAND TOTAL			<u>116.00</u> <u>8.12</u> <u>124.12</u>

Applicant must hold an Oregon registration to conduct a plumbing business or be exempt from this requirement. I hereby certify that, to my knowledge the above information is true and correct. All work to be performed shall be in accordance with all governing laws and rules.

PERMIT EXPIRES IF WORK IS NOT STARTED WITHIN 180 DAYS OF ISSUANCE OR IF WORK IS SUSPENDED FOR 180 DAYS. IT IS THE RESPONSIBILITY OF THE PERMIT HOLDER TO REQUEST INSPECTIONS.

I am the property owner doing my own work.
Contractor name: Dan Mann Plumbing Address: 46278 Pocahontas ^{Haines} Phone No. 541-519-5176
CCL# 14330 Expires: 8/16/01 License No.: 1-21PB Expires: 8/31/01 Business license no. R3418JP Expires: 4/01/02

Signature: Jo Fleming Date: May 14, 2001

White-Applicant Yellow-Office Pink-File

R5

2/15/05

12:55 2005

IMPROVEMENT COST ELEMENTS

INQUIRY

YE A10122

REF/LN CODE MAP/LOT NAME AA VA PCL MCL
 7578 1 0514 08S42 03400 000 FLEMING, JO & BARBARA 3 551 551
 BK 2003 BC 326 GENERAL PURPOSE BLDG - CLASS 6 APPR GY YRAP 2003 BEGTR 2003
 RBL 2002 YRREM SITUS 45491 KEATING CUTOFF RD COUNTY

P ↓ ENDTR C=Cost, I=Income C INCOME APPROACH:

ELEM	UNITS	UTYP	D	DESCRIPTION	W/C	CST/UN.xx	ADJUSTMENT	AMOUNT
0002	2100	SQFT	U	SECOND FLOOR AREA		2137	CMP 50	22439
0050	2116	SQFT	S	BUILDING AREA		1210	100	25604
2452	2116	SQFT		WALL HGT 12' - AVG		24	100	508
2500	504	SQFT		INSULATION-FBLG 1.5"		30	100	151
4207	504	SQFT		FULL FIN DRYWL TP TX		370	100	1865
4705	2	EACH		GARAGE DOOR OPENER		32000	100	640
5502	1	EACH		ELEC PANEL -200 AMP		110000	100	1100
5505	25	EACH		ELEC OUTLET-110 VOLT		3500	100	875
6001	1	EACH		BATH FULL (3 FIXT)		185000	100	1850

ECL % DES % DES % DES % DES % DES % DES % ADJUSTED BASE: 56,692
 LCM 100 PHY 100 FNC 100 +C- 100 USE 100 100 100 = 56,692

MAIN SQFT 2,116 COND = - ADJUDICATED VALUE: YEAR AMT
 TRENDING: YEAR 2003 2004 = MKT 56,690
 % 100 X 100 X 100 X 100 X 100 X 100 X 100 X 100 = RMV 56,690

2-M/S 3-RM 5-DFT 6-INV 7-E0J 8-CLR 9-PRV 10-NXT 11-COM 14-DEL

R6

2/15/05
12:58

COMMENTS-APPRAISAL

YE

A10111

MAP/LOT

NAME

MAR VAR PCL MCL

REF# 7578 08S42

03400 000 FLEMING, JO & BARBARA

3 551 551

COMMENTS

Pg 1

GARAGE, OFFICE AND BX ON 1ST FLOOR. OFFICE IS INSULATED WITH S/R BUT NO
T/T. BX FIXTURES ARE NOT HOOKED UP. GARAGE AND 2ND FLOOR ARE UNFINISHED.
GY 9/10/02.

2005 NC - UNIT IS BEING LIVED IN - EST 75% CMP - FUNCTIONAL GIVEN FOR LIVAB
ILITY. 10/05/04 TL

JV75962 ORS 308.242 & 309.110(2) APPEAL #10 DISMISSED, VALUE STIPULATED
PRIOR TO BOPTA CONVENING KS 2/2/05

7-E0J 8-CLR 9-PRV 10-NXT

19-MENU



State of Oregon
Department of
Environmental
Quality

**Umatilla Chemical Demilitarization Program
Status Update
Environmental Quality
October 21, 2005
(Agenda Item E)**

Umatilla Chemical Demilitarization Program

Permit Modification Requests (PMRs) for the Umatilla Chemical Agent Disposal Facility (UMCDF)

Since the last update, the Department has received the following UMCDF PMRs of note:

- Class 1 PMR UMCDF-05-040-PFS(1R) – proposes to modify the monitoring instrumentation on the furnace pollution abatement system carbon filter systems to more accurately measure the moisture in the exhaust gas. Accurate measurements of the moisture content are necessary to ensure that the carbon remains sufficiently dry to adequately adsorb any chemical agent that may be present. This PMR was submitted on September 23 and is currently being reviewed by the Department.
- Class 1 PMR UMCDF-05-041-DFS(1R) – proposes changes to the permit limits for key operating parameters (exhaust gas temperature, exhaust gas flow rate, agent feed rate) in the Deactivation Furnace System (DFS) based on the preliminary results of the DFS GB rocket agent trial burn (ATB). (“GB” refers to the nerve agent Sarin.) Adjustment of these operating limits prior to formal review of the final ATB report is necessary to ensure ongoing DFS operations are conducted consistent with how the ATB was performed. This PMR was submitted on September 8 and is currently being reviewed by the Department.
- Class 1 PMR UMCDF-05-014-WAST(1R) – proposes changes to how carbon that is changed-out from filter systems will be managed, collected and stored in J-Block pending future treatment at UMCDF. The current permit requirements still reflect the original plan to process the changed-out carbon immediately in the Dunnage Incinerator, which will not be constructed. This PMR was submitted on August 19 and is currently being reviewed by the Department.

The Department has approved the following UMCDF PMRs of note:

- On September 22, Class 1 PMR UMCDF-05-042-MPF(1R) – approved changes to the Metal Parts Furnace (MPF) system to install a backup combustion air blower that will allow the MPF to safely and properly treat combustible secondary waste during a forced shutdown situation. Implementation of these changes is expected to be complete in December 2005.
- On September 22, Class 1 PMR UMCDF-05-039-MPF(1R) – approved final design and operating requirements for the ventilation/filtration and monitoring system for the MPF discharge airlock cool-down area. This PMR resolved outstanding issues from two PMRs

related to the MPF that were previously approved by the Department. Approved changes were implemented prior to the initiation of chemical agent operations in the MPF.

- On September 14, Class 1 PMR UMCDF-05-028-MPF(1R) – approved revised operating limits for the MPF based on the results of the previously performed surrogate trial burn. Implementation of these operating requirements was completed prior to the initiation of chemical agent operations in the MPF.
- On August 23, Class 1 PMR UMCDF-05-038-DFS(1R) – approved deletion of the requirement to conduct a separate GB rocket agent trial burn for potentially gelled rockets. Based on initial processing of 10% of the rockets that were identified as potentially gelled, it was determined that these rockets were not actually gelled and could be drained/processed in accordance with current permit operating limits, without the need to conduct a separate trial burn to establish different operating limits.
- On August 16, TAR UMCDF-05-033-MPF(TA) – approved temporary changes (through 2/12/06) to the MPF system that are designed to improve the facility's ability to more safely respond to forced shutdown situations (e.g. loss of power, combustion air or burner flame, etc.) while hazardous waste is being processed in the MPF. Allowed implementation of the changes prior to the initiation of chemical agent processing in the MPF, while the Department continued its review of the associated Class 2 PMR that is intended to make the changes permanent. The approved changes were developed in response to forced shutdown occurrences at other chemical demilitarization facilities.
- On August 11, Class 1 PMR UMCDF-05-031-MPF(1R) – approved changes to the MPF system that are designed to provide better temperature control in the MPF during hazardous waste treatment operations. The proposed changes were based on lessons learned at other chemical demilitarization facilities and were implemented prior to the initiation of chemical agent processing in the MPF.
- On August 9, Class 2 PMR UMCDF-05-008-WAST(2) – approved the establishment of four additional permitted storage areas within the Munitions Demilitarization Building that will be used exclusively to store containers of secondary waste that are awaiting treatment in the UMCDF furnaces. This additional storage capability should facilitate UMCDF's ability to more efficiently process secondary waste by having containers of secondary waste available and ready to process anytime the furnaces are not being used to destroy munitions/bulk items.

Agent Operations at UMCDF

As of October 11, 2005, UMCDF had processed 32,457 GB rockets (36 % of the original inventory of GB rockets at UMCD) and destroyed more than 340,000 lbs. of GB agent (approximately 17% of the original inventory of GB agent at UMCD).

The Deactivation Furnace System (DFS) was shut down for a scheduled annual maintenance outage from September 8 until October 3, 2005. Following the restart of the DFS, the site performed four mini-burns in preparation for conducting the trial burns later in October to demonstrate PCB destruction efficiency to satisfy federal Toxic Substance Control Act (TSCA) requirements.

No further rocket fires have occurred in the explosive containment rooms since July 29, 2005. Since that time, nearly 8,000 GB rockets have been processed.

UMCDF has begun agent operations in the Metal Parts Furnace (MPF). On September 27, 2005, the site began bulk GB agent processing by punching and draining four MC1 bombs, each containing approximately 220 lbs. of GB agent. On September 30, the site processed the first 12 drained bombs in the MPF and a total of 28 GB bombs have now been processed. UMCDF plans to integrate the processing of bulk GB agent into its operations, while they continue to destroy GB rockets. They intend to alternate between processing GB rockets and GB bombs; three weeks of rockets, then one week of bombs.

Analysis of Rocket Propellant Samples

Evaluation of propellant samples from rockets at UMCD and the Pine Bluff Arsenal is near completion at the Picatinny Arsenal in New Jersey. Propellant samples from Pine Bluff GB rockets showed a similar separation of nitroglycerin from the propellant and migration of liquid nitroglycerin to the outer edge of the propellant grain as was seen in the propellant samples from UMCD. A final report on the propellant evaluations from both sites is expected to be issued by the Army in late November.

Agent Trial Burns

On October 7, 2005, UMCDF submitted its final report to the Department for the DFS GB agent trial burn. The report appears to indicate that UMCDF successfully demonstrated its compliance with agent destruction efficiency and all other permitted emission limits (with the exception of a few organic compounds that are products of incomplete combustion, PICs) while processing 34 – 35 GB rockets per hour. For those PICs, the results were below laboratory analytical detection levels and those detection levels are not low enough to demonstrate compliance with emission limits in the permit. Based upon the pre-trial burn risk assessment, it does not appear that emissions of these PICs represent a significant risk to public health or the environment at the laboratory detection levels. However, these emissions will be more fully evaluated in the post-trial burn risk assessment.

The preliminary GB agent trial burn report for the Liquid Incinerator #1 (LIC1) was submitted to the Department on August 18, 2005. The Department expects to receive the final report on the LIC1 GB agent trial burn during the week of October 17. As was the case with the DFS, the preliminary report appears to indicate that UMCDF successfully demonstrated its compliance with agent destruction efficiency and all other permitted emission limits (with the exception of a few PICs) while destroying 1,030 lbs. per hour of GB agent. For those PICs, the results were below laboratory analytical detection levels that were not low enough to demonstrate compliance and do not appear to represent a significant risk to public health or the environment, based upon the pre-trial burn risk assessment. The emissions will be more fully evaluated in the post-trial burn risk assessment.

The GB agent trial burn plan for the MPF is under review by the Department and UMCDF hopes to conduct the trial burn in January 2006.

The surrogate trial burn report for the Liquid Incinerator #2 (LIC2) is under review by the Department. After it is approved, the Department will begin its review of the GB agent trial burn plan for LIC2. UMCDF hopes to conduct the LIC2 GB agent trial burn in late Spring/early Summer of 2006.

GB Ton Containers

UMCDF received laboratory results of samples collected in late July/early August from four GB ton containers that had been stored at UMCD. These containers had been shipped to UMCDF for expedited characterization and processing due to concerns regarding deterioration of the physical condition of the containers. However, due to uncertainties related to the laboratory analytical results, the site will be resampling three of these containers in the near future. UMCDF plans to process the contents of these containers after they have reliable characterization results that can serve as a basis for ensuring appropriate feed rates of the contents to the LIC1.

Umatilla Chemical Depot (UMCD)

Appeal of Permit Conditions in UMCD Hazardous Waste Storage Permit

It appears that UMCD's appeal of six conditions in the hazardous waste storage permit issued in January 2005 will be resolved without proceeding to a formal hearing. UMCD will be submitting a permit modification request to modify two of the six conditions in the permit. Based upon discussions with the Department, UMCD is expected to drop their objections to the remaining four conditions. The Department will keep the Commission apprised when final resolution of this item occurs.

Significant Events at Other Demilitarization Facilities

Anniston Chemical Agent Disposal Facility (ANCDF), Alabama

In mid-September, after completing a maintenance outage, ANCDF resumed destruction of 105 mm GB projectiles. These are the final GB munitions to be processed at ANCDF. After these projectiles are destroyed, the facility will shut down and begin its changeover process in preparation for commencing its VX campaign (expected to begin in the first half of 2006).

Newport Chemical Agent Disposal Facility (NECDF), Indiana

In mid-September, after modifying its neutralization processing procedures, NECDF resumed operations to destroy VX agent. The modifications were necessary to eliminate unexpected flammability characteristics discovered after an analysis of the VX hydrolysate in June.

The Army has rejected a proposal for revision of its plan for off-site disposal of hydrolysate from neutralization of VX nerve agent. A September 1, 2005, letter to the Army from the Chemical Weapons Working Group (CWWG) urged the Army to construct a supercritical water oxidation facility at NECDF and use it to destroy the hydrolysate on-site, rather than shipping hydrolysate to a commercial wastewater treatment facility operated by DuPont in New Jersey. In a September 27 letter to CWWG, the Army indicated it will continue efforts to ship hydrolysate from NECDF to New Jersey, stating that, "maintaining an accelerated destruction of the VX while meeting international treaty goals can be best achieved at Newport by treating the hydrolysate off site at a permitted commercial facility." Public officials in New Jersey and Delaware have expressed significant opposition to the transport of VX hydrolysate to the DuPont facility.

Pine Bluff Chemical Agent Disposal Facility (PBCDF), Arkansas

On October 4, 2005, PBCDF destroyed its 20,000th GB rocket. In the week of October 10, 2005, the site began its deactivation furnace system GB agent trial burns and TSCA trial burns to demonstrate PCB destruction.

Blue Grass Chemical Agent Destruction Pilot Plant (BGCAPP), Kentucky

As of October 5, 2005, the BGCAPP had received its hazardous waste RD&D (research, development and demonstration) permit and its air quality permit from the Kentucky Department of Environmental Protection. Initial infrastructure construction for the facility is expected to begin in 2006. The RD&D permit only addresses GB agent. However, based upon the anticipated success of the process, at a later time the permit may be expanded to a "regular" hazardous waste treatment permit and include the processing of VX and mustard agents.

Aberdeen Chemical Agent Disposal Facility (ABCDF), Maryland

On September 29, 2005, ABCDF reached the halfway point in cleaning and decontaminating the 1,818 ton containers that previously stored mustard agent at the Edgewood Area of Aberdeen Proving Ground. Neutralization of the mustard agent drained from the ton containers was completed in March 2005.

Deseret Chemical Depot (DCD), Utah

On October 3, 2005, the Tooele Chemical Agent Disposal Facility (TOCDF) (located at the Deseret Chemical Depot, Utah) completed its processing of VX hydrolysate generated from chemical neutralization testing conducted between 1999 and 2001 at the Chemical Agent Munitions Disposal System (CAMDS), the former research and development facility at DCD. Having completed its processing of all GB and VX munitions, TOCDF is now making preparations to conduct its mustard agent campaign, which is expected to begin in Summer 2006.

On October 6, 2005, DCD officials stopped all hazardous waste operations at CAMDS due to findings identified in a letter from the Utah Department of Environmental Quality, based upon a regulatory review of operations at CAMDS the previous week. The Utah state regulators cited mislabeling of waste containers, lapses in tracking wastes, and other regulatory deficiencies. CAMDS had been performing secondary waste segregation and repackaging activities for agent-contaminated materials.

State of Oregon
Department of Environmental Quality

Memorandum

Date: September 12, 2005
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Agenda Item F. Informational Item: Environmental award recognition for Northwest Automotive Trades Association and Mac's Radiator and Air Conditioning, October 21, 2005, EQC Meeting

Purpose of Item To recognize small businesses in Oregon that recently earned national environmental awards: Northwest Automotive Trade Association and Mac's Radiator and Air Conditioning.

Background The National Steering Committee for Small Business Assistance Programs and the EPA Office of the Small Business Ombudsman recently bestowed the following environmental awards on the following Oregon businesses:

2004 National Environmental Industry Leadership Award

Bestowed on the Northwest Automotive Trades Association (NATA), which partnered with DEQ to create DEQ's ecological business program, EcoBiz. Automotive businesses earn the EcoBiz designation by implementing comprehensive pollution prevention practices that meet and exceed environmental regulations. NATA also partnered with the Oregon Environmental Council and DEQ to promote a mercury switch-out program, which allows Oregon drivers to visit one of 110 participating repair shops to have mercury-containing trunk and hood latches safely disposed of and replaced at no charge with non-mercury switches. The program has resulted in the safe management of more than 44 pounds of mercury since 2001.

2005 National Small Business Pollution Prevention Leadership Award

Bestowed on Mac's Radiator and Air Conditioning, Springfield, Oregon, for exemplary implementation of comprehensive pollution prevention practices at all of Mac's 15 facilities in the Pacific Northwest. All of Mac's Oregon repair shops are EcoBiz-certified and Mac's Washington and Idaho shops voluntarily operate under the same strict environmental guidelines as the Oregon EcoBiz locations.

Agenda Item F: Informational Item: Environmental Award Recognition

October 21, 2005, EQC Meeting

Page 2 of 2

EQC involvement Please join DEQ in congratulating NATA and Mac's Radiator and Air Conditioning for their achievements.

Attachments

1. Fact sheet: Northwest Automotive Trades Association Winner of the 2004 National Environmental Industry Leadership Award.
2. Fact sheet: Mac's Radiator and Air Conditioning Winner of the 2005 National Pollution Prevention Leadership Award.

Available Upon Request Additional information is available from Linda Hayes-Gorman, DEQ Bend at (541) 388-6146, ext. 274 or Cheryll Hutchens, DEQ Portland, (503) 229-6480

Approved:

Name:

Nery T. Resto for Andrew Ginsburg

Division:

Air Quality

Report Prepared By: Cheryll Hutchens

Phone: (503) 229-6480



Oregon's Air Quality Business Assistance Program announces

**Northwest Automotive Trades Association
Winner of the 2004
National Environmental Industry Leadership Award**



In collaboration
with US EPA

Helping Oregon Businesses Access Environmental Compliance Assistance & Multi-Media Pollution Prevention Information

National Award Winners!

NATA received the 2004 National Environmental Industry Leadership Award.

Awarded by the National Steering Committee for Small Business Assistance Programs and the EPA Office of the Small Business Ombudsman. Awarded in June 2004 in at the National Small Business Conference in Sacramento, CA.



Deb Elkins, former Executive Director of NATA, accepting the award during the 2004 National Small Business Conference in Sacramento, CA. Also pictured is Mark Shanahan, Chair of the National Steering Committee, and EPA's Small Business Ombudsman Karen Brown.

A Leader and Partner for the Environment

NATA has partnered with the Oregon Department of Environmental Quality (DEQ) and other local governments and non-profit organizations to address a number of environmental issues. For example:

- NATA has provided critical stakeholder input to DEQ on a number of auto-related issues, including lobbying in the Oregon Legislature against privatizing the *Vehicle Inspection Program* several times.
- NATA promotes DEQ's *Clean Air Action Days* program on their website: www.aboutnata.org. Approximately 25 of their member shops provide financial incentives for consumers to participate in *Clean Air Action Days*.
- NATA partnered with DEQ, City of Portland Water Bureau, and others to provide technical assistance to approximately 10 automotive shops within the *Columbia South Shore Well Field Wellhead Protection Area*.
- NATA partnered with DEQ and a number of other local government agencies to develop and implement the *EcoLogical Business Program*. To date, over 60 automotive services facilities, both private and governmental, have been EcoBiz-certified statewide.
- NATA partnered with the Oregon Environmental Council and DEQ to develop and implement the *Mercury Switch-Out Program*. Approx. 110 automotive shops in Oregon participate in the program. Since November 2001, over 7,000 switches and 44 lbs. of mercury have been switched-out.
- NATA lobbied and passed HB 2429 in the 2005 Oregon Legislature for the auto dismantler group improving licensing, record-keeping, and other environmental requirements for auto recyclers in the state.
- NATA President, Bob Anderson of AJ's Auto Repair, sits on DEQ's Air Quality *Small Business Advisory Panel*.
- NATA has a seat on the *Governor's Motor Vehicle Emissions Task Force* – which will analyze Oregon's opting-in on the California Tail Pipe Emission Standards.

About Northwest Automotive Trades Association

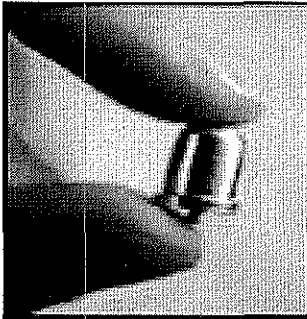
• Northwest Automotive Trades Association (NATA) is the result of merging three not-for-profit trade associations on July 2nd, 2001 when the Automotive Service Association of Oregon (ASA) the Oregon Autobody Craftsman Association (OACA) and the Pacific Automotive Trades Association (PATA) officially came together under the name NATA.



NW Automotive Trades Assn.

- NATA has 600 members statewide in Oregon.
- NATA's members are collision, repair and transmission shops, auto dealers, parts and shop suppliers, tire installers, and tow operators.
- NATA supports the automotive industry and its members through education, representation, and member benefits.

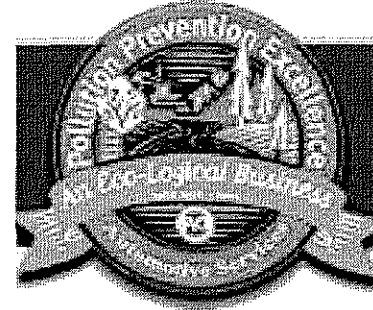
Mercury Switch Out Program



Mercury is a highly persistent toxic chemical that can be found in various automobile components, namely convenience light switches. Even in small quantities, mercury can cause severe ecological damage and has been linked several health problems.

In a joint effort with the Oregon Environmental Council and the Department of Environmental Quality, NATA and over 110 of its member shops have implemented the Mercury Switch-Out Program. Ultimately, this program allows drivers to take their vehicles to participating auto repair facilities in order to have their hood and trunk switches replaced with non-mercury alternatives. This program is free to customers and has resulted in over 7,000 mercury switches (and 44 lbs. of mercury) being replaced since the program's start in November, 2001.

Eco-Logical Business Program



The Eco-Logical Business Program recognizes businesses that reach the highest standards in minimizing their environmental impact.

The goal of the program is to prevent and minimize pollution generated by small businesses. It recognizes vehicle service and repair businesses and shops that reach the highest standards in minimizing their environmental impact. This is the first multi-media (air, water, & waste) certification program in the nation.

There are more than 60 automotive service facilities, both private shops and public maintenance facilities, that have been EcoBiz certified statewide.

On the Value of Working With DEQ

The (DEQ) Small Business Assistance Program in Oregon is beginning to break down the barriers that have existed between small business and our state's regulatory agencies for many years.

This is a critically important step towards environmental sustainability because working together we will be able to develop processes that are both profitable in the work place and environmentally beneficial at the same time. It makes good sense; it is a win-win situation.

- Bob Anderson

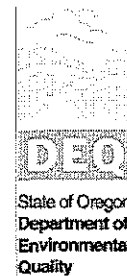
AJ's Auto Repair, Salem

President, Northwest Automotive Trades Association



Oregon's Air Quality Business Assistance Program announces

Mac's Radiator & Air Conditioning Winner of the 2005 National Pollution Prevention Leadership Award



In collaboration
with US EPA

Helping Oregon Businesses Access Environmental Compliance Assistance & Multi-Media Pollution Prevention Information

National Award Winners!

Recipient of the 2005 National Small Business Pollution Prevention Leadership Award.

Awarded by the National Steering Committee for Small Business Assistance Programs and the EPA Office of the Small Business Ombudsman.
Awarded June 13, 2005 in Biloxi, MS at the National Small Business Conference.



Mac's owner Stephen MacDonald and Human Resources and Safety Manager, Teresa Conger, accepting the award in Biloxi, MS.

Mac's On the Value of Technical Assistance

"DEQ provided technical assistance to all our locations in Oregon. It has been a great experience for myself professionally. I have learned a lot and believe that Mac's has helped educate DEQ on radiator repair facilities. On a business level, utilizing DEQ's technical assistance program has been one of the best environmental business decisions we have made. The program people were very helpful. They listened to our comments and ideas and actually worked with us, not against us, to make things work for them, the environment, and Mac's."

- Teresa Conger, Mac's Radiator & Air Conditioning, Portland, OR

Facts About Mac's Radiator & Air Conditioning

- Mac's is a 3rd generation family-owned small business with 15 shops in the Northwest, employing approximately 90 persons.
- Mac's specializes in all types of cooling system products and services. They supply and manufacture cooling systems products for vintage and performance vehicles. They repair and service all types of vehicles, foreign & domestic, vintage and heavy duty.
- All 9 of their Oregon shops are Eco-Biz certified facilities.
- Mac's Washington and Idaho repair shops operate under the EcoBiz guidelines, even though those states do not have the certification program.

Mac's is EcoBiz Certified!

The EcoBiz Automotive Services program certifies compliance with all applicable environmental regulations AND requires each facility to implement comprehensive pollution prevention practices.

Mac's involvement in the Eco-Biz program stemmed from compliance problems that needed handling. Building a relationship with DEQ through that process, led them to understand the benefits of a proactive environmental approach. The result, all nine of their Oregon repair shops are certified through the Eco-Biz program!

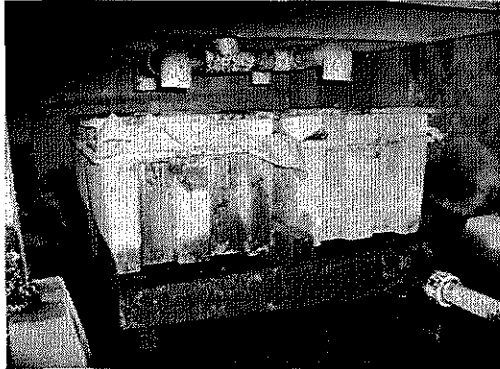


Stephen MacDonald (bottom), Teresa Conger (left) and the technicians of Mac's Radiator & Air Conditioning shop in Bend, Oregon.

Attachment B

Pollution Prevention Activities at Mac's

Mac's developed pollution prevention activities designed to protect the environment and human health for radiator repair shops, e.g.:



Settling Tanks in Zero Wastewater Discharge system at Mac's in Bend.

- Design and use of a "zero wastewater discharge system." Mac's discharges no process wastewater to city sewers or to on-site wastewater systems.

- Reuse spent rinse water as make-up water in hot and/or test tanks.

- Provide employees with work boots, clothing, and shower facilities to reduce lead tracking off-site.

- Recycle lead-containing solder.

- Keep used solder separate from other floor sweepings so as to not render the floor sweepings 'hazardous'.

- Use water-based and low VOC paints.

- Reduce mercury in environment by recycling fluorescent light tubes.

- Recycle antifreeze and purchase antifreeze in bulk to eliminate individual containers as they are not recyclable locally.

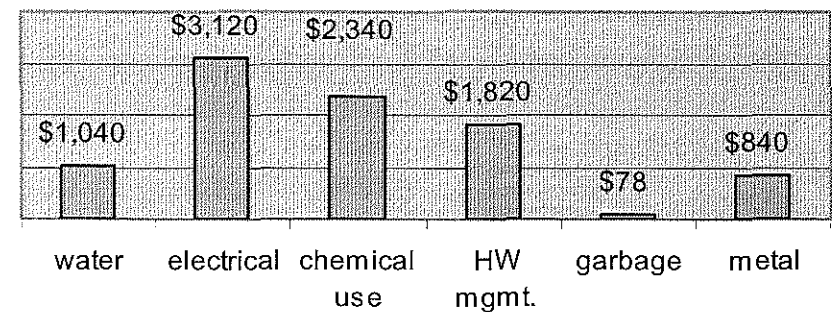
- Recycle Freon.

Mac's Saves Natural Resources & Money

Mac's saves thousands of dollars a year by implementing resource-efficient measures under the Eco-Biz program. Some examples of Mac's savings (averaged for each shop) are:

- Water usage is cut by an average of \$4/day or \$1,040/year.
- New high efficiency lighting cuts the electrical use by \$12/day or \$3,120/year.
- Chemical usage is down by approximately \$9/day or \$2,340/year.
- By lowering chemical usage, Mac's reduces the amount of waste generated and saves roughly \$7/day or \$1,820/year in waste management costs.
- Recycling reduces their garbage costs by \$3/day or \$78/year.
- Scrap metal recycling and sales have increased by \$3.50/day or \$840/year.

Mac's Annual Savings Per Shop



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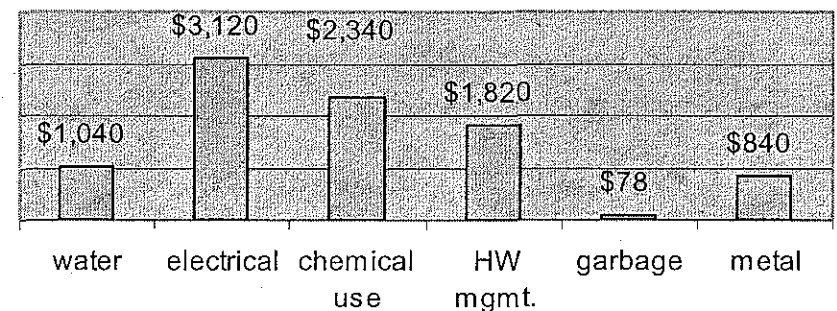
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Mac's Annual Savings Per Shop



To: Environmental Quality Commission **Date:** October 21, 2005
From: Stephanie Hallock, Director *S Hallock*
Subject: Director's Dialogue

Willamette River Update

- **McCormick & Baxter reaches "Construction Completion" Milestone**

I am pleased to report that on September 26, 2005, in a joint DEQ and EPA inspection, EPA formally granted the McCormick & Baxter Superfund site the milestone designation of "Construction Completion" of all cleanup remedies. The designation is a tribute to many years of dedicated work by DEQ staff. In September 2006, DEQ expects to reach the final milestones of Site Completion and Delisting from the National Priority List (NPL).

Construction at the McCormick and Baxter cleanup site included the following:

- Removal and off-site disposal of 33,000 tons of highly contaminated soil and debris in 1999.
- Construction of an 18-acre subsurface barrier wall encompassing the primary sources of creosote contaminated groundwater in 2003.
- Construction of a 23-acre sediment cap and 6-acre riparian soil cap along the riverbank in 2004-2005.
- Construction of a 35-acre upland soil cap (consisting of a combination of impermeable and earthen soil cap) in 2005.

McCormick & Baxter is one of 36 Superfund Sites nationally to achieve the Construction Completion designation in the 2005 Federal fiscal year and one of 962 sites to reach this milestone since inception of the Superfund program. Mike Cook, EPA Interim Superfund Administrator, toured the McCormick & Baxter site and Portland Harbor on September 21.

In February 2006, DEQ will celebrate Construction Completion with a ceremony in which stakeholders, public officials and community representatives will be invited to help plant more than 9,000 native trees and shrubs on the site.

- **The Portland Harbor Superfund Site**

Last December, DEQ reported progress on the environmental cleanup in and around the Portland Harbor Superfund site. Since then, much media attention has been devoted to ongoing work and this past year has seen the following significant activity in this important stretch of the Willamette River:



- The Lower Willamette Group completed the single most comprehensive sampling effort ever undertaken in Portland Harbor. More than 550 sediment samples were taken last fall, and EPA, DEQ and our partners are carefully reviewing results, identifying data gaps, and incorporating the data into risk assessments to determine next steps for the site.
 - The Port of Portland is proposing to dredge, cap, and monitor natural recovery of contaminated sediments at Portland Harbor Terminal 4. The proposed plan includes an option of creating a confined disposal facility (CDF) in Slip 1 for the dredged sediments. The public comment period for the Port of Portland's proposed plan ended in September 2005. EPA will likely render a decision on the plan in late November.
 - Dredging has begun to remove 20,000 cubic yards of contaminated tar near the shore of the harbor at the NW Natural (NWN) Gasco facility, a former manufactured gas plant. Early dredging by EPA resulted in violation of EPA water quality standards. The dredging was stopped and best management practices were established to ensure water quality standards would be met during the remainder of the project. The dredging action has been carefully designed to minimize impacts to the surrounding river, and NWN continues to modify their processes to achieve increased protection. NWN is barging the dredged tar spoils to Boardman where they will be trucked to Arlington for disposal at Chemical Waste Management's permitted hazardous waste landfill. Once the dredging is complete, the area will be capped—probably by the end of October 2005.
 - Finally, DEQ and EPA recently completed a Joint Source Control Strategy (JSCS), which will be a guide for the identification, evaluation and control of upland sources of contamination threatening Portland Harbor. Cleaning up the upland sites is key to eliminating sources of contamination and ensuring the river will not be re-contaminated after the remediation is complete.
- **Abandoned Mines Update**

For several years, DEQ has grappled with environmental challenges posed by abandoned hard rock mines across the state. DEQ has identified 135 mines that raise potential concerns and has completed initial evaluations of 95 of them. In depth investigation and cleanup is underway at 27 of the mines.

Run-off from Formosa mine in Douglas County, has seriously damaged an 18-mile stretch of stream inhabited by Coho salmon and steelhead. This former zinc and copper mine operated periodically during the 1900s, with the majority of production occurring between 1989 and 1994 under the ownership of a Canadian mining company that eventually went bankrupt. When the mine closed in 1994, the company implemented a reclamation plan, which called for backfilling of the mine workings with mill tailings, crushed ore and limestone. Rust and other acidic materials leached from the buried mill tailings and damaged the nearby stream. In 1997, DEQ discovered that the site's acid mine drainage system had failed.

DEQ has completed a remedial investigation and feasibility study at the Formosa mine to help determine a remedy, but lacks sufficient funds to implement a final cleanup. EPA is scoring the site to determine if it qualifies to be on the National Priority List (NPL) for Superfund funding. Once the ranking is complete, DEQ will meet with EPA to discuss whether it makes sense for EPA to take the lead on future work at Formosa mine. The Bureau of Land Management will also participate in the discussion, because a portion of the mine is located on federally-managed land.

The abandoned mine problem is extensive and raises larger questions about funding sources for clean-up at these sites. A recent report to Congress indicated that the cost of cleaning up abandoned mines nationally could top \$24 billion—far exceeding Superfund funding.

- **Willamette TMDL**

Some portions of the Willamette River and its tributaries fail to meet clean water standards, primarily for mercury, bacteria, and temperature. Bacteria make the water unsafe for swimming, mercury makes fish unsafe to eat, and high water temperatures harm salmon and other cold water fish. The federal Clean Water Act calls for a study and plan of action known as a Total Maximum Daily Load (TMDL) to correct these problems. The TMDL includes the analysis to determine the source of the pollutants and the plan to reduce them and restore water quality.

By the end of this year, DEQ will have completed its work on the Willamette Basin TMDL—the most extensive TMDL that DEQ has done to date. Upon completion, DEQ will shift its efforts to working with partners throughout the basin to achieve water quality improvements. These efforts will include:

- Revising water quality permits for industries and sewage treatment plants that discharge into the river.
- Working with over 100 local governments to address pollution carried to the river by storm water runoff.
- Working with the Oregon Department of Agriculture and the Oregon Department of Forestry to ensure agricultural and forest practices are protective of water quality.
- Partnering with federal land managers, watershed councils and citizens to identify and address high priority watershed restoration needs.

More information on the Willamette Basin TMDL can be found at <http://www.deq.state.or.us/wq/willamette/WRBHome.htm>

- **Ross Island Update**

The proposed remedial action for contaminated soil and sediment at the Ross Island Sand and Gravel Company (RSIG) site on Ross Island is currently out for public comment. A Record of

Decision (ROD) will be issued in November 2005. The proposed cleanup consists of capping, stabilization, and long-term monitoring and management of contamination primarily associated with fill brought to the site for reclamation. Some of this fill was known to be contaminated and required confinement (capping with clean sediment). The cleanup will be integrated with on-going reclamation at the site which requires RISG to create wetland and shallow water habitats within the lagoon. The specified reclamation will require approximately 9.5 million cubic yards of fill be placed in shoreline areas of the lagoon over 10 years. Transfer of a large portion of the islands to the city of Portland has been discussed for several years. The ROD and long-term monitoring and management requirements that will be developed as part of cleanup implementation, will make the long-term liability associated with the contamination more clear and may help move these discussions forward; however, it appears that there will be some delay due to differing positions on which party will assume responsibility for the long-term costs for monitoring and managing the site.

Water Quality Toxics Update

On October 12, EPA leadership and I met with members of the Board of Trustees for the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) to discuss a “path forward” to resolving differences over the fish consumption rate in the water quality standard for toxics. EPA told the Board that they would approve the standard submitted by DEQ in 2004 no later than the end of January 2006. As you know, the fish consumption rate in that standard is 17.5 grams/day. DEQ acknowledged that Tribal members consume more fish and do not agree with Oregon’s standard, and that EPA has suggested that a rate of 105 to 113 grams/day might be more appropriate for some waters in Oregon, Washington, and Idaho. DEQ committed to revisiting the standard and the fish consumption rate in the 2008 Triennial Review of water quality standards. In the interim, DEQ, EPA and the Board agreed on the importance of working together on the Columbia River Toxics Initiative led by EPA to support on-the-ground projects to reduce toxics. We also agreed to develop a joint work plan of actions needed to support moving to a new standard, such as a statewide survey of fish consumption rates and distribution of populations with higher fish consumption rates. EPA has agreed to provide financial and technical resources to support this effort.

California Low Emission Vehicles Standards

Governor Kulongoski has directed DEQ to propose rules by the end of 2005 implementing California Low Emission Vehicle Standards (Cal LEV) in Oregon. Adopting rules by year-end would enable Oregon to opt-in to the California standards for the 2009 model year—the year California’s greenhouse gas emission standards take effect. Since Washington’s recent adoption of the California standards is conditional upon Oregon’s action, Oregon’s rulemaking would also enable Washington to opt-in for the 2009 model year.

The Governor has convened a workgroup, chaired by Mark Reeve, to explore issues surrounding implementation of the Cal LEV standards in Oregon. The eleven members of the Vehicle Emission Workgroup represent Oregon environmental and business communities, including auto

manufacturers, car dealers, and the auto repair industry. (A list of the workgroup members is attached). DEQ participation in workgroup discussions will help inform any future rulemaking.

The group held its first two meetings in Portland, September 12-13 and October 5-6, to discuss relevant legal issues, expected costs and benefits, possible effects on the vehicle repair industry, and expectations for vehicle model availability (including diesel vehicles). At a final meeting on October 24, the group will finalize a draft report to the Governor. At that time, if the Governor so directs based on the workgroup report, DEQ will prepare a temporary rule for presentation at the December 2005 EQC meeting and a permanent rule for consideration in June 2006.

Additional information about the workgroup and Cal LEV background materials can be found at <http://www.deq.state.or.us/aq/aqplanning/CalLev/Index.htm>.

On September 9, 2005, Oregon legislators, automobile retailers, and the Alliance of Automobile Manufacturers filed a lawsuit against the DEQ and EQC. The lawsuit asserts that the Governor lacked authority to line-item veto a clause in the budget bill which would have prohibited DEQ from spending money to adopt Cal LEV standards. The Justice Department is preparing a response and anticipates a decision before the December 2005 EQC meeting.

Environmental Council of the States (ECOS) and EPA Update—Director's Activity Update

I was elected President of the Environmental Council of the States (ECOS) at the annual meeting in September. The term is for one year, ending August 2006, when the annual meeting will be held in Portland. Other officers are from South Carolina, Virginia and Oklahoma. The primary significance of serving as president is on-going high-level dialogues with EPA. Currently, that dialogue is about cuts to state base program grants for FY 2005 and 2006 and probably 2007.

The new Deputy Administrator of EPA is Marcus Peacock from the Office of Management and Budget (OMB). He is a key connection for states at EPA, and, being from OMB, his primary concern is accountability—bang for the buck. He is the “father” of the Program Assessment Rating Tool (PART), which is being used by this administration to grade the performance of federal agencies. As an ECOS officer, I have met with Marcus three times so far.

EPA Region 10 has a new Regional Administrator—Michael Bogert from Idaho. He is an attorney who has worked for Governors Kempthorne and Schwarzenegger. When first hired, Michael made it a priority to meet with the director of each state environmental agency personally. We spent an hour and a half together covering a variety of state concerns.

Measure 37 Update

To date, DEQ has received 13 Measure 37 claims that address statutes and rules DEQ administers. DEQ is named as a secondary agency on those claims. Ten claims address on-site regulations; two claims address solid waste (composting) regulations; and one claim addresses surface water rules. The claims are from rural property owners who want to subdivide lands where division is restricted by, in most cases, exclusive farm use (EFU) zoning. It is DEQ's understanding that the counties and the Department of Land Conservation and Development (DLCD) are waiving zoning regulations for claims that meet the qualifying criteria in Measure 37. However, landowners are

apparently filing claims with DEQ based on concerns that DEQ On-Site regulations, in particular, might later restrict development of the property even after the zoning regulations have been waived.

Oregon's Measure 37 claim process requires claimants to file an application for Department of Administrative Services (DAS) review. DAS then sends the claim to a lead agency (usually DLCD) and to other "secondary" agencies whose statutes or rules also have been identified by the claimant as a basis for the claim. Secondary agencies draft staff reports for DOJ approval and DAS offers the reports for public comment. Based on public comment, agencies revise the reports and issue a final order approving or denying the claim in relation to each agency.

DEQ has prepared draft staff reports for three of the claims and a final staff report and final order for another. DEQ staff reports and orders to date have proposed denying the claims on the basis that the claimant has not yet applied for or been denied DEQ approval for a permit and the agency has otherwise taken no action to enforce the regulations on that property. DEQ has also proposed denying claims on the basis that the regulations in question would fall with one or more of the Measure 37 exemptions, including the exemption for pollution control regulations.

With EQC approval, DEQ is prepared to move forward with a DOJ-recommended rule change to formally delegate authority to the Director to act on behalf of the Commission in managing, denying, and approving Measure 37 claims. The rule change would authorize the Director to approve claims by not applying the statute or rule that is the basis of the claim. However, the Director would not have authority to pay a claim, unless the Legislature approved funds for payment of claims. At this point, the Legislature has appropriated no funds to DEQ for payment of Measure 37 claims.

On October 14, Marion County Circuit Court Judge Mary Mertens James issued an opinion determining that Measure 37 is invalid. Until a final judgment is entered in the case, the opinion has no legal effect, and state agencies have been directed to continue acting on Measure 37 claims accordingly. Once a final judgment is entered, unless a stay is granted, state agencies will need to stop issuing orders on Measure 37 claims. Judge Mertens' decision will be appealed directly to the Oregon Supreme Court. The Department of Justice and affected state agencies are reviewing the decision, and further advice is forthcoming regarding what to do pending appeal.

DEQ Laboratory Construction Update

Work on the DEQ Laboratory move from the Portland State University campus to a new site in Hillsboro is moving ahead close to schedule. Due to unexpected design challenges,¹ the design phase is about a month behind schedule. Construction is estimated to begin early spring 2006 with a projected move-in date of late February 2007 (revised from late December 2006). The project team (contractors and staff from the Department of Administrative Services, Public Health Lab and the DEQ Laboratory) is currently developing construction design documents, which will be used to solicit construction bids.

¹ The existing structure purchased for the new lab initially appeared to meet projected space requirements by a narrow margin, but early design work revealed insufficient space. The design phase was extended to add an auxiliary building for storage, utilities and shops.

The estimated cost for the entire project is \$34 million and will be shared by DEQ and the Department of Human Services Public Health Lab, which will also be housed at the site. The cost projection exceeds the \$31 million that the 2003-2005 Legislature granted. The funding level was based on a Department of Administrative Services estimate that did not account for inflation during the planning phases or for laboratory outfitting costs, such as fume hoods, autoclaves, cold storage rooms. DEQ is currently evaluating the impact of the cost increase on its 2005-2007 operating budget and 2007-2009 legislative package.

DEQ Strategic Directions

I will soon engage the DEQ Executive Management Team (EMT) in an update to our strategic plan. I anticipate adjusting the priorities to bring them current with environmental priorities, your vision, Governor and legislative direction, and to reflect our accomplishments.

I want to ensure that we pick the actions that will bring the greatest results, and that all of our actions are challenging, yet achievable. We will also develop and/or modify performance measures for each key action.

During our last strategic planning process, we held a half-day retreat with the EQC. We timed the retreat at the point where the EMT and I had a reasonably clear articulation of what the plan should say and do. We took your guidance and observations and incorporated them into the plan. I want to engage you again this time, and my thought is to hold a similar retreat, most likely in conjunction with our March 2-3, 2006, EQC meeting (see 2006 EQC Meeting dates below). I am interested in hearing your comments about that idea.

2006 EQC Meeting Dates Set

We've confirmed the following dates for 2006 EQC meetings. The listed meeting locations remain tentative.

Mar 2-3	Joint meeting with Department of Agriculture (tentative); Location— Portland
April 27-28	Location—Eastern Region
June 22-23	Location—Portland, headquarters
Aug 10-11	Location—Western Region, Cow Creek Band Casino
Oct 5-6	Location—Portland, headquarters
Dec 14-15	Location—Northwest Region



State of Oregon Governor's Vehicle Emissions Workgroup Charter

The members of the Governor's Vehicle Emissions Workgroup agree to operate under this Charter.

I. Purpose

In March of 2005, the Governor's Advisory Group on Global Warming submitted its final report to Governor Kulongoski, which recommended that the Governor convene an interim Workgroup on California's motor vehicle emission standards (California standards), which includes the LEV II and Pavley components. The Governor has established this Workgroup and has asked it to explore issues surrounding the implementation of California standards in Oregon. At the end of this process the Governor will be directing the Department of Environmental Quality to propose rules for consideration by the Environmental Quality Commission.

II. Workgroup Membership

The Workgroup will be chaired by Mark Reeve

The Chair will be responsible for:

- Keeping members focused on the issues and objectives;
- Ensuring that all members adhere to the process and ground rules;
- Representing the Workgroup to the media.

The Workgroup members are:

Mark Reeve (Chair)	Reeve Kearns
Bob Anderson	NW Auto Trades
Alan DeBoer	Town and Country Chevrolet
Steve Gutmann	Flex Car
Chris Hagerbaumer	Oregon Environmental Council
Ashley Henry	Oregon Business Association
Al Jubitz	Citizen (former head of Jubitz Truck Service)
John Porter	AAA
Mitch Rofsky	Better World
Don Taylor	City of Portland Fleet Administrator
Steve Douglas	Alliance of Automobile Manufacturers

Ex-Officio Members:

David Van'tHof	Governor's Office
Andrew Ginsburg	Department of Environmental Quality

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

J. Christian LANUM, PhD

Name (Please print clearly)

5275 Yaquina Bay Rd

Address

Public Citizen jlanum@isp.com

Affiliation

Email (optional)

Phone (optional)

Agenda Item _____ or

Topic of Presentation Georgia-Pacific Toledo Mill Pollution

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

GRETA PERRY

Name (Please print clearly)

5275 Yaquina Bay Rd

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Public Citizen

Affiliation

Email (optional)

Phone (optional)

Agenda Item _____ or

Topic of Presentation Georgia-Pacific Toledo Mill Toxins

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

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msk@nedc.org

503-768-6673

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Agenda Item ____ or
Topic of Presentation

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

Kathryn Van Natta

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2191 SE Oak Crest DR Hillsboro OR

97123

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NW Pulp & Paper Assn

503-844-9540

Affiliation

Email (optional)

Phone (optional)

Agenda Item ____ or
Topic of Presentation

Association Introduction / Toxics

Water Quality Standard

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

Brett Vandenhout

Name (Please print clearly)

620 SW Main, Suite 615

Address

Willamette Riverkeeper

brett@ecoisp.com

Affiliation

Email (optional)

503 224 3240

Phone (optional)

Agenda Item ____ or

Topic of Presentation

Draft Turbidity Water quality standard

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

BRENT FOSTER

Name (Please print clearly)

2107 RATTLEB RIDGE MASIER OR 97040

Address

COLUMBIA RIVERKEEPER

brent.foster@gorge.net

Affiliation

Email (optional)

Phone (optional)

Agenda Item ____ or

Topic of Presentation

PUBLIC COMMENT

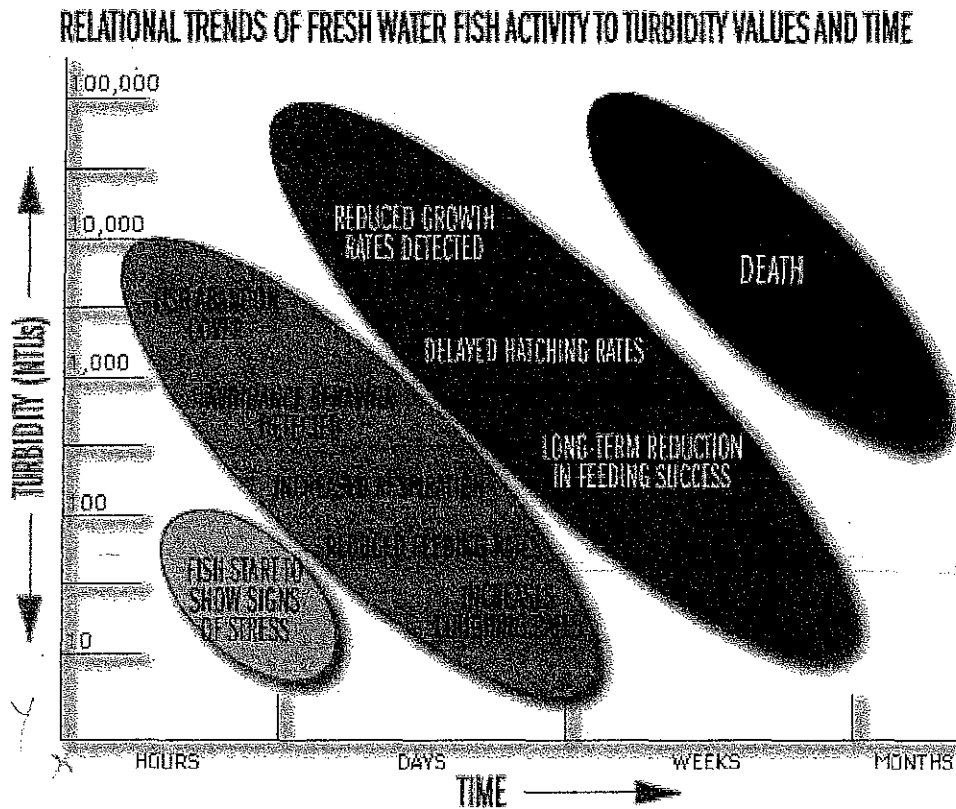


AD

Brett VandenHeuvel
Water Quality Advocate

October 21, 2005

EQC Public Comments: WATER CLARITY HANDOUT



Schematic adapted from "Turbidity: A Water Quality Measure", Water Action Volunteers, Monitoring Factsheet Series, UW-Extension, Environmental Resources Center. It is a generic, un-calibrated impact assessment model based on Newcombe, C. P., and J. O. T. Jensen. 1996. Channel suspended sediment and fisheries: a synthesis for quantitative assessment of risk and impact. North American Journal of Fisheries Management. 16: 693-727.

(b) The Department may use, but is not limited by the following considerations when calculating site-specific criteria:

(A) Stream flow;

(B) Riparian vegetation potential;

(C) Channel morphology modifications;

(D) Cold water tributaries and groundwater;

(E) Natural physical features and geology influencing stream temperatures; and

(F) Other relevant technical data.

(c) DEQ may consider the thermal benefit of increased flow when calculating the site-specific criteria.

(d) Once established and approved by EPA, the site-specific criteria will be the applicable criteria for the water bodies affected.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

340-041-0032

Total Dissolved Solids (TDS)

Total Dissolved Solids: Total Dissolved Solids: The concentrations listed in the basin specific criteria found in OAR 340-041-0101 through OAR 340-041-0350, may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

340-041-0038

Turbidity

(1) A person may not introduce or re-suspend turbidity-causing materials into waters of the state if the introduction or re-suspension causes the turbidity in waters of the state to

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Deleted: All Fresh Water Streams and Tributaries - 100.0 mg/L
Deleted: 340-041-0036
Deleted: Turbidity (Nephelometric Turbidity Units, NTU): No more than a ten percent cumulative increase in natural stream turbidities may be allowed, as measured relative to a control point immediately upstream of the turbidity causing activity. However, limited duration activities necessary to address an emergency or to accommodate essential dredging, construction or other legitimate activities and which cause the standard to be exceeded may be authorized provided all practicable turbidity control techniques have been applied and one of the following has been granted: <ul style="list-style-type: none"> ¶ (a) Emergency activities: Approval coordinated by the Department with the Oregon Department of Fish and Wildlife under conditions they may prescribe to accommodate response to emergencies or to protect public health and welfare; ¶ ¶ (b) Dredging, Construction or other Legitimate Activities: Permit or certification authorized under terms of section 401 or 404 (Permits and Licenses, Federal Water Pollution Control Act) or OAR 141-085-0100 et seq. (Removal and Fill Permits, Division of State Lands), with limitations and conditions governing the activity set forth in the permit or certificate.
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exceed the levels set out in section (2) of this rule at points of compliance specified in section (3) of this rule or in accordance with OAR 340-041-0053.

(2) Turbidity criteria for waters of the state.

(a) Maximum turbidity.

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(A) Where background turbidity is 33 NTUs or less, turbidity must not exceed 5 NTUs above background.

(B) Where background turbidity is greater than 33 NTUs, turbidity must not exceed 15% above background.

Potential great turbidity impact

(b) Monthly average turbidity.

old was ~~annual~~ not monthly

(A) Where background turbidity is 30 NTUs or less, monthly average turbidity must not exceed 3 NTUs above background.

(B) Where background turbidity is greater than 30 NTUs, monthly average turbidity must not exceed 10% above background.

(c) Visual Criteria. A conspicuous turbidity plume must not extend further than the compliance point distances in section (3) of this rule, except as consistent with the numeric or other applicable criteria stated in this rule.

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(d) If specifically authorized by an NPDES permit, CWA §401 water quality certification, or other regulatory mechanism, a person may exceed the instantaneous turbidity criteria in subsection (2) (a), as described below:

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(A) Turbidity may exceed an increase of 5 NTUs above background during a single period of not greater than eight hours for each calendar day allowed. During that period, turbidity increases above background may exceed 30 NTUs for no more than two hours and must not exceed 50 NTUs above background turbidity; and

(B) Limited duration criteria under paragraph (2)(d)(A) are allowed for no more than 6 calendar days out of any consecutive 30-day period, unless turbidity monitoring or existing relevant data demonstrate compliance with the monthly average turbidity criteria in subsection (2)(b).

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(e) In a CWA §401 water quality certification, the Department may authorize ecological restoration, emergency, or essential dredging activities to exceed the criteria in subsections (2)(a) through (2)(d) for a period defined in the certification, and in accordance with the following:

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(A) The Department finds that the source cannot practicably comply with criteria in subsections (2)(a) through (2)(d);

(B) The Department finds for channel restoration or essential dredging that the activity will achieve long-term gains in the protection of beneficial uses that outweigh its potential adverse impacts to beneficial uses, or will offset or mitigate negative impacts to beneficial uses by achieving positive gains on the site or elsewhere in the basin;

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(C) The Department finds that there will be no permanent impairment to any beneficial use from the activity due to or as a result of turbidity, sediment, or sedimentation impacts; and

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(D) The Department coordinates with the Department of Fish and Wildlife regarding water quality and resource protection before authorizing exceedances under this section.

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(f) The Department may establish criteria for limited duration exceedances more stringent than the criteria in subsection (2)(d) to protect beneficial uses from activities that occur in areas or situations such as:

(A) In scenic waterways;

(B) In waters listed under §303(d) of Clean Water Act for turbidity or sedimentation;

(C) Upstream of public drinking water intakes;

(D) Upstream of redds or active spawning areas;

(E) Activities occurring outside the in-water work period as defined by ODFW; or

(F) At any location where special circumstances, cumulative impacts, or other conditions require additional protection.

(g) Persons using authorizations granted under subsections 2(d) through 2(f) must:

(A) Utilize all reasonable and practicable measures to maintain activity-related turbidity at the lowest achievable level;

(B) Monitor best management practices and other control measures to demonstrate that the conditions allowing for the exceedance have been met; and

(C) Document and monitor turbidity to demonstrate BMP effectiveness and/or compliance with allowed turbidity levels.

(3) Turbidity criteria points of compliance for activities not subject to an OAR-340-041-0053 mixing zone. Compliance with the numeric turbidity criteria established in section 2 of this rule is determined within the following distances directly downstream, and within any existing turbidity plume, from a source or activity discharge point:

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Inserted: NPDES permitted mixing zone. Compliance with the numeric turbidity criteria established in section 2 of this rule is determined within the following distances directly downstream, and within any existing turbidity plume, from a source or activity discharge point: ¶

(a) For wetted stream widths no greater than 30 feet at the discharge point: 50 feet. ¶

(b) For wetted stream widths greater than 30 feet but not greater than 100 feet at the discharge point: 100 feet. ¶

(c) For wetted stream widths greater than 100 feet but not greater than 200 feet at the discharge point: 200 feet. ¶

(d) For wetted stream widths greater than 200 feet at the discharge point: 300 feet. ¶

(e) For ponded systems such as lakes, reservoirs, ponds, wetlands, backwater systems, and similar waterbodies: 100 feet, or the maximum surface dimension of the water body, which ever is less. ¶

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Measured outside the mixing zone - August 29 2007

- (a) For wetted stream widths no greater than 30 feet at the discharge point: 50 feet.
- (b) For wetted stream widths greater than 30 feet but not greater than 100 feet at the discharge point: 100 feet.
- (c) For wetted stream widths greater than 100 feet but not greater than 200 feet at the discharge point: 200 feet.
- (d) For wetted stream widths greater than 200 feet at the discharge point: 300 feet.
- (e) For ponded systems such as lakes, reservoirs, ponds, wetlands, backwater systems, and similar waterbodies: 100 feet, or the maximum surface dimension of the water body, which ever is less.

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May

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048
 Stats. Implemented: ORS 468B.030, 468B.035, 468B.048
 Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

340-041-0046

Water Quality Limited Waters

(1) A receiving stream may be designated as water quality limited through the biennial water quality status assessment report prepared to meet the requirements of section 305(b) of the Federal Clean Water Act. Appendix A of the Status Assessment report will identify: what water bodies are water quality limited, the time of year the water quality standards violations occur, the segment of stream or area of water body limited, the parameter(s) of concern, and whether it is water quality limited under the definition of "Water Quality Limited" in OAR 340-041-0002. Appendix B and C of the Status Assessment report will identify the specific evaluation process for designating water bodies limited;

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(2) The water quality limited list contained in Appendix A of the Status Assessment report will be placed on public notice and reviewed through the public hearing process. At the conclusion of the hearing process and the evaluation of the testimony, Appendix A will become the official water quality limited list. The Department may add a water body to the water quality limited list between status assessment reports after placing that action out on public notice and conducting a public hearing;

(3) For interstate water bodies, the State is responsible for completing the requirements of OAR 340-041-0004(9) of this rule for that portion of the interstate water body within the boundary of the State;

(4) For water bodies designated as water quality limited under sub-section (c) of the definition of "Water Quality Limited" in OAR 340-041-0002, the Department will

Deleted: (62)(c)



Oregon Department of Environmental Quality (DEQ) with Staff Time Paid for By the Northwest's Pulp and Paper Association Proposes to All But Eliminate Oregon's Water Clarity Standard

Issue overview: On October 19, 2005 DEQ released a proposed revision to Oregon's water clarity (ie. turbidity) pollution standard that would all but eliminate any controls on water pollution that adversely affects water clarity in the State. The description below details how the key provisions of this precedent setting rule would radically weaken Oregon's existing water clarity standard and pose a direct threat to fish, wildlife, the aesthetics of Oregon's rivers and streams and other beneficial uses. The most striking part of the rule is that for large rivers like the Willamette and Columbia, the proposed standard would eliminate all protections for water clarity within a 300- foot mixing zone DEQ has, for the first time ever, built right into the standard.



Currently illegal discharges like this would be legal under the newly proposed rules

The push to weaken the standard: The proposed change in the water clarity standard was initiated in 2002 after the Northwest Pulp and Paper Association (NWPPA) signed an agreement under Oregon's Receipts Authority agreeing to pay DEQ up to \$ 120,000 to support the staff time it would take to review and re-write the standard. NWPPA had clearly indicated that it believed Oregon's existing standard was too stringent. Despite public opposition about DEQ's contract with NWPPA, which represents many of the largest polluters in Oregon, DEQ moved ahead with its radical weakening of the water clarity standard.

Effect of the proposed standard: Oregon's current water clarity standard requires that, "No more than a ten percent cumulative increase in natural stream turbidities may be allowed, as measured relative to a control point immediately upstream of the turbidity causing activity..." OAR 340-041-0036. Under this standard, pollution in a stream with a natural stream turbidity of 2 NTU (a fairly clear stream) could not cause the turbidity to increase over 2.2 NTU.

Although the new standard has many loopholes through which compliance can be avoided, two provisions in the proposed rule make clear the magnitude to which DEQ is planning to weaken Oregon's water clarity standard. The first, attempts to build a mixing zone where there is no protection of water clarity levels into the standard itself. Additionally, even at the outside of this mixing zone, DEQ has radically weakened the "no more than a 10% increase."

First and most importantly, the new standard eliminates all-together the need to comply with a water clarity standard at the point where a given source of pollution actually enters a given stream. Instead, the proposed rules at 340-041-0038(3) would only require compliance with the new standard at "points of compliance" that range from 50 to 300 feet downstream depending on the size of the stream. For a river like the Columbia or

Willamette, the proposed rule would allow the discharge of pollution at any turbidity level within this 300 foot downstream mixing zone. The proposed rule ignores the reality that removing all limits on water clarity within these downstream mixing zones will have significant and adverse effects on species, such as salmon, that depend on clear water.

In the second major change to the standard, DEQ plans to abandon the “no more than 10% above background” standard and instead allow a 5 NTU maximum increase and a 3 NTU monthly average for any stream with a natural background turbidity of 33 NTUs or less. 340-041-0038(2)(a),(b).

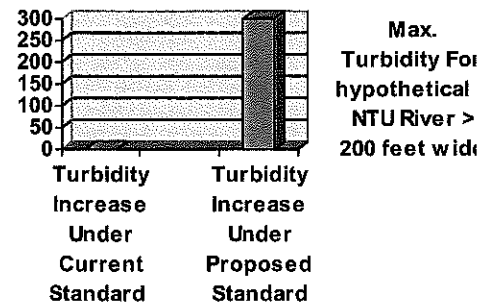
Since even DEQ’s technical basis for the proposed standards admits that fish feeding and growth rates can be adversely affected by NTU levels lower than 10 NTU, allowed increases of 5 or even 3 NTU could certainly create conditions in waters that already have turbidity levels above 5 to the point where trout and other fish are being adversely affected by decreased water clarity. Technical Basis for Revising Turbidity Criteria, Tom Rosetta, Water Quality Division, Oregon DEQ, (Feb. 2004 DRAFT).

Considering the difference in the reduction of water clarity that would be allowed under the new standard compared to the current standard is telling. DEQ’s new rule uses 1 NTU as an assumed natural background turbidity level for streams when data is not available, and so we use that to demonstrate the effect of a hypothetical discharge into a 1 NTU river that is over 200 feet in width. OAR 340-041-0002(7).

Under the current standard, someone only be able to cause an increase in the turbidity level of a 1 NTU by 0.1 NTU to a 1.1 NTU level. Absent some provision for a mixing zone, the discharge would have to meet this 1.1 NTU standard at the location where the pollution entered the stream.

Under the proposed standard, a discharger would be able to cause a 5 NTU maximum increase in turbidity 300 feet downstream from the point of discharge. Even ignoring the massive 300 foot mixing zone where no water clarity limits would apply, the new standard at the outside of the mixing zone would allow a 500% increase in the background turbidity level compared to the 10% increase currently allowed (ie. a change from 1 NTU to 6 NTU). However, when the 300 foot mixing zone is considered the effect is radically greater, but would be dependent on the rate of dilution in the receiving stream.

Assuming a dilution ratio of even 50:1 which is extremely conservative for a 300 foot downstream distance, the proposed standard would allow the discharge of water pollution with a turbidity level on the order of 300 NTU.



For more information please contact Brent Foster, Columbia Riverkeeper (541) 380-1334, brentfoster@gorge.net; or Mark Riskedahl, NEDC (503) 768-6673, msr@nedc.org.

Date: September 29, 2005
To: Environmental Quality Commission
From: Stephanie Hallock, Director *S. Hallock*
Subject: Agenda Item I, Action Item: Tax Credit Consideration
October 21, 2005 EQC Meeting

Proposed Action The Department of Environmental Quality (DEQ, Department) presents its analyses and recommendations regarding Pollution Control Facilities Tax Credits in this agenda item. The Department requests the Environmental Quality Commission's decision on the actions summarized in Attachment A of this staff report.

EQC Action Alternatives The Environmental Quality Commission (EQC, Commission) may postpone any application to a future meeting if the Commission:

- Requires the Department or the applicant to provide additional information; or
- Makes a determination different from the Department's recommendation, and that determination may have an adverse effect on the applicant.

Department Recommendation The Department recommends that the EQC approve final certification of **13** facilities as provided in Attachment B.

Attachments
A. Summary of Recommendations
B. Background and References for Final Certifications
C. Tax Expenditure Report
D. Certified Wood Chipper Report

Available Upon Request ORS 468.150 to 468.190 and OAR 340-016-0005 to 340-016-0080

Approved:

Section:
Division:

Maggie Vandehey
Sally Phelan

Report Prepared By: Maggie Vandehey
Phone: 503-229-6878

Attachment A

Summary of Recommendations

Pollution Control Facilities Tax Credits

October 21, 2005

Recommended for Approval in Attachment B

App #	Media	Applicant	Claimed	Certified	Difference	% Allocable	Maximum Percent	GF Liability	EQC Action
6934	Water	Mallorie's Dairy, Inc.	\$78,487	\$78,487	\$0	100%	35%	\$27,470	
6990	Mat Rec	High Country Enterprises, LLC	33,835	33,835	0	100%	35%	11,842	
6991	Mat Rec	Bend Garbage Company, Inc.	194,600	194,600	0	100%	35%	68,110	
6992	Mat Rec	Bend Garbage Company, Inc.	131,504	131,504	0	100%	35%	46,026	
6993	Mat Rec	Bend Garbage Company, Inc.	47,584	47,584	0	100%	35%	16,654	
6994	Mat Rec	Bend Garbage Company, Inc.	40,253	40,253	0	100%	35%	14,089	
6997	Mat Rec	Safeway Inc.	22,711	22,661	-50	100%	35%	7,931	
7000	Mat Rec	Deschutes Transfer Company	7,105	7,105	0	100%	35%	2,487	
7001	Mat Rec	Deschutes Recycling, LLC	143,370	143,370	0	89%	35%	44,660	
7002	Mat Rec	Deschutes Recycling, LLC	27,672	27,672	0	100%	35%	9,685	
7003	Mat Rec	High Country Enterprises, LLC	116,960	116,960	0	100%	35%	40,936	
7033	Water	Kenneth R. Winokur, DMD PC	757	757	0	100%	35%	265	
7044	Mat Rec	Miller Associated Enterprises, Inc.	65,031	65,031	0	100%	35%	22,761	

13 Applications

Sum	909,869	909,819		312,917
Average	69,990	69,986		24,071
Minimum	757	757		265
Maximum	\$ 194,600	\$ 194,600		\$ 68,110

Attachment B

Background and References for Final Certifications

The Department recommends that the Environmental Quality Commission approve certification of the pollution control and material recovery facilities presented in summary on Attachment A and in detail in this attachment. The individual application records and the Pollution Control Facilities Tax Credit regulations support the Director's Recommendation as shown at the top of each Review Report. The Department organized the reports by ascending application number under the following categories.

1. Material Recovery (shown as *Mat Rec* on the tab)
2. Water

Organization of Review Reports

The organization of the review report reflects the decision making process for certifying a pollution control facility and the amount of the tax credit. The report is the Department's analysis and recommendation regarding:

- The facility's technical qualifications for the pollution control facilities tax credit
- The amount of the credit
- The percentage of the credit attributed to pollution control
- The maximum allowable credit

The Department will use the information in the reports to:

- Develop the Pollution Control Facility Tax Credit Certificate
- Print the taxpayer's Department of Revenue form for claiming the credit on the Oregon Tax Return
- Develop reports for the Department of Revenue, the Commission and other interested parties

Definition of a Pollution Control Facility

The individual review reports in this attachment describe how the facility meets the definition of a pollution control facility.

The tax credit regulations provide the definition of a pollution control facility. The regulations split the definition into several parts. The parts of the definition common to all pollution control facilities include a broad description of the asset, the environmental benefit, and the purpose of the facility:

Asset	Environmental Benefit	Pollution Control Purpose
<ul style="list-style-type: none"> • Land • Structure • Building • Installation • Excavation • Machinery • Equipment • Devices 	<p>Prevents, controls, or reduces:</p> <ul style="list-style-type: none"> • Air pollution • Water pollution • Solid waste • Hazardous waste • Used oil <p>Provides the environmental benefit by an allowable method</p>	<p>Required - Principal primary and most important purpose is to achieve the environmental benefit by complying with DEQ/EPALRAPA requirements</p> <p>Voluntary - Sole sole or exclusive purpose is to achieve the environmental benefit; the benefit must be substantial</p>

Tax Credit Amount

If the facility in an individual report in this attachment meets the definition of a pollution control facility, the amount of the tax credit depends on three determinations:

1. The **facility cost** represents the actual facility cost and the applicant's own cash investment
2. The **percentage** of the facility cost **allocable** to pollution control
3. The **maximum percentage** of the credit allowable

The Department summarizes this information and the resulting amount of the tax credit under the *Director's Recommendation* on the upper right corner of each report.

Material Recovery Facilities for Approval

The Department recommends the Commission approve the following applications for certification as material recovery of solid waste facilities.

Summary of Material Recovery Facilities

App #	Applicant	Certified	% Allocable	Maximum Percent	GF Liability
6990	High Country Enterprises, LLC	\$33,835	100%	35%	\$11,842
6991	Bend Garbage Company, Inc.	\$194,600	100%	35%	\$68,110
6992	Bend Garbage Company, Inc.	\$131,504	100%	35%	\$46,026
6993	Bend Garbage Company, Inc.	\$47,584	100%	35%	\$16,654
6994	Bend Garbage Company, Inc.	\$40,253	100%	35%	\$14,089
6997	Safeway Inc.	\$22,661	100%	35%	\$7,931
7000	Deschutes Transfer Company	\$7,105	100%	35%	\$2,487
7001	Deschutes Recycling, LLC	\$143,370	89%	35%	\$44,660
7002	Deschutes Recycling, LLC	\$27,672	100%	35%	\$9,685
7003	High Country Enterprises, LLC	\$116,960	100%	35%	\$40,936
7044	Miller Associated Enterprises, Inc.	\$65,031	100%	35%	\$22,761
11	Sum	830,575			285,182
Apps	Average	75,507			25,926
	Minimum	7,105			2,487
	Maximum	194,600			68,110

References

Statutory Definition of "Material Recovery"

ORS 468.155 Definitions for ORS 468.155 to 468.190 and 468.962

Such prevention, control or reduction required by this subsection shall be accomplished by the use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS 466.005, or used oil as defined in ORS 459A.555.

Eligibility

OAR 340-016-0060(4) Eligibility

Eligible Activities. The facility shall prevent, reduce, control, or eliminate hazardous waste, solid waste and used oil. The facility shall eliminate or obtain useful material from material that would otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS 466.005, or used oil as defined in ORS 468.850. The facility shall produce an end product of utilization that is an item of real economic value and is competitive with an end product produced in another state. The facility shall produce the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- (A) Have useful chemical or physical properties which may be used for the same or other purposes; or
- (B) May be used in the same kind of application as its prior use without change in identity.



State of Oregon
Department of
Environmental
Quality

Tax Credit Review Report

Pollution Control Facility: Material Recovery

Final Certification

ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0080

Applicant Identification

PO Box 504
Bend, OR 97709

Organized as: **LLC**
Taxpayer ID: **93-1257933**

Director's Recommendation

Approve Application No. **6990**

Applicant: **High Country Enterprises, LLC**

Certification of:

Facility Cost		\$33,835
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		<u>\$11,842</u>

Certificate Period: **5 years**

Facility Identification

761 NE 11th
Redmond, OR 97756

The certificate will identify the facility as:

- 1,244 19-gallon residential recycling boxes**
- 1,000 14.4-gallon residential recycling boxes**
- 50 curbside recycling containers**
- 5 1-yard commercial front-load recycling containers**
- 5 2-yard commercial frontload recycling containers**
- 10 3-yard commercial front-load recycling containers**
- 15 6-yard commercial front-load recycling containers**

Technical Information

High Country Enterprises, LLC, doing business as High Country Disposal collects garbage and recycling materials from its customers in Deschutes County. The applicant has 10,000 residential customers and 1,100 commercial customers.

The applicant claims 1,244 blue, 1,000 red containers and 50 recycling containers for placement with 1,294 residential customers. High Country Enterprises, LLC, also claims 35 containers placed with its commercial customers for recycling cardboard.

Taxpayer Allowed Credit

- ORS Criteria
315.304(4) The Department of Revenue determines if the taxpayer is allowed the credit if one of the following conditions apply. The taxpayer is the:
- a. Owner, including a contract purchaser, of the trade or business that uses the Oregon property requiring a pollution control facility to prevent or minimize pollution; or
 - b. Person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or utilizes such property; or
 - c. Person who, as an owner, including a contract purchaser, or lessee, owns or leases a pollution control facility that is used for recycling, material recovery or energy recovery as defined in ORS 459.005.

Applied to this Application

DEQ will report the following information to the Department of Revenue:

High Country Enterprises, LLC **owns** the claimed facility that they use for recycling or material recovery.

Eligibility

- Timely** Criteria
Filing If the applicant completed constructing the facility on or after January , 2002, the applicant must submit the application within one year after the construction
ORS completion date. The applicant must submit the final application after completing
468.165(6) construction of the facility and placing it into service.

Applied to this Application

The applicant **timely filed** the application. The applicant purchased the containers between 4/27/04 and 1/14/05 and then submitted the application on 4/27/2005. The applicant also submitted the final application after completing construction and placing the facility into service on 1/14/2005.

- Purpose:** Criteria
Voluntary The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be
ORS 468.155 to prevent, control, or reduce a substantial quantity of solid waste, hazardous
(1)(a)(B) waste, or used oil.
OAR 340-
016-
0010(7)(a)(b)

Solid waste as defined by ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and

semisolid materials, dead animals and infectious waste as defined by ORS 459.386. (b) excludes "Materials used for fertilizing or for other productive purposes or which are salvageable as such material are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals."

Applied to this Application

Prior to placing the containers with its customers, the majority of the materials were disposed of as garbage that went to the landfill. The residential containers collect **752 tons** of commingled material per year and the commercial containers collect **1,150 tons** of cardboard per year. In 2004, the applicant increased commingled material and paper recycling by 50 percent compared to 2003. The applicant further sorts the material at its recycling center and ships it to manufacturers or mills for use in products that have a competitive end-use.

Method	<u>Criteria</u>
ORS 468.155 (1)(b)(D)	The claimed facility must prevent, control, or reduce the waste material by the use of a material recovery process. The process must obtain useful material from material that would otherwise be solid waste , hazardous waste or used oil.

"Material Recovery" means any process, such as **pre-segregation**, for obtaining materials from solid waste, hazardous waste or used oil. The recovered material shall still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose. The recovered material shall have useful physical or chemical properties that yield a competitive end product of real economic value. The material recovery process does not include processes:

- a. In which the major purpose is the production of fuel from solid waste, hazardous waste or used oil which can be utilized for heat content or other forms of energy; or
- b. That burns waste to produce energy or to reduce the amount of waste. However, it does not eliminate from eligibility a pollution control device associated with a process that burns waste if such device is otherwise eligible for pollution control tax credit under these rules.

Applied to this Application

The applicant uses the containers to collect **aluminum cans, paper, glass, plastic, metal, and cardboard** separated from garbage. The applicant further sorts the material at the recycling center and ships the recovered materials to manufacturers or mills for use in products that have a competitive end use.

Maximum Credit	<u>Criteria</u>
ORS 468.170(3)(d) ORS 468.155(1)(b)(D)	The maximum tax credit is 35 percent if the applicant submitted the application between January 1, 2002 and December 31, 2008, inclusively, and the facility is used for material recovery or recycling, as those terms are defined in ORS 459.005.

Applied to this Application

The maximum tax credit is **35 percent** because the applicant submitted the application on 4/27/2005, and the facility is used in a **material recovery** process.

Facility Cost

Subtractions	<u>Criteria</u>
OAR 340-016-0070(1)	<p>The applicant must provide documents that substantiate the claimed facility cost. The claimed cost may not include:</p> <ol style="list-style-type: none"> a. the salvage value of a pre-existing facility if the applicant is replacing a facility; b. the amount of any government grants received to pay part of the facility cost; c. the present value of any other state tax credits for which the investment is eligible; and d. ineligible costs as set forth in ORS 468.155(3) and OAR 340-016-0070(3).
ORS 468.155(3) OAR 340-016-0070(3)	<p>The regulations exclude over 40 items from the definition of a Pollution Control Facility. Items excluded from the definition are ineligible for certification.</p> <p>One of the excluded items is the replacement or reconstruction of all or part of a previously certified pollution control facility. The regulations provide two exceptions to this exclusion.</p> <ol style="list-style-type: none"> 1. If the cost to replace or reconstruct the facility is greater than the like-for-like replacement cost of the original facility due to a requirement imposed by the DEQ, the federal Environmental Protection Agency or a regional air pollution authority, then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility. 2. If a facility is replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility.

Applied to this Application

The State of Oregon has issued **one** Pollution Control Facilities Tax Credit Certificate to the applicant at this location. The claimed facility is **not a replacement** of these previously certified facilities. There are **no** other **subtractions**.

Cost Certification Criteria

ORS 468.170(1) The certified cost is limited to the actual cost of the claimed facility. The certified cost may not exceed the taxpayer's own cash investment in the facility or portion of the facility.

Applied to this Application

Invoices substantiated the eligible facility cost. The cost represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion	Facility Cost
<i>Subtractions</i>	Claimed	\$33,835
		0
	Certified	\$33,835

Facility Cost Allocable to Pollution Control

Percentage Certification	Criteria
ORS 468.190 (3)	If the cost of the facility (or facilities certified under one certificate) does not exceed \$50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost would be less than \$50,000. The applicant uses the containers full time for material recovery; therefore, the percentage of the facility cost allocable to pollution control is **100 percent**.

Compliance

Criteria
ORS 468.180(1)
The Environmental Quality Commission may not issue a certificate unless the applicant constructed or installed the claimed facility in accordance with the applicable provisions of ORS 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 465, 466 and 467 and ORS chapters 468, 468A and 468B. This includes the rules and standards adopted to implement these provisions.

Applied to this Application

DEQ has not issued any permits to the site. The applicant states the facility and site are in compliance with Department rules and statutes, and with EQC orders.

Reviewer: Maggie Vandehey, DEQ



State of Oregon
Department of
Environmental
Quality

Tax Credit Review Report

Pollution Control Facility: Material Recovery

Final Certification

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

Applicant Identification

PO Box 504
Bend, OR 97709

Organized as: **S Corp**
Taxpayer ID: **93-0890916**

Technical Information

Bend Garbage Company, Inc., doing business as Bend Garbage and Recycling, collects garbage and recyclable materials from its 11,500 residential and 1,250 commercial customers. The applicant claims a truck outfitted with a shredding machine and collection area for the shredded material. The claimed truck allows the company to provide on-site document destruction. The applicant delivers the shredded material to a recycling center.

Taxpayer Allowed Credit

ORS 315.304(4) Criteria

The Department of Revenue determines if the taxpayer is allowed the credit if one of the following conditions apply. The taxpayer is the:

- a. Owner, including a contract purchaser, of the trade or business that uses the Oregon property requiring a pollution control facility to prevent or minimize pollution; or

Director's Recommendation

Approve Application No. 6991

Applicant: Bend Garbage Company, Inc.

Certification of:

Facility Cost		\$194,600
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		<u>\$68,110</u>

Certificate Period: **5 years**

Facility Identification

61480 Parrell Road
Bend, OR 97702

The certificate will identify the facility as:

**One - 2005 Sterling Acterra recycling truck,
Serial No. SF369-0728**

- b. Person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or utilizes such property; or
- c. Person who, as an owner, including a contract purchaser, or lessee, owns or leases a pollution control facility that is used for recycling, material recovery or energy recovery as defined in ORS 459.005.

Applied to this Application

DEQ will report the following information to the Department of Revenue: Bend Garbage Company, Inc. **owns** the claimed facility that they use for recycling or material recovery.

Eligibility

Timely Filing Criteria

2001 Edition ORS
468.165(6)

If the applicant completed constructing the facility on or after January 1, 2002, the applicant must submit the application within one year after the construction completion date. The applicant must submit the final application after completing construction of the facility and placing it into service.

Applied to this Application

The applicant **timely filed** the application. The applicant completed construction or installation of the claimed facility on 10/20/2004 and submitted the application on 4/28/2005. The applicant also submitted the application after completing construction and placing the facility into service on 10/20/2004.

Purpose: Voluntary Criteria

ORS 468.155
(1)(a)(B)
OAR 340-016-
0010(7)(a)(b)

The sole purpose, meaning the exclusive purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of solid waste, hazardous waste, or used oil.

Solid waste as defined by ORS 459.005: All useless or **discarded** putrescible and non-putrescible **materials**, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined by ORS 459.386. (b) excludes "Materials used for fertilizing or for other productive purposes or which are salvageable as such material are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals."

Applied to this Application

The applicant uses the truck exclusively to shred and collect approximately **260 tons** of paper per year.

Method	Criteria
ORS 468.155 (1)(b)(D)	The claimed facility must prevent, control, or reduce the waste material by the use of a material recovery process. The process must obtain useful material from material that would otherwise be solid waste, hazardous waste or used oil.

Material Recovery means any process, such as pre-segregation, for obtaining materials from solid waste, hazardous waste or used oil. The recovered material shall still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose. The recovered material shall have useful physical or chemical properties that yield a competitive end product of real economic value. The material recovery process does not include processes:

- a. In which the major purpose is the production of fuel from solid waste, hazardous waste or used oil which can be utilized for heat content or other forms of energy; or
- b. That burns waste to produce energy or to reduce the amount of waste. However, it does not eliminate from eligibility a pollution control device associated with a process that burns waste if such device is otherwise eligible for pollution control tax credit under these rules.

OAR 340-016-0010(7)	Criteria
OAR 340-016-0060(4)(e)	The facility produces an end product of utilization. It must be an item of real economic value and it must be competitive with an end product produced in another state. The facility must produce the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- a. Have useful chemical or physical properties and which may be used for the same or other purposes; or
- b. May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The applicant delivers the shredded paper to a recycling center for entry into the mixed-paper recycling stream for use as secondary fiber content.

Maximum Credit	<u>Criteria</u>
ORS 468.170(3)(d)	The maximum tax credit is 35 percent if the applicant submitted the application between January 1, 2002 and December 31, 2008, inclusively, and the facility is used for material recovery or recycling, as those terms are defined in ORS 459.005.
ORS 468.155(1)(b)(D)	

Applied to this Application

The maximum tax credit is **35 percent** because the applicant submitted the application on 4/28/2005, and the facility is used in a material recovery process.

Facility Cost

Subtractions	<u>Criteria</u>
OAR 340-016-0070(1)	The applicant must provide documents that substantiate the claimed facility cost. The claimed cost may not include: <ol style="list-style-type: none"> a. the salvage value of a pre-existing facility if the applicant is replacing a facility; b. the amount of any government grants received to pay part of the facility cost; c. the present value of any other state tax credits for which the investment is eligible; and d. ineligible costs as set forth in ORS 468.155(3) and OAR 340-016-0070(3).
ORS 468.155(3) OAR 340-016-0070(3)	The regulations exclude over 40 items from the definition of a Pollution Control Facility. Items excluded from the definition are ineligible for certification. <p>One of the excluded items is the replacement or reconstruction of all or part of a previously certified pollution control facility. The regulations provide two exceptions to this exclusion.</p> <ol style="list-style-type: none"> 1. If the cost to replace or reconstruct the facility is greater than the like-for-like replacement cost of the original facility due to a requirement imposed by the DEQ, the federal Environmental Protection Agency or a regional air pollution authority, then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility. 2. If a facility is replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility.

Applied to this Application

The State of Oregon has issued **three** Pollution Control Facilities Tax Credit Certificates to the applicant at this location. The claimed facility is **not a replacement** of either the two previously certified recycling trucks. There are **no** other **subtractions**.

Cost Certification Criteria

ORS 468.170(1) The certified cost is limited to the actual cost of the claimed facility. The certified cost may not exceed the taxpayer's own cash investment in the facility or portion of the facility.

Applied to this Application

Invoices substantiated the eligible facility cost. The cost represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion	Facility Cost
<i>Subtractions</i>	Claimed	\$194,600
		0
	Certified	\$194,600

Facility Cost Allocable to Pollution Control

Percentage Certification Criteria
ORS 468.170(1)

The certified "percentage allocable" is limited to the portion of the actual facility cost that is properly allocable to the prevention, control, or reduction of solid waste, hazardous waste, or to recycling or appropriately disposing of used oil.

Applied to this Application

The Department determined that **100 percent** of the facility cost is allocable to pollution control as discussed in the *Integral Facility* and *Percentage* subsections below.

Integral Facility Criteria
OAR 340-016-0075
(4)(a)

Facilities that are integral to the applicant's business must use an alternate method for calculating the percentage of the facility cost that is allocable to pollution control if the **facility cost exceeds \$50,000**. Examples of integral facilities include commercial solid waste and hazardous waste landfills, solid waste and hazardous waste recycling businesses, and environmental service providers.

The Commission may determine that a business is integral to the operation of the applicant's business if the business is unable to operate or is only able to operate at reduced income levels.

The rule requires the Commission to use the following factors to determine whether a pollution control facility is integral to the operation of the applicant's business.

- a. The facility represents 25 percent or more of the total assets of the applicant's business; or
- b. The facility was constructed or installed in response to market demand for such pollution control facilities such as requirements imposed by DEQ, federal Environmental Protection Agency or regional air pollution authority on parties unaffiliated with the applicant; or
- c. Where the facility allows the applicant to generate gross revenues at least 50 percent greater than could be or were without the facility; or
- d. The applicant's operating expenses for the facility are at least 50 percent of the operating expenses for the applicant's entire business.

Applied to this Application

The facility is **not integral** to the applicant's business.

Percentage	<u>Criteria</u>
ORS 468.190(1)	<p>The following factors establish the portion of costs properly allocable to material recovery or recycling if the facility cost exceeds \$50,000.</p> <ol style="list-style-type: none"> a. The extent to which the applicant uses the facility to recover and convert waste products into a salable or usable commodity; b. The estimated annual percent return on the investment in the facility; c. Any alternative methods, equipment, and costs for achieving the same pollution control objective; d. Any related savings or increase in costs that occur or may occur as a result of the installation of the facility; and e. Any other relevant factors.

Applied to this Application

The applicant and the Department calculated the percentage of the facility cost allocable to pollution control according to the standard method in OAR 340-016-0075(3) while considering the factors a. through e. above and a **five-year** useful life. The claimed facility allows the applicant to recover mixed waste paper, which is a useable commodity. The applicant used their annual estimated revenue (\$112,400) from shredding documents and the expenditures (\$103,500) associated with the maintenance and labor, excluding depreciation and interest, to determine the facility's return on investment (ROI). The resulting Facility ROI (<0) is less than the National ROI (7.1) for 2004, the facility's construction completion year. The applicant did not investigate an alternative technology.

Compliance

ORS 468.180(1)

Criteria

The Environmental Quality Commission may not issue a certificate unless the applicant constructed or installed the claimed facility in accordance with the applicable provisions of ORS 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 465, 466 and 467 and ORS chapters 468, 468A and 468B. This includes the rules and standards adopted to implement these provisions.

Applied to this Application

The applicant states the facility and site are in compliance with Department rules and statutes, and with EQC orders. DEQ has not issued any permits to the site.

Reviewer:

Maggie Vandehey, DEQ



State of Oregon
Department of
Environmental
Quality

Tax Credit Review Report

Pollution Control Facility: Material Recovery Final Certification

ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0080

Applicant Identification

PO Box 504
Bend, OR 97709

Organized as: **S Corp**
Taxpayer ID: **93-0890916**

Technical Information

Bend Garbage Company, Inc., collects garbage and recyclable materials from its 11,500 residential and 1,250 commercial customers. The applicant claims 95-gallon carts placed with 3,454 residential customers located in Deschutes County for collecting recyclable materials. The carts are part of a new county recycling program that began in 2004.

Taxpayer Allowed Credit

ORS 315.304(4) Criteria

The Department of Revenue determines if the taxpayer is allowed the credit if one of the following conditions apply. The taxpayer is the:

- a. Owner, including a contract purchaser, of the trade or business that uses the Oregon property requiring a pollution control facility to prevent or minimize pollution; or
- b. Person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or utilizes such property; or
- c. Person who, as an owner, including a contract purchaser, or lessee, owns or leases a pollution control facility that is used for recycling, material recovery or energy recovery as defined in ORS 459.005.

Director's Recommendation

Approve Application No. 6992

Applicant: **Bend Garbage Company, Inc.**

Certification of:

Facility Cost		\$131,504
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		<u>\$46,026</u>

Certificate Period: **5 years**

Facility Identification

61480 Parrell Road
Bend, OR 97702

The certificate will identify the facility as:

3,454 95-gallon recycling carts

Applied to this Application

DEQ will report the following information to the Department of Revenue: Bend Garbage Company, Inc. **owns** the claimed facility that they use for recycling or material recovery.

Eligibility**Timely Filing** Criteria

2001 Edition ORS
468.165(6)

If the applicant completed constructing the facility on or after January 1, 2002, the applicant must submit the application within one year after the construction completion date. The applicant must submit the final application after completing construction of the facility and placing it into service.

Applied to this Application

The applicant **timely filed** the application. The applicant completed construction or installation of the claimed facility on 10/19/2004 and submitted the application on 4/28/2005. The applicant also submitted the application after completing construction and placing the facility into service on 10/19/2004.

Purpose: Voluntary Criteria

ORS 468.155
(1)(a)(B)
OAR 340-016-
0010(7)(a)(b)

The sole purpose, meaning the exclusive purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of solid waste, hazardous waste, or used oil.

Solid waste as defined by ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined by ORS 459.386. (b) excludes "Materials used for fertilizing or for other productive purposes or which are salvageable as such material are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals."

Applied to this Application

The claimed facility prevents **1,476 tons per year** of solid waste from landfill disposal. Deschutes County's new curbside recycling program has increased commingled recycling by 39 percent from October 2004.

Method	<u>Criteria</u>
ORS 468.155 (1)(b)(D)	The claimed facility must prevent, control, or reduce the waste material by the use of a material recovery process. The process must obtain useful material from material that would otherwise be solid waste, hazardous waste or used oil.

"Material Recovery" means any process, such as **pre-segregation**, for obtaining materials from **solid waste**, hazardous waste or used oil. The recovered material shall still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose. The recovered material shall have useful physical or chemical properties that yield a competitive end product of real economic value. The material recovery process does not include processes:

- a. In which the major purpose is the production of fuel from solid waste, hazardous waste or used oil which can be utilized for heat content or other forms of energy; or
- b. That burns waste to produce energy or to reduce the amount of waste. However, it does not eliminate from eligibility a pollution control device associated with a process that burns waste if such device is otherwise eligible for pollution control tax credit under these rules.

OAR 340-016- 0010(7)	<u>Criteria</u> The facility produces an end product of utilization. It must be an item of real economic value and it must be competitive with an end product produced in another state. The facility must produce the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:
OAR 340-016- 0060(4)(e)	The facility produces an end product of utilization. It must be an item of real economic value and it must be competitive with an end product produced in another state. The facility must produce the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- a. Have useful chemical or physical properties and which may be used for the same or other purposes: or
- b. May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The applicant collects recyclable materials from its customers and delivers the material to a **mill** for incorporation into a useful end-product.

Maximum Credit	<u>Criteria</u>
ORS 468.170(3)(d) ORS 468.155(1)(b)(D)	The maximum tax credit is 35 percent if the applicant submitted the application between January 1, 2002 and December 31, 2008, inclusively, and the facility is used for material recovery or recycling, as those terms are defined in ORS 459.005.

Applied to this Application

The maximum tax credit is **35 percent** because the applicant submitted the application on 4/28/2005, and the facility is used in a material recovery process.

Facility Cost

Subtractions	<u>Criteria</u>
OAR 340-016-0070(1)	<p>The applicant must provide documents that substantiate the claimed facility cost. The claimed cost may not include:</p> <ul style="list-style-type: none"> a) the salvage value of a pre-existing facility if the applicant is replacing a facility; b) the amount of any government grants received to pay part of the facility cost; c) the present value of any other state tax credits for which the investment is eligible; and d) ineligible costs as set forth in ORS 468.155(3) and OAR 340-016-0070(3).
ORS 468.155(3) OAR 340-016-0070(3)	<p>The regulations exclude over 40 items from the definition of a Pollution Control Facility. Items excluded from the definition are ineligible for certification.</p> <p>One of the excluded items is the replacement or reconstruction of all or part of a previously certified pollution control facility. The regulations provide two exceptions to this exclusion.</p> <ol style="list-style-type: none"> 1. If the cost to replace or reconstruct the facility is greater than the like-for-like replacement cost of the original facility due to a requirement imposed by the DEQ, the federal Environmental Protection Agency or a regional air pollution authority, then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility. 2. If a facility is replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility.

Applied to this Application

The State of Oregon has issued **three** Pollution Control Facilities Tax Credit Certificates to the applicant at this location. The claimed facility is **not a replacement** of any of the 3,766 previously certified curbside containers. There are **no other subtractions**.

Cost Certification Criteria

ORS 468.170(1) The certified cost is limited to the actual cost of the claimed facility. The certified cost may not exceed the taxpayer's own cash investment in the facility or portion of the facility.

Applied to this Application

Invoices substantiated the eligible facility cost. The cost represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion	Facility Cost
<i>Subtractions</i>	Claimed	\$131,504
		0
	Certified	\$131,504

Facility Cost Allocable to Pollution Control

Percentage Certification Criteria
 ORS 468.170(1) The certified percentage allocable is limited to the portion of the actual facility cost that is properly allocable to the prevention, control, or reduction of solid waste, hazardous waste, or to recycling or appropriately disposing of used oil.

Applied to this Application

The Department determined that **100 percent** of the facility cost is allocable to pollution control as discussed in the *Integral Facility* and *Percentage* subsections below.

Integral Facility Criteria
 OAR 340-016-0075 (4)(a) Facilities that are integral to the applicant's business must use an alternate method for calculating the percentage of the facility cost that is allocable to pollution control if the **facility cost exceeds \$50,000**. Examples of integral facilities include commercial solid waste and hazardous waste landfills, solid waste and hazardous waste recycling businesses, and environmental service providers.

The Commission may determine that a business is integral to the operation of the applicant's business if the business is unable to operate or is only able to operate at reduced income levels.

The rule requires the Commission to use the following factors to determine whether a pollution control facility is integral to the operation of the applicant's business.

- a. The facility represents 25 percent or more of the total assets of the applicant's business; or
- b. The facility was constructed or installed in response to market demand for such pollution control facilities such as requirements imposed by DEQ, federal Environmental Protection Agency or regional air pollution authority on parties unaffiliated with the applicant; or
- c. Where the facility allows the applicant to generate gross revenues at least 50 percent greater than could be or were without the facility; or
- d. The applicant's operating expenses for the facility are at least 50 percent of the operating expenses for the applicant's entire business.

Applied to this Application

The facility is **not integral** to the applicant's business.

Percentage	<u>Criteria</u>
ORS 468.190(1)	<p>The following factors establish the portion of costs properly allocable to material recovery or recycling if the facility cost exceeds \$50,000.</p> <ol style="list-style-type: none"> a. The extent to which the applicant uses the facility to recover and convert waste products into a salable or usable commodity; b. The estimated annual percent return on the investment in the facility; c. Any alternative methods, equipment, and costs for achieving the same pollution control objective; d. Any related savings or increase in costs that occur or may occur as a result of the installation of the facility; and e. Any other relevant factors.

Applied to this Application

The applicant and the Department calculated the percentage of the facility cost allocable to pollution control according to the standard method in OAR 340-016-0075(3) while considering the factors a. through e. above and a **five-year** useful life. The claimed facility allows the applicant to convert a substantial quantity of solid waste into useful products. The applicant used their estimated revenue (\$124,000 per year) from estimated fees and the expenditures (\$115,000 per year) associated with direct cost of operations (labor, maintenance, supplies, etc.,—excluding depreciation and interest) to determine the facility's return on investment (ROI). The resulting Facility ROI is less than **zero** percent and less than the National ROI (7.1) for 2004, the facility's construction completion year. The applicant did not investigate an alternative technology.

Compliance

ORS 468.180(1) Criteria

The Environmental Quality Commission may not issue a certificate unless the applicant constructed or installed the claimed facility in accordance with the applicable provisions of ORS 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 465, 466 and 467 and ORS chapters 468, 468A and 468B. This includes the rules and standards adopted to implement these provisions.

Applied to this Application

The applicant states the facility and site are in compliance with Department rules and statutes, and with EQC orders. DEQ has not issued any permits to the site.

Reviewer: Maggie Vandehey, DEQ



State of Oregon
Department of
Environmental
Quality

Tax Credit Review Report

Pollution Control Facility: Material Recovery Final Certification

ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0080

Applicant Identification

PO Box 504
Bend, OR 97709

Organized as: **S Corp**
Taxpayer ID: **0980916**

Technical Information

Bend Garbage Company, Inc., doing business as Bend Garbage and Recycling, collects garbage and recyclable materials from its 11,500 residential and 1,250 commercial customers. The applicant claims 893 secure recycling containers to collect sensitive office paper. The applicant shreds the paper at the customer's site using the truck claimed on application number 6991. The company then delivers the shredded material to a recycling center.

Director's Recommendation

Approve Application No. 6993

Applicant: **Bend Garbage Company, Inc.**

Certification of:

Facility Cost		\$47,584
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		<u>\$16,654</u>

Certificate Period: **5 years**

Facility Identification

61480 Parrell Road
Bend, OR 97702

The certificate will identify the facility as:

443 35-gallon recycling carts with lids and wheels, Serial No.'s 101 to 543
450 65-gallon recycling carts with wheels, Serial No.'s 101 to 550

Taxpayer Allowed CreditORS 315.304(4) Criteria

The Department of Revenue determines if the taxpayer is allowed the credit if one of the following conditions apply. The taxpayer is the:

- a. Owner, including a contract purchaser, of the trade or business that uses the Oregon property requiring a pollution control facility to prevent or minimize pollution; or
- b. Person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or utilizes such property; or
- c. Person who, as an owner, including a contract purchaser, or lessee, owns or leases a pollution control facility that is used for recycling, material recovery or energy recovery as defined in ORS 459.005.

Applied to this Application

DEQ will report the following information to the Department of Revenue: Bend Garbage Company, Inc. **owns** the claimed facility that they use for recycling or material recovery.

Eligibility**Timely Filing** Criteria

2001 Edition ORS
468.165(6)

If the applicant completed constructing the facility on or after January 1, 2002, the applicant must submit the application within one year after the construction completion date. The applicant must submit the final application after completing construction of the facility and placing it into service.

Applied to this Application

The applicant **timely filed** the application. The applicant completed construction or installation of the claimed facility on 2/28/2005 and submitted the application on 4/28/2005. The applicant also submitted the application after completing construction and placing the facility into service on 2/28/2005.

Purpose: Voluntary Criteria

ORS 468.155
(1)(a)(B)
OAR 340-016-
0010(7)(a)(b)

The sole purpose, meaning the exclusive purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of solid waste, hazardous waste, or used oil.

Solid waste as defined by ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined by ORS 459.386. (b) excludes "Materials used for fertilizing or for other productive purposes or which are salvageable as such material are used on land

in agricultural operations and the growing or harvesting of crops and the raising of animals.”

Applied to this Application

The applicant uses the carts exclusively to collect **260 tons** of waste paper each year. The carts prevent the paper from disposal as garbage or by other means. Mixed and office paper recycled at Bend Garbage Company increased 38 percent during 2004 versus 2003.

Method	<u>Criteria</u>
ORS 468.155 (1)(b)(D)	The claimed facility must prevent, control, or reduce the waste material by the use of a material recovery process. The process must obtain useful material from material that would otherwise be solid waste, hazardous waste or used oil.

Material Recovery means **any process**, such as **pre-segregation**, for obtaining materials from solid waste, hazardous waste or used oil. The recovered material shall still have useful physical or chemical properties after serving a specific purpose and **can**, therefore, **be reused** or recycled for the same or other purpose. The recovered material shall have useful physical or chemical properties that yield a competitive end product of real economic value. The material recovery process does not include processes:

- a. In which the major purpose is the production of fuel from solid waste, hazardous waste or used oil which can be utilized for heat content or other forms of energy; or
- b. That burns waste to produce energy or to reduce the amount of waste. However, it does not eliminate from eligibility a pollution control device associated with a process that burns waste if such device is otherwise eligible for pollution control tax credit under these rules.

OAR 340-016-0010(7)	<u>Criteria</u>
OAR 340-016-0060(4)(e)	The facility produces an end product of utilization. It must be an item of real economic value and it must be competitive with an end product produced in another state. The facility must produce the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- a. Have useful chemical or physical properties and which may be used for the same or other purposes: or
- b. May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The carts collect paper from the applicant’s customers for secure shredding. The applicant then delivers the shredded paper to a mill. The mill uses the shredded paper as **secondary fiber** and incorporates the fiber into a useful product.

Maximum Credit Criteria
 ORS 468.170(3)(d) The maximum tax credit is 35 percent if the applicant submitted the application
 ORS between January 1, 2002 and December 31, 2008, inclusively, and the facility is
 468.155(1)(b)(D) used for material recovery or recycling, as those terms are defined in ORS
 459.005.

Applied to this Application

The maximum tax credit is **35 percent** because the applicant submitted the application on 4/28/2005, and the facility is used in a material recovery process.

Facility Cost

Subtractions Criteria
 OAR 340-016- The applicant must provide documents that substantiate the claimed facility cost.
 0070(1) The claimed cost may not include:

- a) the salvage value of a pre-existing facility if the applicant is replacing a facility;
- b) the amount of any government grants received to pay part of the facility cost;
- c) the present value of any other state tax credits for which the investment is eligible; and
- d) ineligible costs as set forth in ORS 468.155(3) and OAR 340-016-0070(3).

ORS 468.155(3) The regulations exclude over 40 items from the definition of a Pollution Control
 OAR 340-016- Facility. Items excluded from the definition are ineligible for certification.
 0070(3)

One of the excluded items is the replacement or reconstruction of all or part of a previously certified pollution control facility. The regulations provide two exceptions to this exclusion.

1. If the cost to replace or reconstruct the facility is greater than the like-for-like replacement cost of the original facility due to a requirement imposed by the DEQ, the federal Environmental Protection Agency or a regional air pollution authority, then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility.
2. If a facility is replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility.

Applied to this Application

The State of Oregon has issued **three** Pollution Control Facilities Tax Credit Certificates to the applicant at this location. Document shredding is a new service for the customers; therefore, the carts are **not replacements** of any previously certified containers. There are **no** other **subtractions**.

Cost Certification Criteria

ORS 468.170(1) The certified cost is limited to the actual cost of the claimed facility. The certified cost may not exceed the taxpayer's own cash investment in the facility or portion of the facility.

Applied to this Application

Invoices substantiated the eligible facility cost. The cost represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion	Facility Cost
<i>Subtractions</i>	Claimed	\$47,584
	Certified	0
		\$47,584

Facility Cost Allocable to Pollution Control**Percentage** Criteria

Certification ORS 468.190 (3) If the cost of the facility (or facilities certified under one certificate) does not exceed \$50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost would be less than \$50,000. The applicant uses the facility **100 percent** of the time for collecting waste paper.

ComplianceORS 468.180(1) Criteria

The Environmental Quality Commission may not issue a certificate unless the applicant constructed or installed the claimed facility in accordance with the applicable provisions of ORS 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 465, 466 and 467 and ORS chapters 468, 468A and 468B. This includes the rules and standards adopted to implement these provisions.

Applied to this Application

The applicant states the facility and site are in compliance with Department rules and statutes, and with EQC orders. DEQ has not issued any permits to the site.

Reviewer: Maggie Vandehey, DEQ



State of Oregon
Department of
Environmental
Quality

Tax Credit Review Report

Pollution Control Facility: Material Recovery Final Certification

ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0080

Applicant Identification

PO Box 504
Bend, OR 97709

Organized as: **S Corp**
Taxpayer ID: **93-0890916**

Facility Identification

61480 Parrell Road
Bend, OR 97702

The certificate will identify the facility as:

- 2,000 19-gallon recycling boxes**
- 2,000 14.4-gallon recycling boxes**
- Five 1-cubic yard front load recycling containers**
- Ten 1.5 cubic yard front load recycling containers**
- Ten 2-yard front load recycling containers**
- Ten 3-yard front load recycling containers**
- Two 4-yard front load recycling containers**
- Three 6-yard front load recycling containers**

Technical Information

Bend Garbage Company, Inc., doing business as Bend Garbage and Recycling, collects garbage and recyclable materials from its residential and commercial customers within the City of Bend. The applicant claims 19-gallon containers for collecting commingled materials and 14.4-gallon containers for collecting glass for placement with 2,000 of the company's 11,500 residential customers. The applicant also claims 40 containers for collecting cardboard from some of its 1,250 commercial customers.

Director's Recommendation

Approve Application No. 6994

Applicant: **Bend Garbage Company, Inc.**

Certification of:

Facility Cost		\$40,253
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		<u>\$14,089</u>

Certificate Period: **5 years**

Taxpayer Allowed CreditORS 315.304(4) Criteria

The Department of Revenue determines if the taxpayer is allowed the credit if one of the following conditions apply. The taxpayer is the:

- a. Owner, including a contract purchaser, of the trade or business that uses the Oregon property requiring a pollution control facility to prevent or minimize pollution; or
- b. Person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or utilizes such property; or
- c. Person who, as an owner, including a contract purchaser, or lessee, owns or leases a pollution control facility that is used for recycling, material recovery or energy recovery as defined in ORS 459.005.

Applied to this Application

DEQ will report the following information to the Department of Revenue: Bend Garbage Company, Inc. **owns** the claimed facility that they use for recycling or material recovery.

Eligibility**Timely Filing** Criteria

2001 Edition ORS
468.165(6)

If the applicant completed constructing the facility on or after January 1, 2002, the applicant must submit the application within one year after the construction completion date. The applicant must submit the final application after completing construction of the facility and placing it into service.

Applied to this Application

The applicant **timely filed** the application. The applicant completed construction or installation of the claimed facility on 1/7/2005 and submitted the application on 4/28/2005. The applicant also submitted the application after completing construction and placing the facility into service on 1/7/2005.

Purpose: Voluntary Criteria

ORS 468.155
(1)(a)(B)
OAR 340-016-
0010(7)(a)(b)

The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of solid waste, hazardous waste, or used oil.

Solid waste as defined by ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined by ORS 459.386. (b) excludes "Materials used for fertilizing or for other

productive purposes or which are salvageable as such material are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals.”

Applied to this Application

The claimed facility prevents **1,476 tons** of paper and **2,350 tons** of commingled recyclable materials from landfill disposal each year. Bend Garbage Company's 2004 commingled and cardboard recycling increased by 12.5 percent over 2003.

Method	<u>Criteria</u>
ORS 468.155 (1)(b)(D)	The claimed facility must prevent, control, or reduce the waste material by the use of a material recovery process. The process must obtain useful material from material that would otherwise be solid waste, hazardous waste or used oil.

Material Recovery means any process, such as pre-segregation, for obtaining materials from solid waste, hazardous waste or used oil. The recovered material shall still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose. The recovered material shall have useful physical or chemical properties that yield a competitive end product of real economic value. The material recovery process does not include processes:

- a. In which the major purpose is the production of fuel from solid waste, hazardous waste or used oil which can be utilized for heat content or other forms of energy; or
- b. That burns waste to produce energy or to reduce the amount of waste. However, it does not eliminate from eligibility a pollution control device associated with a process that burns waste if such device is otherwise eligible for pollution control tax credit under these rules.

OAR 340-016-0010(7)	<u>Criteria</u>
OAR 340-016-0060(4)(e)	The facility produces an end product of utilization. It must be an item of real economic value and it must be competitive with an end product produced in another state. The facility must produce the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which: <ol style="list-style-type: none"> a. Have useful chemical or physical properties and which may be used for the same or other purposes: or b. May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The applicant collects recyclable materials from its customers and delivers it to a recycling center for additional sorting and delivery to the appropriate recycling mills for incorporation into a useful product.

Maximum Credit	<u>Criteria</u>
ORS 468.170(3)(d)	The maximum tax credit is 35 percent if the applicant submitted the application between January 1, 2002 and December 31, 2008, inclusively, and the facility is used for material recovery or recycling, as those terms are defined in ORS 459.005.
ORS	
468.155(1)(b)(D)	

Applied to this Application

The maximum tax credit is **35 percent** because the applicant submitted the application on 4/28/2005, and the facility is used in a material recovery process.

Facility Cost

Subtractions	<u>Criteria</u>
OAR 340-016-0070(1)	The applicant must provide documents that substantiate the claimed facility cost. The claimed cost may not include: <ol style="list-style-type: none"> a) the salvage value of a pre-existing facility if the applicant is replacing a facility; b) the amount of any government grants received to pay part of the facility cost; c) the present value of any other state tax credits for which the investment is eligible; and d) ineligible costs as set forth in ORS 468.155(3) and OAR 340-016-0070(3).
ORS 468.155(3) OAR 340-016-0070(3)	The regulations exclude over 40 items from the definition of a Pollution Control Facility. Items excluded from the definition are ineligible for certification. <p>One of the excluded items is the replacement or reconstruction of all or part of a previously certified pollution control facility. The regulations provide two exceptions to this exclusion.</p> <ol style="list-style-type: none"> 1. If the cost to replace or reconstruct the facility is greater than the like-for-like replacement cost of the original facility due to a requirement imposed by the DEQ, the federal Environmental Protection Agency or a regional air pollution authority, then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility. 2. If a facility is replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility.

Applied to this Application

The State of Oregon has issued **three** Pollution Control Facilities Tax Credit Certificates to the applicant at this location. The claimed facility is **not a replacement** of any of the 3,766 previously certified residential containers or 147 previously certified containers for cardboard recycling. There are **no** other **subtractions**.

Cost Certification Criteria

ORS 468.170(1) The certified cost is limited to the actual cost of the claimed facility. The certified cost may not exceed the taxpayer's own cash investment in the facility or portion of the facility.

Applied to this Application

Invoices substantiated the eligible facility cost. The cost represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion	Facility Cost
<i>Subtractions</i>	Claimed	\$40,253
		0
	Certified	\$40,253

Facility Cost Allocable to Pollution Control

Percentage Certification
ORS 468.190 (3)

Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed \$50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost would be less than \$50,000. The applicant uses the facility **100 percent** of the time for material recovery.

ComplianceORS 468.180(1) Criteria

The Environmental Quality Commission may not issue a certificate unless the applicant constructed or installed the claimed facility in accordance with the applicable provisions of ORS 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 465, 466 and 467 and ORS chapters 468, 468A and 468B. This includes the rules and standards adopted to implement these provisions.

Applied to this Application

The applicant states the facility and site are in compliance with Department rules and statutes, and with EQC orders. DEQ has not issued any permits to the site.

Reviewer: Maggie Vandehey, DEQ



State of Oregon
Department of
Environmental
Quality

Tax Credit Review Report

Pollution Control Facility: Material Recovery Final Certification

ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0080

Applicant Identification

5918 Stoneridge Mall Road
Pleasanton, CA 94588

Organized as: **C Corp**
Taxpayer ID: **94-3019135**

Technical Information

Safeway Inc., is a retail grocer. The applicant installed hydraulic balers in three stores to recycle the old corrugated cardboard (OCC) used in shipping products to the stores. The applicant also claims installation and associated electrical costs. The applicant collects and transports the baled OCC to a central consolidation point for pickup by a recycling vendor.

Taxpayer Allowed Credit

ORS 315.304(4) Criteria

The Department of Revenue determines if the taxpayer is allowed the credit if one of the following conditions apply. The taxpayer is the:

- a. Owner, including a contract purchaser, of the trade or business that uses the Oregon property requiring a pollution control facility to prevent or minimize pollution; or
- b. Person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or utilizes such property; or

Director's Recommendation

Approve Application No. 6997 @ Reduced Cost

Applicant: **Safeway Inc.**

Certification of:

Facility Cost		\$22,661
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		<u>\$7,931</u>

Certificate Period: **8 years**

Facility Identification

Located at various Safeway Inc. sites in
Portland, Oregon.

The certificate will identify the facility as:

Three GPI Model M60STD Verticle Balers:

Woodstock - Serial No. 602340STD

Ivanhoe - Serial No. 602324STD

Webster Road - Serial No. 602287STD

- c. Person who, as an owner, including a contract purchaser, or lessee, owns or leases a pollution control facility that is used for recycling, material recovery or energy recovery as defined in ORS 459.005.

Applied to this Application

DEQ will report the following information to the Department of Revenue:
Safeway Inc. **owns** the claimed facility that they use for recycling or material recovery.

Eligibility

Timely Filing Criteria

2001 Edition ORS
468.165(6)

If the applicant completed constructing the facility on or after January 1, 2002, the applicant must submit the application within one year after the construction completion date. The applicant must submit the final application after completing construction of the facility and placing it into service.

Applied to this Application

The applicant **timely filed** the application. The applicant completed construction or installation of the balers between 5/13/2004, and 7/15/2004, and submitted the application on 5/10/2005. The applicant also submitted the application after completing construction and placing the facility into service between 5/13/2004 and 7/15/2004.

Purpose: Voluntary Criteria

ORS 468.155
(1)(a)(B)
OAR 340-016-
0010(7)(a)(b)

The sole purpose, meaning the exclusive purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of solid waste, hazardous waste, or used oil.

Solid waste as defined by ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and **cardboard**, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined by ORS 459.386. (b) excludes "Materials used for fertilizing or for other productive purposes or which are salvageable as such material are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals."

Applied to this Application

The balers reduce each store's solid waste disposal by about 45 to 50 percent or **390,000 pounds of OCC per store, per year**. Without the balers, the cardboard would have been disposed of as trash in the store dumpsters.

Method	<u>Criteria</u>
ORS 468.155 (1)(b)(D)	The claimed facility must prevent, control, or reduce the waste material by the use of a material recovery process. The process must obtain useful material from material that would otherwise be solid waste, hazardous waste or used oil.

Material Recovery means any process, such as **pre-segregation**, for obtaining materials from solid waste, hazardous waste or used oil. The recovered material shall still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or **recycled for the same or other purpose**. The recovered material shall have useful physical or chemical properties that yield a competitive end product of real economic value. The material recovery process does not include processes:

- a. In which the major purpose is the production of fuel from solid waste, hazardous waste or used oil which can be utilized for heat content or other forms of energy; or
- b. That burns waste to produce energy or to reduce the amount of waste. However, it does not eliminate from eligibility a pollution control device associated with a process that burns waste if such device is otherwise eligible for pollution control tax credit under these rules.

OAR 340-016-0010(7)	<u>Criteria</u> The facility produces an end product of utilization . It must be an item of real economic value and it must be competitive with an end product produced in another state. The facility must produce the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:
OAR 340-016-0060(4)(e)	

- a. Have useful chemical or physical properties and which may be used for the same or other purposes: or
- b. May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The balers allow the applicant to separate the OCC from garbage. Mills will use the OCC as secondary fiber in manufacturing **chipboard and new cardboard**.

Maximum Credit	<u>Criteria</u>
ORS 468.170(3)(d) ORS 468.155(1)(b)(D)	The maximum tax credit is 35 percent if the applicant submitted the application between January 1, 2002 and December 31, 2008, inclusively, and the facility is used for material recovery or recycling, as those terms are defined in ORS 459.005.

Applied to this Application

The maximum tax credit is **35 percent** because the applicant submitted the application on 5/10/2005, and the facility is used in a material recovery process.

Facility Cost**Subtractions** Criteria

OAR 340-016-0070(1) The applicant must provide documents that substantiate the claimed facility cost. The claimed cost may not include:

- a) the salvage value of a pre-existing facility if the applicant is replacing a facility;
- b) the amount of any government grants received to pay part of the facility cost;
- c) the present value of any other state tax credits for which the investment is eligible; and
- d) ineligible costs as set forth in ORS 468.155(3) and OAR 340-016-0070(3).

ORS 468.155(3) The regulations exclude over 40 items from the definition of a Pollution Control Facility. Items excluded from the definition are ineligible for certification.
OAR 340-016-0070(3)

One of the excluded items is the **removal of equipment** replaced by the facility.

Another excluded item is the replacement or reconstruction of all or part of a previously certified pollution control facility. The regulations provide two exceptions to this exclusion.

1. If the cost to replace or reconstruct the facility is greater than the like-for-like replacement cost of the original facility due to a requirement imposed by the DEQ, the federal Environmental Protection Agency or a regional air pollution authority, then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility.
2. If a facility is replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility.

Applied to this Application

The State of Oregon has issued **fifteen** Pollution Control Facilities Tax Credit Certificates to the applicant at this location. The claimed facility is **not a replacement** of these previously certified facilities.

The Department subtracted the \$50 charge for equipment removal shown on Invoice Number 3755.

Cost Certification Criteria

ORS 468.170(1) The certified cost is limited to the actual cost of the claimed facility. The certified cost may not exceed the taxpayer's own cash investment in the facility or portion of the facility.

Applied to this Application

Invoices substantiated the eligible facility cost. The cost represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion	Facility Cost
	Claimed	22,711
<i>Subtractions</i>	Equipment removal	-\$50
	Certified	\$22,661

Facility Cost Allocable to Pollution Control

Percentage Certification
ORS 468.190 (3)

Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed \$50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost would be less than \$50,000. The applicant uses the facility **100 percent** of the time for baling OCC.

Compliance

ORS 468.180(1)

Criteria

The Environmental Quality Commission may not issue a certificate unless the applicant constructed or installed the claimed facility in accordance with the applicable provisions of ORS 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 465, 466 and 467 and ORS chapters 468, 468A and 468B. This includes the rules and standards adopted to implement these provisions.

Applied to this Application

The applicant states the facility and site are in compliance with Department rules and statutes, and with EQC orders. DEQ has not issued any permits to the site.

Reviewer: Maggie Vandehey, DEQ



State of Oregon
 Department of
 Environmental
 Quality

Tax Credit Review Report

Pollution Control Facility: Material Recovery Final Certification

ORS 468.150 -- 468.190
 OAR 340-016-0005 -- 340-016-0080

Applicant Identification

PO Box 504
 Bend, OR 97709

Organized as: **S Corp**
 Taxpayer ID: **93-1017303**

Facility Identification

61480 Parrell Road
 Bend, OR 97702

The certificate will identify the facility as:

**One - 40-yard recycling drop box, Serial No.
 13262**

Technical Information

Deschutes Transfer Company provides all the equipment necessary to collect garbage and recycling materials from the public in Deschutes County that do not have curbside service. The applicant claims a drop box placed at the transfer station used to collect recyclable materials.

Taxpayer Allowed Credit

ORS 315.304(4) Criteria

The Department of Revenue determines if the taxpayer is allowed the credit if one of the following conditions apply. The taxpayer is the:

- a. Owner, including a contract purchaser, of the trade or business that uses the Oregon property requiring a pollution control facility to prevent or minimize pollution; or
- b. Person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or utilizes such property; or
- c. Person who, as an owner, including a contract purchaser, or lessee, **owns** or leases a **pollution control facility** that is used for recycling, material recovery or energy recovery as defined in ORS 459.005.

Director's Recommendation

Approve Application No. 7000

Applicant: **Deschutes Transfer Company**

Certification of:

Facility Cost		\$7,105
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		<u>\$2,487</u>

Certificate Period: **5 years**

Applied to this Application

DEQ will report the following information to the Department of Revenue: Deschutes Transfer Company **owns** the claimed facility that they use for recycling or material recovery. The county owns the recycled materials.

Eligibility**Timely Filing** Criteria

2001 Edition ORS
468.165(6)

If the applicant completed constructing the facility on or after January 1, 2002, the applicant must submit the application within one year after the construction completion date. The applicant must submit the final application after completing construction of the facility and placing it into service.

Applied to this Application

The applicant **timely filed** the application. The applicant completed construction or installation of the claimed facility on 7/22/2004 and submitted the application on 4/29/2005. The applicant also submitted the application after completing construction and placing the facility into service on 7/22/2004.

Purpose: Voluntary Criteria

ORS 468.155
(1)(a)(B)
OAR 340-016-
0010(7)(a)(b)

The sole purpose, meaning the exclusive purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of solid waste, hazardous waste, or used oil.

Solid waste as defined by ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined by ORS 459.386. (b) excludes "Materials used for fertilizing or for other productive purposes or which are salvageable as such material are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals."

Applied to this Application

The drop boxes collect approximately **664 tons** of recyclable materials a year. Without the drop box, the materials would be deposited into the garbage trailers.

Method	<u>Criteria</u>
ORS 468.155 (1)(b)(D)	The claimed facility must prevent, control, or reduce the waste material by the use of a material recovery process. The process must obtain useful material from material that would otherwise be solid waste, hazardous waste or used oil.

Material Recovery means any process, such as pre-segregation, for obtaining materials from solid waste, hazardous waste or used oil. The recovered material shall still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose. The recovered material shall have useful physical or chemical properties that yield a competitive end product of real economic value. The material recovery process does not include processes:

- a. In which the major purpose is the production of fuel from solid waste, hazardous waste or used oil which can be utilized for heat content or other forms of energy; or
- b. That burns waste to produce energy or to reduce the amount of waste. However, it does not eliminate from eligibility a pollution control device associated with a process that burns waste if such device is otherwise eligible for pollution control tax credit under these rules.

OAR 340-016-0010(7)	<u>Criteria</u>
OAR 340-016-0060(4)(e)	The facility produces an end product of utilization. It must be an item of real economic value and it must be competitive with an end product produced in another state. The facility must produce the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- a. Have useful chemical or physical properties and which may be used for the same or other purposes: or
- b. May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The drop boxes collect cardboard, commingled materials, glass and steel recyclable materials, and the applicant transports the materials to a material recovery facility for additional sorting. The material is incorporated into a useful end product.

Maximum Credit	<u>Criteria</u>
ORS 468.170(3)(d)	The maximum tax credit is 35 percent if the applicant submitted the application between January 1, 2002 and December 31, 2008, inclusively, and the facility is used for material recovery or recycling, as those terms are defined in ORS 459.005.
ORS 468.155(1)(b)(D)	

Applied to this Application

The maximum tax credit is **35 percent** because the applicant submitted the application on 4/29/2005, and the facility is used in a material recovery process.

Facility Cost

Subtractions	<u>Criteria</u>
OAR 340-016-0070(1)	The applicant must provide documents that substantiate the claimed facility cost. The claimed cost may not include: <ol style="list-style-type: none"> a) the salvage value of a pre-existing facility if the applicant is replacing a facility; b) the amount of any government grants received to pay part of the facility cost; c) the present value of any other state tax credits for which the investment is eligible; and d) ineligible costs as set forth in ORS 468.155(3) and OAR 340-016-0070(3).
ORS 468.155(3) OAR 340-016-0070(3)	The regulations exclude over 40 items from the definition of a Pollution Control Facility. Items excluded from the definition are ineligible for certification. <p>One of the excluded items is the replacement or reconstruction of all or part of a previously certified pollution control facility. The regulations provide two exceptions to this exclusion.</p> <ol style="list-style-type: none"> 1. If the cost to replace or reconstruct the facility is greater than the like-for-like replacement cost of the original facility due to a requirement imposed by the DEQ, the federal Environmental Protection Agency or a regional air pollution authority, then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility. 2. If a facility is replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility.

Applied to this Application

The State of Oregon has not issued any Pollution Control Facilities Tax Credit Certificates to the applicant at this location. The claimed facility is **not a replacement** facility and there are **no other subtractions**.

Cost Certification Criteria

ORS 468.170(1) The certified cost is limited to the actual cost of the claimed facility. The certified cost may not exceed the taxpayer's own cash investment in the facility or portion of the facility.

Applied to this Application

Invoices substantiated the eligible facility cost. The cost represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion	Facility Cost
<i>Subtractions</i>	Claimed	\$7,105
		0
	Certified	\$7,105

Facility Cost Allocable to Pollution Control

Percentage Certification
ORS 468.190 (3)

Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed \$50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost would be less than \$50,000. The applicant uses the drop box **100 percent** of the time for collecting recyclable materials.

Compliance

ORS 468.180(1) Criteria

The Environmental Quality Commission may not issue a certificate unless the applicant constructed or installed the claimed facility in accordance with the applicable provisions of ORS 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 465, 466 and 467 and ORS chapters 468, 468A and 468B. This includes the rules and standards adopted to implement these provisions.

Applied to this Application

The applicant states the facility and site are in compliance with Department rules and statutes, and with EQC orders. DEQ has not issued any permits to the site.

Reviewer: Maggie Vandehey, DEQ



State of Oregon
 Department of
 Environmental
 Quality

Tax Credit Review Report

Pollution Control Facility: Material Recovery

Final Certification

ORS 468.150 -- 468.190
 OAR 340-016-0005 -- 340-016-0080

Applicant Identification

PO Box 504
 Bend, OR 97709

Organized as: **LLC**
 Taxpayer ID: **93-1307244**

Technical Information

Deschutes Recycling, LLC is a recycling center located at Knott Landfill. The applicant collects recyclable materials from the public and local garbage and recycling haulers. Deschutes County licenses Deschutes Recycling, LLC to compost yard debris and wood waste. The company purchased a wheel loader and the buckets to process the material into compost. The loader moves the material through the grinding and screening stages of the process. The applicant uses the loader to place the material into rows and to turn the material as it cooks.

Taxpayer Allowed Credit

ORS 315.304(4) Criteria

The Department of Revenue determines if the taxpayer is allowed the credit if one of the following conditions apply. The taxpayer is the:

- a. Owner, including a contract purchaser, of the trade or business that uses the Oregon property requiring a pollution control facility to prevent or minimize pollution; or
- b. Person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or utilizes such property; or

Director's Recommendation

Approve Application No. 7001 @ Reduced Percentage

Applicant: **Deschutes Recycling, LLC**

Certification of:

Facility Cost		\$143,370
Percentage Allocable	X	89%
Maximum Percentage	X	35%
Tax Credit		\$44,660

Certificate Period: **5 years**

Facility Identification

61020 SE 27th Street
 Bend, OR 97702

The certificate will identify the facility as:

- One - Volvo model L90E Wheel Loader,
 Serial No. 90EV66139**
- One - 3.5 cubic yard bucket**
- One - 5.4 cubic yard bucket**

- c. Person who, as an owner, including a contract purchaser, or lessee, owns or leases a pollution control facility that is used for recycling, material recovery or energy recovery as defined in ORS 459.005.

Applied to this Application

DEQ will report the following information to the Department of Revenue: Deschutes Recycling, LLC **owns** the claimed facility that they use for recycling or material recovery.

Eligibility

Timely Filing

2001 Edition ORS
468.165(6)

Criteria

If the applicant completed constructing the facility on or after January 1, 2002, the applicant must submit the application within one year after the construction completion date. The applicant must submit the final application after completing construction of the facility and placing it into service.

Applied to this Application

The applicant **timely filed** the application. The applicant completed construction or installation of the claimed facility on 2/25/2005 and submitted the application on 4/28/2005. The applicant also submitted the application after completing construction and placing the facility into service on 2/25/2005.

Purpose: Voluntary

ORS 468.155
(1)(a)(B)
OAR 340-016-
0010(7)(a)(b)

Criteria

The sole purpose, meaning the exclusive purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of **solid waste**, hazardous waste, or used oil.

Solid waste as defined by ORS 459.005: All useless or **discarded** putrescible and non-putrescible **materials**, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, **demolition** and **construction materials**, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined by ORS 459.386. (b) excludes "Materials used for fertilizing or for other productive purposes or which are salvageable as such material are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals."

Applied to this Application

The applicant uses the wheel loader with the buckets exclusively for material recovery. The applicant uses different equipment for moving compost to the point of sale. The claimed facility **reduced 17,398 tons** of yard debris and wood waste to compost in 2004.

Method	<u>Criteria</u>
ORS 468.155 (1)(b)(D)	The claimed facility must prevent, control, or reduce the waste material by the use of a material recovery process. The process must obtain useful material from material that would otherwise be solid waste, hazardous waste or used oil.

Material Recovery means any **process**, such as pre-segregation, for obtaining materials from solid waste, hazardous waste or used oil. The recovered material shall still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose. The recovered material shall have useful physical or chemical properties that yield a **competitive end product** of real economic value. The material recovery process does not include processes:

- a. In which the major purpose is the production of fuel from solid waste, hazardous waste or used oil which can be utilized for heat content or other forms of energy; or
- b. That burns waste to produce energy or to reduce the amount of waste. However, it does not eliminate from eligibility a pollution control device associated with a process that burns waste if such device is otherwise eligible for pollution control tax credit under these rules.

Method	<u>Criteria</u>
OAR 340-016-0010(7) OAR 340-016-0060(4)(e)	The facility produces an end product of utilization. It must be an item of real economic value and it must be competitive with an end product produced in another state. The facility must produce the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which: <ol style="list-style-type: none"> a. Have useful chemical or physical properties and which may be used for the same or other purposes: or b. May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The wheel loader is part of a process that produced **15,965 tons of compost** in 2004.

Maximum Credit	<u>Criteria</u>
ORS 468.170(3)(d) ORS 468.155(1)(b)(D)	The maximum tax credit is 35 percent if the applicant submitted the application between January 1, 2002, and December 31, 2008, inclusively, and the facility is used for material recovery or recycling, as those terms are defined in ORS 459.005.

Applied to this Application

The maximum tax credit is **35 percent** because the applicant submitted the application on 4/28/2005, and the facility is used in a material recovery process.

Facility Cost

- | | |
|---------------------------------------|---|
| Subtractions | <u>Criteria</u> |
| OAR 340-016-0070(1) | The applicant must provide documents that substantiate the claimed facility cost. The claimed cost may not include: <ol style="list-style-type: none"> a) the salvage value of a pre-existing facility if the applicant is replacing a facility; b) the amount of any government grants received to pay part of the facility cost; c) the present value of any other state tax credits for which the investment is eligible; and d) ineligible costs as set forth in ORS 468.155(3) and OAR 340-016-0070(3). |
| ORS 468.155(3)
OAR 340-016-0070(3) | The regulations exclude over 40 items from the definition of a Pollution Control Facility. Items excluded from the definition are ineligible for certification. One of the excluded items is the replacement or reconstruction of all or part of a previously certified pollution control facility. The regulations provide two exceptions to this exclusion. <ol style="list-style-type: none"> 1. If the cost to replace or reconstruct the facility is greater than the like-for-like replacement cost of the original facility due to a requirement imposed by the DEQ, the federal Environmental Protection Agency or a regional air pollution authority, then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility. 2. If a facility is replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility. |

Applied to this Application

The State of Oregon has not issued any Pollution Control Facilities Tax Credit Certificates to the applicant at this location. The claimed facility is **not a replacement** of any previously certified facilities. There are **no** other **subtractions**.

Cost Certification

- | |
|-----------------|
| <u>Criteria</u> |
| ORS 468.170(1) |
- The certified cost is limited to the actual cost of the claimed facility. The certified cost may not exceed the taxpayer's own cash investment in the facility or portion of the facility.

Applied to this Application

Invoices substantiated the eligible facility cost. The cost represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion	Facility Cost
<i>Subtractions</i>	Claimed	\$143,370
		0
	Certified	\$143,370

Facility Cost Allocable to Pollution Control

Percentage Certification	Criteria
ORS 468.170(1)	The certified percentage allocable is limited to the portion of the actual facility cost that is properly allocable to the prevention, control, or reduction of solid waste, hazardous waste, or to recycling or appropriately disposing of used oil.

Applied to this Application

The Department determined that **89 percent** of the facility cost is allocable to pollution control as discussed in the *Percentage* subsections below.

Integral Facility	Criteria
OAR 340-016-0075 (4)(a)	Facilities that are integral to the applicant's business must use an alternate method for calculating the percentage of the facility cost that is allocable to pollution control if the facility cost exceeds \$50,000 . Examples of integral facilities include commercial solid waste and hazardous waste landfills, solid waste and hazardous waste recycling businesses, and environmental service providers.

The Commission may determine that a business is integral to the operation of the applicant's business if the business is unable to operate or is only able to operate at reduced income levels.

The rule requires the Commission to use the following factors to determine whether a pollution control facility is integral to the operation of the applicant's business.

- a. The facility represents 25 percent or more of the total assets of the applicant's business; or
- b. The facility was constructed or installed in response to market demand for such pollution control facilities such as requirements imposed by DEQ, federal Environmental Protection Agency or regional air pollution authority on parties unaffiliated with the applicant; or
- c. Where the facility allows the applicant to generate gross revenues at least 50 percent greater than could be or were without the facility; or
- d. The applicant's operating expenses for the facility are at least 50 percent of the operating expenses for the applicant's entire business.

Applied to this Application

The facility is **not integral** to the applicant's business.

Percentage	<u>Criteria</u>
ORS 468.190(1)	<p>The following factors establish the portion of costs properly allocable to material recovery or recycling if the facility cost exceeds \$50,000.</p> <ol style="list-style-type: none"> a. The extent to which the applicant uses the facility to recover and convert waste products into a salable or usable commodity; b. The estimated annual percent return on the investment in the facility; c. Any alternative methods, equipment, and costs for achieving the same pollution control objective; d. Any related savings or increase in costs that occur or may occur as a result of the installation of the facility; and e. Any other relevant factors.

Applied to this Application

The applicant and the Department calculated the percentage of the facility cost allocable to pollution control according to the standard method in OAR 340-016-0075(3) while considering the factors a. through e. above and a **five-year** useful life. The claimed facility allows the applicant to reduce a substantial quantity of solid waste into soil amendments. The applicant used their estimated revenue from annual tipping fees and product sales (\$245,000) and the expenditures (\$230,000) associated with the annual labor, supplies, maintenance and residual removal, excluding depreciation and interest, to determine the facility's return on investment (ROI). Facility ROI (0.75) is less than the National ROI (6.7) for 2005, the facility's construction completion year. (Using an erroneous National ROI of 7.1, the applicant calculated the percentage of the facility cost allocable to pollution control to be 100 percent.) The applicant did not investigate an alternative technology.

Compliance

ORS 468.180(1) Criteria

The Environmental Quality Commission may not issue a certificate unless the applicant constructed or installed the claimed facility in accordance with the applicable provisions of ORS 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 465, 466 and 467 and ORS chapters 468, 468A and 468B. This includes the rules and standards adopted to implement these provisions.

Applied to this Application

The applicant states the facility and site are in compliance with Department rules and statutes, and with EQC orders. DEQ has not issued any permits to the site.

Reviewer: Maggie Vandehey, DEQ



State of Oregon
 Department of
 Environmental
 Quality

Tax Credit Review Report

Pollution Control Facility: Material Recovery

Final Certification

ORS 468.150 -- 468.190

OAR 340-016-0005 -- 340-016-0080

Applicant Identification

PO Box 504
 Bend, OR 97709

Organized as: **LLC**
 Taxpayer ID: **93-1307244**

Technical Information

Deshutes Recycling, LLC is a recycling center located at Knott Landfill in Deschutes County. The applicant collects recyclable materials from the public and local garbage and recycling haulers. The company purchased a Bobcat Skid Steer Loader with a Grapple to load recycled paper into the baler to prepare it for shipping to market.

Taxpayer Allowed Credit

ORS 315.304(4) Criteria

The Department of Revenue determines if the taxpayer is allowed the credit if one of the following conditions apply. The taxpayer is the:

- a. Owner, including a contract purchaser, of the trade or business that uses the Oregon property requiring a pollution control facility to prevent or minimize pollution; or
- b. Person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or utilizes such property; or

Director's Recommendation

Approve Application No. **7002**

Applicant: **Deschutes Recycling, LLC**

Certification of:

Facility Cost		\$27,672
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		<u>\$9,685</u>

Certificate Period: **5 years**

Facility Identification

61020 SE 27th
 Bend, OR 97702

The certificate will identify the facility as:

One – Bobcat Model S250 Skid Steer Loader, Serial No. 526013289 with a Bobcat 72 inch Industrial Grapple, Serial No. 456103365

- c. Person who, as an owner, including a contract purchaser, or lessee, owns or leases a pollution control facility that is used for recycling, material recovery or energy recovery as defined in ORS 459.005.

Applied to this Application

DEQ will report the following information to the Department of Revenue: Deschutes Recycling, LLC **owns** the claimed facility that they use for recycling or material recovery.

Eligibility

Timely Filing Criteria

2001 Edition ORS
468.165(6)

If the applicant completed constructing the facility on or after January 1, 2002, the applicant must submit the application within one year after the construction completion date. The applicant must submit the final application after completing construction of the facility and placing it into service.

Applied to this Application

The applicant **timely filed** the application. The applicant completed construction or installation of the claimed facility on 6/16/2004 and submitted the application on 4/28/2005. The applicant also submitted the application after completing construction and placing the facility into service on 6/16/2004.

Purpose: Voluntary Criteria

ORS 468.155
(1)(a)(B)
OAR 340-016-
0010(7)(a)(b)

The sole purpose, meaning the exclusive purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of solid waste, hazardous waste, or used oil.

Solid waste as defined by ORS 459.005: All useless or **discarded** putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, **paper and cardboard**, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined by ORS 459.386. (b) excludes "Materials used for fertilizing or for other productive purposes or which are salvageable as such material are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals."

Applied to this Application

Deschutes Recycling, LLC uses the skid loader exclusively to prevent **12,326 tons** of paper and cardboard from landfill disposal each year.

Method	<u>Criteria</u>
ORS 468.155 (1)(b)(D)	The claimed facility must prevent, control, or reduce the waste material by the use of a material recovery process. The process must obtain useful material from material that would otherwise be solid waste, hazardous waste or used oil.

Material Recovery means any process, such as pre-segregation, for obtaining materials from solid waste, hazardous waste or used oil. The recovered material shall still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose. The recovered material shall have useful physical or chemical properties that yield a competitive end product of real economic value. The material recovery process does not include processes:

- a. In which the major purpose is the production of fuel from solid waste, hazardous waste or used oil which can be utilized for heat content or other forms of energy; or
- b. That burns waste to produce energy or to reduce the amount of waste. However, it does not eliminate from eligibility a pollution control device associated with a process that burns waste if such device is otherwise eligible for pollution control tax credit under these rules.

Method	<u>Criteria</u>
OAR 340-016- 0010(7) OAR 340-016- 0060(4)(e)	The facility produces an end product of utilization. It must be an item of real economic value and it must be competitive with an end product produced in another state. The facility must produce the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- a. Have useful chemical or physical properties and which may be used for the same or other purposes: or
- b. May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The steer loader sorts and moves **cardboard** to equipment that bales the cardboard for shipment to mills. The mills use the cardboard as secondary fiber in products that have a competitive end use.

Maximum Credit	<u>Criteria</u>
ORS 468.170(3)(d) ORS 468.155(1)(b)(D)	The maximum tax credit is 35 percent if the applicant submitted the application between January 1, 2002 and December 31, 2008, inclusively, and the facility is used for material recovery or recycling, as those terms are defined in ORS 459.005.

Applied to this Application

The maximum tax credit is **35 percent** because the applicant submitted the application on 4/28/2005, and the facility is used in a material recovery process.

Facility Cost

Subtractions	<u>Criteria</u>
OAR 340-016-0070(1)	<p>The applicant must provide documents that substantiate the claimed facility cost. The claimed cost may not include:</p> <ol style="list-style-type: none"> a) the salvage value of a pre-existing facility if the applicant is replacing a facility; b) the amount of any government grants received to pay part of the facility cost; c) the present value of any other state tax credits for which the investment is eligible; and d) ineligible costs as set forth in ORS 468.155(3) and OAR 340-016-0070(3).
ORS 468.155(3) OAR 340-016-0070(3)	<p>The regulations exclude over 40 items from the definition of a Pollution Control Facility. Items excluded from the definition are ineligible for certification.</p>

One of the excluded items is the replacement or reconstruction of all or part of a previously certified pollution control facility. The regulations provide two exceptions to this exclusion.

1. If the cost to replace or reconstruct the facility is greater than the like-for-like replacement cost of the original facility due to a requirement imposed by the DEQ, the federal Environmental Protection Agency or a regional air pollution authority, then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility.
2. If a facility is replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility.

Applied to this Application

The State of Oregon has not issued any Pollution Control Facilities Tax Credit Certificates to the applicant at this location. The claimed facility is **not a replacement** of a previously certified facility. The applicant subtracted the amount of the trade in (\$9,750) from the cost of the skid loader (\$37,422) prior to claiming the \$27,672 facility cost. There are **no other subtractions**.

Cost Certification

<u>Criteria</u>
ORS 468.170(1)

The certified cost is limited to the actual cost of the claimed facility. The certified cost may not exceed the taxpayer's own cash investment in the facility or portion of the facility.

Applied to this Application

Invoices substantiated the eligible facility cost. The cost represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion	Facility Cost
<i>Subtractions</i>	Claimed	\$27,672
		0
	Certified	\$27,672

Facility Cost Allocable to Pollution Control

Percentage Certification
ORS 468.190 (3)

Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed \$50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost would be less than \$50,000. The applicant has dedicated the skip loader to recycling; therefore, the loader cost is 100 percent allocable to pollution control.

Compliance

ORS 468.180(1)

Criteria

The Environmental Quality Commission may not issue a certificate unless the applicant constructed or installed the claimed facility in accordance with the applicable provisions of ORS 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 465, 466 and 467 and ORS chapters 468, 468A and 468B. This includes the rules and standards adopted to implement these provisions.

Applied to this Application

The applicant states the facility and site are in compliance with Department rules and statutes, and with EQC orders. DEQ has not issued any permits to the site.

Reviewer: Maggie Vandehey, DEQ



State of Oregon
 Department of
 Environmental
 Quality

Tax Credit Review Report

Pollution Control Facility: Material Recovery Final Certification

ORS 468.150 -- 468.190
 OAR 340-016-0005 -- 340-016-0080

Applicant Identification

PO Box 504
 Bend, OR 97709

Organized as: LLC
 Taxpayer ID: 93-1257933

Technical Information

High Country Enterprises, LLC, doing business as High Country Disposal, is a garbage and recycling hauler. The company serves 10,000 residential customers in Deschutes County. In its service, the applicant claims recycling containers placed with 3,072 of its residential accounts to collect commingled recycling. The carts are blue and have lids. After High Country Enterprises, LLC, started the new curbside recycling program in November of 2004, its average monthly commingled recycling rate increased by 55 percent.

Taxpayer Allowed Credit

ORS 315.304(4) Criteria

The Department of Revenue determines if the taxpayer is allowed the credit if one of the following conditions apply. The taxpayer is the:

- a. Owner, including a contract purchaser, of the trade or business that uses the Oregon property requiring a pollution control facility to prevent or minimize pollution; or
- b. Person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or utilizes such property; or

Director's Recommendation

Approve Application No. 7003

Applicant: **High Country Enterprises, LLC**

Certification of:

Facility Cost		\$116,960
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		<u>\$40,936</u>

Certificate Period: 5 years

Facility Identification

761 NE 11th
 Redmond, OR 97756

The certificate will identify the facility as:

**3,072 95-gallon curbside recycling carts,
 Serial No's 9000101 through
 9003172**

- c. Person who, as an owner, including a contract purchaser, or lessee, owns or leases a pollution control facility that is used for recycling, material recovery or energy recovery as defined in ORS 459.005.

Applied to this Application

DEQ will report the following information to the Department of Revenue: High Country Enterprises, LLC, **owns** the claimed facility used for recycling or material recovery.

Eligibility

Timely Filing Criteria

2001 Edition ORS
468.165(6)

If the applicant completed constructing the facility on or after January 1, 2002, the applicant must submit the application within one year after the construction completion date. The applicant must submit the final application after completing construction of the facility and placing it into service.

Applied to this Application

The applicant **timely filed** the application. The applicant completed construction or installation of the claimed facility on 10/13/2004 and submitted the application on 4/28/2005. The applicant also submitted the application after completing construction and placing the facility into service on 10/13/2004.

Purpose: Voluntary Criteria

ORS 468.155
(1)(a)(B)
OAR 340-016-
0010(7)(a)(b)

The sole purpose, meaning the exclusive purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of solid waste, hazardous waste, or used oil.

Solid waste as defined by ORS 459.005: All useless or **discarded** putrescible and **non-putrescible materials**, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined by ORS 459.386. (b) excludes "Materials used for fertilizing or for other productive purposes or which are salvageable as such material are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals."

Applied to this Application

High Country Enterprises, LLC uses the carts exclusively to collect commingled recyclable materials. This new service prevents **1,902 tons** of solid waste from landfill disposal each year.

Method Criteria
 ORS 468.155 (1)(b)(D) The claimed facility must prevent, control, or reduce the waste material by the use of a material recovery process. The process must obtain useful material from material that would otherwise be solid waste, hazardous waste or used oil.

Material Recovery means any process, such as pre-segregation, for obtaining materials from solid waste, hazardous waste or used oil. The recovered material shall still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose. The recovered material shall have useful physical or chemical properties that yield a competitive end product of real economic value. The material recovery process does not include processes:

- a. In which the major purpose is the production of fuel from solid waste, hazardous waste or used oil which can be utilized for heat content or other forms of energy; or
- b. That burns waste to produce energy or to reduce the amount of waste. However, it does not eliminate from eligibility a pollution control device associated with a process that burns waste if such device is otherwise eligible for pollution control tax credit under these rules.

OAR 340-016-0010(7) Criteria
 OAR 340-016-0060(4)(e) The facility produces an end product of utilization. It must be an item of real economic value and it must be competitive with an end product produced in another state. The facility must produce the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- a. Have useful chemical or physical properties and which may be used for the same or other purposes: or
- b. May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The carts collect commingled materials such as **aluminum, tin, mixed paper, plastic, cardboard and newspaper** separated from garbage. The applicant delivers the materials to a recycling center for additional sorting and shipment to manufacturers or mills for use in products that have a competitive end use.

Maximum Credit Criteria
 ORS 468.170(3)(d) The maximum tax credit is 35 percent if the applicant submitted the application
 ORS between January 1, 2002, and December 31, 2008, inclusively, and the facility is
 468.155(1)(b)(D) used for material recovery or recycling, as those terms are defined in ORS
 459.005.

Applied to this Application

The maximum tax credit is **35 percent** because the applicant submitted the application on 4/28/2005, and the facility is used in a material recovery process.

Facility Cost

Subtractions	<u>Criteria</u>
OAR 340-016-0070(1)	<p>The applicant must provide documents that substantiate the claimed facility cost. The claimed cost may not include:</p> <ul style="list-style-type: none"> a) the salvage value of a pre-existing facility if the applicant is replacing a facility; b) the amount of any government grants received to pay part of the facility cost; c) the present value of any other state tax credits for which the investment is eligible; and d) ineligible costs as set forth in ORS 468.155(3) and OAR 340-016-0070(3).
ORS 468.155(3) OAR 340-016-0070(3)	<p>The regulations exclude over 40 items from the definition of a Pollution Control Facility. Items excluded from the definition are ineligible for certification.</p> <p>One of the excluded items is the replacement or reconstruction of all or part of a previously certified pollution control facility. The regulations provide two exceptions to this exclusion.</p> <ul style="list-style-type: none"> 1. If the cost to replace or reconstruct the facility is greater than the like-for-like replacement cost of the original facility due to a requirement imposed by the DEQ, the federal Environmental Protection Agency or a regional air pollution authority, then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility. 2. If a facility is replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility.

Applied to this Application

The State of Oregon has issued **one** Pollution Control Facilities Tax Credit Certificate to the applicant at this location. The claimed bins are for a new service area, and they are **not a replacement** of these previously certified facilities. There are **no other subtractions**.

Cost Certification Criteria

ORS 468.170(1) The certified cost is limited to the actual cost of the claimed facility. The certified cost may not exceed the taxpayer's own cash investment in the facility or portion of the facility.

Applied to this Application

Invoices substantiated the eligible facility cost. The cost represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion	Facility Cost
<i>Subtractions</i>	Claimed	\$116,960
		0
	Certified	\$116,960

Facility Cost Allocable to Pollution Control

Percentage Certification Criteria
 ORS 468.170(1) The certified percentage allocable is limited to the portion of the actual facility cost properly allocable to the prevention, control, or reduction of solid waste, hazardous waste, or to recycling or appropriately disposing of used oil.

Applied to this Application

The Department determined that **100%** of the facility cost is allocable to pollution control as discussed in the *Percentage* subsections below.

Integral Facility Criteria
 OAR 340-016-0075 (4)(a) Facilities that are integral to the applicant's business must use an alternate method for calculating the percentage of the facility cost that is allocable to pollution control if the **facility cost exceeds \$50,000**. Examples of integral facilities include commercial solid and hazardous waste landfills, solid and hazardous waste recycling businesses, and environmental service providers.

The Commission may determine that a business is integral to the operation of the applicant's business if the business is unable to operate or is only able to operate at reduced income levels.

The rule requires the Commission to use the following factors to determine whether a pollution control facility is integral to the operation of the applicant's business.

- a. The facility represents 25 percent or more of the total assets of the applicant's business; or
- b. The facility was constructed or installed in response to market demand for such pollution control facilities such as requirements imposed by DEQ, EPA or regional air pollution authority on parties unaffiliated with the applicant; or
- c. Where the facility allows the applicant to generate gross revenues at least 50 percent greater than could be or were without the facility; or
- d. The applicant's operating expenses for the facility are at least 50 percent of the operating expenses for the applicant's entire business.

Applied to this Application

The facility is **not integral** to the applicant's business.

Percentage	<u>Criteria</u>
ORS 468.190(1)	<p>The following factors establish the portion of costs properly allocable to material recovery or recycling if the facility cost exceeds \$50,000.</p> <ol style="list-style-type: none"> a. The extent to which the applicant uses the facility to recover and convert waste products into a salable or usable commodity; b. The estimated annual percent return on the investment in the facility; c. Any alternative methods, equipment, and costs for achieving the same pollution control objective; d. Any related savings or increase in costs that occur or may occur as a result of the installation of the facility; and e. Any other relevant factors.

Applied to this Application

The applicant and Department calculated the percentage of the facility cost allocable to pollution control according to the standard method in OAR 340-016-0075(3) while considering the factors a. through e. above and a **five-year** useful life. The claimed facility allows the applicant to recover a substantial quantity of solid waste that will be used to manufacture a salable product. The applicant used their estimated revenue (\$110,000 per year) from fees and the expenditures (\$102,000 per year) associated with the maintenance, supplies and labor, excluding interest and depreciation, to determine the facility's return on investment (ROI). The resulting Facility ROI (0) is less than the National ROI (6.7) for 2004, the facility's completion year. The applicant did not investigate an alternative technology.

Compliance

ORS 468.180(1)	<u>Criteria</u>
	<p>The Environmental Quality Commission may not issue a certificate unless the applicant constructed or installed the claimed facility in accordance with the applicable provisions of ORS 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 465, 466 and 467 and ORS chapters 468, 468A and 468B. This includes the rules and standards adopted to implement these provisions.</p>

Applied to this Application

The applicant states the facility and site are in compliance with Department rules and statutes, and with EQC orders. DEQ has not issued any permits to the site.

Reviewer: Maggie Vandehey, DEQ



State of Oregon
**Department of
 Environmental
 Quality**

Tax Credit Review Report

Pollution Control Facility: Material Recovery

Final Certification

ORS 468.150 -- 468.190
 OAR 340-016-0005 -- 340-016-0080

Applicant Identification

PO Box 40097
 Eugene, OR 97404

Organized as: **S Corp**
 Taxpayer ID: **93-0941217**

Facility Identification

2399 Hwy 99 North
 Eugene, Oregon 97402

The certificate will identify the facility as:

- 500 65-gallon yard-debris carts, Serial No.s Y004001 through Y004100 and Y004201 through Y004600**
- 900 65-gallon recycling roll carts, Serial No.s LAR 001851 through LAR 002750**

Technical Information

Miller Associated Enterprises, Inc., doing business as Lane Garbage – Apex Disposal, is a recycling collection and transportation company. The applicant claims recycling carts placed with its residential customers for scheduled curbside pickup. As of August 1, 2005, the applicant serves 9,200 residential customers.

Taxpayer Allowed Credit

ORS 315.304(4) Criteria

The Department of Revenue determines if the taxpayer is allowed the credit if one of the following conditions apply. The taxpayer is the:

- a. Owner, including a contract purchaser, of the trade or business that uses the Oregon property requiring a pollution control facility to prevent or minimize pollution; or

Director's Recommendation

Approve Application No. **7044**

Applicant: **Miller Associated Enterprises, Inc.**

Certification of:

Facility Cost		\$65,031
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		<u>\$22,761</u>

Certificate Period: **7 years**

- b. Person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or utilizes such property; or
- c. Person who, as an owner, including a contract purchaser, or lessee, owns or leases a pollution control facility that is used for recycling, material recovery or energy recovery as defined in ORS 459.005.

Applied to this Application

DEQ will report the following information to the Department of Revenue: Miller Associated Enterprises, Inc. **owns** the claimed facility that they use for recycling or material recovery.

Eligibility**Timely Filing** Criteria

2001 Edition ORS
468.165(6)

If the applicant completed constructing the facility on or after January 1, 2002, the applicant must submit the application within one year after the construction completion date. The applicant must submit the final application after completing construction of the facility and placing it into service.

Applied to this Application

The applicant **timely filed** the application. The applicant completed construction or installation of the claimed facility on 6/8/2005 and submitted the application on 7/11/2005. The applicant also submitted the application after completing construction and placing the facility into service on 9/3/2004.

Purpose: Voluntary Criteria

ORS 468.155
(1)(a)(B)
OAR 340-016-
0010(7)(a)(b)

The sole purpose, meaning the exclusive purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of solid waste, hazardous waste, or used oil.

Solid waste as defined by ORS 459.005: All useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined by ORS 459.386. (b) excludes "Materials used for fertilizing or for other productive purposes or which are salvageable as such material are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals."

Applied to this Application

The claimed carts collect **76.6 tons per year** of yard debris and **250.3 tons per year** of commingled materials per year. Prior to using the containers, most residents used the trash receptacles as a means of disposing of their yard debris and recyclable materials.

- Method** Criteria
 ORS 468.155 (1)(b)(D) The claimed facility must prevent, control, or reduce the waste material by the use of a material recovery process. The process must obtain useful material from material that would otherwise be solid waste, hazardous waste or used oil.

Material Recovery means any process, such as pre-segregation, for obtaining materials from solid waste, hazardous waste or used oil. The recovered material shall still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose. The recovered material shall have useful physical or chemical properties that yield a competitive end product of real economic value. The material recovery process does not include processes:

- a. In which the major purpose is the production of fuel from solid waste, hazardous waste or used oil which can be utilized for heat content or other forms of energy; or
- b. That burns waste to produce energy or to reduce the amount of waste. However, it does not eliminate from eligibility a pollution control device associated with a process that burns waste if such device is otherwise eligible for pollution control tax credit under these rules.

- OAR 340-016-0010(7) Criteria
 OAR 340-016-0060(4)(e) The facility produces an end product of utilization. It must be an item of real economic value and it must be competitive with an end product produced in another state. The facility must produce the end product by mechanical processing, chemical processing; or through the production, processing, pre-segregation, or use of materials which:

- a. Have useful chemical or physical properties and which may be used for the same or other purposes: or
- b. May be used in the same kind of application as its prior use without change in identity.

Applied to this Application

The applicant collects the yard debris from its residential customers and delivers it to composting facilities. The applicant collects recyclable materials and delivers it to a material recovery facility (MRF.) The MRF separates and processes the material prior to selling it to mills for use as raw material.

- Maximum Credit** Criteria
 ORS 468.170(3)(d) The maximum tax credit is 35 percent if the applicant submitted the application between January 1, 2002, and December 31, 2008, inclusively, and the facility is used for material recovery or recycling, as those terms are defined in ORS 468.155(1)(b)(D) 459.005.

Applied to this Application

The maximum tax credit is **35 percent** because the applicant submitted the application on 7/11/2005, and the facility is used in a material recovery process.

Facility Cost

Subtractions	<u>Criteria</u>
OAR 340-016-0070(1)	<p>The applicant must provide documents that substantiate the claimed facility cost. The claimed cost may not include:</p> <ul style="list-style-type: none"> a) the salvage value of a pre-existing facility if the applicant is replacing a facility; b) the amount of any government grants received to pay part of the facility cost; c) the present value of any other state tax credits for which the investment is eligible; and d) ineligible costs as set forth in ORS 468.155(3) and OAR 340-016-0070(3).
ORS 468.155(3) OAR 340-016-0070(3)	<p>The regulations exclude over 40 items from the definition of a Pollution Control Facility. Items excluded from the definition are ineligible for certification.</p> <p>One of the excluded items is the replacement or reconstruction of all or part of a previously certified pollution control facility. The regulations provide two exceptions to this exclusion.</p> <ol style="list-style-type: none"> 1. If the cost to replace or reconstruct the facility is greater than the like-for-like replacement cost of the original facility due to a requirement imposed by the DEQ, the federal Environmental Protection Agency or a regional air pollution authority, then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility. 2. If a facility is replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility.

Applied to this Application

The State of Oregon has issued **five** Pollution Control Facilities Tax Credit Certificates to the applicant at this location by certifying 3,950 yard-debris carts and 1,900 recycling carts. The claimed facility is **not a replacement** of these previously certified facilities. There are **no** other **subtractions**.

Cost Certification

<u>Criteria</u>
<p>ORS 468.170(1) The certified cost is limited to the actual cost of the claimed facility. The certified cost may not exceed the taxpayer's own cash investment in the facility or portion of the facility.</p>

Applied to this Application

Invoices substantiated the eligible facility cost. The cost represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion	Facility Cost
<i>Subtractions</i>	Claimed	\$65,031
		0
	Certified	\$65,031

Facility Cost Allocable to Pollution Control

Percentage Certification Criteria
 ORS 468.170(1) The certified percentage allocable is limited to the portion of the actual facility cost that is properly allocable to the prevention, control, or reduction of solid waste, hazardous waste, or to recycling or appropriately disposing of used oil.

Applied to this Application

The Department determined that **100 percent** of the facility cost is allocable to pollution control as discussed in the *Integral Facility* and *Percentage* subsections below.

Integral Facility Criteria
 OAR 340-016-0075
 (4)(a) Facilities that are integral to the applicant's business must use an alternate method for calculating the percentage of the facility cost that is allocable to pollution control if the **facility cost exceeds \$50,000**. Examples of integral facilities include commercial solid waste and hazardous waste landfills, solid waste and hazardous waste recycling businesses, and environmental service providers.

The Commission may determine that a business is integral to the operation of the applicant's business if the business is unable to operate or is only able to operate at reduced income levels.

The rule requires the Commission to use the following factors to determine whether a pollution control facility is integral to the operation of the applicant's business.

- a. The facility represents 25 percent or more of the total assets of the applicant's business; or
- b. The facility was constructed or installed in response to market demand for such pollution control facilities such as requirements imposed by DEQ, federal Environmental Protection Agency or regional air pollution authority on parties unaffiliated with the applicant; or

- c. Where the facility allows the applicant to generate gross revenues at least 50 percent greater than could be or were without the facility; or
- d. The applicant's operating expenses for the facility are at least 50 percent of the operating expenses for the applicant's entire business.

Applied to this Application

The facility is **not integral** to the applicant's business.

Percentage	Criteria
ORS 468.190(1)	<p>The following factors establish the portion of costs properly allocable to material recovery or recycling if the facility cost exceeds \$50,000.</p> <ol style="list-style-type: none">a. The extent to which the applicant uses the facility to recover and convert waste products into a salable or usable commodity;b. The estimated annual percent return on the investment in the facility;c. Any alternative methods, equipment, and costs for achieving the same pollution control objective;d. Any related savings or increase in costs that occur or may occur as a result of the installation of the facility; ande. Any other relevant factors.

Applied to this Application

The applicant and Department calculated the percentage of the facility cost allocable to pollution control according to the standard method in OAR 340-016-0075(3) while considering the factors a. through e. above and a **seven-year** useful life. The claimed facility allows the applicant to recover and convert solid waste into a useable commodity. The applicant used their estimated revenue (\$33,555 per year) from the fee for collecting the yard debris and for the sale of commingled material. The applicant also used the estimated expenditures (\$44,469 per year) associated with labor, maintenance and tipping fees for yard-debris to determine the facility's return on investment (ROI). The resulting Facility ROI is less than the National ROI for 2004, the facility's construction completion year. The applicant did not investigate an alternative technology.

Compliance

ORS 468.180(1) Criteria

The Environmental Quality Commission may not issue a certificate unless the applicant constructed or installed the claimed facility in accordance with the applicable provisions of ORS 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 465, 466 and 467 and ORS chapters 468, 468A and 468B. This includes the rules and standards adopted to implement these provisions.

Applied to this Application

The applicant states the facility and site are in compliance with Department rules and statutes, and with EQC orders. DEQ has not issued any permits to the site.

Reviewer: Maggie Vandehey, DEQ

Water Pollution Control Facilities for Approval

The Department recommends the Commission approve the following applications for certification as water pollution control facilities.

Summary of Water Pollution Control Facilities

App #	Applicant	Certified	% Allocable	Maximum Percent	GF Liability
6934	Mallorie's Dairy, Inc.	78,487	100%	35%	27,470
7033	Kenneth R. Winokur, DMD PC	\$757	100%	35%	\$265
2 Apps		Sum			27,735
		Average			13,868
		Minimum			265
		Maximum			\$27,470

References

Statutory Definition of a Water Pollution Control Facility

ORS 468.155 provides the definition of a pollution control facility. Part of that definition describes how the applicant must accomplish the pollution control. For water pollution control facilities, the prevention, control, or reduction must be accomplished by "The *disposal or elimination* of or redesign to eliminate industrial waste and the use of treatment works for industrial waste as defined in ORS 468B.005."

ORS 468.155 Definitions for ORS 468.155 to 468.190 and 468.962

Such prevention, control or reduction required by this subsection shall be accomplished by the disposal or elimination of or redesign to eliminate industrial waste and the use of treatment works for industrial waste as defined in ORS 468A.005;

ORS 468B.005 provides the following pertinent definitions.

Industrial waste means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

Treatment works means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

Wastes means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive or other substances that will or may cause pollution or tend to cause pollution of any waters of the state.

Water pollution means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

Eligibility

OAR 340-016-0060(4) Eligibility

Eligible Activities. The facility shall prevent, reduce, control, or eliminate industrial waste. The facility shall dispose of, eliminate or be redesigned to eliminate industrial waste and the use of treatment works for industrial wastewater as defined in ORS 468B.005.



State of Oregon
Department of
Environmental
Quality

Tax Credit Review Report

Pollution Control Facility: Water

Final Certification

ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0080

Applicant Identification

Mallorie's Dairy, Inc.
PO Box 720
Silverton, OR 97381

Organized as: C Corp
Taxpayer ID: 93-0547316

Technical Information

Mallorie's Dairy, Inc. owns over 400 crop acres and houses about 2,100 cows at its Silverton location. The dairy milks about 1,500 cows. The applicant claims a three-part manure handling system:

1. It consists of a retaining wall to contain stored manure from five dry-cow barns
2. A blacktop area to prevent manure and bedding materials from contaminating soil and surface water; and
3. A sump pit and pump to handle all contaminated water from the manure storage area

The bunker and paved area slope toward the sump pit, and a pipeline connects the sump to an existing lagoon. The applicant composts and recycles the manure/sawdust mixture as bedding in the milk cow barns.

Director's Recommendation

Approve Application No.6934

Applicant: **Mallorie's Dairy, Inc.**

Certification of:

Facility Cost		\$78,487
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		<u>\$27,470</u>

Certificate Period: 10 years

Facility Identification

Mallorie's Dairy, Inc.
6331 Brush Creek Dairy
Silverton, OR 97381

The certificate will identify the facility as:

A manure handling facility that includes 35,000 square feet of blacktop, a 120 foot by 6 foot bunker wall, a 10 foot by 30 foot by 8 foot sump pit, pump, 180 feet of 6 inch plastic pipe and 345 feet of 4 inch plastic pipe

Taxpayer Allowed CreditORS 315.304(4) Criteria

The taxpayer who is allowed the credit must be:

- a. The owner, including a contract purchaser, of the trade or business that utilizes Oregon property requiring a pollution control facility to prevent or minimize pollution; or
- b. A person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or utilizes such property.

Applied to this Application

DEQ will report the following information to the Department of Revenue:

Mallorie's Dairy, Inc. **owns** the business that uses the Oregon property requiring the pollution control.

Eligibility**Timely Filing** Criteria2001 Edition ORS
468.165(6)

If the applicant completed constructing the facility on or after January 1, 2002, the applicant must submit the application within one year after the construction completion date. The final application, however, is not valid if the applicant submits the application before they complete construction or before they place the facility into service.

Applied to this Application

The applicant **timely filed** the application within the one-year filing requirement. They completed construction on 12/28/2004 and submitted the application on 2/24/2005. The applicant submitted the application after they completed construction and placed the facility into service on 12/30/2004.

Purpose: Required CriteriaORS 468.155
(1)(a)(A)
OAR 340-016-
0060(2)(a)

The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ or federal Environmental Protection Agency (EPA) to prevent, reduce, or control water pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

Water Pollution means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof. ORS 468B.005

Applied to this Application

The dairy operates under an Oregon Confined Animal Feeding Operation (CAFO) General Permit. The permit conditions state that the production area shall operate with a zero discharge effluent limit guidelines (ELG.) Mallorie's Dairy, Inc.'s manure handling system is consistent with the Oregon Department of Agriculture's guidance to construct and operate the dairy production facility so that it achieves the zero discharge condition to eliminate surface and ground water pollution and manage manure properly.

The animals in the dry barns generate about 3,000 tons of waste and use about 1,000 tons of bedding material a year. The applicant pushed this material onto bare-ground storage areas totaling about one acre. Assuming an annual rainfall of 36 inches, an estimated one million gallons of water entered the storage area annually. The applicant directed the runoff to an earthen ditch and then pumped it through a hose that crossed a creek to the lagoon. When the trench overflowed its boundaries or the cows damaged the hose, the waste could contaminate the stream that flowed into Pudding Creek.

Method	<u>Criteria</u>
ORS 468.155 (1)(b)(A)	The prevention, control, or reduction must be accomplished by disposal or elimination of industrial wastewater and the use of a treatment works for industrial waste as defined in ORS 468B.005.

Industrial waste means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

Treatment works means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

Applied to this Application

Manure **meets the definition** of industrial waste. The manure handling system meets the definition of treatment works, because it contains animal waste and prevents it from contaminating soil, groundwater, and surfacewater.

Exclusions	<u>Criteria</u>
ORS 468.155 (3) OAR 340-016- 070(3)	The regulations provide a list of over 40 items excluded from the definition of a Pollution Control Facility. Items that do not meet the definition are ineligible for certification.

Applied to this Application

There are **no exclusions**.

Replacement	<u>Criteria</u>
ORS 468.155 (3)(e)	The replacement or reconstruction of all or part of a facility that the State of Oregon previously certified as a pollution control facility under ORS 468.170 is not eligible for the tax credit with two exceptions. The applicant replaced the facility:

- a. due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or
- b. before the end of its useful life.

Applied to this Application

The State of Oregon has not issued any certificates to the applicant at this site. The claimed facility is **not a replacement** facility.

Maximum Credit
ORS 468.173(3)(f)

Criteria

The maximum tax credit is 35% if the applicant submitted the application between January 1, 2002 and December 31, 2008, inclusively, and the certified cost does not exceed \$200,000.

Applied to this Application

The maximum tax credit is **35%** because the applicant submitted the application on 2/24/2005, and the certified facility cost is \$78,487.

Facility Cost

Subtractions

OAR 340-016-0070(1)

Criteria

The applicant must provide documents that substantiate the claimed facility cost. The claimed cost may not include:

- a) the salvage value of a pre-existing facility if the applicant is replacing a facility;
- b) the amount of any government grants received to pay part of the facility cost;
- c) the present value of any other state tax credits for which the investment is eligible; and
- d) ineligible costs as set forth in OAR 340-016-0070(3).

Applied to this Application

There are **no subtractions**.

Cost Certification

ORS 468.170(1)

Criteria

The certified cost is limited to the actual cost of the claimed facility. The certified cost may not exceed the taxpayer's own cash investment in the facility or portion of the facility.

Applied to this Application

Invoices substantiated the eligible facility cost and show that the cost represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion	Claimed
<i>Subtractions</i>	Claimed	\$78,487
		0
	Certified	\$78,487

Facility Cost Allocable to Pollution Control

Percentage	<u>Criteria</u>
Certification ORS 468.170(1)	The certified percentage allocable is limited to the portion of the actual facility cost that is properly allocable to the prevention, control, or reduction of solid waste, hazardous waste, or to recycling or appropriately disposing of used oil.

Applied to this Application

The Department determined that **100 percent** of the facility cost is allocable to pollution control as discussed in the *Percentage* subsections below.

Percentage	<u>Criteria</u>
ORS 468.190(1)	<p>The following factors establish the portion of costs properly allocable to pollution control for facilities that cost more than \$50,000.</p> <ol style="list-style-type: none"> a. The extent to which the applicant uses the facility to recover and convert waste products into a salable or usable commodity; b. The estimated annual percent return on the investment in the facility; c. Any alternative methods, equipment, and costs for achieving the same pollution control objective; d. Any related savings or increase in costs that occur or may occur as a result of the installation of the facility; and e. Any other relevant factors.

Applied to this Application

The applicant and the Department calculated the percentage of the facility cost allocable to pollution control according to the standard method in OAR 340-016-0075(3) while considering the factors a. through e. above and a **fifteen-year** useful life. The claimed facility does not produce a salable or useable commodity, and no revenue or cost savings are associated with it. The expenditures exceed the revenue; therefore, the resulting Facility ROI is less than the National ROI for 2004, the facility's construction completion year. The applicant did not investigate an alternative technology.

Compliance

Percentage	<u>Criteria</u>
ORS 468.180(1)	The Environmental Quality Commission may not issue a certificate unless the applicant constructed or installed the claimed facility in accordance with the applicable provisions of ORS 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 465, 466 and 467 and ORS chapters 468, 468A and 468B. This includes the rules and standards adopted to implement these provisions.

Applied to this Application

The applicant states the facility and site are in compliance with DEQ rules and statutes, and with EQC orders. The Department of Agriculture (ODA) has issued an **ODA CAFO General Permit No. 172211** to the applicant at this site.

Reviewer: Maggie Vandehey, DEQ
Wym Matthews, CAFO Program Manager, ODA



State of Oregon
Department of
Environmental
Quality

Tax Credit Review Report

Pollution Control Facility: Water - Amalgam Separator Final Certification

ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0080

Applicant Identification

Kenneth R. Winokur DMD PC
329 S. Main Street
Independence, OR 97351

Organized as: C Corp
Taxpayer ID: 93-0800241

Technical Information

Kenneth R. Winokur, DMD, PC, operates a dental practice that generates amalgam waste particles. The applicant installed an Amalgam Separator to remove amalgam waste particles from wastewater. A licensed hazardous waste collector disposes of the amalgam waste.

Taxpayer Allowed Credit

ORS 315.304(4) Criteria

The Department of Revenue determines if the taxpayer is allowed the credit if one of the following conditions apply. The taxpayer is the:

- a. Owner, including a contract purchaser, of the trade or business that uses the Oregon property requiring a pollution control facility to prevent or minimize pollution; or
- b. Person who, as a lessee or pursuant to an agreement, conducts the trade or business that operates or utilizes such property.

Director's Recommendation

Approve Application No.7033

Applicant: **Kenneth R. Winokur, DMD PC**

Certification of:

Facility Cost		\$ 757
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		<u>\$ 265</u>

Certificate Period: 1 year

Facility Identification

Same as the applicant's address.

The certificate will identify the facility as:

One – Amalgam Separator, a stainless steel tank, manufactured by Robert Lloyd Sheet Metal, Inc.

Applied to this Application

DEQ will report the following information to the Department of Revenue: Kenneth R. Winokur, DMD, PC, **owns** the business that uses the Oregon property requiring the pollution control.

Eligibility**Timely Filing**

2001 Edition ORS
468.165(6)

Criteria

The applicant must submit the final application after completing construction of the facility and placing it into service. If the applicant completed constructing the facility on or after January 1, 2002, the applicant must submit the application within one year after the construction completion date.

Applied to this Application

The applicant **timely filed** the application. The applicant completed construction or installation of the claimed facility on **11/4/2004** and filed the application on **6/22/2005**. The applicant filed the application within the one-year filing requirement. The applicant also submitted the application after completing construction and placing the facility into service on 11/4/2004.

Purpose: Voluntary

ORS 468.155
(1)(a)(B)
OAR 340-016-
0060(2)(a)

Criteria

The sole purpose, meaning the exclusive purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of water pollution.

Pollution or water pollution means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

Applied to this Application

The amalgam separator prevents a substantial quantity of amalgam from discharging to the sanitary sewer. **Amalgam contains mercury** and is an alloy of silver, tin and copper. If the dental practice does not remove the amalgam from the wastewater, it could contaminate rivers and streams and may be absorbed by fish and their predators. The primary environmental route of **human exposure to mercury is from eating fish.**

Method

ORS 468.155
(1)(b)(E)

Criteria

The prevention, control, or reduction must be accomplished by the treatment, substantial reduction, or elimination of or redesign to treat, substantially reduce or eliminate hazardous waste as defined in ORS 466.005.

Industrial waste means any liquid, gaseous, radioactive or solid waste

substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

Treatment works means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

Applied to this Application

Mercury **meets the definition** of industrial wastewater, and amalgam separators meet the definition of treatment works in ORS 468B.005.

Maximum Credit Criteria

ORS 468.173(f) The maximum tax credit is 35 percent if the applicant submitted the application between January 1, 2002, and December 31, 2008, inclusively, and the certified facility cost does not exceed \$200,000.

Applied to this Application

The maximum tax credit is **35 percent** because the applicant submitted the application on 6/22/2005, and the certified facility cost does not exceed \$200,000.

Facility Cost

Subtractions Criteria

OAR 340-016-0070(1) The applicant must provide documents that substantiate the claimed facility cost. The claimed cost may not include:

- a) the salvage value of a pre-existing facility if the applicant is replacing a facility;
- b) the amount of any government grants received to pay part of the facility cost;
- c) the present value of any other state tax credits for which the investment is eligible; and
- d) ineligible costs as set forth in OAR 340-016-0070(3).

Applied to this Application

There are **no subtractions**.

Cost Certification Criteria

ORS 468.170(1) The certified cost is limited to the actual cost of the claimed facility. The certified cost may not exceed the taxpayer's own cash investment in the facility or portion of the facility.

Applied to this Application

Invoices substantiated the eligible facility cost. The cost documentation indicates that the cost represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion	Claimed
Subtractions	Claimed	\$757
		0
	Certified	\$757

Facility Cost Allocable to Pollution Control

Percentage Certification
ORS 468.190 (3)

Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed \$50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost is **\$757**, and the applicant uses the facility **100 percent** of the time for pollution control.

Compliance

ORS 468.180(1)

Criteria

The Environmental Quality Commission may not issue a certificate unless the applicant constructed or installed the claimed facility in accordance with the applicable provisions of ORS 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 465, 466 and 467 and ORS chapters 468, 468A and 468B. This includes the rules and standards adopted to implement these provisions.

Applied to this Application

The applicant states the facility and site are in compliance with Department rules and statutes, and with EQC orders. DEQ has not issued any permits to the site.

Reviewer: Maggie Vandehey

Attachment C

Tax Expenditure Liability Report

When the Environmental Quality Commission issues a Pollution Control Facilities Tax Credit Certificate, the State of Oregon incurs a tax expenditure liability. The table in this attachment shows the maximum potential fiscal impact associated with the Commission's decision to certify the facilities presented in this staff report and for the current biennium.

This report shows the maximum amount of credit that each applicant may use to reduce their Oregon taxes in any one year if the Commission certifies their facility. The annual limitation is equal to the tax credit divided by the remaining useful life of the facility but no more than ten years. The remaining useful life is the useful life of the facility less the expired period between the date the applicant placed the facility into operation and the Commission approved certification.

Attachment C

Tax Expenditure Liability Report

05-07 Biennium

App #	Tax Credit	Placed in Operation	UL	Remaining UL	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
6990	\$11,842	2005	5	5	2,368	2,368	2,368	2,368	2,370	0	0	0	0	0
6991	\$68,110	2004	5	4	17,028	17,028	17,028	17,026	0	0	0	0	0	0
6992	\$46,026	2004	5	4	11,506	11,506	11,506	11,508	0	0	0	0	0	0
6993	\$16,654	2005	5	5	3,331	3,331	3,331	3,331	3,330	0	0	0	0	0
6994	\$14,089	2005	5	5	2,818	2,818	2,818	2,818	2,817	0	0	0	0	0
6997	\$7,931	2004	8	7	1,133	1,133	1,133	1,133	1,133	1,133	1,133	0	0	0
7000	\$2,487	2004	5	4	622	622	622	621	0	0	0	0	0	0
7001	\$44,660	2005	5	5	8,932	8,932	8,932	8,932	8,932	0	0	0	0	0
7002	\$9,685	2005	5	5	1,937	1,937	1,937	1,937	1,937	0	0	0	0	0
7003	\$40,936	2004	5	4	10,234	10,234	10,234	10,234	0	0	0	0	0	0
7044	\$22,761	2004	7	6	3,794	3,794	3,794	3,794	3,794	3,791	0	0	0	0
6934	\$27,470	2004	15	10	2,747	2,747	2,747	2,747	2,747	2,747	2,747	2,747	2,747	2,747
7033	\$265	2004	1	1	265	0	0	0	0	0	0	0	0	0
Oct '05	\$312,916				\$66,715	\$66,450	\$66,450	\$66,449	\$27,060	\$7,671	\$3,880	\$2,747	\$2,747	\$2,747
Wood Chippers														
Aug '05	\$55,012				\$21,311	\$13,861	\$10,802	\$7,011	\$2,027	\$0	\$0	\$0	\$0	\$0
Total	367,928				88,026	80,311	77,252	73,460	29,087	7,671	3,880	2,747	2,747	2,747

Attachment D

Certified Wood Chipper Report 4/06/05 – 8/31/05

On October 4, 2002, the Commission adopted OAR 340-016-0009. The rule delegates the Commission's authority to certify wood chippers for tax credit purposes to the Department. The Commission requested that the Department periodically provide a listing of the wood chipper certifications.

The Department presented the last Certified Wood Chipper Report to the EQC on June 24, 2005. The Department certified **24** wood chippers from the date of the last report to the date of this report for certificates issued from April 6, 2005, through August 31, 2005.

Reference

OAR 340-016-0009 Certification of wood chippers

For the purpose of subdelegating authority to approve and issue final certification of pollution control facilities under OAR 340-016-0080(2):

- 1) The Environmental Quality Commission authorizes the Director of the Department of Environmental Quality or the Director's delegate to certify wood chippers as provided in OAR 340-016-0060(4)(h)(C) if:
 - a) The Department determines the facility is otherwise eligible under OAR 340-016-0060; and
 - b) The claimed facility cost does not exceed \$50,000 as set forth in OAR 340-016-0075(1).
- 2) The Department may elect to defer certification of any facility to the Environmental Quality Commission.
- 3) If the Department determines the facility cost, the percentage of the facility cost allocable to pollution control, or the applicable percentage under ORS 468.173 is less than the applicant claimed on the application then the Department shall:
 - a) Notify the applicant in writing; and
 - b) Include a concise statement of the reasons for the proposed certification of a lesser amount or percentage; and
 - c) Include a statement advising the applicant of their rights under section (4).
- 4) Applicants that receive a notification under section (3) may elect to defer certification to the Environmental Quality Commission by notifying the Department within 30 days of the notification date.
- 5) The Department shall defer certification to the Environmental Quality Commission according to sections (2) and (4).
- 6) The Director or the Director's delegate shall certify facilities that otherwise qualify under this rule and have not been deferred according to sections (2) or (4).

Adopted 10-4-02; effective 11-01-02

Attachment D

Certified Wood Chippers

4/06/05 - 8/31/05

Action Date	App #	Applicant	Claimed	Certified	Difference	% Allocable	Maximum Percent	GF Liability
08-Aug-05	5928	Glenn Woods @ 50%, Mitch Gibson @ 50%	\$1,399	\$1,399	\$0	100%	50%	\$700
08-Aug-05	6921	Jean M. Hester	\$596	\$596	\$0	100%	35%	\$209
08-Aug-05	6977	Paul Nicholson	\$799	\$799	\$0	100%	35%	\$280
08-Aug-05	7021	Alan Nichols	\$4,500	\$4,500	\$0	100%	35%	\$1,575
08-Aug-05	7022	Everett Franklin Skinner	\$8,499	\$8,499	\$0	100%	35%	\$2,975
08-Aug-05	7023	Tim G. Brewer	\$28,958	\$28,958	\$0	100%	35%	\$10,135
08-Aug-05	7024	Dennis Lewis	\$1,550	\$1,550	\$0	100%	35%	\$543
08-Aug-05	7025	Kenneth J. Becker	\$1,799	\$1,799	\$0	100%	35%	\$630
08-Aug-05	7027	Timothy Beevers	\$1,595	\$1,595	\$0	100%	35%	\$558
08-Aug-05	7028	David Cruickshank	\$1,595	\$1,595	\$0	100%	35%	\$558
08-Aug-05	7029	Terry E. Low	\$2,599	\$2,599	\$0	100%	35%	\$910
08-Aug-05	7032	Julie E. Burns	\$2,250	\$2,250	\$0	100%	35%	\$788
08-Aug-05	7035	Glenn Felix	\$624	\$624	\$0	100%	35%	\$218
08-Aug-05	7037	Ken Steege	\$2,599	\$2,599	\$0	100%	35%	\$910
08-Aug-05	7038	Kenneth W. May	\$3,000	\$3,000	\$0	100%	35%	\$1,050
08-Aug-05	7039	Michael Engelstein	\$1,799	\$1,619	(\$180)	100%	35%	\$567
08-Aug-05	7040	Robert Plant	\$3,570	\$3,570	\$0	100%	35%	\$1,250
08-Aug-05	7041	Stephen T. Griffis	\$1,550	\$1,550	\$0	100%	35%	\$543
08-Aug-05	7042	Scott Lathrop	\$1,099	\$1,099	\$0	100%	35%	\$385
08-Aug-05	7050	Douglas County, Inc.	\$38,966	\$38,966	\$0	100%	35%	\$13,638
08-Aug-05	7052	David John Kruger	\$1,599	\$1,599	\$0	100%	35%	\$560
08-Aug-05	7056	Spring River Tree Service, Inc,	\$24,000	\$24,000	\$0	100%	35%	\$8,400
08-Aug-05	7057	S. Duane Ash	\$3,799	\$3,799	\$0	100%	35%	\$1,330
08-Aug-05	7058	Richard P. Toubeaux	\$18,000	\$18,000	\$0	100%	35%	\$6,300

24 certificates issued

Sum	\$156,744	\$156,564	\$55,012
Average	\$6,032	\$6,025	\$2,118
Minimum	\$596	\$596	\$209
Maximum	\$38,966	\$38,966	\$13,638