EQCMeeting1of2DOC20050623

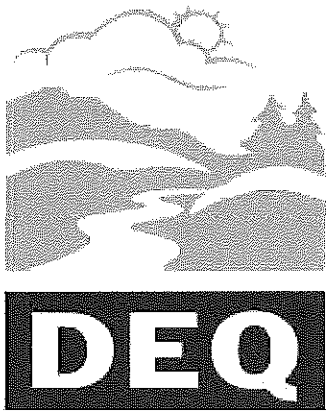
Part 1 of 2

OREGON

ENVIRONMENTAL QUALITY

COMMISSION MEETING

MATERIALS 06/23/2005



State of Oregon
Department of Environmental Quality

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

Larry Alexander
Name (Please Print Clearly)

32700 SE Leewood Rd #76 Boring, Or 97009
Address

Big Valley Woods Tenants Assn.
Affiliation

Agenda Item J or
Topic of Presentation Comments & objections

Please limit comments to five minutes

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

Michael Connors - Davis Wright Tremaine
Name (Please Print Clearly)

1300 SW Fifth Ave. Portland OR 97201
Address

Big Valley Woods
Affiliation

Agenda Item J or
Topic of Presentation Big Valley Woods - WPCF permit

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Rep Gordon S. Anderson
Name (Please Print Clearly)

900 Court St. NE H-284 Salem, OR 97301
Address

House of Representatives
Affiliation

Agenda Item _____ or
Topic of Presentation Placer Mining Permit 7:00PM

Please limit comments to five minutes

Oregon Environmental Quality Commission

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JIM FOLEY
Name (Please Print Clearly)

15961 WOODCHIP LN.
Address

LA PINE, OR.
Affiliation NATIONAL LAND RIGHTS LEAGUE

Agenda Item _____ or
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JOHN McGEE
Name (Please Print Clearly)

276 NW HICKORY ST, ALBANY OR 97321
Address

BIG VALLEY WOODS (K&D ENGINEERING)
Affiliation

Agenda Item J or
Topic of Presentation SUPPORT

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Oregon Environmental Quality Commission

Public Forum
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Steven Wise
Name (Please Print Clearly)

32700 SE Lacamas Drive / Boring
Address

Big Valley Woods
Affiliation

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Dave Kelsea
Name (Please Print Clearly)

4159 - D' Market St
Address

Father - Goldminer - Citizen
Affiliation

Agenda Item _____ or
Topic of Presentation 700 pm - Placer Mining

Please limit comments to five minutes

Oregon Environmental Quality Commission

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Request to Present Information

Butch Wilson
Name (Please Print Clearly)

13516 181 Ave SE Renton WA 98059-7106
Address

Small Scale Prospector
Affiliation

Agenda Item _____ or
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Kathleen Feehan
Name (Please Print Clearly)

PO Box 638
Address

Confed. Tribes of the Umatilla Indian Reservation
Affiliation

Agenda Item _____ or
Topic of Presentation OR Water Quality Criteria for toxics - fish consumption rate

Please limit comments to five minutes

Oregon Environmental Quality Commission

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BRUCE BEATTY
Name (Please Print Clearly)

4602 ALAMEDA AVE WEST - UNIVERSITY PLACE, WA 98466
Address

Self
Affiliation

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Oregon Renewable Energy Action Plan

"We can make Oregon the national leader in renewable energy and renewable product manufacturing. .... Development of renewable energy will lessen our reliance on fossil fuels, protect Oregon's clean air and create jobs."
Governor Kulongoski, 2003

1. Introduction

Promoting a diversity of renewable energy generating resources in Oregon is good energy policy for a state that has an electricity system heavily dependent on hydropower and increasingly dependent on fossil fuels. Because some renewable energy fuels are freely accessible and others are not subject to fossil fuel price swings, they help stabilize electric rates. They contribute to a healthy electric power infrastructure. Similarly, developing a biofuels industry in Oregon will help reduce our dependence on petroleum for transportation. As importantly, developing the state's renewable energy resources, related manufacturing and research and development presents a huge economic opportunity, particularly in rural parts of the state where economic development can be most challenging. Investments stay in Oregon, creating jobs and growing a "second crop" for farmers, ranchers and forest landowners. Finally, renewable energy is an investment in the environment by displacing the use of fossil fuel generation and avoiding numerous pollutants and global warming gases.

"It is a fairly rare initiative that is good policy, good economic development, and good for the environment, but renewable energy development is that rare gem."[1]

Oregon has long been one of the nation's leaders in encouraging renewable energy resources. For example, the state provides tax credits and low-interest loans for all types of renewable resource projects through the Oregon Department of Energy. The Energy Trust of Oregon uses public purpose charge funds from Portland General Electric (PGE) and Pacific Power customers to achieve a goal of renewable sources supplying 10 percent of the state's electric power by 2012. Many utilities in the state offer consumers "green power" options to support development of renewable resources. PGE ranks second in the country in sales for green power options; PacifiCorp ranks fourth. More than one million Oregon households and businesses regularly receive information on the power sources, environmental impacts and costs of generation from renewable energy sources versus fossil fuels. The Bonneville Power Administration (BPA) and the consumer owned utilities offer renewable incentives through the Conservation and Renewable Discount program. The Oregon University System, with utility funding, has done solar and wind resource assessment for decades, with all data publicly available.

[1] Quote from comments on the first draft.

Among the benefits of renewable energy for the state:

- A net increase of 1,250 new jobs with each $100 million investment in renewable energy resources
- Additions to the rural tax base and opportunities for local economic development.
- Income diversification in rural areas, which helps preserve family farms and ranches.
- Using forest residues to produce energy can improve forest health, reduce wildfire risk and fire suppression costs, and reduce overall smoke emissions from forestland burning.
- Clean transportation fuels can come from Oregon farm and forest products, instead of from out-of-state sources.
- Generating energy from waste gas at dairies, landfills and sewage treatment plants can reduce environmental liabilities and provide another revenue source for businesses and communities.
- Renewable resources help insulate Oregonians from volatile fossil-fuel prices.
- Using renewable energy resources reduces air pollution, thereby reducing health care costs and limiting the impact of likely stricter federal emission standards in the future.
- A healthy environment helps attract and retain businesses and is also very important to the tourist industry.

Oregon is already making use of renewable technologies including hydro, wind, direct use of geothermal, biomass, and solar. But it can and must do better. By building on these achievements with the actions as outlined in this Renewable Energy Action Plan (the Plan), Oregon will continue to be a leader on renewable energy policy and will meet a large fraction of its energy needs with new renewables by the year 2025. The Plan also will play a central role in furthering the Governor's initiatives on sustainability and global warming. The Plan complements the state's energy efficiency programs.

2. Driving forces behind the Renewable Energy Action Plan

This process was initiated under Governor Kulongoski's leadership. He has recognized the importance of developing energy efficiency and renewable energy resources in furthering economic development. There is growing evidence that oil and natural gas supplies are becoming more constrained and expensive for the long-term. It is recognized that investments in efficiency and renewable resources have significant environmental and economic benefits. As utilities plan additional capacity, an opportunity exists for growth in renewable resources.

Oregon has a long history of legislative direction supporting energy efficiency and renewable resources development. Oregon Revised Statute 469.010, adopted three decades ago, states:

> 1) Continued growth in demand for nonrenewable energy forms poses a serious and immediate, as well as future, problem. It is essential that future generations not be left a legacy of vanished or depleted resources, resulting in massive environmental, social and financial impact.

2) It is the goal of Oregon to promote the efficient use of energy resources and to develop permanently sustainable energy resources. The need exists for comprehensive state leadership in energy production, distribution and utilization. It is, therefore, the policy of Oregon:

(a) That development and use of a diverse array of permanently sustainable energy resources be encouraged utilizing to the highest degree possible the private sector of our free enterprise system.

(b) That through state government example and other effective communications, energy conservation and elimination of wasteful and uneconomical uses of energy and materials be promoted. This conservation must include, but not be limited to, resource recovery and materials recycling.

(c) That the basic human needs of every citizen, present and future, shall be given priority in the allocation of energy resources, commensurate with perpetuation of a free and productive economy with special attention to the preservation and enhancement of environmental quality.

(d) That state government assist every citizen and industry in adjusting to a diminished availability of energy.

(e) That energy-efficient modes of transportation for people and goods shall be encouraged, while energy-inefficient modes of transportation shall be discouraged.

(f) That cost-effectiveness be considered in state agency decision-making relating to energy sources, facilities or conservation, and that cost-effectiveness be considered in all agency decision-making relating to energy facilities.

(g) That state government shall provide a source of impartial and objective information in order that this energy policy may be enhanced. [1975 c.606 §1; 1979 c.723 §1]

3. The Benefits of Renewable Energy Resources

Risk Mitigation

Fossil fuels pose significant risks when considering the availability and price.

Oregon is vulnerable to oil price spikes and shortages. Oregonians spent $4.1 billion on oil products in 2000. The vast majority of this money left the state. If oil prices doubled it would have a severe impact on the state.

Natural gas prices have increased significantly in the last few years. Oregonians spent 50 percent more per British thermal unit (Btu) to heat their homes in 2002 than they did in 1998. Oregonians spent $1.1 billion on natural gas in 2000, not including gas used in power plants. Natural gas provides 15 percent of Oregon's electric power, but this percentage is growing. As with oil, the vast majority of this money leaves the state. New supplies are proving to cost as much or more than current supplies.

In 2002, Oregonians spent $2.9 billion on electricity. Oregon's economy is still recovering from a widespread economic downturn that began in the 2000-2001 timeframe. As loads grow, there will be continued pressure on rates because new resources – including renewable resources – are more expensive than existing ones.

Readily available energy at an affordable price is essential for the manufacturing, agricultural, transportation, retail, and indeed all sectors of Oregon's economy. It is prudent that we diversify our investments and allocate a greater portion to renewable resources. By focusing our efforts on renewable energy markets, Oregon will better protect itself from the volatility of the wholesale electricity and natural gas markets. It is essential that we act now to lay the foundation for accelerated renewable energy development that will sustain Oregon's progress.

Developing renewable resources reduces major health risks through reduced air, land, and water pollution. Adverse effects of global warming on weather and climate can be mitigated by reduced CO_2 emissions.

Economic Development and Job Creation

Oregonians expect their basic needs to be met. They expect the State of Oregon to plan for and develop an environment that produces social and economic benefits that meet current and future needs, while preserving and restoring the health of the natural environment.

Investments in renewable energy result in a *net* increase in jobs. For every $100 million in investments in renewable energy, about 1,250 full time equivalent jobs are created. Furthermore, the *net* increase in economic output (the value of the production by the industries involved), wages, business and other income total almost $200 million. In addition, the increase in state and local taxes is about $1 million.[2,3]

Based on these data, initiatives as outlined in this document could lead to an investment of $300 million or more by the end of 2006, which would result in about a 3,700 net job increase. This is a significant number of new family-wage jobs in the agricultural and forestry segments of our economy, as well as other businesses.

There are several additional advantages of new renewables electric generating facilities. Some of these advantages are the result of renewables' capital intensiveness. For example, the

[2] Based on Economic Impact Analysis of Energy Trust of Oregon Program Activities, Final Report, by ECONorthwest, Portland, April 2003. It is important to emphasize that these are *net* benefits because they were calculated relative to the case where ratepayers, following their normal spending patterns, spent an equivalent amount of money. If a comparison were made between investing in renewable energy projects within Oregon versus with making the same investment outside the state, then the benefits from the investments would be much greater. Accordingly, they are conservative estimates.

[3] See also "Assessing the Economic Development of Wind Power", Northwest Economic Associates, February 2002. Prepared for the National Wind Coordinating Committee. This study includes specific data for Morrow and Umatilla counties and the Vancycle wind farm.

property tax benefits of wind energy development have a high net value to the community because the wind energy activity in turn consumes few government services.

Recent studies indicate that by making investments in public/private renewable energy partnerships and providing incentives for the renewable energy sector, the *net bill* to American consumers may be *lowered* because an increased use of renewable energy will stem the rise of natural gas prices[4].

The development of renewable resources can often affect land use in a positive way. Biogas generation on dairy farms solves the problem of manure disposal and associated water pollution. Biomass recovery for forest health can improve air and water quality by reducing wildfires resulting from secondary forest biomass burdens. Wind projects are commonly done on farming and grazing land, and improvements are made to pre-existing roads which farmers and ranchers use for property maintenance and agricultural operations.

Environmental Benefits

Renewable energy systems have far less impact on the environment than those systems that rely on fossil fuels and nuclear power. Reducing the environmental impact of energy use helps preserve Oregon's natural resources and enhance Oregonians' quality of life.

In addition to the obvious environmental benefits, such as improved air and water quality, we can reduce the health risks associated with pollution, minimize the impact of future federal mandates on air and water quality standards, bolster tourism and recreation, and grow Oregon's economy.

Oregon's renewable energy policy allows no backsliding on important siting standards. All new large-scale energy facilities in Oregon, including those using renewable resources, must meet siting standards that protect the public health and safety, and the environmental protection policies of the state.

4. . Goals and Initiatives

The Plan's goal is to encourage and accelerate the sustainable production of energy from renewable sources, stimulate economic development, particularly in rural parts of the state, and improve the environmental future of the state. The Plan intends to demonstrate a variety of technologies for tapping renewable resources, and to help remove barriers to renewable resource development.

[4] According to a recent study released today by the Union of Concerned Scientists, a national renewable energy portfolio standard (RPS) of 20 percent by 2020 would save families and businesses $49 billion in lower electricity and gas bills. More than 355,000 jobs would be created if the United States obtained 20 percent of its electricity from wind, solar and other renewable energy sources

This section articulates both long term and short-term goals, followed by potential legislative initiatives, coordination initiatives by the Governor's Office and an estimate of the fiscal impact for the next biennium. Section 4 lists the actions that will benefit renewable energy development across sectors, and section 5 lists sector-specific action items.

Long Term Goals: 2007 - 2025

Electricity Generation

1. New - post 1999 - renewable generation will meet 10 percent of Oregon's total load by 2015, which is roughly about 1 percent growth in renewable generation per year. This will increase to or exceed 25 percent of the load by 2025.[5]
2. Twenty five percent of state government's total electricity needs will be met by new renewable energy sources by 2010 and 100 percent by 2025.[6]

Transportation Fuels

1. All diesel fuel sold in Oregon will contain 5 percent biodiesel (B-5) by 2010, growing to 20 percent (B-20) by 2025. All biodiesel will meet applicable ASTM (American Society for Testing and Minerals) standards.
2. All standard gasoline sold in Oregon will contain 10 percent ethanol by 2010.
3. Five percent of all gasoline sold in Oregon will be an E-85 blend of ethanol and gasoline (85 percent ethanol, 15 percent gasoline) by the year 2015, growing to 15 percent by 2025.
4. One hundred percent of the diesel used by state government's fleet vehicles will be B-20 by 2010.
5. Ten percent of the gasoline used by state government's fleet vehicles will be E-85 by 2010. This percentage will grow to 25 percent by 2025.

Short Term Goals, to be achieved by the end of 2006

Electricity Generation

1. Three hundred megawatts of new wind energy resources will be developed[7], of which 10 percent will be from community or locally owned wind energy projects.
2. Find *and implement effective* solutions[8] to the transmission capacity bottleneck(s) between eastern and western Oregon to provide access from renewable and other resources in eastern Oregon to load centers.[9]

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[5] Currently, hydro meets about 44% of load, wind and geothermal 1%, biomass and municipal solid waste 3%. These are pre-1999 resources except for some wind. Sites of new renewables do not have to be within Oregon's borders.

[6] This goal is dependent on funding. See discussion under Purchase of Renewable Resources by State Gov't.

[7] PGE's 2002 Integrated Resource Plan alone targets approximately 200 MW of wind resources by the end of 2006.

[8] Non-wire solutions can be implemented in a relatively short time frame.

[9] Delivery of renewable resource energy from locations in eastern Oregon to the Willamette Valley will also require additional north-to-south transmission capacity on BPA's grid.

3. All utilities in Oregon will offer customers a "stable-price" renewable energy product.[10]
4. Five hundred additional solar photovoltaic electric systems will be installed in the years 2005 and 2006 for a total of about one megawatt.
5. Five megawatts of new biogas generation facilities will be obtained from wastewater treatment, dairies and landfills.
6. Twenty-five megawatts of new biomass-fueled electric generation will be built or under construction, in addition to the aforementioned 5 megawatts of biogas facilities.
7. Twenty-five megawatts of new combined heat and power generation systems that are at least 10% better than the State standard for siting exemption will be built or under construction.
8. Two hundred 5-kilowatt fuel cells will be installed.[11]
9. Twenty megawatts or more geothermal electric generation will be in the process of being developed.
10. One to four megawatts of new environmentally sustainable hydroelectric generation will be on line or in the process of being developed (primarily irrigation piping channels).
11. An assessment of the feasibility of a renewable portfolio standard (RPS) for the state will be completed.

Transportation Fuels

1. Diesel sold in Oregon will contain 2 percent biodiesel (on average). All biodiesel will meet applicable ASTM standards.
2. Fifteen million gallons of biodiesel will be produced annually from Oregon crops or products and waste oils collected in Oregon.
3. Gasoline sold in Oregon will contain 2 percent ethanol (on average).
4. One hundred million gallons of ethanol will be produced annually.

State Government

1. Ten percent of state government's total electricity needs will be met by renewable energy sources (through green tag or "stable price" product purchases and/or direct development of renewable energy by state government).[12]
2. Twenty-five percent of the diesel used by state government's fleet vehicles will be B-20.
3. Seventy-five percent of the gasoline used by state government's fleet vehicles will be E-10.
4. A streamlined one-stop leasing process for state lands to develop renewable energy resources will be in effect.

[10] Currently, only one Oregon utility offers such an option.
[11] Some fuel cells will use renewable fuels but others will used fossil fuels to reach this goal.
[12] See discussion under Purchase of Renewable Resources by State Government

Demonstration Projects

To highlight the benefits of renewable electricity generation and fuels, the following projects will be completed:

1. Five public or private energy-efficient buildings that make use of passive solar design features.
2. One biodiesel plant using mustard, other agricultural products or "waste" products.
3. One ethanol plant.
4. Projects that generate electricity either singularly or through any combination of the sun, wind, geothermal sources, irrigation district micro-hydro, biomass burning, on-farm dairy waste digesters, municipal anaerobic digesters, waste heat recovery systems and renewably fueled fuel cells.
5. Five sites that directly use geothermal energy.
6. One industrial park or renewable energy cluster that integrates renewable energy and sustainability related products or services.

Anticipated Legislative Initiatives in 2005

1. Make changes in the Small Energy Loan Program to allow more renewable energy projects to be financed.
2. Repeal the provision in state law that creates a conflict for renewable energy projects between the state Business Energy Tax Credit (BETC) and the federal production tax credit.
3. Revise the Residential Energy Tax Credits (RETC) for solar electric systems and fuel cells to be applied over several years (up to $6,000 per system).
4. Revise the Residential Energy Tax Credit (RETC) 316.116 Statute to explicitly state that resident individuals can receive multiple tax credits in the same year for alternative energy devices, alternative fuel vehicles or alternative fuel devices.
5. Extend the 50 percent property tax exemption for ethanol production facilities until the close of the 2016 fiscal year and expand this exemption to biodiesel facilities and to grain storage and oil crushing facilities that are constructed to store harvested oil-seed crops or to extract the oil from such crops, if at least 75 percent of the crushed oil feedstock is used in the production of biodiesel that meets applicable ASTM standards.
6. Introduce a production-based tax credit for biodiesel and ethanol produced in Oregon to make Oregon-produced biofuel competitive with biofuel imports from the Midwest states. The tax credit would be phased-in and be subject to production caps per year per production facility. Phase 2 of the production credit, beginning in 2010, would maintain the rate and the cap levels of the credit but would require that the biofuel eligible for the tax credit be produced from feedstock grown or produced in Oregon.
7. Introduce a ban on MTBE[13] in the state.

[13] MTBE - methyl tertiary-butyl ether. It is one of a group of chemicals commonly known as "oxygenates" because they raise the oxygen content of gasoline. Oxygen helps gasoline burn more completely, reducing harmful tailpipe emissions from motor vehicles. The US Environmental Protection Agency's Office of Water has concluded that available data are not adequate to estimate potential health risks of MTBE at low exposure levels

8. Allow biomass facilities to qualify for net metering and allow the Oregon Public Utility Commission to adopt rules to increase the 25-kilowatt limit on a net metering facility for customers of Portland General Electric and Pacific Power.
9. Authorize state agencies to develop renewable energy projects on state property where renewable energy resources, such as remote wind sites or geothermal, may not otherwise be developed by private organizations.
10. Allow state agencies to enter into long-term power purchase contracts for new, in-state, renewable electricity generation. Make budget provisions allowing agencies to pay equivalent to a regional market standard price for carbon dioxide (CO_2) emission reductions.
11. Establish funds to: [14]
    - Collect wind characteristics data at ten sites throughout the state, and make those data publicly available, to help community and locally-owned wind farm developments as well as large scale wind farm development and wind energy integration with the grid.
    - Collect information on the geochemistry of wells and springs, and make those data publicly available, to assist the geothermal industry, state and federal agencies and research institutions in geothermal resource target evaluation in Oregon.
    - Supplement the utilities' sponsorship of the University of Oregon's solar resource assessment work.
    - Perform feasibility studies of renewable projects.

Key Coordination Initiatives to be taken by the Governor's Office

1. Support a Renewable Energy Working Group to be coordinated through the Governor's Office and the Oregon Department of Energy to guide the **implementation** of this Plan.[15]
2. Coordinate this Plan with Western Governors' global warming and renewable energy efforts.
3. Play an active role in recognition of programs, projects (including the Governor's designation of specific demonstration projects as Oregon Solutions projects) or policies that help promote this Plan's objectives.

in drinking water but that the data support the conclusion that MTBE is a potential human carcinogen at high doses. Eleven states including California and Washington have banned its use as a fuel additive.

[14] Additional funding support will be sought from a number of sources, including USDOE and USDOA Farm Bill grants.

[15] This working group could delegate many of the action items to several smaller resource specific working groups like the Wind Working Group, but other implementation actions and policy considerations will require this higher level integrated approach.

Purchases of Renewable Energy Resources by State Government

The amount of renewable energy resources that state government purchases will depend on the funding level, source and which of the following three mechanisms the state uses to achieve these goals: green tags (or Tradable Renewable Certificates), bundled stable-price power purchases or investments in renewable resource projects. Direct investments in generating projects at state facilities, rather than simply buying green tags or Tradable Renewable Certificates, offer the potential of long-term bill savings for the state, added benefits from distributed generation, and higher value in terms of demonstration and state leadership. A number of state government sites are over 1 average megawatt (aMW) and would therefore qualify for direct access. This allows the state to select the type of renewable product it desires, while also gaining experience with direct access through the investor-owned utilities.

It would cost about $200,000 per year to buy green tags for 10 percent of state government's electricity needs as proposed for the 2005-2007 biennium.[16] Payments would go toward renewable resource projects in Oregon. A "stable- price" renewable resource product is an alternative that has the added benefit of fixing power costs over several years. However, only one Oregon utility offers such an option today. The state may want to enter a contract with an alternative electricity supplier for a term sufficient to acquire such a product, if available. Estimates of the costs of this option are not available at this time. Investments in renewable resources at state facilities could include solar electric systems on government buildings and wind turbines at government sites with favorable wind resources. The projects could meet load at the site, displacing the need for purchased power, or be sized to sell excess power to a utility or third party.

The Energy Trust could contribute toward these investments to the extent they benefit the PGE and Pacific Power customers (including state agencies) that provide the Trust's renewable resource funds.[17] Investments would be tied to increasing generating capacity from renewable resources in the state and demonstrating on-site generation.

5. General Renewable Resource Actions

The following actions will be taken to enhance and expand support for development of *all* renewable resources in Oregon. Actions supporting expansion of specific renewable resources follow.

[16] Assuming a cost of 0.5 cents/kWh for green tags.

[17] The Trust's contributions to state government renewable purchases would reduce the Trust investments in other renewable projects, however.

Actions:

1. The Governor's Office will:
   - Coordinate the legislative initiatives as outlined in section 3 of this Plan.
   - Support a **Renewable Energy Working Group** to oversee reaching the long and short term goals, and prepare regular progress reports to the Governor's Office and stakeholders. This group will consist of private sector citizens, renewable industry representatives, agricultural representatives, a governor's office representative, key state agencies, private and consumer-owned utilities, and others. The Oregon Department of Energy (ODOE) will provide staff support for this working group, coordinate the implementation of the action items outlined in this Plan and assist in the preparation of progress reports to the Governor's Office.

2. The Renewable Energy Working Group will consider to:
   - Set priorities on actions where Oregon has an advantage or need greater than other states, define the role of major stakeholders, and estimate the budget impact and other funds needed.
   - Assist in reaching the long and short-term goals of this Plan and coordinate the implementation of the action items outlined in this Plan.[18]
   - Work with the Oregon's congressional delegation to support a national renewable portfolio standard, as well as support a federal cap on CO_2 emissions or caps on the CO_2 emissions per kWh of load-serving entities (emissions portfolio standards).
   - Work with the Oregon's congressional delegation to make sure that the federal Production Tax Credit and the Renewable Energy Production Incentive are maintained.
   - Assess the feasibility and effectiveness of production-based incentives for electricity generated by small to medium scale renewable resource facilities.[19]
   - Assess the feasibility of a state Renewable Portfolio Standard and compare it with production-based incentives as to its effectiveness to encourage renewable energy development.
   - Work with the state's consumer and privately owned utilities, the Northwest Power and Conservation Council and Bonneville Power Administration (BPA) to develop a process and protocols for expediting interconnection requests and developing more distributed generation.
   - Work with Oregon's congressional delegation, BPA and consumer owned utilities to expand BPA's Conservation and Renewables Discount Program.

[18] This Renewable Energy Working group will refine this plan and further delineate the participants not just by departments but by functions as well (a Wind Working Group, Biomass Working Group, Solar Working Group, Geothermal, etc.).

[19] Production based incentives have been very successful in the Midwest and Europe. For examples of community wind projects in the Midwest, see http://www.windustry.com/community/default.htm#Projects.
For discussion of the European incentives sometimes called "feed laws" or "minimum renewable energy tariffs or rates", see http://www.energy.state.or.us/renew/Wind/WindPubs/feed_laws_Hvelplund.pdf.

- Work with BPA and consumer owned utilities to promote PURPA's[20] Qualifying Facilities using renewable resources, while avoiding financial harm to the utilities such as a reduction in a utility's "net requirements" (loss of a portion of a utility's long term allocation).
- Support research and demonstration projects that modernize the electric system by combining advanced telecommunications, information and control methods with the electricity infrastructure for more efficient (economically and environmentally) "smart" grid operation.
- Explore whether transmission constraints for community owned renewable energy projects could be overcome if: (1) a new or upgraded, privately owned transmission project were to be slightly increased in size, and (2) that this increase would be reserved for such community owned projects in exchange for a reduction in property taxes equal to the incremental costs for the transmission owner.
- Identify growing Oregon renewable energy businesses and assist them with expansion planning and workforce development.
- Help improve coordination and provide tools to attract new renewable energy businesses to build facilities in Oregon.
- Focus efforts to solidify the strength of a Brand Oregon renewable energy market for our technology services and commodities.
- Help develop a framework for valuation of environmental and other externalities.

3. The Oregon Department of Energy (ODOE) will:
   - Include in its Biennial Energy Plan a section that tracks the progress towards this Plan's goals.
   - Provide staff support for the Renewable Energy Working Group.
   - Continue to assist households, businesses, units of local government and others to invest in renewable energy resources through the state's energy tax credit and energy loan programs, in coordination with incentives offered by the Energy Trust and BPA.
   - Continue to support the state Energy Facility Siting Council's need to review an increasing number of applications for renewable resource power plants.
   - Manage the fund to finance feasibility studies of renewable projects, if such a fund is established.
   - Provide information on model siting standards and technical assistance to local governments, together with input from other stakeholders throughout the state, to help them plan for siting renewable resource facilities.
   - Work with the Oregon Department of Fish and Wildlife and the Department of Environmental Quality to acknowledge the clear environmental benefits of renewable energy (over fossil fuel alternatives) in siting renewable energy projects.

[20] PURPA: Public Utilities Regulatory Policies Act of 1978. Before PURPA, only utilities could own and operate electric generating plants. PURPA required utilities to buy power from independent companies that could produce power for less than what it would have cost for the utility to generate the power, called the "avoided cost".

- Work with the Oregon Public Utility Commission and the Building Codes Division to identify and adopt uniform technical standards, procedures and agreements for interconnecting generators, where the Federal Energy Regulatory Commission does not have jurisdiction.

4. The Oregon Economic and Community Development Department will:
   - Help develop a viable renewable energy industry "cluster" by working with key stakeholders in government, business, non-governmental organizations, higher education, and local communities.
   - Create financial incentives, support regulatory streamlining, provide technical assistance, and publicly recognize businesses and communities that implement energy conservation programs, purchase renewable energy, and adopt best practices.
   - Support research and education to further development of new technologies that leverage renewable energy sources.
   - Grow Oregon's economy by obtaining funds for the development of and facilitating the transfer of new technologies from Oregon's University System and Research and Development centers to private enterprise.
   - Encourage and support infrastructure projects that incorporate eco-friendly design and innovative technologies that use renewable energy resources and enhance livability.

5. The Department of Administrative Services will:
   - Report on the state's purchases of renewable energy resources on an annual basis.

6. The Oregon Public Utility Commission has investigations underway or may examine for the *investor-owned* utilities the following:
   - Standards to streamline the interconnection of small generators.[21]
   - Increasing the size of qualifying facilities eligible for standard purchase rates, a standard power purchase agreement with an extended contract length, and a standard method for determining avoided costs.
   - How distributed renewable and combined heat and power resources can help meet energy, capacity, distribution and transmission system needs at the lowest cost.
   - Backup service for renewable resources and other distributed generators to ensure that costs and benefits are properly reflected in rates and terms.
   - Ways to remove utilities' disincentives for accommodating independently owned renewable resources and combined heat and power resources.
   - Standard rates and terms for retail customers to use the distribution system to sell power to other customers and marketers.

[21] Generally less than 20 MW.

In addition, the Oregon Public Utility Commission will continue to work with its Portfolio Options Committee, the utilities and third-party providers to improve green power options for Oregonians and increase participation.

7. The Oregon Department of Agriculture will:
    - Assist, jointly with ODOE, in planning and conducting workshops and other educational activities to inform agricultural producers about renewable energy information, technologies, resources, and programs.
    - Assist, jointly with ODOE, agricultural producers in evaluating project feasibility and eligibility for federal energy grants, ODOE tax credits, and other resources for renewable energy projects. Assist growers in applying for these resources as appropriate to the project.

8. The Oregon Department of State Lands will:
    - In close cooperation with agencies such as Fish and Wildlife, Parks, Agriculture, Forestry, Land Conservation and Development, review administrative rules that guide the leasing of state-owned lands to determine whether a one-stop leasing process can be developed for the siting of renewable energy.
    - Consider the importance of renewable energy resources when revising its Asset Management Plan.

9. The Oregon Department of Consumer and Business Services' Building Codes Division will:
    - Provide education and training materials to local governments regarding renewable energy installations.
    - Update its code and standards to reflect the new technologies and developments in renewable energy installations.

10. The Oregon University System and Community Colleges will consider to:
    - Inventory all of the renewable resource and energy efficiency research, development and curricula.
    - Further develop higher education renewable resource research and development capabilities to help Oregon businesses gain a national and international leadership role in this market.
    - Establish and/or maintain educational standards that will produce future leaders in renewable resource systems integration and resource technologies.
    - Actively participate in renewable energy policy development and implementation.

11. The Oregon Solutions team will:
    - Designate renewable resource projects as priority demonstrations.
    - Provide developers with expedited access to state incentives and resources.
    - Facilitate streamlining through the Community Governance System.

6. Resource Specific Actions

Each resource segment, listed in alphabetical order below, briefly identifies the resource and technologies currently being used and lists the main perceived barriers. Actions are listed next.

Biofuels – Biodiesel and Biolubricants

Canola, rape seed, mustard, possibly soy and other crops, along with waste grease from the food service or processing industry, can be refined into oils that can be used as lubricants or converted to biodiesel fuel suitable for use in diesel engines. Many of these feedstocks can be grown in Oregon. Biodiesel can be blended in various ways, but generally comes in B-20 (20 percent biodiesel, 80 percent petroleum diesel) or B-100 (100 percent biodiesel) forms. Currently, suppliers are rapidly developing an Oregon customer base of public and commercial fleets.

The Oregon Department of Administrative Services began buying B-20 exclusively, which amounts to about 200,000 gallons per year. The total amount of B-20 used in 2003 in Oregon was about 700,000 gallons.

There is no market-pull mechanism in place with mandated goals to support a biodiesel production industry in Oregon. There is currently a lack of feedstock. A crushing plant is needed in Oregon to separate oils from crop feedstock. Consumer awareness is low for both biodiesel and biolubricants. Better incentives are needed to facilitate market penetration.

Probably the most important element of an Oregon Biodiesel Strategy - and the most complicated to implement - is the development of a local supply of inexpensive (e.g. mustard seed) feedstock. The key is identification of an oilseed that produces a high value meal product and a generous supply of low-value oil.

Actions:

1. The Renewable Energy Working Group will consider to:
    - Help form partnerships with growers, state agencies and interested investors for building a crushing plant to separate oils from crop feedstock.
    - Assist in the completion of a demonstration project where oil seed crops are grown as a healthy rotational crop, are crushed and refined on-site, and produce all of the farm's fuel.
    - Develop a program to support school districts that use B-20 biodiesel fuel in their entire school bus fleet. The program will include public information on the public health benefits of clean-burning, renewable biodiesel fuel.
    - Support work that focuses on the identification of an oilseed that produces a high value meal product and a generous supply of low-value oil.

2. The Oregon Department Agriculture will:
    - Work with Oregon State University to evaluate and disseminate information on production of bio-fuel crops for conversion to biodiesel and biolubricants.
    - Assist growers assess the feasibility of grower-owned processing facilities, and work with parties interested in biodiesel production on business plan evaluation, plant development and siting, and identifying potential funding sources (in coordination with the Oregon Economic and Community Development Department (OECDD), ODOE, and local communities).
    - Work with OECDD, ODOE and other appropriate entities to identify methods of branding and pump labeling for Oregon produced biodiesel to encourage consumer consumption of locally produced product.

3. The Oregon Department of Energy will:
    - Work with the BPA to evaluate the potential of using biodiesel in electric generators for rural/remote areas where transmission is a problem during peak hours.

4. The Department of Administrative Services will:
    - Manage its fleet fuel use so that it will meet the short and long-term goals for the use of biodiesel.

Biofuels - Ethanol

Ethanol is a renewable fuel currently distilled primarily from corn. In the future, ethanol will be produced from lignocellulosic feedstocks such as wood waste and agricultural residue, which are abundant in Oregon. Throughout North America, ethanol is used as a gasoline additive for a wide variety of purposes, including the reduction of exhaust pollutants that become precursors to ground level ozone. The ethanol content in gasoline can be as high as 15 percent without the need to modify standard engines. Slight modifications to a vehicle's fuel system have to be made to run on E-85 (85 percent ethanol). In Oregon, ethanol is the predominant oxygenate in the gasoline supply. In 2002, up to 60 million gallons of ethanol were used to oxygenate the 1.6 billion gallons of gasoline used by Oregonians. That ethanol, which accounts for up to 4 percent of Oregon's gasoline supply, was produced in the Midwest.

The summer nighttime temperatures in Oregon are not ideal for growing the high sugar corn or hard red wheat preferred by ethanol distillers. There are currently no distillers or refiners located in Oregon. Other Oregon biomass feedstocks such as barley or cellulosic wastes (grass straw or wheat stubble) can be used to make ethanol, but at higher cost.

There is no market-pull mechanism in place with mandated goals to increase the use of ethanol. Consumer awareness is low. Better incentives are needed to make ethanol plants using Oregon grown crops economically viable.

Actions:

1. The Renewable Energy Working Group will consider to:
    - Support Oregon university system's research on alcohol fuels produced from cellulosic materials.
    - Continue and enhance efforts to work with the national Governor's Ethanol Coalition.
    - Support policies and actions to promote government and private purchases of hybrid vehicles fueled with E-85.

2. The Oregon Department of Energy will:
    - Continue and enhance efforts to work with the national Governor's Ethanol Coalition.

3. The Department of Agriculture will:
    - Assist growers and cooperatives, in coordination with Oregon State University research and extension programs and agricultural organizations, in the development of biofuel crops for ethanol production, including varietal development, growing and harvesting practices, development of business plans, facilities for processing, siting, market development and promotion.

4. The Department of Forestry will:
    - Assist, jointly with ODOE, the forest products industry to get federal funds for biomass-to-ethanol development through demonstration of cellulose-to-glucose conversion.

5. The Department of Administrative Services will:
    - Make sure that its fleet fuel use will meet the short and long-term goals for the use of ethanol.

Biogas

Biogas facilities produce electricity and heat or steam from waste gas (methane) from landfills, sewage treatment plants and manure. Currently, three landfills tap waste methane gas to generate four megawatts of electricity and provide industrial fuel. In addition, 29 wastewater treatment plants use methane to generate three megawatts of electricity and provide heat for sewage treatment. Electricity is beginning to be generated using manure from dairy cows. For farmers, biogas is mostly a byproduct and other benefits are often the main reason for these projects.

Only the largest cities can afford landfill and waste treatment facility biogas projects. Lack of funding for feasibility studies and lack of fact sheets for best design practices for methane recovery systems have been identified as barriers.

Actions:

1. The Oregon Department of Energy will:
    - Identify the major remaining landfill and waste treatment facility sources of biogas and provide up-to-date "best practices" information to the owners of promising sites.[22]
    - Support efforts to reach the short-term goal of 5 MW of new biogas-fueled electricity production demonstration projects.

2. The Oregon Department of Agriculture will:
    - Assist livestock operations in assessing best design practices for methane recovery and related technologies.
    - Promote the development of methane production digesters - as economically feasible for producers - through industry association events, OSU Agricultural Extension Service and local economic development.
    - Support efforts to reach the short-term goal of 5 MW of biogas-fueled electricity production demonstration projects.

Biomass

Currently, there are biomass combustion boilers at more than fifty industrial sites in Oregon. These boilers supply heat and energy for industrial processes. The power generated at these facilities was about 108 megawatts in 2001.

New biomass energy markets may provide a way of disposing of otherwise problematic forest biomass residues from timber harvests, stand improvement activities, fuels treatments, and thinning in a cost-effective manner. Agricultural and urban biomass wastes (extracted from municipal solid wastes) can also be utilized as fuel for energy facilities.

The lack of certainty in biomass outputs and the high cost of gathering and transporting forest and other biomass to an energy conversion facility continue to be barriers to economic biomass energy development. However, investments in forest and other biomass conversion to energy will lead to multiple environmental, economic, and social benefits. These include:

- reduced wildfire risks to communities and wildfire suppression costs to taxpayers
- increased timber supplies
- improved forest health, water quality, wildlife habitat, and recreation areas
- reduced air pollution from wildfire and prescribed forest burning smoke
- extended landfill life with recovery of biomass
- reduced and avoided carbon dioxide emissions, and
- maintenance of family-wage jobs and a forest industry infrastructure in rural Oregon.

[22] In cooperation with the U.S. EPA's Landfill Methane Outreach Program (LMOP). This is a voluntary assistance and partnership program that promotes the use of landfill gas as a renewable, green energy source.

These benefits are not properly accounted for in the energy market place.

Although electric power is the most widely used end product from biomass, integrated bio-refineries offer another opportunity. These refineries can produce liquid fuels, high-value chemicals and materials, and electric power within the same facility. With proper encouragement, integrated facilities could gasify rather than combust their feed stocks and use the synthetic gas to offset the use of natural gas for power production, while also converting that same synthetic gas to liquid fuels and/or chemicals. Such facilities could also benefit the fuel cell industry, because fuel cells are a viable consumer of these fuels.

Biomass facilities may need a production-based tax credit in addition to the fuel cost reduction incentives to be economically viable. Such combined incentives would be a reflection of the full realm of societal benefits as outlined above.

Actions:

1. The Renewable Energy Working Group will consider to:
    - Help determine whether financial support (such as a per ton transportation incentive) for forest treatment projects is needed to move biomass feedstock from the forest to renewable energy plant sites. Particular attention should be paid to 1) existing facilities for which utility contracts expire, and 2) how the cost of such projects can be spread out over a larger geographic area than the local utility's service territory.
    - Help the formation of partnerships between private companies and consumer owned utilities to develop energy systems for local communities.
    - Support efforts to develop integrated bio-refineries that produce liquid fuels, high-value chemicals and materials, and electric power within the same facility.
    - Encourage the development and utilization of small energy efficient biomass heating and electrical systems for heating and providing power to institutions, state offices, schools, etc., especially in rural Oregon.
    - Help identify and address barriers to securing stable, long-term biomass supplies from federal forestlands.
    - Promote greater public awareness of the primary and secondary benefits of biomass energy production.
    - Support efforts to develop Material Recovery Facilities (MRF) to remove the biomass from municipal solid waste and convert the biomass into fuel.
    - Investigate the feasibility and desirability of a biomass Emission Reduction Credit (ERC) initiative to encourage development of a private market for trading of Biomass ERCs.

2. The Oregon Department of Energy (ODOE) will:
    - Reach out, jointly with the Oregon Department of Forestry (ODF), to local governments and biomass energy developers and assist them in locating potential facility site locations.

3. The Oregon Department of Forestry will:
    - Expand its ongoing, statewide Forest Assessment Project to include a comprehensive assessment of forest biomass supply and demand relationships.
    - Identify federal, state, and private forestlands where proximity and non-timber biomass production potential provide long-term opportunities for biomass recovery for energy generation.
    - Cooperate with biomass energy developers in locating potential facility site locations on Board of Forestry forestlands and, consistent with other management plans for these lands, work to develop expedited leasing processes for such sites.
    - Assist in the development of long-term forest health restoration contracting mechanisms with the USDA Forest Service and USDI Bureau of Land Management to assure affordable and predictable access to forest biomass on federal forestlands in regions surrounding biomass generation sites.
    - Assess, in cooperation with federal agencies, the sustainable level of biomass generation necessary to maintain healthy forests.
    - Promote congressionally approved pilot projects in Oregon where local communities with mature, successful histories of collaboration are empowered to demonstrate their stewardship of federal forestlands.
    - Promote active fuels and vegetation management, along with aggressive fire suppression on public and private forestlands, as key tools to produce biomass for energy generation and to manage forest health.
    - Promote alternatives to prescribed burning through the administration of the Department of Forestry Smoke Management Plan.
    - Monitor, jointly with ODOE, available federal funds for biomass projects and provide this information to stakeholders. Where needed, they will provide assistance with the application process for federal funds.
    - Work with federal agencies to promote forest biomass energy opportunities through administration of the National Fire Plan, the Healthy Forests Restoration Act and the Tribal Forest Protection Act.
    - Facilitate the use of the federal Environmental Quality Incentive Program to provide matching funds for forest fuel reduction projects that will provide feedstock for biomass energy plants.
    - Investigate the benefits of reduced and avoided carbon dioxide emissions from forest fuel reduction projects in conjunction with biomass energy generation.

4. The Oregon Economic and Community Development Department will:
    - Develop, jointly with the ODF, a comprehensive forest sector economic development strategy for Oregon that will encourage continued investment in

forestlands by public and private landowners and that promotes biomass energy production along with timber and non-timber forest products.
- Work with biomass developers to identify siting opportunities especially on sites of retired or abandoned wood processing facilities in rural communities.

5. The Department of State Lands will:
   - Cooperate with biomass energy developers in locating potential facility site locations on state lands where it can be accommodating taking into account the Department's Trust obligations and current lease commitments.

6. The Oregon University System and Community Colleges will consider to:
   - Research and identify Oregon's potential for bio-refinery industry. Identify opportunities where bio-refineries can produce liquid fuels, high-value chemicals and materials, and electric power within the same facility.

Combined Heat and Power Systems

The combined heat and power (CHP or cogeneration) form of distributed generation is about twice as energy efficient, and produces fewer pollutants than producing heat and power separately.[23] These systems capture the waste heat produced during generation for industrial processes or for heating and cooling. Although CHP systems typically use fossil fuels, they can also use renewable energy resources, which include wood residues hogged fuel, spent pulping liquor, food processing/agriculture anaerobic digester gases and waste byproducts, wastewater gas and other manufacturing byproducts. Due to these benefits, three states[24] have legally recognized waste heat recovery, regardless of primary fuel source, as a renewable resource eligible to satisfy renewable portfolio standards.

CHP sited at strategic locations also has the ability to provide reliability and power quality benefits through reduced strain and congestion of the transmission system, as well as through voltage support at the 'end of the line' in a transmission or distribution system.

Recovering waste heat does not require any burning of additional fuels. Some of the benefits of this technology are:
- Minimal environmental impact, as they are located on existing industrial sites.
- Low operating and maintenance requirements.
- Base load generation.

[23] Traditional power plants waste up to two-thirds of the fuel's energy value before it reaches customers, most of it waste heat. However, new power plants are nearly 50% efficient.
[24] Nevada, North Dakota and South Dakota.

The current CHP resource in Oregon consists of 41 projects in Oregon with 818 megawatts of electric generation capacity.[25] Natural gas turbines comprise 15 of these CHP projects for 540 megawatts of capacity. The other 26 projects account for 278 megawatts and use renewable resource fuels such as wood residue (hogged fuel), spent pulping liquor[26] and wastewater gas. It is estimated that there is very cost-effective potential for upwards of 1,000 megawatts of new CHP resource in Oregon.

Actions:

1. The Renewable Energy Working Group will consider to:
   - Work with state agencies and others to give waste heat the same status as renewable energy in state legislation, rules and miscellaneous programs or projects that benefit renewable energy resources.

Fuel Cells

Fuel cell technology can play an important role in Oregon's renewable energy future. Fuel cell fuel reformers are able to combine water with renewable fuels including bio-methanol, biodiesel, biogas and ethanol to produce hydrogen. The renewable hydrogen can then be used in a fuel cell stack where it is converted to electricity, or the hydrogen can be used directly in commercial or industrial applications.

Oregon commercial and industrial sectors use approximately 30 million cubic feet of hydrogen per year. All hydrogen is imported since there are no commercial hydrogen generation plants in Oregon. If hydrogen used in Oregon were generated in Oregon using renewable resources, new jobs could be created.

In the short run, most fuel cells are expected to use non-renewable fuels. However, a goal of this Plan is to foster increasing use of renewable fuels as technologies become feasible.

Actions

1. The Renewable Energy Working Group will consider to:
   - Support Oregon companies in attracting funding from regionally targeted federal fuel cell and hydrogen generation programs including regional US Department of Energy and US Environmental Protection Agency (EPA) programs.
   - Encourage the Oregon University System to explore fuel cell technology and to establish a fuel cell technology center.

[25] Those systems range in size from 30 kilowatts at a commercial office to over 100 megawatts at a pulp and paper plant. In almost every case, the systems operate to generate electricity and thermal energy primarily for onsite use. Only a few of the largest facilities sell electricity on the market. Not all of them operate at all times.

[26] In chemical pulping the lignin in the wood is dissolved in a digester where the wood chips are cooked. The fibres are separated from the spent pulping liquor (so-called black liquor). The black liquor is first concentrated, and subsequently incinerated in so-called recovery boilers.

- Support a revision of the federal tax credit language for renewable fuels to include off-road and stationary uses instead of exclusively supporting transportation applications.
- Support and highlight one or more demonstration projects that generate electricity using Oregon-made fuels with energy technologies engineered and manufactured in Oregon.

2. The Oregon Department of Energy will:
    - Modify its Web site and publications to identify more clearly how a fuel cell owner can apply for tax credits and to describe how the owner is using those tax credits.

Geothermal

Most areas of high heat flow are in the Cascades, central Oregon, southeast Oregon and parts of northeast Oregon. These are the locations where geothermal resources are most likely to be found. Geothermal resources include high-temperature (100 degrees C and above) for electricity generation, intermediate temperature (100 – 50 degrees C) for industrial, agricultural and municipal applications and low-temperature heat pump applications. The Oregon Department of Geology and Mineral Industries (DOGAMI) has geothermal resource maps available to the public showing both regional and site-specific information.

Currently, about 1,800 ground-source heat pumps provide space and water heating for Oregon homes. The City of Klamath Falls uses geothermal energy for a district heating system, which represents only a small portion of the direct geothermal use in the area. Geothermal sources elsewhere in Oregon supply heat for buildings, swimming pools, resorts and industrial uses. All of these applications fall into the "direct use" category.

Geothermal electric generation could provide important renewable *base load* generation. Furthermore, geothermal electricity production on federal lands requires that a resource production royalty be paid to the federal government. In Oregon, half of the royalty payment would be paid to the state, and the state is obligated to pass at least 50 percent onto the county where the electricity was produced.

Since 1975, geothermal exploration and development in Oregon has been facilitated by a successful collaboration between state and federal agencies (DOGAMI, Bureau of Land Management and the US Forest Service). Memoranda of Understanding have been useful tools and these agencies anticipate continuing this association in the future. Numerous projects - heat flow and exploratory drill holes throughout the state and the Newberry Project in central Oregon- have obtained useful results.

Geothermal experts at the state and federal level and in private industry continue to consider the area on the flanks of Newberry Volcano, outside the Newberry National Volcanic Monument, to be one of the best prospects for high-temperature geothermal electricity production in the Pacific Northwest. To date, limited exploration drilling has measured temperatures up to 315 degrees C (600 degrees F).

The main barrier for development of geothermal electricity generation in Oregon is its above-market cost. Financial incentives similar to those for wind (about 1.5 to 2 cents per kWh) were not available for geothermal until the extension of the federal production tax credit took place in October 2004. When power sales contracts are anticipated or awarded, the geothermal industry will likely respond with building a 20 MW or larger demonstration plant. Furthermore, an important round of exploration and assessment in Oregon will likely be undertaken.

Actions to promote direct use:

1. The Oregon Department of Energy will:
    - Work with the GeoHeat Center in Klamath Falls and others to help establish training for heating, ventilation and air-conditioning (HVAC) contractors on the benefits of earth-coupled heat pumps and help develop a statewide promotion strategy.
    - Work with the GeoHeat Center and others to highlight demonstrations of homes, businesses and public buildings such as schools and correctional facilities using direct geothermal energy in the community.

2. The Oregon Department of Geology and Mineral Industries, in cooperation with the Departments of Energy, Forestry, and State Lands, will:
    - Work with the GeoHeat Center and others to provide copies of existing maps detailing the geothermal resource potential of Oregon and incorporate additional information into the data base as new information becomes available.
    - Periodically publish updated geothermal resource maps of Oregon as additional data availability and demand require.

3. The Oregon Department of Agriculture will:
    - Collaborate with ODOE and agricultural producers in identifying new and expanded uses for geothermal application in agricultural operations, and expand implementation through education, pilot projects, and existing incentive programs.

Actions to promote generation of electricity:

1. The Renewable Energy Working Group will consider to:
    - Work with the federal government and others to provide a forgivable loan or grant program for drilling exploratory holes.
    - Work with the Energy Trust, the utilities, BPA and others to expedite a Power Purchase Agreement with added incentives based on above-market costs for a 20 MW or larger demonstration project.

- Review the royalty and tax implications of geothermal production facilities and explore funding means to help promote geothermal development.[27]
- Help develop a partnership plan between state and federal agencies for further development of projects on federal land or involving federal leases.

2. The Oregon Department of Geology and Mineral Industries will:
   - Sample and analyze waters from wells and springs throughout the state to develop a statewide data base useful to the geothermal industry, to state and federal agencies and research institutions as a valuable component in geothermal resource target evaluation in Oregon, provided funding can be obtained.[28]

3. The Oregon Department of Energy will:
   - Continue the collaboration with the Pacific Northwest Section of the Geothermal Resources Council regarding geothermal resources within Oregon.
   - Coordinate the Oregon Geothermal Working Group, which is part of USDOE's "Geo-Powering the West" program.

4. The Oregon Department of State Lands will:
   - Review and, if necessary, revise its administrative rules governing the exploration for and leasing of geothermal resources to ensure that they are easily understood and usable by persons wanting to conduct these activities on lands administered by the agency.

Hydroelectric Generation

Currently, hydropower meets about 44 percent of Oregon's electricity demands. In comparison, "new" hydro would be a small player in any likely renewable-generation growth scenario. It focuses primarily on the potential to develop micro-hydro (or "seasonal" hydro) in association with numerous irrigation piping canals. Run-of-the-river technology could also make a contribution throughout many areas of rural Oregon. There are often minimal environmental consequences of adding hydroelectric facilities on existing dams and reservoirs, as the majority of the environmental implications are already in place at the time of original dam construction. Several projects, generally ranging from under 1 MW to 12 MW, are currently in the planning and permitting stages on reservoir facilities throughout the state. Oregon has significant experience designing, financing, installing and operating these optimized water use systems.

[27] Geothermal electricity production on federal land requires that a royalty be paid. In Oregon, half of the royalty payment would be paid to the state, and the state is obligated to pass at least 50% onto the county where the electricity was produced.

[28] This has been done in Nevada with positive results. Funding support will be sought from a number of sources, including the state and US DOE grants

Actions:

1. The Renewable Energy Working Group will consider to:
    - Work with state agencies and interested stakeholders to explore the feasibility of multi-purpose upstream small storage facilities for use in micro-hydro projects in the context of ORS 536.238's "environmentally and financially feasible storage."
    - Seek funding to defray costs of water rights permitting for micro-hydro projects.
    - Identify and support generation efficiency improvements, such as those performed by the utilities, as hydro facilities come up for Federal Energy Regulatory Commission re-licensing and State of Oregon reauthorization. Support maximum generation efficiency for new projects in Oregon, while safeguarding the environment.
    - Continue to support the state's policy of re-authorizing hydroelectric projects and the development of new hydroelectric facilities on existing dams and reservoirs that are found to be in the public interest if they balance the region's generation needs with the enhancement or maintenance of the natural resources of the state.
    - Assist irrigation and water service districts as they identify sites in Oregon where untapped micro-hydro could be developed using irrigation piping channels.
    - Help develop irrigation canal systems that use pipes to reduce evaporation and percolation losses, concentrate water pressure which reduces irrigation pumping energy use, and provides sites for hydroelectric generation.
    - Help complete an environmentally enhancing hydroelectric demonstration project case study that involves multi-agency analysis and collaboration.

2. The Oregon Water Resources Department (OWRD) will:
    - Work with state agencies and interested stakeholders to develop recommendations to streamline rules and application procedures for micro-hydro projects. This will include an examination of the very small micro-hydro systems for net metering and off-grid personal use.
    - Continue to develop and enhance the coordination of micro-hydro projects consistent with state policies.
    - Identify micro-hydro resources and make them available to the public on OWRD's Web site.
    - Prepare and disseminate a "Guide to Micro-Hydro Permitting in Oregon."

3. The Oregon Department of State Lands will:
    - Revise its administrative rules governing the authorization of hydroelectric projects on state-owned waterways. The goals of this review will be to develop administrative rules that are easily understood and usable by people who currently have, or want to place such facilities on state-owned waterways. At the same time, ensure that the Common School Fund receives an appropriate amount of revenue from the use of these lands in this manner.

Ocean Energy

Generation of electricity through conversion of ocean current, swell, wave action, tidal, or thermal gradients is being successfully demonstrated. Most promising applications are offshore use of the consistent rise and fall of swells along deep-water shorelines where there is significant year-round wave action. Wave power densities in Oregon are estimated to be capable of producing between 5 and 15 megawatts per mile of coastline.

The technology is available now to construct a sizeable wave farm. Economics are likely to be in the $3,000/kW range for smaller than 10 MW offshore systems, falling to around $1,000/kW for a 200 MW system. Power price is in the range of 10 cents/kWh for small systems, falling to a projected 3-5 cents /kWh for the larger systems. This lower number would be competitive with current base load generation.

Currently the United Kingdom has a vibrant program of wave, ocean, and marine/tidal technologies being supported through government support. The Electric Power Research Institute (EPRI) recently began studies to build six demonstration projects in six states, including Oregon and Washington. EPRI wants to build a 500 kW demonstration project off the Oregon coast within a 2-4 year time horizon.[29]

Actions:

1. The Renewable Energy Working Group will consider to:
    - Encourage the ongoing ocean energy research at Oregon State University to include technology cost reduction, improvement in efficiency and reliability, identification of sites, interconnection with the utility grid, and study of the impacts of the technology on marine life and the shoreline.
    - Coordinate efforts to attract one of EPRI's 500 kW demonstration projects to the Oregon coast by 2006.

Solar

Solar energy is a large untapped natural resource. Solar energy is available throughout Oregon creating job opportunities in virtually every district. Oregon's solar resources are significant with two-thirds of Oregon receiving as much or more than Florida. Solar energy can provide space heating, hot water and electricity. Solar electricity will primarily be produced with photovoltaic cells for distributed systems. For central facilities in the 100 MW range, solar thermal electric facilities may be the preferred option. Designing buildings to make the most of sunlight for lighting also can reduce energy needs. South-facing windows with overhangs to prevent overheating in summer and heat storage materials add little to the cost of a new building. Solar water heating can supply about half of the hot water for a typical Oregon home. Currently, residents have installed more than 17,000 solar water heating systems in the last 20 years. There are more than 250 solar electric systems in the state.

[29] At the end of 4 years, the pilot project will have generated enough data to begin determining commercial feasibility.

Actions

1. The Oregon Economic and Community Development Department, with assistance from ODOE, will:
    - Stimulate the development of an Oregon inverter-manufacturing sector.
    - Work to attract a photovoltaic manufacturer with existing financing and tax incentives.

2. The Oregon Department of Energy (ODOE) will:
    - Demonstrate high performance energy homes that use advanced design to reduce energy demand, passive solar for space heating, active solar water heating and photovoltaic systems to produce as much or more electric energy than the home uses on an annual basis.
    - Continue to make sure that solar water heating, solar electric systems, and passive design features are considered in all new public buildings. Including simple things like orientation and making the building roof suitable for photovoltaic panels will reduce costs of installation when panel prices decline enough and electrical prices climb (i.e. plan for the future).

3. The Oregon Department of Agriculture will:
    - Collaborate with ODOE and agricultural producers in identifying new and expanded uses for solar application in agricultural operations, and expand implementation through education, pilot projects, and existing incentive programs.

Wind

Large wind farms are currently operating in Oregon with a total capacity of 259 MW, the largest of which is Stateline with 120 MW. Several of these existing wind farms are planning expansions and new plants are in the planning phase as well. Utilities have incorporated wind energy in their resource plans. The feasibility of smaller wind farms (of up to about 10 MW) owned by local communities and landowners is being investigated at several locations. Net metering is available for systems of 25 kW and smaller.

Transmission capacity between eastern and western Oregon is the main to further large-scale development of wind. Currently, all wind farms need a production based tax credit (or similar financial incentive), but this may not be needed in the future given the price trend of natural gas and the efficiency of larger turbines. Smaller project economics are more challenging due to the higher cost of installing small numbers of utility-scale wind turbines. Transmission issues are often barriers for this kind of developments as well. The lack of long-term wind speed data from different parts of the region (other than the eastern Columbia River area) impairs the marketability and development of wind.[30]

[30] Data are needed by utilities to lower their risk, by network operators to solve their integration problems, and by developers who will go where the good long term data sites are and who need long term data for financing. Regional energy costs can be lowered by the availability of an extensive database.

Actions:

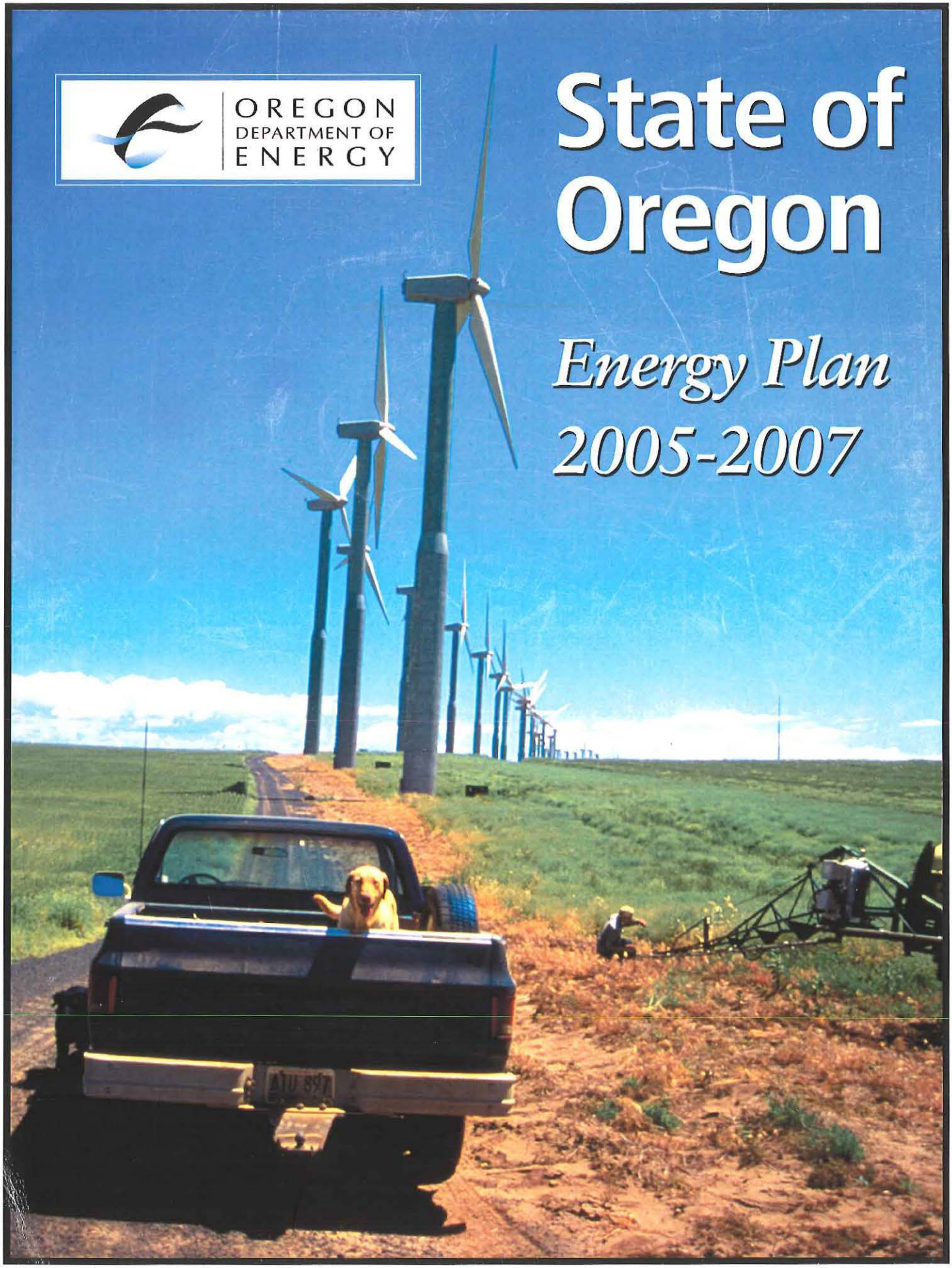
1. The Renewable Energy Working Group will consider to:
    - Work with BPA to use the federal hydropower system and BPA's new wind integration services to reduce the cost of energy to customers.
    - Help develop a project to collect wind characteristics data at ten sites throughout the state, and make them publicly available, to help community and locally owned wind farm developments as well as large-scale wind farm development and wind energy integration with the grid, if funds become available. Oregon State University would manage such a program.
    - Work with BPA and others to expand the anemometer loan program that is currently offered by the Energy Trust.

2. The Oregon Department of Energy will:
    - Continue to coordinate technical and financial assistance for community and farmer-owned wind farm demonstration projects.
    - Continue to coordinate the Oregon Wind Working Group, as part of the US Department of Energy's Wind Powering America Program with the primary focus to promote small-sized wind farms to agricultural communities.

3. The Oregon Department of Forestry will:
    - Cooperate with wind energy developers and community leaders in locating potential facility site locations on Board of Forestry forestlands and state lands.
    - Work to develop expedited leasing processes for such sites, consistent with other management plans for these lands.

4. The Oregon Department of State Lands will:
    - Continue to look for opportunities on state lands administered by the agency for the placement of wind farms. Additionally, the agency will cooperate with wind energy developers and community leaders in locating facility sites while meeting its Trust and current lease obligations.

5. The Oregon Military Department will:
    - Perform a feasibility study of installing wind turbines on or near its military properties throughout the state.


OREGON
DEPARTMENT OF
ENERGY
State of
Oregon
Energy Plan
2005-2007

From the Director

An adequate, affordable supply of clean energy is critical for Oregon's continued economic recovery. This Biennial Energy Plan outlines actions the Oregon Department of Energy is taking to help the State achieve this goal. Our programs encourage Oregonians to invest in energy efficiency and develop renewable energy.

As staff to the Energy Facility Siting Council, the Oregon Department of Energy ensures that an energy facility built in Oregon is safe and meets state environmental standards. A one-stop siting process means those facilities are sited efficiently.

Security of our energy facilities has become important since 9-11. We have worked with utilities, energy suppliers, and federal, state and local officials to upgrade the security of our energy system. We also plan and prepare for supply disruptions from accidents, bad weather or terrorism.

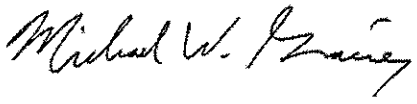
The Oregon Department of Energy works to protect Oregonians and the Columbia River from the radioactive wastes at the U.S. Department of Energy's Hanford site in Washington. We have increased our efforts to remove that threat and are seeing some results.

Energy-efficiency and renewable energy development are the foundation for Oregon's energy future. Saving energy saves money by enabling us to use less power in meeting our everyday needs. It will help our businesses operate more efficiently and more competitively. Saving energy also helps provide Oregonians with more disposable income to boost the local economy, and it benefits Oregon's environment.

Combine energy efficiency with renewable energy development and Oregon has a powerful tool to not only protect the environment, but to create new jobs and new industries. Oregon is rich in renewable resources. Investments in renewable energy will stay in Oregon, creating jobs, particularly in rural Oregon, and growing a "second crop" for farmers, ranchers and forest landowners.

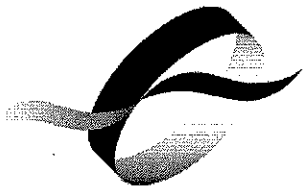
Please take the time to read about energy efficiency, renewable energy, protecting the Columbia River by cleaning up the Hanford nuclear site and other efforts of the Oregon Department of Energy. This 2005-2007 Energy Plan is not only a look at past influences, but also a window into the future of energy in Oregon. I hope you find this plan helpful and informative.

Thank you,



Michael W. Grainey

BIENNIAL
Energy Plan



OREGON
DEPARTMENT OF
ENERGY

625 Marion Street NE, Salem, Oregon 97301

(503) 378-4040
1-800-221-8035 in Oregon
www.oregon.gov/energy

JANUARY 2005

ODOE-003

Biennial Energy Plan

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Introduction

Energy powers our way of life and Oregonians spend about $7.6 billion a year for energy in all its forms.

Oregon's economy is driven by affordable, reliable energy, but energy prices and availability can fluctuate. One such event was the gasoline shortage of 1973-1974, which led to the creation of the Oregon Department of Energy (ODOE) in 1975.

Energy use and production also have a significant impact on the environment. ODOE plays an important role in the State's efforts to provide a stable energy supply while promoting the environmental benefits of developing renewable energy and improving energy efficiency.

To help Oregonians meet future energy challenges and current energy needs, ODOE works with businesses and trade associations, homeowners and renters, schools and governments. The message is spread through personal contact, the agency Web site, conferences and trade shows.

Another avenue of outreach is this Biennial Energy Plan. The Plan identifies trends in energy supply and use, conservation and renewable energy, nuclear safety, and the maintenance of a healthy economy.

This 2005-2007 Plan begins by explaining the Oregon Department of Energy's role in the state's economic recovery. Oregon is rich in the renewable resources of wind, solar, geothermal, and biomass, which can reduce price volatility and cut greenhouse gas emissions. Developing them here in Oregon, along with related research and development, and manufacturing capability, presents a substantial economic opportunity for the state.

The Plan then presents background information on the sources and uses of Oregon's energy; important energy issues for Oregon; ODOE's action plan for 2005-2007; and the state's accomplishments in conservation, new energy resources and nuclear safety.

A number of appendices accompany the plan. Of special note is the summary of various documents related to energy, including the Oregon Renewable Energy Action Plan, the Oregon Strategy for Greenhouse Gas Reductions, and the Sustainability Plan.

Energy's Role in the Economic Recovery

The beginning of the 2003-2005 Biennial Energy Plan summarized the impact of the energy crisis of 2000 and 2001. That crisis has passed, but in this plan, the discussion centers on moving Oregon out of the economic downturn. Outlined below are Oregon Department of Energy efforts to help individuals and businesses spend less on energy and turn investments into jobs.

Help in recovering from the electricity crisis came from the Energy Facility Siting Council, which since 2000 has approved site certificates for eight electric generation facilities consisting of 16 power plants. From the mid-1990s through 2000, the Council approved 12 power plants at nine sites. This, combined with the energy efficiency measures Oregonians have taken and a slower economy, has helped provide a cushion of electricity supply. In fact, the Northwest Power and Conservation Council projects a surplus of electricity at least until the end of the decade, even in a drought.

Whether electricity and other energy prices will be affordable is uncertain. Oregonians can weather price increases by improving efficiency and developing renewable energy options. The Oregon Department of Energy (ODOE) has played and will continue to play an important role in the state's economic development in the following ways.

1. Maximize energy conservation and efficiency
With the Business Energy Tax Credit and Energy Loan programs, the Oregon Department of Energy has helped businesses reduce energy use by investing in energy efficiency. This frees up dollars to be spent in ways that improve our economy. Greater use of high efficiency appliances has reduced energy use and stimulated economic activity. By the end of 2003, more than 125,000 Oregonians had used ODOE's Residential Energy Tax Credit to buy refrigerators, clothes washers, and dishwashers that meet Oregon's high standards. Governments and schools also use ODOE incentives to retrofit their buildings and take advantage of the agency's technical advice to save energy. Building commissioning is promoted as standard practice in new buildings to ensure energy-saving performance over the decades.

2. Support a stable energy supply for Oregon
ODOE operates a streamlined siting process for major energy facilities. In addition to issuing site certificates for power plants and a 142-mile natural gas pipeline, utilities have been encouraged to invest in renewable energy. ODOE will continue to promote a diversity of renewable energy generating resources to meet 10 percent of Oregon's electricity load by 2015. Solutions to the transmission capacity bottleneck between eastern and western Oregon are also part of ongoing efforts.

3. Support renewable energy development and technology companies in Oregon
ODOE has used the Business Energy Tax Credit and the State Energy Loan Program to encourage large-scale renewable energy systems. Those incentives have enticed solar photovoltaic and manufacturers of other renewable resource equipment to consider locating in Oregon. The Oregon Department of Energy offers incentives for Oregonians to buy their solar components for use on public buildings or land as well as private sector facilities. Examples of large solar installations include Kettle Foods in Salem and the Pepsi-Cola facilities in Klamath Falls and Lakeview.

Developing the state's renewable energy resources, related manufacturing, research and development presents an economic opportunity, particularly in rural parts of the state. Renewable energy investments stay in Oregon, creating jobs and growing a "second crop" for farmers, ranchers and forest landowners.

Oregon's universities and scientists are a resource for technology and information to the benefit of Oregon's economy. The combination of scientific expertise and state incentives positions Oregon businesses to export technologies such as micro-electronics, fuel cell applications, power controllers, and renewable resource technical services.

Oregon has earned acclaim for its sustainable development and energy resource programs, leading to a demand for Oregon-based green products and services. With its many incentive programs, ODOE is in a unique position to be aware of and assist companies.

The Oregon Department of Energy has consulted with or provided incentives for smaller companies that are bringing next-generation technologies, services, or products to market. Examples include:

- Abundant Renewable Energy of Newberg with its wind turbine controller,
- PV Powered of Bend and its inverter for small renewable electric generation,
- Energy Outfitters of Grants Pass with its solar photovoltaic system package,
- Osmotek of Corvallis and its membrane technologies for evaporation,
- Beaverton's Beta Control Systems equipment that makes industrial acids re-usable, and
- GMV Industries of Arlington with its solar-powered center pivot irrigation assembly.

Central Oregon serves as an example of an efficiency and renewable energy development cluster. The nine-county central Oregon corridor possesses diverse renewable resources including solar, wind, geothermal, and biomass. The corridor can build around several dozen renewable energy-related companies manufacturing fuel cell applications, photovoltaic system inverters and other technology.

4. Promote alternative fuels to protect Oregonians from petroleum price increases

Through incentives, the Oregon Department of Energy continues to encourage alternative fuel production and fueling stations, such as SeQuential Biofuels of Eugene and Portland. Oregon's Renewable Energy Action Plan recommends that gasoline sold in Oregon should contain 2 percent ethanol by 2006.

ODOE tax credits encourage purchase of hybrid vehicles, which provide a cushion against future price increases. More than 1,000 Oregonians had taken the credit for hybrid vehicles by the end of 2003. ODOE also is providing incentives for two projects to reduce diesel truck idling. One provides electric hook-ups for long-haul trucks in the I-5 corridor and the other provides auxiliary power units for trucks idling in the Lane Regional Air Pollution Authority region. This will save truckers fuel and reduce emissions.

5. Clean up the Hanford site

ODOE will work to ensure sufficient cleanup and proper management of radioactive waste to protect the Columbia River. Hanford cleanup is essential to preserve Oregon agriculture and fisheries. The Columbia River is vital to irrigation and the region's inland commerce. The Columbia fishery is an important economic and cultural resource and the river is a valuable recreational asset. Cleaning up Hanford is a $2 billion a year business just 30 to 50 miles across the Oregon border. ODOE will continue to encourage Hanford officials and contractors to actively solicit business in Oregon.

Oregon's Energy Demand and Supply

Overview

Trends Since 1990

Oregonians spent $7.6 billion on energy in 2000, the last year for which figures are available. This does not include energy used to generate power or to transport natural gas in pipelines. Total energy use was 773 trillion British Thermal Units (Btu–a measure of energy consumption), up 15 percent from 1990. However, the per capita energy use in Oregon fell by 4 percent between 1990 and 2000, primarily because ocean vessels purchased less fuel in Oregon and factories decreased their use of wood waste.

The use of taxed gasoline increased by 13 percent between 1990 and 2003, while per capita use declined by 4 percent. The per capita decline was largely because of the higher efficiency of new vehicles, relative to the fleet of existing vehicles. The number of miles driven per capita was about the same for both years.

Overall Energy Use

Nearly half of the energy Oregon uses is from petroleum products and is used primarily for transportation (Figure 1).

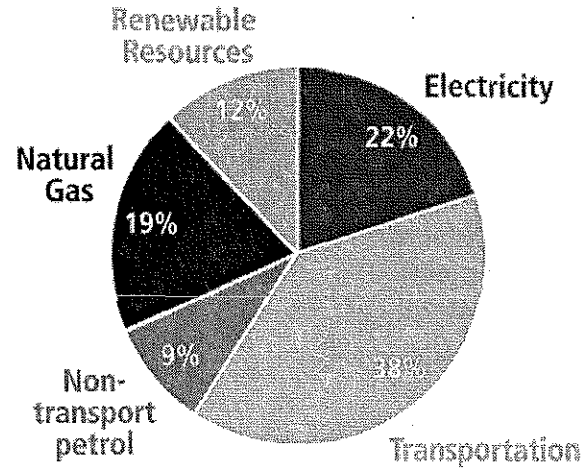


Figure 1: 2000 Oregon energy end uses
Forty-seven percent of the energy Oregon uses is from petroleum products, primarily for transportation. Direct-use renewable resources include geothermal, hogged fuel (bark, sander dust and other wood-related scrap), pulping liquor and wood burned in homes.

The Impact of Energy on the Economy

As shown in Figure 2, money spent by Oregon households, businesses and governments on energy as a percent of total Oregon personal income has changed significantly since 1970. This shows how dependent Oregon's economy is on the cost of energy.

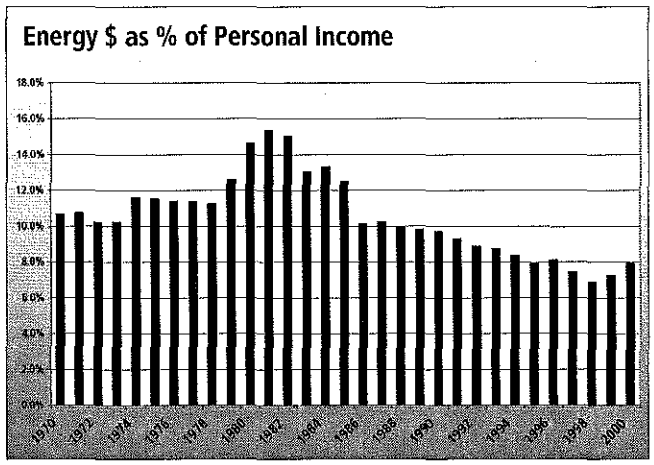


Figure 2: Energy expenditures as a percent of income.
With increased emphasis on energy conservation following the energy crises in the 1970s and 1980s, consumers were cushioned against price spikes starting in the 2000-2001 energy crisis.

The percentage declined from about 15 percent in 1981 to 10 percent in 1985. This was largely due to a drop in petroleum and natural gas prices. From 1985 to 1998, the percentage declined to about 7 percent, largely due to economic growth in less energy-intensive sectors, such as retail sales and electronics manufacturing. Since 1998, the percentage has grown due to rising energy prices. Energy use is falling, but not as fast as prices are rising.

The money Oregonians spend to import natural gas and oil is drained from the economy. In 2000, Oregon business, households and governments spent 1.2 percent of total personal income on natural gas and 3.8 percent on petroleum prod-

ucts. This does not include natural gas used for electric generation. Natural gas and oil price spikes tend to harm the Oregon economy more than the U.S. economy because Oregon imports 100 percent of its natural gas and oil compared to 15 percent and 56 percent, respectively, for the U.S. Areas of the U.S. that produce natural gas and oil see increased employment when prices spike, but Oregon does not.

Fuel Price and Use Changes — 1999 to 2003

Petroleum

From 1999 to 2003, petroleum prices for residential heating oil, on-highway diesel and regular gasoline increased 39, 25 and 30 percent, respectively (prices include taxes). Taxed gasoline use rose by 0.5 percent for this period. From 1999 to 2001, distillate sales (both highway diesel and heating oil) were down 0.1 percent.

In 2004, the combined effect of high oil and natural gas prices was especially hard on industry. Often, if one fuel rose the other did not, enabling factories to switch to a cheaper fuel. That was not possible in 2004 because they both rose.

Figure 3 shows the Oregon retail prices for regular gasoline and residential heating in dollars per gallon, without tax for 1999 through part of 2004. These prices have not been adjusted to remove the effects of general inflation.

Oregon prices have followed national trends. Regardless of U.S. crude oil production levels, Oregon retail prices will continue to be linked to world oil prices.

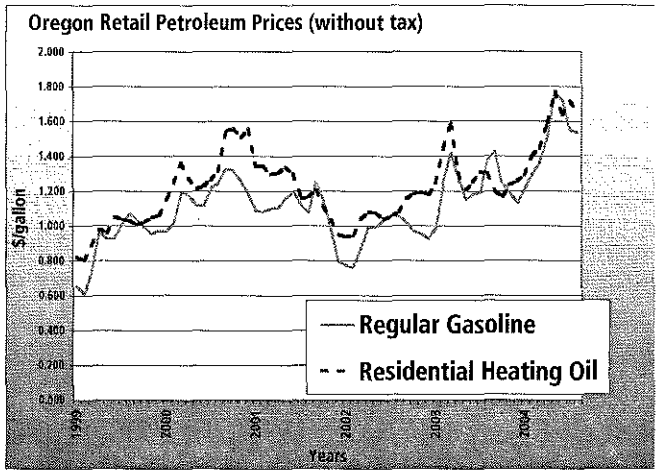


Figure 3: Oregon retail petroleum prices, without taxes included

This shows the volatility of retail gasoline and home heating oil prices.

Natural Gas

Oregon wholesale natural gas prices rose 168 percent between January 1999 and July 2004. Over the same period residential rates rose 94 percent. These prices have not been adjusted to remove the effects of general inflation. The percentage increases for commercial and industrial customers fell between the wholesale and residential price increases.

Figure 4 shows the price of wholesale gas purchased by Oregon gas utilities from January 1999 through July 2004 and average residential retail rates. While natural gas distribution and transport costs are regulated, wholesale gas costs are passed through to retail customers.

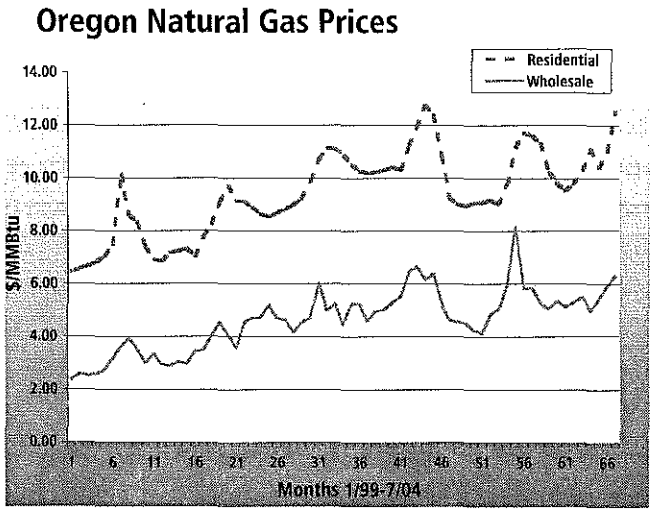


Figure 4: Oregon natural gas prices
After falling in the late 1980s, Oregon's natural gas prices spiked in 2001, declined and then rose again in 2004.

Electricity

Between 7 and 15 percent of the Oregon's electricity is generated from natural gas, depending on snow and water conditions. The share of gas-fired generation is increasing as loads grow and as most new plants are fired by natural gas. Electric utilities can reduce their exposure to fuel price spikes by developing renewable resources and buying more of their fuel in longer-term contracts. While these measures can be more expensive in the near term, the tradeoffs are part of the utility least-cost planning process.

From 1999 to 2003, retail electricity prices rose 29 percent. The increase was 23 percent for residential customers and higher for larger customers. Both investor-owned (IOUs) and consumer-owned utilities (COUs) were affected. Oregon utilities face substantially higher costs for new electricity resources compared to the costs of existing resources. For these same years, residential use fell 3 percent and combined commercial and industrial use fell 10 percent. These values do not include the closure of large aluminum smelters in Troutdale and The Dalles since 1999.

Due to higher natural gas prices, wholesale electric prices in 2004 were up sharply from 2003. This had only a modest impact on retail prices, in part, because demand growth has slowed. Oregon IOUs generate most of their own power. Oregon COUs buy most of their power from federal dams and the Columbia Generating Station (the commercial nuclear power plant at Hanford, Wash.), through the Bonneville Power Administration.

Energy Supply — Fossil Fuels

Petroleum Supply

Oregon imports 100 percent of its petroleum, and unlike other Western states, does not have refineries or internal crude oil resources. Taken together, Alaska, Arizona, California, Hawaii, Nevada, Oregon and Washington form a nearly self-contained system of petroleum production and consumption. Although the system is relatively stable, a major disruption in any part of the supply and distribution chain could create a severe and prolonged petroleum shortage.

Figure 5 maps the major sources and distribution of Oregon's petroleum products. Four refineries in the Puget Sound area of Washington provide more than 90 percent of Oregon's refined petroleum products. The Washington refineries transport their products to Oregon and Washington markets via the Olympic Pipeline and barges. The bulk of Oregon's oil enters through the Port of Portland and is distributed statewide by tanker trucks, Columbia River barge service and the Kinder Morgan pipeline, which extends to Eugene. More than 80 percent of the crude oil these refineries export to Oregon originates in the Alaska North Slope oil fields. The Trans Alaska Pipeline transports crude oil 800 miles from the oil

fields on the state's northern coast to the Valdez terminal on its southern coast. From there, barges and tankers ship the crude oil to the Washington refineries and other destinations. The Western Canada Sedimentary Basin is another significant source of crude oil for the refineries. The remaining crude, less than 5 percent, comes from the continental U.S., Mexico, Indonesia or the Middle East.

In addition to Washington, refineries in Salt Lake City and British Columbia provide nearly 10 percent of Oregon's refined petroleum products. Under normal conditions, only minor amounts arrive from California and the Pacific Rim countries of Indonesia, South Korea and Japan via tanker ships. Tanker trucks distribute these petroleum products statewide.

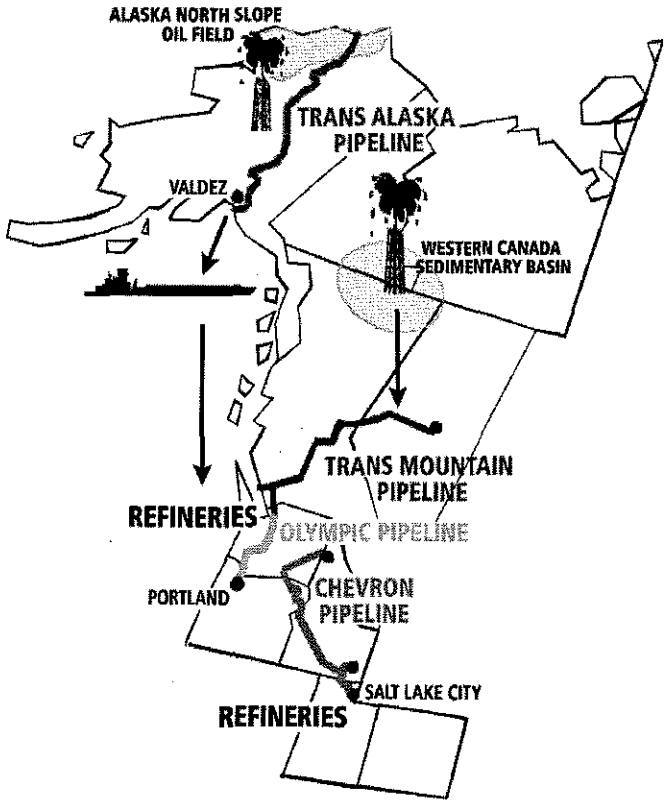


Figure 5: Sources of Oregon's petroleum.
Shows the interconnection of the source, refineries and transportation of Oregon's petroleum. The majority of the crude oil comes from Alaska.

Oregon has about 2,250 retail fueling stations, with more than 29,000 registered fuel pumps. Between 1997 and 2002, the state lost about 10 retail gasoline stations but gained approximately 6,000 retail fuel pumps. The difference between station and pump growth resulted from buyouts, remodels of retail gasoline stations, and installation of pumps at grocery and department stores.

Other Transport Fuels

Other fuels used for transportation in Oregon include ethanol, biodiesel, compressed natural gas, liquefied natural gas, liquefied petroleum gas (propane) and electricity. These alternative fuels are used in place of diesel and gasoline, although some of them are either used with, or partially derived from, petroleum products.

Federal policy directs utilities and states to adopt alternative fuels to reduce dependence on foreign petroleum or to improve air quality. Most alternative-fueled vehicles are eligible for Oregon residential and business energy tax credits and state energy loans.

Ethanol and biodiesel are the main alternatives to gasoline and diesel respectively. Ethanol is an alcohol fuel distilled primarily from corn. Biodiesel is oil, distilled primarily from soy. Both biofuels also can be produced from other types of biomass (plants and other organic matter).

Following ethanol, compressed natural gas and propane are Oregon's most common alternative fuels. However, they represent less than 0.04 percent of transport fuel use.

Hybrid (gas-electric) vehicles average 45 miles per gallon – twice that of the average passenger car. A hybrid recovers energy normally wasted when braking and uses it to power an electric motor that assists the gasoline engine. Hybrids also gain efficiency by having the gasoline engine operate at a constant optimum speed. As of October 2004,

Oregonians had registered about 4,000 hybrid vehicles, up from 800 at the end of 2002. More vehicle manufacturers are introducing hybrid models to the market.

Oregon's state fleet has about 77 hybrids, 150 com-pressed natural gas and 67 flex fuel (ethanol) vehicles, and more will be purchased. Tri-Met's MAX light rail transit system in the Portland area operates on electricity.

Petroleum Contingencies

To mitigate the effects of a petroleum emergency, the Oregon Department of Energy (ODOE) maintains the Oregon Petroleum Contingency Plan. The plan outlines alert and notification procedures as well as actions to supply gasoline and diesel fuel to the emergency services sector for vehicles, generators and onsite storage. Growing use of transportation petroleum in the West puts pressure on an already tight supply system.

The Valdez terminus of the Trans Alaska Pipeline can store up to 386 million gallons of crude oil. However, this represents, at most, one week of the pipeline's current output.

Distribution sites in the Portland area store less than one month's supply of refined petroleum products. Smaller stocks are stored at private distribution centers in Eugene, Medford, Bend, Pendleton, Coos Bay, Newport and Astoria. Local availability and retail prices are sensitive to supply, demand and delivery schedules. In the pas, distributors have occasionally limited allocations. In some cases, this forced service stations to curtail retail hours.

The Puget Sound refineries have operated above 90 percent capacity for the past decade. The refineries cannot accommodate dramatic demand increases and have no plans to increase production capacity. If refinery output decreased due to an emergency, Oregon would have to import petroleum products from distant refineries. The state could face shortages and steep cost increases.

Three of five British Columbia refineries have closed since 1996, significantly reducing additional refinery production. Five San Francisco Bay area refineries operate at capacity and have been converted to produce only products meeting California Air Resources Board standards. Increasing demand in the California market for these products makes it less likely these refineries will be able to supply the Oregon market.

The world's largest oil refinery, owned by SK Corporation in Ulsan, South Korea, could provide petroleum products using crude from Southeast Asia. Production has begun in the oil sands region of Alberta, Canada, but this will likely only replace declining crude oil supplies in North America.

Natural Gas Supply

Oregon imports 100 percent of its natural gas and receives it from British Columbia, Alberta, Wyoming, Colorado and New Mexico. Two connected interstate pipelines deliver the natural gas (Figure 6).

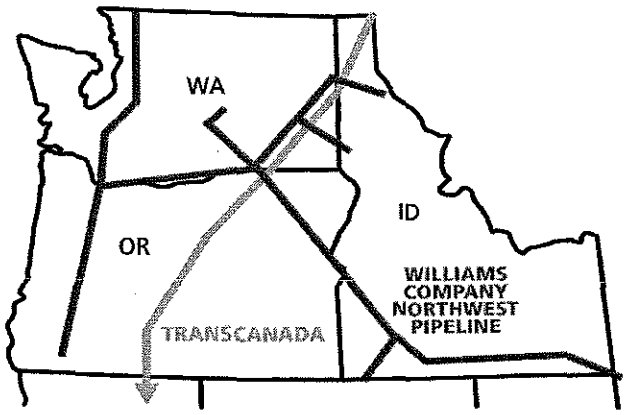


Figure 6: Pipelines serving Oregon
Two natural gas pipelines serve Oregon customers. The Williams Company pipeline and the Gas Transmission Northwest (GTN) pipeline owned by TransCanada bring product from the Rocky Mountains and Canada. Pacific Gas and Electric National Energy Group formerly owned the TransCanada line.

The Williams Company's Northwest Pipeline brings natural gas to Portland from British Columbia and the Rocky Mountain region of the U.S. British Columbia gas enters the U.S. near Sumas, Wash. and roughly follows Interstate 5. Gas from the Rockies comes into Oregon near Ontario. A lateral pipeline transports gas from Washougal, Wash. to the Portland area, the Willamette Valley and Grants Pass. Natural gas from Alberta arrives in a Gas Transmission Northwest (GTN) pipeline. It enters the U.S. near Kingsgate, Idaho, and moves through eastern Oregon, leaving the state near Malin, before traveling on to California and Nevada. A lateral line transports natural gas from Klamath Falls to Medford. The GTN pipeline is owned by TransCanada and connects with the Williams Northwest pipeline at Stanfield, Oregon.

Three natural gas utilities serve Oregon:

- Northwest Natural serves 80 percent of Oregon's retail customers, including the Willamette Valley and the coast.
- Avista Corporation serves parts of southern Oregon and La Grande.
- Cascade Natural Gas serves parts of central and eastern Oregon.

Northwest Natural receives natural gas from the Williams' pipeline. Northwest Natural owns underground gas storage facilities in Mist, Ore. and liquefied natural gas storage facilities in Newport and Portland. Northwest Natural also has contracts to use liquefied natural gas storage at Plymouth, Wash. and underground storage at Jackson Prairie, Wash.

Avista obtains natural gas from the Williams pipeline and the Williams-Grants Pass lateral as well as TransCanada's main pipeline and Medford lateral.

Cascade customers from Madras to Chemult receive natural gas from TransCanada's GTN pipeline. The Williams Northwest pipeline serves Cascade customers from Umatilla to Ontario. Cascade and Avista either own or have contracts to use natural gas storage facilities.

Several projects are underway to expand natural gas pipeline capacity in the U.S. and Canadian West. The largest of these is the Kern River Gas Transmission Company's $1.2 billion pipeline expansion designed to meet growing demand for natural gas in Utah, Nevada and California.

Although pipeline additions will likely keep pace with growing demand, U.S. domestic production may not. A drilling boom in 2001 did little to increase U.S. production. By early 2002, domestic production had returned to 2000 levels despite current high wholesale prices.

From 2001 to 2003, U.S. gas production declined almost 3 percent and Canadian imports declined by 8 percent, despite significantly higher prices. In order to make up for declining domestic production, the U.S. would have to import natural gas from abroad.

Natural gas produced overseas has to be liquefied for ocean transport. It is expensive to liquefy, transport, and regasify, and it will take time to build the tankers and production facilities. One liquefied natural gas (LNG) regasification plant is proposed for Coos Bay and three others are being discussed for Columbia and Clatsop counties. It is unlikely any of these will be ready before 2008; there will also be increasing worldwide competition for the gas.

Three possible new sources could fill the gap at wholesale prices of $4 per thousand cubic feet or less:

- Pipelines to reserves in Prudhoe Bay, Alaska and MacKenzie Delta, Canada
- Imported liquefied natural gas
- Deep offshore exploration of the Gulf of Mexico

These will require huge investments of time and money. Natural gas prices for Oregon and the

U.S. likely will remain volatile until these new sources are available.

Natural Gas Regulation

The Federal Energy Regulatory Commission regulates siting of interstate natural gas pipelines as well as prices for the use of pipelines. The Oregon Energy Facility Siting Council sites and regulates large intrastate pipelines.

The Oregon Public Utility Commission (PUC) regulates the rates Oregon's natural gas utilities charge their retail customers. Wholesale natural gas prices are not regulated. Many industrial customers buy directly from the wholesale market.

Retail natural gas rates generally pass along the wholesale cost of natural gas to retail customers. The PUC sets retail rates so utility companies have the opportunity to earn a fair rate of return on their investments.

State statute requires natural gas utilities to offer conservation programs. Utilities provide free energy audits and weatherization incentives for residential customers. They also provide energy audits for commercial customers, but charge for this service.

Natural gas utilities also have to prepare integrated resource plans for the PUC. These plans outline contracts to meet natural gas demand, proposed pipeline expansions, new storage facilities, and energy conservation budgets and programs. In 2002, Northwest Natural began new conservation and low-income bill assistance programs.

Natural Gas Contingencies

A sustained loss of pipelines connecting Oregon to any of its sources of natural gas would disrupt the state's economy, particularly manufacturing. However, barring a major earthquake or other catastrophic event, it is unlikely a sustained disruption would occur. In the event of a disruption, utilities could acquire alternative supplies. This would impact wholesale costs and retail rates, but only for sustained interruptions.

Because natural gas customers have electricity, a gas pipeline interruption could put stress on the electric system, which would face increased electrical loads. Reduced gas supplies for gas-fired power plants would also strain the electric system.

Electricity Supply

Figure 7 shows the mix of resources for Oregon's utilities. This also include biomass self-generation (such as wood waste) by industrial customers and renewable energy certificates (green tags) purchased by customers or on their behalf by their utility. Green tags are the environmental benefits that take place when renewable energy replaces fossil-fuel energy.

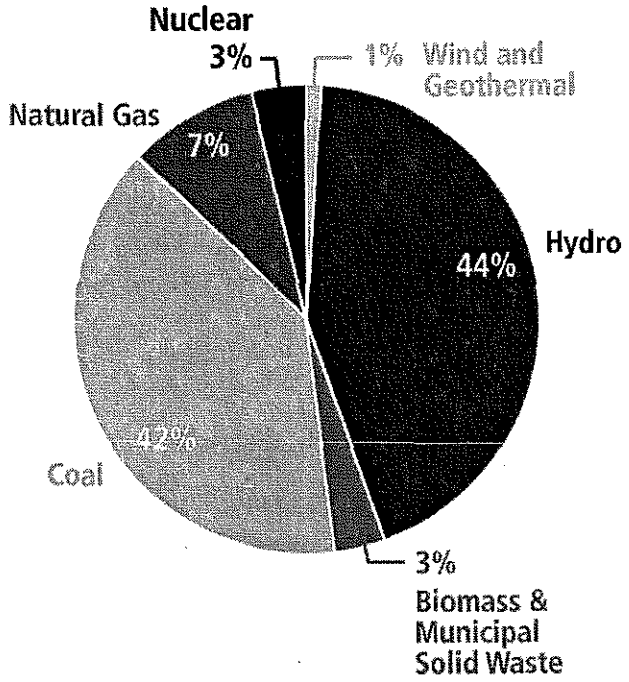


Figure 7: Where Oregon gets its electricity.
Oregon's 2003 fuel mix shows that electricity comes mainly from hydropower and that generated by coal.

Oregon's fuel mix varies based on water and snow (hydro) conditions. For example, natural gas generation in 2003 was 7 percent or about half the 2001 level. In 2001, hydro generation was down and gas generation filled much of the gap. Coal power comes from the Boardman plant in Oregon and from plants in Utah, Wyoming, and Montana. Nuclear power is from the Columbia Generating Station at Hanford, Wash. Biomass refers to generation from pulping liquors at paper factories, woodwaste and waste methane gas. Municipal solid waste (MSW) refers to the generation plant in Marion County. MSW accounts for only about 6 percent of combined biomass and MSW generation. New wind facilities have been added since 2001, but in 2003, wind was still less than 1 percent of total generation.

From 2001 to 2003, the Northwest added approximately 3,350 megawatts (MW) of new generation to the system; most of it fired by natural gas, including 1,675 MW in Oregon. One megawatt roughly equals enough electricity for the instantaneous demand of 750 to 1,000 homes at once.

The power supply should be adequate for several years, even in a drought. However, adequate resources do not guarantee stable wholesale prices. The West is dependent on natural gas-fired power plants. If natural gas prices spike, power prices likely will follow.

Electricity Conservation

Electric energy conservation is making a comeback, if tax credit and other incentive programs are a measure. In 2000, the combination of the Oregon Department of Energy's Residential Energy Tax Credit and Business Energy Tax Credit programs stimulated savings of 58.9 million kilowatt-hours (kWh). In 2001, the savings nearly doubled to 109.2 million kWh. By 2003, the savings reached 860.3 million kWh – more than 14 times the energy saved in 2000.

This dramatic increase in electric energy saving can be attributed to several factors including:

- A West Coast energy crisis in 2001 that saw energy prices soar as a result of the collapse of the California energy markets.
- Volatile and increased natural gas prices that have raised the cost of generating electricity.
- Expansion of energy efficiency efforts by the Oregon Department of Energy, utilities and other energy efficiency delivery organizations to help the public identify and implement energy projects.

The continued volatility and long term upward trend in electricity prices likely will help keep electric energy savings moving upward in Oregon.

Electricity Contingencies

Earthquakes and drought pose the greatest natural risks for Oregon's electricity supply. A drought would be especially problematic if accompanied by a natural gas shortage or the loss of major transmission lines or power plants. Extremely cold weather also strains supplies.

The Bonneville Power Administration (BPA), Pacific Power and PGE have contingency plans for dealing with short- and long-term electricity shortages. The PUC approves plans from Pacific Power and PGE. ODOE and Oregon Emergency Management notify local agencies in case of emergencies.

PGE and Pacific Power have programs to pay customers for reducing use if there is a long-term shortage. During severe long-term shortages, the PUC could require all Oregon electricity consumers to reduce monthly use, relative to the prior year.

During a short-term shortage, utilities ask their customers to make voluntary reductions. If these fall short, utilities can black out individual substations for one or two hours. These events are called rotating outages or rolling blackouts. Critical substations serving hospitals, communications or public safety are exempt. If a substation serves only a few large customers, and those customers reduce their use by the same proportion as the outage, the substation is exempt. For some industrial customers, rotating outages are more disruptive than reducing output or shutting down equipment to achieve equivalent savings.

The Oregon Department of Energy is responsible for planning, preparedness and response to various emergencies that affect the state. They include nuclear emergencies at fixed facilities, radioactive waste transport incidents on Oregon highways, petroleum disruptions or shortages, and electricity emergencies involving the State's 38 consumer- owned utilities.

Immediately following September 11, ODOE conducted vulnerability assessments on the electric, nuclear and petroleum industries. The assessments showed that while we cannot plan for every contingency, the region's nuclear, petroleum, and energy industries have implemented appropriate measures to reduce the likelihood of a terrorist event on a facility, shipment, a pipeline, or an electrical grid.

Energy Supply — Renewable Resources

Nature provides a constant supply of renewable energy resources. Their use usually produces fewer pollutants than fossil fuels. Renewable energy resources include:

- Hydroelectricity
- Wind
- Biomass fuels (from plants and other organic matter)
- Solar
- Geothermal (heat from the Earth)

All renewable energy sources can be used to generate electricity. Solar, geothermal and biomass can supply heat. In addition, biomass can be used to fuel vehicles.

Hydroelectricity

In 1999, electricity accounted for about 20 percent of Oregon's total energy use. This percentage has been constant since 1980.

Wind

Wind-generated electricity is increasingly competitive as wind turbine and other costs decline, the price of natural gas increases, and the federal wind production tax credit continues. Oregon now has five large wind projects with a total capacity of 259 MW. The largest is the Stateline project, straddling the Washington/Oregon border, just north of Pendleton. Turbines on the Oregon side of this project have a maximum output of 120 MW. Other wind farms include Vansycle Ridge (24.5 MW), Klondike (24 MW), Condon (about 50 MW) and Combine Hills (41 MW). Wind machines generate, on average, about a third of the maximum output or capacity.

Several new wind projects and expansions are under way or being planned for a total capacity of more than 400 MW. However, transmission capacity between eastern and western Oregon remains the main barrier for further large-scale development of wind.

Smaller locally owned or community-owned wind farms are also under development. The economics of smaller projects are more challenging due to the higher cost of installing small numbers of utility-scale wind turbines. Transmission issues are often barriers for these kinds of developments as well.

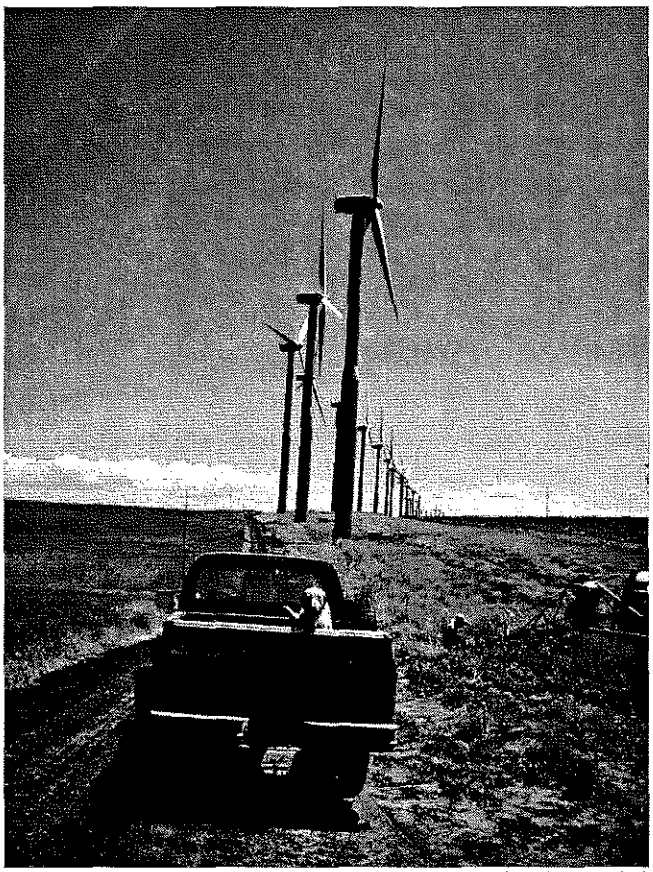


Photo by D.A. Black

Photo 1: Wind Development in Oregon
Renewable energy investments grow a "second crop" for farmers, ranchers and forest landowners.

Biomass

Biomass facilities produce electricity and heat or steam from wood, pulping liquor at papermills, and gas (methane) from landfills, sewage treatment plants and manure. In 2003, total biomass provided 79 trillion Btu of energy. About 37 percent of this energy was from wood wastes burned at 49 industrial sites. In addition to producing steam and process heat, ten of these sites generate power, totaling about 866,000 megawatt-hours (MWh) of electricity. About 46 percent of the total biomass energy came from combustion of pulping liquor at six pulp mills. Two pulp mills produced 310,000 MWh of electricity in 2003.

In 2003, three landfills tapped waste methane gas to generate 37,000 MWh of electricity and provided industrial fuel. In addition, 29 wastewater treatment plants used methane to generate 26,000 MWh of electricity and provide heat for sewage treatment. Two facilities produced about 500 MWh of electricity from cow manure.

New biomass energy markets may provide a way of disposing of forest biomass residues from timber harvest and decreasing wildfire risks by reducing available fuels. These markets are being explored in central and eastern Oregon.

Biofuels

Biomass also can be used to produce biofuels for transportation, including ethanol and biodiesel. Ethanol is a renewable fuel currently distilled primarily from corn. In the future, ethanol may be produced from lignocellulosic (plant materials) feedstock such as wood waste and agricultural residue, which are abundant in Oregon. The ethanol content in gasoline can be as high as 15 percent without to need to modify standard engines. Slight modifications to a vehicle's fuel system must be made to run on E-85 (85 percent ethanol). In Oregon, ethanol is the predominant oxygenate in the gasoline supply. In 2002, up to 60 million gallons of ethanol were used to oxygenate the 1.6 billion gallons of gasoline used by Oregonians. That ethanol, which accounts for up to 4 percent of Oregon's gasoline supply, was produced in the Midwest.

Canola, rapeseed, mustard, soy and other crops, along with waste grease from the food service and

food-processing industry can be refined into oil suitable to fuel diesel vehicles and to be used as lubricants. Many of these feedstocks can be grown in Oregon. Biodiesel can be blended in various ways, but generally comes in B-20 (20 percent biodiesel, 80 percent petroleum diesel) or B-100 (100 percent biodiesel) forms. Currently, suppliers are rapidly developing an Oregon customer base of public and commercial fleets. The Oregon Department of Administrative Services began buying B-20 exclusively, which amounts to about 200,000 gallons per year. The total amount of B-20 used in 2003 in Oregon was about 700,000 gallons, up from 100,000 gallons in 2001.

Solar

Solar energy is a large, untapped natural resource available throughout Oregon. Oregon's solar resources are significant, with two-thirds of Oregon receiving as much or more than Florida. Solar energy can provide space heating, hot water and electricity. Solar electricity will primarily be produced with photovoltaic cells for distributed systems. Large solar thermal-electric plants may become an option.

Designing buildings to make the most of sunlight for lighting also can reduce energy needs. South-facing windows with overhangs to prevent overheating in summer and heat storage materials add little to the cost of a new building.

Solar water heating can supply about half of the hot water for a typical Oregon home. Residents have installed more than 17,600 solar water heating systems in the last 25 years. There are more than 300 solar electric systems in the state.

Geothermal

Geothermal resources include high-temperature (100 degrees Celsius and above) for electricity generation, intermediate-temperature (100 – 50 degrees C) for industrial, agricultural and municipal applications and low-temperature heat pump applications. Most areas of high heat flow are in the Cascades, central Oregon, southeast Oregon and parts of northeast Oregon.

By the end of 2003, about 1,800 ground-source heat pumps provided space and water heating for Oregon homes. The City of Klamath Falls uses geothermal energy for a district heating system. Geothermal sources elsewhere in Oregon supply heat for buildings, swimming pools, resorts and industrial uses. All of these applications fall into the "direct use" category.

Geothermal electric generation could provide important renewable base load generation. Geothermal experts continue to consider the area outside the Newberry National Volcanic Monument to be one of the best prospects for high-temperature geothermal electricity production in the Pacific Northwest. To date, limited exploration drilling has measured temperatures up to 315 degrees C.

Ocean Wave

Generation of electricity through conversion of ocean current, swell, wave action, tidal gradients, and thermal gradients is being successfully demonstrated around the world. Most promising applications are offshore use of the consistent rise and fall of swells along deep-water shorelines where there is significant year-round wave action. Wave power densities in Oregon are estimated to be capable of producing between 5 and 15 megawatts per mile of coastline.

The Electric Power Research Institute (EPRI) has proposed building six demonstration projects in six states, including Oregon and Washington. One of EPRI's 500 kW demonstration projects may come to the Oregon coast by 2006.

Promoting Renewable Resources in Oregon

The Oregon Department of Energy (ODOE) provides tax credits and low-interest loans for all types of renewable resource projects. Large wind, geothermal and biomass facilities also qualify for federal production incentives.

Many utilities offer consumers the option to pay extra to support development of new renewable resources, including wind, geothermal, landfill gas and solar. These resources may be in Oregon or located elsewhere on the Western electric grid. Portland General Electric's (PGE) renewable sign-up program has more than 33,000 customers purchasing the renewable power options. Pacific Power has about 18,000 customers using their renewable program.

Some Oregon residents and businesses invest in on-site renewable resource generation. Oregon law requires electric utilities to buy excess power from customers with small solar, wind or hydro-electric systems. Utilities also must purchase excess power produced by small fuel cells, which can run on natural gas or methane.

Under Senate Bill 1149, the 3 percent public purpose charge on the bills of PGE and Pacific Power customers will provide an estimated $10 million per year to promote renewable resources.

In 2004, under the guidance of the Governor's office, ODOE coordinated the development of the Renewable Energy Action Plan, with extensive contributions from many state agencies and other stakeholders. This Plan's goal is to encourage and accelerate the sustainable production of energy from renewable sources, stimulate economic development (particularly in rural parts of the state), and improve the environmental future of Oregon. The Plan seeks to demonstrate a variety of technologies for tapping renewable resources and to help remove barriers to renewable resource development.

Environmental Impacts of Energy Use

Energy use and production affects the environment in a number of ways, including impacts to air and water.

Air Pollutants

Carbon dioxide (CO2), methane and nitrous oxide (N2O) are greenhouse gases. Carbon dioxide cannot be removed easily from tailpipes and smokestacks. Therefore, reducing carbon dioxide emissions requires increasing energy efficiency, switching to less carbon-intensive fuels (from coal to natural gas generation, for example) or using renewable resources.

The Oregon Department of Environmental Quality (DEQ) regulates emissions of nitrogen oxides, volatile hydrocarbons, sulfur oxides and particulate matter from vehicles, factories and power plants. Oregon's emissions must meet federal standards.

Vehicle emissions are the principal source of nitrogen oxides and volatile hydrocarbons in Western cities. Power generation from coal, and to a lesser extent natural gas, is another major source of nitrogen oxides.

Due to recent pollution control requirements, new gas-fired power plants produce only 3 percent of the nitrogen oxides of existing coal-fired plants of the same size, and virtually no volatile hydrocarbons, sulfur oxides or particulate matter.

Coal power plants are a major source of sulfur oxides. Diesel-powered vehicles also produce sulfur oxides, but new federal standards will greatly reduce these emissions.

Wood stoves, diesel-powered vehicles, field burning and forest fires are significant sources of small particulates.

Other Environmental Impacts

All forms of energy production result in environmental impacts. Fossil-fueled power generation produces, in general, more significant impacts than renewable resources. However, wind generation can have wildlife impacts and geothermal power production can result in the release of naturally occurring volatile chemicals such as mercury. Chemically hazardous wastes are produced in the manufacture of solar photovoltaic cells. Production and collection of biomass energy resources can result in soil and forest resource depletion if not managed correctly. All forms of energy production must be carefully reviewed, and possible impacts minimized.

The Oregon Water Resources Department rules allow new power plants to use water only if the use does not interfere with existing water uses, including fish and wildlife habitat. The DEQ regulates water pollution and increases in temperature from power plant discharges.

State standards also set limits on the impacts that new power plants can have on soils, protected areas, fish and wildlife habitat, threatened and endangered species, noise, and scenic, cultural and recreational values. The Energy Facility Siting Council requires new plants to meet state standards.

Federal and non-federal projects must comply with decisions by federal authorities related to salmon species that are threatened with extinction. Improvements in fish habitat often are part of Federal Energy Regulatory Commission (FERC) re-licensing of non-federal projects.

Nuclear Cleanup and Emergencies

Oregon has two small nuclear reactors used for research: one at Reed College in Portland, and another at Oregon State University's Radiation Center in Corvallis. The reactors are regulated by both the U.S. Nuclear Regulatory Commission and by Energy.

Hanford Nuclear Site

The Hanford Nuclear Site, located on the Columbia River in southeast Washington, is the largest environmental cleanup in the world. The site covers 586 square miles and contains waste from more than 40 years of producing plutonium for America's nuclear weapons program. The U.S. Department of Energy (USDOE) owns and operates the site.

The Hanford Site includes more than 1,800 waste sites, ranging from small areas of surface contamination to 177 underground tanks holding more than 53 million gallons of highly radioactive waste. Hanford's tanks pose the greatest health and environmental threat. At least 67 of the tanks have leaked more than one million gallons of highly radioactive waste into the soil. The tank leaks, combined with intentional releases into the soil, have resulted in extensive contamination of the groundwater beneath the site.

Since Hanford cleanup began, much of the focus has been on resolving immediate threats: concerns about tanks that might catch fire or explode; concerns about spent nuclear fuel stored in leaking, earthquake-vulnerable basins; and concerns about tons of unstable plutonium. After 15 years of cleanup, some of the immediate risks have been successfully resolved, but many serious issues remain. Now the focus is on the quality of the remaining cleanup. There is considerable debate about that issue. In recent years, USDOE Headquarters has stressed a quicker, less expensive cleanup. This, in effect, means leaving more waste in place.

There are still plenty of long-term risks. Extensive groundwater contamination remains and huge amounts of sub-surface waste are still moving toward the groundwater, including high-level radioactive waste leaked from the tanks. Highly radioactive materials remain in unlined burial grounds. Huge facilities to immobilize Hanford's tank wastes are still years from being built and operating.

The remaining cleanup will take decades. In the meantime, a fire, explosion or accident involving Hanford's underground waste storage tanks, plutonium manufacturing facilities or laboratories could release radioactive materials. Such a release could affect Oregon.

Also located at Hanford is the Columbia Generating Station, the Northwest's only operating commercial nuclear power plant. An accident at this plant could cause an airborne radioactive release, with potential impacts to Oregonians.

The consequences in Oregon from a radioactive release could be economic and environmental. Agricultural operations near Umatilla and Hermiston are only about 40 miles from Hanford.

To mitigate the risk Hanford poses to Oregon, the Oregon Department of Energy (ODOE) is urging USDOE to clean up the site and clean it up properly, as soon as possible. The Oregon Department of Energy also works with USDOE, the Columbia Generating Station, Washington State and the affected counties to ensure that the region can provide a coordinated response to a Hanford emergency. This includes conducting and participating in routine exercises.

Every two years, the Federal Emergency Management Agency (FEMA) evaluates Oregon's ability to respond to a commercial nuclear power plant accident that results in the release of radioactive materials. Oregon is tested on its ability to alert and mobilize emergency responders; assess the severity of the radiological accident; identify and track the radioactive release; and conduct environmental monitoring, sampling, and analysis. The state must also show it can issue and implement appropriate protective actions for the public, and provide timely and accurate information to the public and news media. FEMA evaluations show that the Oregon Department of Energy has met all the test objectives.

Trojan Nuclear Power Plant

The Trojan Nuclear Power Plant is on the bank of the Columbia River in Columbia County. Portland General Electric (PGE), the plant's majority owner and operator, permanently closed Trojan in 1993 and is decommissioning the plant. Decommissioning involves removing radioactive and hazardous materials so the site can be used for another purpose. ODOE oversees the decommissioning work.

Trojan's nuclear reactor was dismantled in the late 1990s and all major components were shipped to the Hanford commercial low-level waste site for burial.

The plant's spent fuel is stored on site in dry storage containers, known as the Independent Spent Fuel Storage Installation. PGE finished the

decommissioning of the spent fuel pool and its associated building in 2003. The fuel will be stored securely at the plant site until a national spent-fuel repository opens.

In early 2002, the U.S. Secretary of Energy recommended that the federal government proceed with constructing such a repository at Yucca Mountain in Nevada. Congress voted to override Nevada's veto of the proposed disposal site. A national spent fuel repository is not expected to open until after 2010.

After PGE completes all clean-up activities, the utility must perform a detailed survey that shows all areas of the plant are free of contamination. The Energy Facility Siting Council must review and approve the survey before cleanup is considered finished. ODOE provides technical staff for the Council.

In October 2004, PGE petitioned the Council to adopt administrative rule amendments that would relieve PGE of regulatory requirements associated with plant decommissioning. If adopted, these amendments will represent the Council's approval of Trojan's decommissioning. The facility will require a site certificate from the Council as long as spent nuclear fuel remains on site. If the Council approves the Trojan rule amendments, all areas of the plant, except for the spent fuel storage area, will be free for non-nuclear use.

An accident involving Trojan's spent fuel would, at most, result in a small release of radioactive materials. On-site workers might need protection; people off-site likely would not. The State of Oregon, Columbia County and PGE are prepared to respond to an emergency. Energy's emergency preparedness plan includes the Trojan Nuclear Plant.

Lakeview Abandoned Uranium Mines

During the 1950s, two uranium mines were developed in Lake County. The White King and the Lucky Lass mines were abandoned in the 1960s. In the mid-1980s, the U.S. Department of Energy and State of Oregon completed a cooperative cleanup of the uranium mill site near Lakeview. The mines themselves, however, were never cleaned up.

Former Governor Kitzhaber petitioned the U.S. Environmental Protection Agency (EPA) to list the mines on the National Priorities List for federal Superfund cleanup. The EPA issued a record of decision adding the mines to the list in September 2001. Besides the EPA, others involved include ODOE, the U.S. Forest Service, and the Oregon Department of Environmental Quality.

The EPA, DEQ and ODOE negotiated a consent decree in which Kerr-McGee agreed to perform the cleanup work. Final site design will include consolidating and stabilizing about one million tons of mine overburden (rock waste) and neutralizing the acidic water in the White King mine pit. Cleanup is expected to run through the 2006 construction season. Management of surface water and groundwater may require long-term attention.

Research Reactors

Oregon has two small nuclear reactors used for research: one at Reed College in Portland, and another at Oregon State University's Radiation Center in Corvallis. The reactors are regulated by both the U.S. Nuclear Regulatory Commission and by ODOE.

Transportation of Radioactive Materials

Radioactive materials travel on Oregon's roads every day. Radioactive waste travels through the state, destined for disposal at Hanford. Radioactive medicines are distributed daily across Oregon, and radioactive materials often are transported to and used at construction and industrial sites.

Most of these shipments pose a low risk because of the nature of the cargo. More shipments, of much more dangerous waste, likely will be trucked in the future as waste is moved from Hanford to permanent disposal sites.

ODOE works with local, state and federal agencies to ensure the safe transportation of these wastes. ODOE also works to ensure swift and appropriate response to a radioactive material transportation accident, providing training for emergency responders along the transport corridors. Nearly 800 emergency responders and hospital emergency room personnel have attended radiological training since January 2003.

Energy Issues Facing Oregon

Energy and the Economy

Energy price and supply affect Oregonians. For example, energy price increases caused Oregonians to spend 50 percent more per unit of energy to heat their homes in 2002 than they did in 1998. Energy conservation and efficiency, along with renewable resources can help insulate Oregonians from volatile energy prices. This benefits the state's economy.

Energy efficiency and renewable energy result in direct local economic improvement. Project construction creates a one-time surge in economic activity, while operation and maintenance create long-term jobs. Every $100 million of investment in renewable energy creates about 1,250 full time equivalent jobs and nearly $200 million in economic benefits, which increase tax revenues by about $1 million. [1]

Efficiency and renewable energy can also meet a significant portion of Oregon's incremental energy needs, in some cases at a lower cost than that of conventional fuels. For example, when natural gas prices rose to about $7 per million Btu that translated to about 5.6 cents per kWh, which is significantly higher than the cost of wind energy.

Between 1990 and 2002, utilities in the Pacific Northwest invested $2.4 billion in conservation, resulting in savings of 2,600 average megawatts (aMW) annually. This precluded generating the output of five large coal plants and avoided significant environmental cost. That $2.4 billion investment is recovered in electricity bill savings every 18 months. [2]

In 2004 alone, Oregonians invested nearly $200 million in efficiency and renewable energy. These investments support Oregon's economy by increasing business activity, cutting energy costs, and making Oregon business more competitive.

Economic development and energy agencies from Oregon, Washington and British Columbia commissioned Poised for Profit: How Clean Energy Can Power the Next High-Tech Job Surge in the Northwest. This 2001 report showed that the clean energy sector could be twice the size of the aircraft industry within 20 years and generate as many as 30,000 new jobs. The study estimated this sector includes more than 225 companies with revenues, and research and development funding exceeding $2 billion.

Local efficiency and renewable energy investments boost revenues for Oregon designers, vendors, manufacturers, and service providers in a wide range of manufacturing and construction trades. Energy cost savings build each year from these investments and stay in Oregon's economy.

Businesses that make efficiency or renewable energy improvements are more competitive, because of lower operating costs and in many cases better control over production and product quality. In addition, Oregon business becomes less dependent upon foreign oil and natural gas supplies, which have experienced sharp price increases.

For example, developing biodiesel and ethanol production from Oregon renewable resources will provide local business with numerous opportunities. In-state production also offers long-term

[1] Based on Economic Impact Analysis of Energy Trust of Oregon Program Activities, Final Report, by ECONorthwest, Portland, April 2003.

[2] Per communications with Tom Eckman, Conservation Program Director, Northwest Power and Conservation Council, September 16, 2004. Assumes average avoided cost – or value of savings – of 5.5¢/kWh, or $55/MWh. In 2001, when West Coast market prices for electricity spiked to $250/MWh and higher, the savings realized in the Pacific Northwest would have been appreciably greater.

benefits to the environment and the economy.

A Minnesota study suggests that local economic benefits are about 10 times higher for locally owned and operated businesses when compared to those from projects owned by corporations outside the region.

Central Oregon may serve as an example of an efficiency and renewable energy development cluster. The nine-county central Oregon corridor (Wasco, Sherman, Gilliam, Wheeler, Deschutes, Jefferson, Crook, Klamath, and Lake counties) possesses diverse renewable resources including solar, wind, geothermal, and biomass. The corridor can build on several dozen renewable energy-related companies manufacturing fuel cell applications, photovoltaic system inverters and other technologies.

Oregon businesses are recognized for their experience developing renewable energy. Institutes in the higher education system are dedicated to the full range of energy efficiency and renewable resources. The scientists at Oregon's universities are a deep resource for technology and information in this sustainable industry. Oregon's economy can benefit from their unique expertise. For example, microelectronics, fuel cell applications, power controllers, and renewable resource technical services are supported by Oregon incentives. The combination of scientific expertise and state incentives positions Oregon businesses to export these technologies.

Actions to Maintain Hanford Cleanup

Oregon has a tremendous stake in ensuring the safe and timely cleanup of the Hanford Nuclear Site in southeastern Washington State. Hanford is only 35 miles from the Oregon border. The Columbia River flows through the Hanford Site, and then continues downstream past prime Oregon farmlands and fish habitat. The threat to the Columbia River from Hanford's radioactive and chemical wastes is Oregon's greatest concern at Hanford.

In addition, cleanup decisions at Hanford can influence the amount and type of waste that is brought to Hanford for treatment or disposal and influence the amount and type of waste that leaves Hanford for other disposal sites. These wastes travel on more than 200 miles of Oregon highways. Oregon works to ensure the safe transport of these radioactive wastes. In addition, Hermiston, Boardman and Umatilla are within the 50-mile nuclear emergency-planning zone of the Hanford Site. The people there could be at risk in the event of a major accident at Hanford.

Despite Oregon's strong interest in Hanford cleanup, Oregon has no regulatory authority over Hanford cleanup. A Tri-Party Agreement between the U.S. Department of Energy (USDOE), the U.S. Environmental Protection Agency and the Washington Department of Ecology is the legally binding action plan for cleaning up chemical and radiological wastes at Hanford.

Over the years, the Oregon Department of Energy (ODOE) has attempted to secure a more formal role in decision-making about the Hanford cleanup. In June 2002, the director of the Washington Department of Ecology acknowledged Oregon's "bona fide interest in Hanford matters" and offered to provide ODOE with real time briefings about Tri-Party Agreement negotiations.

While Oregon seeks new opportunities to gain a stronger role at Hanford, ODOE's Nuclear Safety Division continues to work closely with USDOE, with Hanford's regulators, with stakeholders and with tribal nations to implement sound technical and policy decisions regarding the cleanup. We

continue to review the cleanup plans that USDOE and its regulators propose and provide Oregon's input and perspective. In addition, work with our congressional delegation ensures sufficient funding for cleanup.

Emergency Preparedness

The national focus on security of critical infrastructure in the wake of 9-11 has significantly increased ODOE's responsibilities in emergency planning, preparedness and response activities. Before 9-11, the agency's only emergency response program with security concerns involved nuclear emergencies that affected Oregonians. This includes preparing and responding to nuclear accidents at the Trojan Nuclear Power Plant, the Columbia Generating Station, the Hanford facilities, and to accidents involving the transport of radioactive materials on Oregon highways.

Now, the nation's petroleum supply and distribution system, and electrical grid are also classified as critical infrastructure vulnerable to terrorist attacks. Protecting the health and safety of Oregonians from severe petroleum disruptions and electricity emergencies involving the State's 38 consumer-owned utilities is the responsibility of ODOE. To address security and terrorism concerns and needs related to energy infrastructure, the Oregon Department of Energy has been meeting with state and federal law enforcement agencies and energy suppliers.

To better protect, secure, and respond to a severe or long-term emergency involving Oregon's petroleum supply and distribution system, ODOE is expanding and restructuring its Petroleum Contingency Plan. For the first time, ODOE is working directly with the U.S. Department of Energy's Office of Energy Assurance, Oregon's petroleum suppliers, law enforcement, other state agencies, and the state's 36 counties to ensure a coordinated response to petroleum emergencies. The Oregon Department of Energy is developing a database with sensitive information on fuel consumption, designated emergency fueling stations, and maps of emergency routes in the state to simplify and accelerate the overall application process for emergency fuel during a crisis.

The Oregon Department of Energy is also working with the Oregon Public Utility Commission (PUC) and Oregon Emergency Response System to expand the existing notification plan for rotating outages to include all electricity emergencies. ODOE and the PUC are jointly responsible for planning and response to electricity emergencies affecting Oregon. ODOE is responsible for Oregon's consumer-owned utilities while the PUC regulates the State's investor-owned utilities.

Responding to petroleum and electricity emergencies requires extensive coordination. This includes facilitating the allocation of fuel and notifying or providing critical emergency information to the State's utility providers to avert an electricity crisis. ODOE will continue to work with its federal, state, local, and industry counterparts to ensure a comprehensive response to energy emergencies affecting Oregon.

Petroleum – Price Increases and Production Peaks

Oregon should expect continued high gasoline and other oil price prices that could negatively affect our economy, which remains heavily dependent on oil. About half the energy products Oregon uses are refined oil, most of it for transportation. In 2000, Oregonians spent 2.6 percent of their total personal income on gasoline and 4.3 percent on all oil products combined.

The price Oregonians pay for petroleum products depends on world oil prices. Middle East production strongly influences the world price. The Middle East produced 28 percent of the world's oil in 2001 and controls two-thirds of the world's oil reserves. There have been four world price spikes in the last 30 years, in 1973, 1979, 1990 and 2004. These were due to high world oil demand and the Yom Kippur War, the Iran-Iraq War, the Persian Gulf War, and the Iraq War, respectively. As recent events indicate, the Middle East remains unsettled.

Another potential problem is long-term price trends. World oil production may peak in the next decade and begin a long-term decline. Meanwhile, world demand for oil continues to grow. Increased demand will maintain or increase already high oil prices.

While U.S. oil production peaked in 1970, most experts think that worldwide production will peak within five to ten years. This is based on a projected maximum global resource base of 2.2 trillion barrels, which has held steady since the 1950s.

Production from most non-OPEC sources, such as Canada, Mexico, and the North Sea, likely already has peaked. Production from many OPEC nations has reached a plateau, and is unlikely to increase before it begins to decline.

The oil peak does not mean we are about to run out of oil. It means we have used about half the Earth's oil — the easiest and cheapest half to find and produce. After the peak, prices may rise sharply. This would have a major impact on the U.S. and world economies, because oil accounts for about 40 percent of the energy we use, including 95 percent of U.S. transportation energy. All the major recessions of the past 35 years were preceded by sharp increases in the price of oil.

The state has little ability to mitigate the economic impacts of a sustained fuel price increase after it occurs. Oregonians can reduce their vulnerability to oil prices by decreasing the miles they drive, buying vehicles that get more miles per gallon, and increasing the use of alternative fuels.

The most significant options to reduce vehicle miles traveled relate to work commutes, which includes increased transit use, van/carpooling, and telework. Improved commuter options are:

- Increasing incentives for employers to reduce single-occupant commuting. Employers can pay for transit passes and can develop telework sites or encourage working from home.
- Expanding incentives to encourage vanpooling and carpooling, such as carpool parking discounts and high-occupancy vehicle lanes.
- Starting commuter rail along existing rail lines.
- Expanding transit service.

High efficiency vehicles, including hybrids, offer the greatest potential for reducing gasoline use in the near term. However, the most significant option to improve vehicle efficiencies is to encourage improvement in the federal Corporate Average Fuel Economy (CAFE) standard. Congress has not increased fuel economy standards for new vehicles since 1985. The report of the Governor's Global Warming Advisory Group, *Oregon Strategy for Greenhouse Gas Reductions*, provides a number of recommended actions that also reduce use of petroleum.

For Oregon's overall petroleum supply, the Oregon Department of Energy is responsible for allocating gasoline and diesel during critical emergencies. ODOE's Petroleum Contingency Plan ensures a coordinated response with the state's petroleum suppliers, law enforcement,

other state agencies, and the counties. The revised plan will include a database with county-specific information on fuel use, designated emergency fueling stations, and maps of emergency routes.

Natural Gas – Price Increases and Production Peaks

As with petroleum, the recent spikes in natural gas prices may seem minor once world production peaks and begins to decline. Rather than spike and decline, natural gas prices would likely remain high.

Natural gas accounts for 20 to 25 percent of U.S. primary energy use. Natural gas is a clean, high-value resource that could substitute for oil in many uses. However, like oil, natural gas is non-renewable and production will peak and decline. For North American natural gas, that appears to be happening now.

From 2001 to 2003, U.S. gas production declined almost 3 percent and Canadian imports declined 8 percent, despite significantly higher prices. In addition, world natural gas production eventually will peak. Discoveries of new fields peaked in 1970, and for the past three years, the world has used more natural gas than it has found.

Because of these production declines, natural gas prices are more than double what they were five years ago. High natural gas prices hurt the economy.

To make up for declining domestic production, the U.S. would need to import natural gas from abroad. However, natural gas produced overseas must be liquefied for ocean transport. This is expensive, as is regasification, and it will take time to build the tankers and production facilities. One LNG regasification plant is proposed in Coos Bay and three in Columbia and Clatsop counties. It is unlikely any LNG facility will be ready before 2008 and even then, there will be increasing worldwide competition for the gas. Much of it likely will go to countries closer to the source of production where it can be moved easier and cheaper by pipeline. Oregon will get product with a higher delivered price.

Oregon wholesale natural gas prices rose 168 percent between January 1999 and July 2004. Over the same period, residential rates rose 94 percent. This is largely responsible for the drop in natural gas use for residential, commercial and industrial sectors of 3, 8 and 37 percent respectively. While the reduced use in the residential and commercial sectors was due primarily to price increases, the economic recession added to reductions in the industrial sector.

Natural gas prices influence electric prices. Because roughly 8 percent of Oregon's electricity is generated from natural gas, gas prices influence retail electric prices. The share of gas-fired generation is increasing as loads grow and since most new power plants are fired by natural gas. Electric utilities can reduce their exposure to fuel price spikes by developing renewable resources and buying more of their fuel in longer-term contracts. These measures can be more expensive in the near term. These tradeoffs are part of the utility least-cost planning process.

Natural gas prices continued to rise in late 2004. Oregonians can reduce their vulnerability to natural gas price spikes by weatherizing their homes and installing premium-efficiency equipment in homes, buildings and factories. Natural gas utilities and others offer conservation programs.

Public schools (K-12) in Pacific Power and Portland General service territories are eligible for $6

million per year for electric, natural gas and oil conservation. In addition, ODOE recently received funds from an overcharge settlement to cover energy efficiency measures in Oregon K-12 public schools served by municipal utilities, people's utility districts, and electric cooperatives.

The Oregon Department of Energy offers tax credits and loans for conservation in buildings and factories and programs to reduce natural gas use in state facilities.

Expanding state, utility and non-profit conservation programs would reduce Oregon's vulnerability to natural gas price spikes.

Alternative Fuels for Transportation

Alternatives to gasoline and diesel play a major role in reducing demand for foreign petroleum, diversifying our fuel mix, and reducing carbon dioxide emissions. Oregon recognizes the following alternative fuels: ethanol, methanol, electricity, compressed natural gas, liquefied natural gas, liquefied petroleum gas, biodiesel, hydrogen, and hybrid vehicles. Many of these transportation fuels burn cleaner, come from renewable sources and can originate in the Northwest.

A balanced approach is needed to meet Oregon's alternative fuel and transportation efficiency objectives. Alternative transportation fuels can provide lower emissions, cost savings and insulation from petroleum price variance. Renewable biofuels (ethanol and biodiesel) show the most promise and can be produced in Oregon. Locally developed biofuels can stimulate economic development and reduce overall fuel costs.

Biodiesel can displace conventional diesel with blends ranging from 2 to 100 percent. Blends up to 20 percent require no engine modifications. Biodiesel is a clean burning alternative fuel, produced from domestic, renewable resources. Biodiesel can be made from waste grease products or locally grown agricultural products, such as rapeseed or mustard seed. Pure biodiesel is biodegradable, nontoxic and essentially free of sulfur and aromatics.

Ethanol alcohol fuel is usually mixed with gasoline at 85 percent ethanol and 15 percent unleaded gasoline to form what is called E-85. In 2004, gasoline in Oregon had an overall average ethanol content of 2 to 3 percent. Ethanol can be blended with conventional gasoline up to 10 percent without any engine modifications. Blends using 85 percent ethanol (E-85) require slight engine modifications. Typically derived from distilling corn, ethanol is also a byproduct of starch manufacturing.

To help develop alternative fuels, the Oregon Renewable Energy Action Plan recommends that:

1. Diesel sold in Oregon contain 2 percent biodiesel (on average).
2. Fifteen million gallons of biodiesel be produced annually from Oregon crops or products and waste oils collected in Oregon.
3. Gasolines sold in Oregon contain 2 percent ethanol (on average).
4. Oregon produce one hundred million gallons of ethanol annually.

Electricity Supply

Adequate Electricity Resources

Conservation, new renewable generating resources, and the transmission infrastructure to deliver power from generating plants to load centers are the key elements in assuring adequate electricity.

In its 5th Power Plan, the Northwest Power and Conservation Council (NPCC) concluded that, on a regional basis, there should be a surplus of electricity at least until the end of the decade, even in a drought. These conclusions assume moderate growth in demand, availability of power plants developed by independent power producers, and the aggressive regional pursuit of conservation and demand response options even in a time of surplus.

Utility Resources

Between 2001 and 2003, Oregon added 1,675 MW of natural gas- fired capacity, and 307 MW of average wind generation. Many power plants have been completed in California, Arizona, Washington and Nevada, helping to ensure adequate resources throughout the West.

To avoid the shortages and price spikes of 2000 and 2001, Oregon's investor-owned utilities plan to rely less on wholesale power markets. Instead, they plan to ensure adequate resources by building more gas-fired and wind power plants or sign long-term, fixed-price purchase agreements.

The Bonneville Power Administration (BPA) resources can meet the current needs of Oregon's consumer-owned utilities. Long-term, BPA's role in meeting the load growth of its customers after 2011 may diminish or disappear.

In addition to wind plants, Oregon will likely need new stand-alone gas-fired plants in the next decade. State law, through Energy Facility Siting Council exemptions and incentives, encourages smaller turbines or internal combustion engines at customer sites. Producing both heat and power, the plants are more efficient than producing heat and power separately and cause fewer CO2 emissions. They also reduce transmission line losses and can reduce the need to upgrade transmission and distribution systems.

Transmission Infrastructure Improvements Needed

Transmission constraints – both physical and contractual – present a significant challenge to developing new generation. For example, interconnecting with BPA in some of Oregon's best wind generation areas, and shaping and transmitting wind and other generation from east of the Cascades to western load centers both present problems.

Aggressive Pursuit of Conservation

The NPCC has concluded that it makes economic sense to aggressively pursue cost-effective conservation, even in a time of surplus. ODOE agrees. It is a matter of "pay me now or pay me more later." Under virtually all scenarios in the NPCC's analysis, acquiring conservation at a quicker pace than in the past several years would result less costly and less risky system.

The NPCC's Plan calls for the region to acquire more than 500 average megawatts of conservation from 2005 through 2009. Oregon's share of this target is roughly 150 average megawatts. Accomplishing the NPCC's targets will require the commitment of every energy stakeholder. ODOE will work with all Oregon utilities to determine their share of the target and move quickly to acquire those shares.

Aggressive Pursuit of Renewable Generation

The NPCC projects the need for new generating resources sometime after 2010. Most new power plants in Oregon over the past decade run on natural gas. However, natural gas prices are volatile and were very high in 2004. Renewable resource generating plants have no fuel costs and raise fewer and less severe risks and environmental concerns.

Renewable resources, whether in the construction, operation or component manufacturing phase, are good for Oregon's economy. For that reason, Oregon should make maximum use of renewable energy.

Oregon's Renewable Energy Action Plan provides that by the end of 2006, 300 MW of wind energy will be developed, as will 2.5 MW of new solar electric, 5 MW of new biogas, 25 MW of new biomass, and 50 MW of new combined heat and power. Under the Plan, renewable generation will meet 10 percent of Oregon's load by 2015. This will increase to or exceed 25 percent of the load by 2025. ODOE will continue to encourage rapid development of economically viable renewable resources.

Renewable resources are preferable to the likely alternative of new coal. Coal generation would have significant human health and environmental impacts. New coal-fired plants produce more than twice the carbon dioxide (CO2) of new gas-fired plants and, even with maximum control technologies produce significant amounts of sulfur dioxide, nitrogen oxides and mercury. It is unlikely new coal-fired plants will be built in Oregon in the near future.

Any development of mine-mouth coal-fired generation would require an investment in transmission of an estimated $1 billion to bring the electricity to the population centers in western Oregon. Strategic upgrades to accommodate smaller renewable resource generation projects, along with continued investments in energy efficiency would eliminate the need for a coal plant and the transmission needed to serve it.

Electricity and Natural Gas Transmission

Developing sources of new energy is important, but just as important is upgrading the energy delivery infrastructure. This includes natural gas storage, pipelines and compressor stations, electricity transmission lines and substations. Oregon's natural gas infrastructure has been upgraded recently with the expansion of Northwest Natural's Mist storage facility and completion of Northwest Natural's new pipeline from Sherwood to Molalla. Both projects received a site certificate from the Energy Facility Siting Council.

The immediate need is to upgrade the electricity transmission system. Bottlenecks and lack of capacity at various locations constrain the development of new power plants, including wind. For example, wind development in eastern Oregon awaits construction of the proposed 500-kilovolt transmission line between the McNary and John Day dams on the lower Columbia River.

The problems with the transmission system, which result in inefficiency as well as reduced reliability and capacity, include managing real-time capacity constraints, lack of responsibility and incentives for expansion. There is also a poor match between contracted rights and the physics of the transmission system. These can be addressed by renegotiating transmission contracts and establishing regional markets for transmission capacity and related services.

The electricity system upgrades in particular need to target renewable resources. This includes providing transmission for new smaller generation that serves local needs. At the same time, to the extent that we can develop such local renewable resources and combined heat and power generation resources, the need for transmission is reduced.

The Bonneville Power Administration's (BPA) policy on open capacity should give preference to electricity generated from renewable resources. BPA has discretion on scheduling load and access to its transmission system, and it can take steps to ease access to its system.

Energy's Action Plan for 2005 and 2006

The mission of the Oregon Department of Energy (ODOE) is to ensure Oregon has an adequate supply of reliable and affordable energy and is safe from nuclear contamination, by helping Oregonians save energy, develop clean energy resources, promote renewable energy and clean up nuclear waste. We set the following goals to achieve our mission:

- Meet a significant portion of Oregon's incremental energy needs with conservation and renewable resources.
- Help reduce carbon dioxide emissions through incentives and other programs.
- Prepare the state and counties within 50 miles of an operating commercial nuclear power plant for nuclear emergencies.
- Reach key cleanup milestones at the Hanford Nuclear Reservation.

This two-year action plan seeks to meet these goals. A number of these actions appeared in the 2003 Plan. We evaluated those actions, found them effective, and concluded they should be continued.

Conservation

Households

1. **Encourage homeowner investments in cost-effective efficiency measures and renewable resources.**
   Highly efficient appliances and renewable resources for heating, hot water and electricity can significantly reduce use of fossil fuels. But the higher initial cost of many technologies is a significant barrier. Providing tax credits helps overcome this obstacle.

   ODOE will continue to update standards and eligible technologies for the state's Residential Energy Tax Credit program and provide information and technical help to Oregonians who use it. In addition, ODOE will implement a Governor's directive to bring the tax credit application process on-line.

2. **Continue services and incentives for weatherizing homes.**
   Weatherizing homes is a significant source of energy savings. Since 1977, Oregon law has ensured that every household in the state has the opportunity to learn which measures its home needs to make it energy-efficient. For many measures there are financial incentives to help pay for them.

   For oil-heated homes, which typically are older and less efficient, weatherization and heating upgrades reduce the impact of volatile fuel-oil prices. ODOE provides rebates through the State Home Oil Weatherization Program.

   In addition, the Oregon Department of Energy will continue to train and certify contractors to properly design and seal heating ducts and work with others to develop new incentive programs. ODOE also will promote the Business Energy Tax Credit and State Energy Loan Program for weatherization and other efficiency upgrades for rental housing.

   For low-income households, ODOE will continue to participate in the Oregon Housing and Community Services Department's Advisory Committee on Energy. The committee crafts policies and procedures for weatherization and energy assistance. ODOE will work with Oregon's congressional delegation to advocate for an increase in federal funding for weatherizing low-income housing.

3. **Support energy-efficient building residential codes.**
Oregon's statewide residential building code includes significant energy- efficiency measures. The Oregon Department of Energy will continue to provide training and technical help for the building industry and local building departments. ODOE will assist the Building Codes Division with recommendations from the West Coast Governors' Global Warming Initiative to upgrade energy codes.

On the national level, ODOE helps develop federal standards for appliances. This includes water heaters, air conditioners, dishwashers, clothes washers, refrigerators, and heat pumps. States are preempted from adopting such standards, because products are national in scope. ODOE will continue to serve on this national committee.

4. **Encourage energy-efficient building practices beyond code levels.**
ODOE also will promote energy-efficient building practices that exceed code. ODOE is supporting development of an integrated High Performance Home. The concept includes a super-efficient building shell, solar equipment, advanced heating and ventilation systems, and electronic controls to help homes approach zero net energy use. At certain times of the day or year the house will produce more energy than it needs, while at other times it may use some power from the local utility. Over the entire year, power purchased from the utility will be offset by power produced by the house and sold back to the utility. ODOE will demonstrate the concept, monitor performance in a few homes, and promote the concept to builders, designers, and homebuyers.

For the more conventional market, ODOE administers the Environmental Protection Agency's (EPA) Energy Star Home program in Oregon. The program requires sealing of heating and cooling ducts, more efficient heat pumps or natural gas furnaces, and improvements to windows and floor insulation. To maximize market potential, ODOE will provide training and quality control for the program, and ensure coordination with the Residential Tax Credit program, High Performance Homes Initiative, and utility programs.

The Oregon Department of Energy will also encourage more energy-efficient manufactured housing. Oregon produces 75 percent of the manufactured homes in the region. ODOE has worked with the industry to design and market energy-efficient manufactured homes under the Super Good Cents® (SGC) brand name. More than 60 percent of new manufactured homes are built to SGC standards. The Department will continue administering the regional program and work to increase market share. Manufacturers will be helped to improve energy efficiency by conducting research to reduce duct losses. Work in also underway to launch a "buyback" program to retire old, inefficient manufactured homes and replace them new, more efficient models.

Businesses

5. **Encourage businesses to invest in cost-effective energy efficiency and renewable resources.**
Tax credits are available to businesses for investments in energy efficiency and renewable resources to help them overcome the higher first-costs. ODOE

evaluates the performance of the Business Energy Tax Credit program, identifies priority target markets and implements improvements. ODOE also will use the State Energy Loan Program and work with others to leverage tax credit benefits for Oregon businesses. The loan program is targeting at least $5 million per year in efficiency investments in commercial buildings.

6. **Upgrade energy standards for commercial buildings.**
State code for commercial buildings sets minimum standards to ensure that new buildings include all practicable energy efficiency measures. ODOE will provide training and materials to code officials, designers, distributors, and contractors to help ensure compliance with the code. ODOE will monitor code implementation and evaluate actual energy savings. New technologies and practices make additional cost-effective energy savings possible. ODOE will assist the Building Codes Division with recommendations from the West Coast Governors' Global Warming Initiative to upgrade energy codes.

7. **Promote building commissioning as standard practice in nonresidential buildings.**
The building commissioning process ensures that the complex equipment providing lighting, heating, cooling, ventilating and other amenities in buildings works together effectively and efficiently. Studies on commissioning show that the practice provides savings of 15 to 30 percent. The Oregon Department of Energy continues to lead a project to make commissioning standard practice for public buildings in the Northwest. In addition to demonstrating and documenting commissioning in 36 buildings, ODOE provides information and commissioning guides.

Industry

8. **Apply best practices in Oregon industries and increase efficiency investments.**
To remain competitive, industry depends on stable supplies and prices for natural gas, electricity and petroleum. In 2004, natural gas prices doubled, petroleum prices were at a record high, and historically low electricity rates in the Northwest were at or above the national average. Companies that adopt the most efficient production methods reduce energy costs, waste and emissions while they improve productivity and often product quality.

   Competition for capital is acute and fixed costs are rising. The federal tax structure supports the write-off of energy cost expenditures, while capital investments in energy-efficient or renewable energy technology are recovered through depreciation of equipment. Continued business energy tax credits are critical to support investments in energy efficiency. The Oregon Department of Energy will continue to provide Oregon industries with up-to-date information on best practices and help them use the state tax credit. In addition, ODOE will assist industries in applying for national grants for research and innovative efficiency projects.

   ODOE has a grant to work with the states of California, Washington, Idaho, the national laboratories, the Northwest Food Processor's Association, the California League of Food Processors, utilities, and energy efficiency advocates. The purpose is to develop and disseminate information on best practices and emerging technologies to

help the food processing industry invest in energy and resource efficiency. In addition to helping the industry reduce costs, we hope to transfer the model to other industries.

9. **Assist Oregon's largest electricity consumers to invest in energy efficiency.**
Oregon law allows large electricity consumers to directly invest much of the public purpose charge on their utility bills in energy efficiency and the above-market cost of renewable energy.

   ODOE will continue to certify that the proposed site, investments, and expenses are eligible as provided by law. ODOE will continue to provide technical help to Oregon's largest energy-using industries on efficiency opportunities. ODOE will promote all services and incentives available to the largest electricity consumers to encourage industry investments.

10. **Assist Oregon's energy efficiency and renewable fuels manufacturers to invent, produce, and sell state-of-the-art services and equipment.**
Many Oregon businesses invent, design, manufacture, and deliver energy efficiency equipment, including wind energy generators, fuel cells and reformers, inverters for solar electric systems, controls, premium efficiency light fixtures, hybrid vehicle controls, renewable transportation fuels, and more. These businesses are creating jobs and helping Oregon's economy grow. ODOE will help find the latest information, develop networks of experts, and use the state's incentive programs to assist them.

Public Buildings

11. **Reduce energy bills for Oregon schools.**
Oregon law sets aside funds for improving the energy efficiency of K-12 schools in the service areas of Portland General Electric and Pacific Power. Education service districts administer the funds. Funds must first go to energy audits, then to measures recommended by those audits. ODOE helps coordinate the program, provides technical help and quality control, manages a database to track the program, and reports on expenditures and results. Many of the audits already are completed. In the next two years, ODOE will work with the education service districts to implement $8 million to $10 million in energy efficiency projects.

    In addition, the Oregon Department of Energy (ODOE) recently received $1 million from an overcharge settlement to fund energy efficiency measures in Oregon K-12 public schools served by municipal utilities, people's utility districts, and electric cooperatives. Using separate funding ODOE will provide technical assistance for energy audits and project specifications.

    ODOE also will continue to provide funding to schools using the State Energy Loan Program, federal monies and other sources. ODOE identifies schools with high energy bills, conducts energy audits and makes recommendations for cost-effective efficiency measures.

12. **Develop high-performance school buildings.**
ODOE will continue training for school staff, construction vendors, administrators and facility managers on the advantages of building high-efficiency, environmen-

tally sound buildings. ODOE provides technical assistance and funding via the State Energy Loan Program and the Business Energy Tax Credit Pass-through to help schools finance high performance energy-efficiency measures and meet the standards. Through 2004, one Oregon school has been built to meet the stringent Leadership in Energy and Environmental Design (LEED) Gold rating and five have been completed that meet the LEED Silver rating. Eight more schools have been constructed to meet federal High Performance Schools standards. At the end of 2004, four schools designed to meet the LEED Silver rating and five schools designed to meet federal High Performance Schools standards were under construction.

13. **Expand the use of the energy tax credit for governments and schools.**
The owner of a conservation project is allowed to transfer the state energy tax credit to an Oregon business in exchange for cash payment. The project owner may be a public institution. ODOE will continue to develop partnerships to promote this option for schools and local, state and federal buildings in Oregon. ODOE will coordinate these efforts with the State Energy Loan Program to invest in public building conservation measures.

14. **Increase the energy efficiency of new and remodeled state buildings by 20 percent or better.**
State law requires that new state buildings and major renovations be at least 20 percent more energy-efficient than required by Oregon's building code. ODOE recommends savings measures to consider in the design and reviews the plans to ensure targets are achieved. ODOE has provided assistance for 70 new or renovated state buildings and is working on more than 56 other projects. Estimated savings for completed buildings are about $2 million per year.

The law also requires existing state buildings to reduce electricity use 10 percent compared to energy use in 2000. The Oregon Department of Energy will continue to help state agencies develop and carry out conservation plans and use the State Energy Loan Program funds to help achieve the 10 percent reduction. ODOE will identify best practices for building design and energy-using systems and distribute its report to state agencies.

ODOE also has worked with a group of state agencies to evaluate whether they could get additional savings by aggregating loads and buying power on the open market. The group determined that the market wasn't mature enough yet, and that risks outweighed potential benefits. ODOE will continue to monitor the market.

15. **Establish energy savings performance contracting for public buildings.**
Energy savings performance contracting provides guaranteed energy savings to secure financing and pay for efficiency improvements without increasing operating budgets. Contractors also provide project management, reducing the need for in-house expertise. The Oregon Department of Energy has developed model contract documents for state and local governments and schools. ODOE demonstrated energy savings performance contracting with Oregon State University's Hatfield Marine Science Center and will continue to help other public agencies.

16. **Continue federally funded community energy projects.**
ODOE uses federal Rebuild America funds to provide technical help for resource-saving projects for schools, state agencies, local governments and others. Work includes design assistance, training, demonstration projects and technical analysis. ODOE will continue Rebuild America projects with Oregon State University, Willamette Education Service District, Portland Public Schools, Redmond School District, Canby School District, Salem-Keizer School District, Condon School District, The Dalles Middle School, Oregon Parks and Recreation Department, and the cities of Salem, Bend and Cannon Beach. Using grant funds, ODOE provides technical help with energy savings performance-contracting services for universities and K-12 schools.

Transportation

17. **Reduce drive-alone commuting.**
Reducing vehicle miles traveled for commuting is the most effective way to reduce Oregon's dependence on imported and polluting gasoline and diesel. ODOE provides employers with information and incentives for vanpooling, shuttles, employee bus passes, and for developing innovative transportation choices.

    ODOE coordinates the Columbia-Willamette Clean Cities Coalition. The group consists of fleet managers and alternative fuel industry representatives. The goal is to share information with fleet managers on the benefits of clean fuels, clean fuel vehicles and reducing vehicle miles traveled.

18. **Increase purchases of hybrid gas-electric vehicles.**
Hybrid gasoline-electric vehicles hold great potential for reducing fossil fuel use and vehicle emissions. The Oregon Department of Energy will continue to provide tax credits and low-interest loans to encourage hybrid vehicles for business and personal use. ODOE also will help the state motor pool buy more hybrid vehicles for the fleet.

19. **Foster alternative fuel production and fueling stations.**
Alternative fuels such as biodiesel, ethanol, natural gas, electricity and hydrogen are less polluting and diversify our transportation fuel supply. But they cost more than diesel and gasoline. ODOE will continue to provide information, technical help, tax credits and low-interest loans to encourage alternative fuel production and fueling stations in the state.

20. **Reduce truck idling.**
Interstate heavy-duty diesel trucks idle during rest stops to operate refrigeration units, maintain cab comfort, provide power to domestic appliances and accessories, and perform other functions. The Oregon Department of Energy will participate in state and regional efforts to reduce energy use and air pollution impacts associated with long duration idling. ODOE will also provide information, technical help, tax credits, and low-interest loans to encourage the reduction of truck idling. For example, ODOE has approved a tax credit and loan for the Lane Regional Air Pollution Authority program to install alternative power units on long-haul diesel trucks.

Clean Energy Resources

21. **Implement the Oregon's Renewable Energy Action Plan.**
At the direction of Governor Kulongoski, the Oregon Department of Energy led the formulation of the Oregon Renewable Energy Action Plan. The Plan's purpose is to encourage and accelerate the production of energy from renewable sources, stimulate economic development (particularly in rural areas), and improve the environment. The Plan sets long- and short-term goals for both electricity generation and transportation fuels. The Plan proposes a number of administrative actions to encourage renewable energy. One of the Plan's highlights is the 10-10 program, where renewable resources would meet 10 percent of Oregon's electricity load by 2015.

22. **Increase the share of renewable resources serving Oregon's energy needs.**
The Oregon Department of Energy will continue to provide loans and tax credit in coordination with incentives offered by the Energy Trust and Bonneville Power Administration. ODOE will provide technical support for the Energy Facility Siting Council's review of applications for renewable resource power plants, and provide information and technical assistance to local governments on model siting standards.

    ODOE has a federal grant and is leading a state Wind Working Group. The group includes farming and rural interests, developers, utilities, government agencies, and environmental groups. ODOE will continue to guide implementation of the group's Action Plan to overcome barriers to wind development, with a focus on locally owned small wind farms. ODOE also obtained funding for an Oregon Geothermal Working Group and will coordinate efforts to develop geothermal resources for electricity generation and direct use applications.

23. **Assess the feasibility of a state Renewable Portfolio Standard.**
The Renewable Energy Action Plan calls for an assessment of the feasibility of a state Renewable Portfolio Standard, which would require all electricity suppliers to gradually increase renewable resources used to supply power needs. Such a Renewable Portfolio Standard will be compared with production-based incentives as to its effectiveness to encourage renewable energy. A broadly based working group will explore the options.

24. **Support federal incentives for renewable resource generation.**
The federal energy production tax credit for investor-owned utilities and other companies has been extended to the end of 2005, along with a related production incentive for publicly owned utilities (the Renewable Energy Production Incentive or REPI). Congress expanded eligibility beyond wind and some crop-based resources to include solar, geothermal, small irrigation hydroelectric power, open-loop biomass, refined coal, agricultural livestock waste nutrients, municipal solid waste and landfill gas.

    ODOE will continue to work with Oregon's congressional delegation to extend the incentives for at least 10 years; to establish tradable credits for electric cooperatives, municipal power

providers and others; and to make REPI more consistently available. (REPI is now handled through annual appropriations separate from tax legislation.)

25. **Develop a registry for the Western electric grid to verify renewable energy claims.**
Power plants that use a renewable resource have two products for sale: electricity and environmental attributes such as cleaner emissions. Increasingly these products are sold separately, to different customers. Power from wind turbines, for example, is sold in the wholesale market at the same price as power from a coal or natural gas plant, and no claims are made that the generation process is any cleaner. The higher cost of the wind power is recouped through the sale of its environmental attributes to retail customers who pay a little more to increase the share of electricity that comes from renewable sources.

    To prevent fraud and ensure that customers get what they are paying for, ODOE is working with the Western Governors' Association and Western states to develop a Western Renewable Energy Generation Information System (WREGIS). The WREGIS will serve as an independent, regional electricity generation tracking system that will issue and track renewable energy certificates (known as WREGIS certificates). The system is being designed to meet the tracking and verification needs of regulators, utilities, generators, marketers, and other stakeholders in the West. The registry will validate sales claims for power sources, energy production and environmental characteristics. It will also facilitate sales and maintain consumer confidence in the green or renewable power market.

26. **Support customer choice of renewable resource generation.**
Oregon law requires Portland General Electric and Pacific Power to provide renewable resource rate options to their residential and small business customers. As of 2004, PGE ranked second in the U.S. in green power sales, and Pacific Power ranked fourth. The utilities regularly provide more than a million Oregon households and businesses with information on the environmental impacts and costs of electricity from renewable energy sources compared to fossil fuels. ODOE will continue to work with the Public Utility Commission, utilities, and third-party providers to enhance consumer choice and information programs.

27. **Remove transmission barriers to renewable energy development.**
Oregon has sizable wind resources. But a scarcity of transmission lines between the resource areas and load centers is a barrier to further development of wind power and other renewable resources, such as geothermal power.

    The Oregon Department of Energy will advocate that the Bonneville Power Administration, other transmission providers and project developers build the long-distance transmission system needed to support resource development and give renewable resources preferential access to the transmission currently available. Bonneville's policy on open capacity should give preference to electricity generated from renewable resources.

    ODOE will also urge that electricity system upgrades target renewable resources, including transmission for new, smaller generation that serves local needs.

We will also support development of local renewable resources and combined heat and power generation resources, which reduce the need for transmission.

To further address this issue, the Oregon Department of Energy will advocate early construction of the proposed 500-kilovolt-transmission line between the McNary and John Day dams on the lower Columbia River.

As part of Oregon's Renewable Energy Action Plan, a Renewable Energy Working Group will be formed to work on transmission and other issues. The Oregon Department of Energy would be staff to the working group.

28. **Encourage renewable energy research and demonstration projects.** The outstanding work of Oregon's universities and community colleges on renewables should be promoted to help Oregon businesses gain a national and international leadership role in the renewables market. ODOE will work with the universities, community colleges and other stakeholders to achieve that goal. The Oregon Department of Energy also will pursue collecting more data on wind characteristics to help community and locally owned wind farms and large-scale wind farm development. Such a publicly available database will help evaluate integration with the grid of large-scale wind energy.

Information on the geochemistry of wells and springs is needed to assist the geothermal industry, state and federal agencies and research institutions in geothermal resource target evaluation. ODOE will work with the Oregon Geothermal Working Group on this and other efforts.

The Oregon Department of Energy will also support continued funding for the University of Oregon's solar resource assessment work.

29. **Develop clean distributed resources to help meet Oregon's energy needs.** Generating electricity at or near the place it will be used can improve reliability of the electric grid, reduce the need for utility system upgrades, and cut demand for utility power during high-cost peak hours. New combined heat and power systems, including microturbines and fuel cells, are very efficient and provide the high-quality, reliable power that a growing number of businesses need. Many distributed generation systems, from solar panels to methane digesters, use clean renewable energy.

These projects qualify for the State Energy Loans Program and the Business Energy Tax Credit. ODOE will continue to demonstrate and document the benefits of distributed generation, provide information, technical help and incentives for consumers, train equipment installers, and offer information to policy makers and the public. ODOE will help the dairy, wood, food, and paper products industries turn wastes or underutilized feedstock residues into renewable resource fuels for highly efficient combined heat and power.

ODOE is working with the Public Utility Commission and others to identify and remove barriers to clean distributed resources. ODOE participates in PUC proceedings seeking to assure that these projects are economically viable.

Energy Supply

Siting Major Energy Facilities

30. **Continue reviewing applications for power plants and proposed Liquefied Natural Gas (LNG) terminals.**
Oregon law requires a site certificate before a large energy facility, such as a power plant, transmission line, gas pipeline or natural gas storage facility, can be built or operated in the state. The Oregon Energy Facility Siting Council makes decisions about siting most large energy facilities and issuing site certificates. The Oregon Department of Energy serves as staff and coordinates all permits required by state and local government agencies.

ODOE has reviewed an unprecedented number of siting applications in the last four years. The high level of activity continues. ODOE is reviewing additional applications representing more than 3,000 megawatts of power plant capacity. The Oregon Department of Energy has or expects Notices of Intent for more power plants, half of which will be wind power.

Production of natural gas has declined in North America for the past two years. Because of this decline, developers are proposing to license and build LNG terminals to import liquefied gas from overseas. These new proposals are energy facilities under Oregon Law, and in 2004, ODOE received the first Notice of Intent to file an application for this type of energy facility. ODOE will work closely with state and local government agencies as well as the Federal Energy Regulatory Commission to review LNG proposals.

31. **Work with the Energy Facility Siting Council to identify and resolve policy issues raised by some power plant applications.**
Among the issues are water supply conflicts, local air quality concerns and cumulative air impacts. Natural gas-fired power plants use tremendous quantities of water, and water use has been raised in several siting reviews. In addition, many members of the public have concerns about siting power plants in areas where they may affect important visual resources or farmland. We will review our standards and those of other agencies to address this.

32. **Implement Oregon's strategy for reducing greenhouse gases.**
Two efforts are underway related to global warming. The first is the three Governors' West Coast Climate Change Initiative, with the states of Oregon, Washington and California. The states are working on joint actions to reduce greenhouse gas emissions. One action for truckers is to use alternatives to serve their cab instead of idling the rigs all night. The three states are also considering the adoption of other measures, such as pooled purchasing for energy-efficient state vehicles and equipment. Common efficiency standards for appliances, which the federal government has failed to set, are also being considered

Each state is also taking its own measures to reduce carbon dioxide emissions. In Oregon, the focus is the Governor's Advisory Committee on Global Warming. It comprises 28 public members representing a range of interests. The recommendations include support for implementation of the Renewable Energy Strategy, support for the energy efficiency

goals of the Northwest Power and Conservation Council, and other actions to help the region acquire as much cost-effective conservation as possible.

Adequate Supplies and Fair Prices

33. **Encourage needed investments in electricity supplies and delivery systems.**
Oregon's investor-owned electric utilities rely in part on short-term purchases of electricity and natural gas, particularly during drought years. In light of recent price hikes, least-cost plans for Oregon utilities should include more long-term acquisitions and renewable energy. ODOE will encourage strategies that diversify the resource mix and reduce the utilities' reliance on the short-term market.

    Further, electric transmission lines, natural gas storage facilities and interstate pipelines should expand rapidly enough to support appropriate resource choices for the growing economies in the West. ODOE is a member of the Western Interconnection Planning Work Group that is studying the need for transmission lines in the West.

34. **Intervene in wholesale power and transmission investigations and ratemaking proceedings.**
The Oregon Department of Energy (ODOE) will continue to participate in investigations by the State Attorney General to pursue refunds when abuses have occurred. Under the Williams Settlement, ODOE received $1 million of the $15 million total. The funds are being used to improve the energy efficiency of schools in Grant, Malheur, Union, Harney, Baker, Klamath, Gilliam, Lane, Tillamook, Columbia and Washington counties.

    The spikes in wholesale electric prices have raised concerns that competition may not be functioning effectively. To help prevent wholesale price manipulation, the Oregon Department of Energy will intervene in state and federal proceedings to ensure open access to distribution and transmission systems and limit the influence of the largest market players.

35. **Advocate for retail electric rate designs that encourage appropriate conservation, fuel switching and load shifting.**
Average prices of energy from the Bonneville Power Administration and Oregon's electric and natural gas utilities are set to recover past investments. Customers, however, will make the appropriate conservation and fuel-switching choices only if their bills reflect the resulting cost savings in the long run. Appropriate rate design can do that while still charging average prices that recover utility costs.

    The costs of serving electricity load are highest at times of peak system use. Reducing consumption during these periods reduces energy, transmission and distribution costs, lowering prices for all customers.

    ODOE will encourage rate designs and programs that provide appropriate conservation, fuel switching and load shifting.

36. **Ensure Oregon can provide energy for essential services during supply emergencies.**
Oregon imports all of its petroleum, natural gas and much of its electricity. Supply problems or accidents that affect distribution could create severe or prolonged shortages for Oregonians.

The Oregon Department of Energy is responsible for Oregon's Petroleum Contingency Plan. ODOE will ensure a coordinated response with the state's petroleum suppliers, law enforcement, other state agencies, and the counties. The revised plan will include a database with county-specific information on fuel use, designated emergency fueling stations, and maps of emergency routes.

In 2004, ODOE signed a Memorandum of Understanding with the Oregon Public Utility Commission to define roles and responsibilities in response to energy emergencies. In the event of rotating outages and other severe electricity emergencies the two agencies will be able to respond in coordination.

Energy will continue to work with the Federal Bureau of Investigation, the U.S. Department of Energy's Office of Energy Assurance, Bonneville Power Administration, and organizations identified as critical infrastructure within the private sector to ensure that Oregon and the Pacific Northwest are prepared to respond effectively to energy emergencies.

Nuclear Safety

37. **Advocate cleanup actions at the Hanford site that protect the health and safety of Oregonians and the environment.**
The U.S. Department of Energy's (USDOE) Hanford Nuclear Reservation in southeastern Washington is the largest environmental cleanup site in North America. The ODOE will push for thorough cleanup as it works with the Oregon Hanford Cleanup Board, USDOE, Hanford's regulators, stakeholders and tribal governments.

38. **Continue to improve and implement the state's transportation safety plan for radiological materials.**
ODOE administers the state's transportation safety program for radiological materials. ODOE will continue to provide training, maintain equipment and disseminate shipment information to local emergency response teams to ensure they can respond effectively to an accident involving radioactive materials. ODOE also will continue to work with the federal government and other Western states — primarily through the Western Governors' Association and the Western Interstate Energy Board — to develop and implement procedures governing the transport of radioactive materials to reduce the likelihood of an accident.

39. **Ensure Oregon is prepared to respond to nuclear emergencies.**
Although the risk of a nuclear emergency in Oregon is low, the consequences of such an event could be severe, particularly for the agricultural industry. ODOE administers the state's Nuclear Emergency Response Program. The program includes planning response to incidents at the Hanford nuclear site, Energy Northwest's Columbia Generating Station (a commercial nuclear plant on the Hanford site), the decommissioned Trojan nuclear plant near Rainier, and research reactors at Oregon State University in Corvallis and Reed College in Portland. ODOE will continue regular training and drills with state and county agencies to ensure they are ready to respond if a nuclear emergency occurs. The Oregon Department of Energy will also continue to refine and test execution

of the state's comprehensive, coordinated response to an emergency.

40. **Complete cleanup of mines in Lake County.** Uranium was mined at the White King and Lucky Lass mines in the Fremont National Forest, northwest of Lakeview. Both mines are listed as hazardous waste sites on the National Priorities List. ODOE is working with the U.S. Environmental Protection Agency (EPA), the Oregon Department of Environmental Quality (DEQ) and Kerr-McGee Corp. to clean up the two mine sites.

    In 2001, the EPA issued a decision that spells out how the site will be cleaned up. The EPA, DEQ and ODOE negotiated a consent decree through which Kerr-McGee agreed to perform the cleanup work. The design work began in 2003, and cleanup should be completed during the limited summer construction seasons of 2005 and 2006. In the future, ODOE may need to oversee management of surface water and groundwater.

State Program Achievements

Conservation and Renewable Resource Savings

Conservation is a cornerstone of Oregon's energy policy because it is the most environmentally clean resource and, over the long run, it is the cheapest. The Oregon Department of Energy provides information, demonstrates new technologies, and offers a variety of programs to encourage Oregonians to use energy more efficiently and to use renewable energy sources.

The 1975 Oregon Legislature set as state goals the promotion of "the efficient use of energy resources" and the development of "permanently sustainable energy resources."

This report describes ODOE's conservation and renewable resource programs, including energy loans, and gives estimated savings and electricity generation in 2003. These are the total energy savings and generation from activities since ODOE began its programs in 1979.

Electricity	6.1	billion kilowatt-hours
Natural gas	196.8	million therms
Oil	9.1	million gallons
Wood & other fuels	2.1	trillion Btu

Altogether, the yearly energy savings and electricity generated are 45 trillion Btu — enough to meet the energy needs of 542,000 Oregon homes. Those savings cut energy bills for Oregonians by $554 million a year.

Business Energy Tax Credit

Total number of tax credits: (since the program began)	7,461
Recipients	
Commercial firms	5,933
Manufacturers	924
Farms and ranches	604
Types of investment	
Conservation	5,906
(including 1,827 rental weatherization projects for 48,100 apartments and homes)	
Recycling	1,005
Renewable resources	550
Energy savings in 2003	
Electricity	1.8 billion kWh
Natural gas	100.5 million therms
Oil	6 million gallons
Wood and other	2.1 trillion Btu
Electricity generated in 2003	
1,035 million kWh	
Dollar value of savings and generation in 2003	
$227.3 million	

ODOE offers tax credits to businesses to encourage them to invest in energy conservation, renewable resources, recycling, alternative fuels, transportation efficiency and sustainable buildings. The owner of a project may transfer the tax credit to an Oregon business in exchange for cash payment. The project owner may be a public or non-profit institution.

The tax credit is 35 percent of the eligible cost of the project. The tax credit may be taken in one year for projects under $20,000. For larger projects, businesses take 10 percent of the credit in the first and second years and 5 percent each year thereafter. For conservation projects, the energy savings must pay back the investment in one to 15 years.

Among the most recent projects that received a Business Energy Tax Credit are:

- A large wood-products employer in Baker County replaced metal halide lamps with new energy-efficient lighting. They will receive a tax credit of $10,500 on their $30,000 investment.
- A farmers' cooperative in McMinnville installed variable frequency drive motors at a cost of $31,500. Their tax credit is more than $11,000.
- A farmer in Wasco County invested $72,645 in a new pivot sprinkler system saving not only water but reducing energy costs by $4,800 annually. The tax credit was $25,000.
- The Port of Tillamook Bay invested $800,000 in an anaerobic digester using the output from 4,000 cows. The project will generate more than 3.8 million kWh annually. Using the pass-through program, the Port received $200,000 to fund the project.
- A 68-unit apartment complex in Portland insulated and installed energy-efficient windows saving more than $7,000 annually in energy costs. The building owner received a tax credit for $35,000 and used the energy loan program.
- A university in Forest Grove is constructing a 40,000 square foot library. The building is being constructed to a LEED Silver rating by incorporating sustainable design and construction practices. Using the pass-through program, the university will invest $250,000 and receive a cash payment of $62,500.

Residential Energy Tax Credit

Total numer of tax credits (since the program began)	157,151
Renewable resource systems	
Solar water heating	17,645
Heat pump water heaters	300
Geothermal	2,090
Solar space heating	1,653
Solar electric	336
Wind	36
Hydro	20
	22,080
Appliances	
Clothes washers	68,704
Refrigerators	17,389
Dishwashers	39,123
Water heaters	1,055
Energy-efficient ducts	856
Heat pumps and aitr conditioners	417
Ventilation systems	6
Drain-water heat exchangers	24
	134,029
Alternative-fuel and hybrid vehicles	1,042
Energy savings in 2003	
Electricity	84.0 million kWh
Natural gas	1.8 million therms
Oil	11,000 gallons
Dollar value of savings and generation in 2003	$4.9 million

As new energy-saving technologies have come on the market, the Legislature has expanded the tax credit to encourage their adoption. Highly efficient appliances, including heating ducts and certain water heating systems, were added in 1997. The program expanded in 2000 to include fuel cells and in late 2001 to include highly efficient furnaces, boilers, heat pumps, ventilation systems and air conditioning systems.

Today, the tax credit is offered to households for the following:

- Up to $1,500 for solar and wind systems; up to $900 for geothermal systems
- A tax credit based on energy savings and cost for highly energy-efficient refrigerators, clothes washers, dishwashers, and certain water heating, space heating, cooling and ventilation systems and for sealing duct work
- Up to $750 for alternative-fuel vehicles and $750 for charging/fueling systems (a total of $1,500 for hybrid gasoline-electric vehicles)
- Up to $1,500 for fuel cells

State Home Oil Weatherization Program

Energy audits (since the program began):	43,545
Loans:	4,426
Loan amount:	$11.6 million
Rebates:	11,574
Rebate amount:	$6.5 million
Energy savings in 2003	
Oil:	1.9 million gallons
Dollar value of savings in 2003:	$2.5 million

For households that heat primarily with oil, propane or wood, the Oregon Department of Energy's State Home Oil Weatherization Program offers a Home Energy Checklist and rebates for weatherization and heating measures. Oil companies doing business in Oregon fund the program. The program has also been streamlined to allow homeowners to conduct their own audits.

About 100,000 Oregon homes are heated with oil or propane. Most of them were built before energy standards were part of the building code and are often in need of weatherization and heating measures.

Energy-Efficient Manufactured Homes

Number of energy-efficient homes manufactured and sited in Oregon since mid-1995:	24,024
Energy savings in 2003	
Electricity:	125 million kWh
Natural gas:	536,000 therms
Dollar value of savings in 2003:	$9.4 million

Unlike homes and apartments built on site, manufactured homes are not subject to Oregon's building code. Instead, federal law governs energy efficiency and other aspects of manufactured homes. Federal energy standards are minimal. ODOE has worked with the manufactured home industry in the Northwest since 1988 to build energy-efficient homes.

Under a voluntary agreement with 20 regional manufacturers, ODOE certifies homes that are very efficient. Homes that meet the standards are labeled Super Good Cents® or Energy Star. Compared to homes built to federal standards, these homes have more insulation, more efficient windows and doors, better sealed heating ducts, improved air sealing and a specially designed ventilation system. On average, the homes reduce the energy needed for heat by half.

Under the agreement, ODOE:

- Approves design plans
- Inspects homes at the plant
- Troubleshoots for homebuyers and manufacturers on any energy-related problems
- Researches and tests new energy-efficient building practices and materials
- Provides marketing assistance

More than 60% of Oregonians buying a manufactured home have chosen to buy an energy-efficient model.

Transportation Program

Project Type	# of Projects	Vehicle Miles Reduced
Commuter Pool Vehicles	14	7,855,632
Transportation Management Association	11	45,403,068
Transit Passes	111	116,636,666
Transit-Shuttles	7	576,729
Financial Incentives	19	12,611,758
Bicycles	11	335,199
Telework	32	364,545
Total:	205	**183,783,597**

ODOE works with business and governments to increase use of public transit, carpools, vanpools and bicycles. Energy encourages adoption of telework, employer financial incentives, transit passes, and other transportation alternatives. A key tool to encourage creative transportation options is the Business Energy Tax Credit.

Residential Building Codes

Number of homes built to energy standards

Single-family	276,000
Multi-family	150,000
	426,000

2003 energy savings

Electricity:	952 million kWh
Natural gas:	58 million therms

Dollar value of savings in 2001: $123.1 million

The cheapest and most effective way to ensure a home is energy-efficient is to build it that way. In 1974, Oregon became the first state to include energy standards in a statewide building code. The standards required minimum insulation levels in ceilings, walls and floors. Before that time, most Oregon homes were built with little, if any, insulation. Almost one-third of Oregon's 1.4 million existing houses and apartments are built to energy standards.

The energy standards have been raised several times since then. Changes to standards for space heating, cooling, ventilation, water heating, lighting and building envelope took effect in 2003. The changes will reduce energy use 5 to 10 percent in new houses. A home built today requires about half the energy to heat as a home built before the energy standards.

ODOE's role is to submit recommendations to the Building Codes Division for cost-effective changes to the standards and provide training and technical help for the building industry and local building departments.

Commercial Building Codes

2003 energy savings*

Electricity:	1.4 billion kWh
Natural gas:	13.8 million therms

(*Since 1983)

Dollar value of savings in 2003: $97.7 million

Building envelope and heating, ventilation and air conditioning (HVAC) standards became part of the state building code for commercial buildings in 1978. The standards address lighting, the heat loss and gain of the building shell, and the efficiency of heating, ventilation and cooling systems. The standards were raised in 1988, 1995, and 2003. Changes that took effect late in 2003 are estimated to save about 10 percent more energy than the previous code.

The Oregon Department of Energy submits recommendations for cost-effective changes to the standards and provides training and technical help for designers, contractors and local building departments. Oregon's commercial code is about 5 percent more energy-efficient than the national standard.

Large Electric Consumer Public Purpose Program

Number of completed projects:	76

2003 energy savings

Electricity:	148.2 million kWh

Dollar value of savings in 2003: $1.5 million

Under Senate Bill 1149, Portland General Electric and Pacific Power must collect a public purpose charge from both residential and business consumers within their service areas. The public purpose charge is 3 percent of the total electric costs charged to a customer. It went into effect on March 1, 2002.

Large electric consumers (over one average megawatt or 8,650,000 kilowatt hours a year) may be eligible to self-direct portions of their public purpose charges. The Oregon Department of Energy reviews and certifies applications by large electric consumers for conservation projects and renewable energy resources. ODOE administers the program through an interactive Web site. As of December 2004, about 30 sites were actively participating in this self-direction program.

Energy-Efficient New State Buildings

Number of of energy-efficient new or renovated state buildings:	70

2003 energy savings

Electricity:	24.9 million kWh
Natural gas:	510,000 therms
Other:	3.9 billion Btu

Dollar value of savings in 2003: $2.0 million

An Oregon law enacted in 1990 requires that new state buildings and major renovations be as energy-efficient as possible — within cost-effectiveness guidelines. In response to the electricity crisis of 2001, legislation established a standard that is 20 percent better than building code.

ODOE recommends savings measures to consider in the design and reviews the plans to ensure targets are achieved. Typical measures adopted include energy efficiency improvements for windows, lighting, controls, and heating, ventilation and air conditioning equipment. By the end of 2003, 70 state buildings had been built or renovated with energy efficiency measures that go beyond code requirements. Average energy savings exceed 20 percent.

Alternative Fuels

Business tax credits	
Vans/trucks (propane or natural gas)	315
Buses (propane or natural gas)	228
Forklifts (natural gas)	57
Cars (natural gas or electric)	138
Fueling stations (natural gas)	25

Residential tax credits	
New gasoline-electric cars	1,017
New electric vehicles	3
New natural gas vehicles	2
Electric conversions	13
Propane conversions	2
Biodiesel conversions	2
Charging system	3

Vehicles that run on alternative fuels such as natural gas, biodiesel, liquefied natural gas, electricity, propane, methanol, ethanol and hydrogen are less polluting than vehicles that burn gasoline

or diesel. In 1991, the Legislature made alternative-fuel vehicles and fueling stations eligible for the Business Energy Tax Credit. In 1997, the Legislature expanded the Residential Energy Tax Credit to include alternative-fuel vehicles and fueling systems. Hybrid vehicles have rapidly increased in market share since being introduced in the late 1990s.

Oregon's first biofuel production facility is currently under development. The State of Oregon Department of Administrative Services Motor Pool Division plans to bring to Oregon its first ethanol (E-85) fueling station. In addition, five fuel vendors are providing biodiesel, oil distilled primarily from soybeans, to fleets throughout the state.

Schools

Number of school buildings completed since 1997:	117
Total incentives:	$742,000
2003 energy savings	
Electricity:	12.2 million kWh
Natural gas:	4.8 million therms
Other:	1.1 billion Btu

Dollar value of savings in 2003: $4.5 million

Oregon's electric industry restructuring law sets aside funds for improving the energy efficiency of schools in the service areas of Portland General Electric and Pacific Power. Education service districts administer the funds. More than 800 schools will benefit. Funds must first go to energy audits, then to measures recommended by those audits. The Oregon Department of Energy (ODOE) helps coordinate the program and provides technical help.

For schools statewide, ODOE provides training for school staff and construction vendors on building highly efficient, productive and environmentally sound buildings. Several school districts also are using construction bid specifications that ODOE wrote to ensure that energy-using systems operate correctly from the start.

In addition, ODOE developed specifications for energy-efficient portable classrooms, which many schools are using to accommodate increasing numbers of students. The energy-efficient classrooms reduced energy bills 30 to 50 percent compared to similar classrooms that meet only minimum standards.

ODOE has used federal Rebuild America funds to provide technical assistance for resource-saving projects for schools across the state. Work includes design assistance, training, demonstration projects and technical analysis.

Other Programs

Information from ODOE is available for building commissioning, energy savings performance contracting, demand-controlled ventilation, resource-efficient irrigation, and combined heat and power systems. Energy-saving ideas for businesses and homeowners have been promoted through the annual Energy Awareness campaign.

ODOE also works with federal programs that set appliance standards, help industry adopt efficiency practices, promote energy-efficient technologies and support installation of solar energy systems.

Energy Loan Program

Approved by the voters in 1980, the State Energy Loan Program (SELP) has made 606 loans since it began, totaling more than $315 million. SELP's

purpose is to promote energy conservation and renewable energy development. The program offers low-interest, long-term loans for projects that:

- Save energy
- Produce energy from renewable resources such as water, wind, geothermal, solar, biomass, waste materials or waste heat
- Use recycled materials to create products
- Use alternative fuels

The Loan Program can loan to individuals, businesses, schools, cities, counties, special districts, state and federal agencies, public corporations, cooperatives, tribes, and non-profits. The loans are funded by the sale of state general obligation bonds. Borrowers pay the costs of administering the program.

Conservation Loans

Of the 403 conservation loans made by the program through 2003, 152 have been to businesses, 80 to school districts, 61 to local governments and 35 to state government. Others receiving loans include Oregon colleges and universities, and tribal governments.

Renewable Resource Loans

Through 2003, SELP made more than 200 loans for renewable resource projects, with 77 for geothermal, 59 for solar, 29 for hydro, 18 for biomass, 16 for waste heat and one for wind.

Energy Savings and Generation in 2003	
Electricity:	444.8 million kWh
Natural gas:	17.25 million therms
Oil/Diesel:	1.16 million gallons
Wood/other:	12 billion Btu
Electric Generation:	545.1 million kWh
Dollar Value of savings and production in 2003:	$76.3 million

Besides loans for proven technologies, the program showcases innovation. Among the projects funded by the Energy Loan Program in 2003 and 2004 are:

- Associated General Contractors of America reconfigured their HVAC system with a $124,000 energy loan. They installed state-of-the-art variable frequency drives for the air handlers and variable air volume units controlled by direct digital controls. AGC expects the building to save about 24 percent.
- A Portland athletic club borrowed $140,000 to create a "green" addition to their facility, nearly doubling their square footage but keeping their energy costs to less than 60 percent of similar buildings.
- The Tamarack Wellness Center in Eugene received a loan of $273,000 for a 24 kW photovoltaic system and a solar domestic hot water system for the showers and therapy pool complex.
- A homebuilder borrowed $230,000 for a demonstration home in Bend. It included integrated energy features such as net-metered solar photovoltaics, structural insulated panels and insulated concrete forms.
- Oregon growers borrowed $665,000 for orchard fans. These wind machines use the temperature inversion to warm crops by convection rather than diesel smudge pots resulting in cleaner air and reduced energy use.
- The Round at Beaverton received a $1.6 million loan for construction of a centralized heating, cooling and domestic hot water delivery system in the mixed-use building complex on the light rail line.
- Oregon schools and universities received loans for more than $2.15 million including $1,000,000 for the University of Oregon's Lillis Business Complex, which incorporated many sustainable and renewable energy features.

- Loans in excess of $766,000 were used for weatherization and HVAC upgrades for Oregon apartment buildings, resulting in lower utility bills for tenants, and lower vacancy rates for property owners.

Acquiring Energy Resources

The Energy Facility Siting Process

The Energy Facility Siting Council, a seven-member citizen commission appointed by the Governor and confirmed by the Senate, makes siting decisions for large energy facilities. ODOE serves as its technical and administrative staff. ODOE reviews an application for site certificate, coordinates the review of other state agencies and local governments, and issues a proposed decision for public comment and Council consideration.

The Council has the authority to exempt proposed developments from its siting authority if certain criteria are met. High-efficiency cogeneration power plants, grain-based ethanol plants and temporary power plants are among those the Council has exempted from siting standards. These plants have little environmental or community impacts as long as the criteria are met.

The Energy Facility Siting Council uses all relevant state and local criteria in making its siting decision. In addition to their own standards, they apply applicable Oregon Department of Environmental Quality (DEQ), Department of State Lands, Oregon Department of Fish &Wildlife, Oregon Water Resources and local land use requirements. Only DEQ's federally-delegated water and air quality permits are excluded from Council review.

The Council affords the public a single review and set of hearings in which to participate. Developers have one process for all state and local government requirements. A siting decision can only be appealed to the Oregon Supreme Court. Oregon's consolidated siting process is a powerful tool for state consideration of these complex proposals.

New Generating Capacity in Oregon

Since 1990, ODOE and the Council have approved nine applications for large power plants. Six power plants have been built: Coyote Springs Power Plant, Hermiston Generating Plant, Hermiston Power Plant, Stateline Wind Plant, Klamath Expansion Project and Klamath Cogeneration Plant. Of the three most recent Council approvals, only the Port Westward Power Plant was under construction in late 2004. Construction has not begun on COB near Klamath Falls or Summit Westward near Clatskanie.

Proposals Under Review

The Klamath Expansion Project (a temporary 100 MW power plant), owned by Pacific Power (a PacifiCorp Company) Power Marketing, is being reviewed for permanent operation under a law adopted by the legislature in 2001 addressing the electricity shortages of that winter season. This single-cycle peaking plant will operate when demand and prices are high enough to justify its use.

ODOE and the Council have been reviewing an unprecedented number of energy facility proposals. Turner Energy Center in Marion County, the Klamath Generating Project, and the West Cascades Energy Facility in Lane County have submitted applications for a site certificate.

One approved site, the Stateline Wind facility, received an amendment to its site certificate to nearly double the number of turbines and power output at a site in Umatilla County.

Other developers are investigating possible proposals in Oregon. Those include:

- Wind facilities in Tillamook, Sherman and Gilliam counties
- Liquefied natural gas import terminals in the Coos Bay and Columbia and Clatsop counties
- Industrial cogeneration proposals are possibly in line for Council review beginning in 2005.

The number of proposed power plants reflects developers' hopes to build for the future competitive wholesale electricity market. Capacity for gas and electricity transmission, availability of capital and market prices will affect decisions to build power plants. Not all of the facilities reviewed will be built.

Site Certificates Approved

In 2003, the Council approved an application for a large natural gas pipeline. The Northwest Natural pipeline through Washington, Clackamas and Marion counties was put into service in September 2004.

In November 2004, the Council approved issuance of a site certificate to COB Energy Facility LLC for the proposed COB Energy Facility, subject to conditions. The proposed facility is a 1,150-megawatt, combined-cycle combustion turbine system, three miles south of Bonanza in Klamath County. A new 7.2-mile, 500 kV transmission line would connect the proposed facility to the Captain Jack substation to the south. Natural gas would be supplied to the proposed facility through a new 4.1-mile lateral from an existing interstate pipeline. Water would be supplied from a well about 2.8 miles from the proposed site.

Amendments

Amendments to site certificates for existing energy facilities have been reviewed and approved as well. Northwest Natural's Mist underground gas storage facility in Columbia County was approved for expansion in December 2003. In June 2003, the Council approved a major expansion of the Stateline Wind facility in Umatilla County. Several amendments of the Port Westward, Summit Westward and South Mist Extension pipeline were approved to allow administrative and site design changes.

Exemptions

Several high efficiency cogeneration facilities, temporary power plants or biomass fuel plants have been granted exemption from Council jurisdiction. These plants have not yet gone forward because wholesale prices have been too low for them to operate profitably. These include the Columbia River Energy project (43 MW), West Linn Paper project, (between 42 and 94 MW) and the Cascade Grain Ethanol plant in Columbia County.

Administrative Rule Changes

The Council adopted rules to define how staff will review proposals for carbon dioxide offset projects in August 2003. In addition, the Council adopted amendments to its rules interpreting the Council's authority under ORS 469.501(3) to balance the overall public benefits of a proposed energy facility against the damage to resources protected by any Council standard the facility does not meet. The Council concluded that the balancing rule would continue to be applied only in special circumstances that will rarely occur. Other changes to Council rules were made to clarify requirements and improve the process.

Model Siting Ordinance

The Oregon Department of Energy published a model land use ordinance to assist local governments in the siting of energy facilities not under Council jurisdiction. Oregon can expect to see more small energy facilities as technology improves for micro-turbines, fuel cells and other combined heat and power applications. The ordinance covers gas and electric transmission and distribution lines, cogeneration, wind and solar installations and hydroelectric facilities.

Biomass

Biomass includes plant and other organic matter, and it can provide electricity, heat and transportation fuel. ODOE's tax credits and loans have funded a number of biomass energy projects.

ODOE publishes annually a directory of Oregon biomass energy facilities and places on its Web site information about biomass energy technology, uses and resources in the state. ODOE also conducts studies, educational events, and provides technical assistance and secures federal funding for Oregon biomass projects.

In December 2003, the Oregon Department of Energy assessed forest and agricultural resources for electricity generation and ethanol production in Wallowa, Union and Baker counties. The report showed that the use of biomass for electric power or ethanol production would have net economic benefits, including an estimated six jobs created for each megawatt (MW) of biomass power capacity that is installed. ODOE also funded a research project on cellulose-ethanol technology.

In 2001, ODOE published a report on Western Forest Health and the use of Oregon forest resources for energy production. It concluded that a biomass energy market may be the key to initiating many forest restoration projects and that the potential for breaking through the forest health-biomass energy gridlock is promising in eastern Oregon.

Nuclear Safety Priorities

Hanford Cleanup

The Oregon Department of Energy continues to work towards a formal role for Oregon in the cleanup of chemical and radioactive waste at the Hanford Nuclear Site. ODOE also serves on the Hanford Advisory Board and as members of the Hanford Natural Resources Trustee Council. National participation includes the National Governor's Association and the State and Tribal Government Working Group.

ODOE does not view some cleanup decisions by the U.S. Department of Energy (USDOE) as fully protective of the environment. In July 2004, ODOE exercised its rights as a Trustee of Hanford's natural resources by joining with the State of Washington to file a notice of intent to sue USDOE over its failure to adequately assess natural resource injury. The notice to sue has resulted in improved discussions with USDOE. As of December 2004, Oregon planned to hold off on proceeding with litigation.

ODOE continues to be involved with litigation that challenges an internal USDOE order allowing it to redefine some high-level radioactive waste as incidental waste. Among Hanford's more than 1,800 waste sites are 177 aging underground storage tanks that hold about 53 million gallons of highly radioactive and chemically hazardous waste. During the cleanup process, some residual waste will likely remain in the tanks. Oregon is concerned that USDOE might leave waste in the tanks that should be retrieved, immobilized, and disposed of in a deep geologic repository.

ODOE is also closely following litigation filed by the State of Washington that attempts to stop waste from coming to Hanford until the full environmental impacts of these actions are assessed.

Through meetings and presentations, ODOE keeps Oregonians informed about Hanford cleanup decisions. Since January 2003, an advisory board to ODOE – the Oregon Hanford Cleanup Board – has conducted six meetings in northeast Oregon and along the Columbia River. Through ODOE's Community Outreach program, more than 4,500 Oregonians have been informed about the importance of Hanford cleanup.

Emergency Preparedness

ODOE is responsible for preparing and responding to nuclear emergencies, petroleum disruptions or shortages, and electricity emergencies involving the State's 38 consumer-owned utilities.

To ensure a timely and effective response to nuclear, petroleum, and electricity emergencies impacting Oregon, ODOE developed the capability to coordinate its emergency operations from within the agency. ODOE's Emergency Operations Center (EOC) opened on July 1, 2004 and was activated for the first time on July 30, 2004 in response to an actual emergency declared at the Columbia Generating Station in south-central Washington. The EOC allowed ODOE to promptly assess the severity of the event and determine there would not be any adverse impacts to Oregon as a result of the nuclear power plant emergency. The Federal Emergency Management Agency certified ODOE's EOC as a fully functional emergency center after a five-hour evaluation of its setup and operation.

ODOE participates regularly in planning meetings and drills to ensure that the State of Oregon is prepared to respond to an incident at a nuclear facility. ODOE participated in eight nuclear emergency preparedness drills and exercises in 2004. The Federal Emergency Management Agency had a positive review of ODOE's performance.

The Oregon Department of Energy's Petroleum Contingency Plan will ensure a coordinated response with Oregon's petroleum suppliers, law enforcement, other state agencies, and the 36 counties. To improve the overall fuel allocation process during a crisis, ODOE is developing a database with sensitive information on fuel use, designated emergency fueling stations, and maps of emergency routes.

ODOE signed a Memorandum of Understanding with the Oregon Public Utility Commission (PUC) to define roles and responsibilities in energy emergencies. While ODOE is responsible for petroleum contingency planning and the PUC for natural gas, the two agencies have joint responsibilities in planning and responding to electricity emergencies. The memorandum improves the coordination and response between the two agencies in a severe electricity emergency.

Transportation Safety

The Oregon Department of Energy regulates the transportation of radioactive materials in Oregon and maintains an effective capability of responding to a transportation incident. Since January 2003, there have been more than 555 radioactive shipments in Oregon and no accidents.

ODOE contracts with Oregon State Health Services to provide radiological response training for emergency responders. Since January 2003, 781 firefighters, police officers, paramedics and hospital emergency room staff received this training. ODOE also provided advanced radiological response training in 2003 and 2004 to members of Oregon's regional Hazardous Material Response Teams through its contract with Oregon

State University's Radiation Center. In addition, ODOE routinely calibrates and maintains the radiation detection equipment it provided to local emergency response agencies.

The Oregon Department of Energy continues to support shipments of transuranic waste from the Hanford Site to the Waste Isolation Pilot Plant in New Mexico. Since these shipments began in July 2000, USDOE has successfully made 121 such shipments. The Oregon Department of Transportation stops and inspects a sampling of these shipments.

In 2003, ODOE resumed discussions with other Western states and USDOE regarding procedures for the future shipment of spent nuclear fuel to a national repository. Shipments would originate at the shutdown Trojan nuclear plant, from the Columbia Generating Station near Richland, Wash., and from the Hanford Site. Those shipments could begin by 2010.

OREGON
DEPARTMENT OF
ENERGY

The mission of the Oregon Department of Energy is to ensure Oregon has an adequate supply of reliable and affordable energy and is safe from nuclear contamination, by helping Oregonians save energy, develop clean energy resources, promote renewable energy, and clean up nuclear waste

Appendix A *Electric Utilities Serving Oregon's Counties*

Baker	Oregon Trail Electric Cooperative, Idaho Power Company
Benton	Consumer Power Inc., Pacific Power
Clackamas	Canby Utility Board, Portland General Electric
Clatsop	West Oregon Electric Cooperative, Claskanie People's Utility District, Pacific Power
Columbia	West Oregon Electric Cooperative, Columbia River Public Utility District, Claskanie People's Utility District, Portland General Electric
Coos	Coos-Curry Electric Cooperative, Central Lincoln People's Utility District, City of Bandon Electric Department, Pacific Power
Crook	Central Electric Cooperative, Pacific Power
Curry	Coos-Curry Electric Cooperative, Central Lincoln People's Utility District
Deschutes	Midstate Electric Cooperative, Central Electric Cooperative, Pacific Power
Douglas	Coos-Curry Electric Cooperative, Douglas Electric Cooperative, Central Lincoln People's Utility District, City of Drain, Pacific Power
Gillam	Wasco Electric Cooperative, Columbia Basin Electric Cooperative
Grant	Oregon Trail Electric Cooperative, Central Electric Cooperative, Columbia Power Cooperative
Harney	Oregon Trail Electric Cooperative, Harney Electric Cooperative, Idaho Power Co.
Hood River	Hood River Electric Cooperative, City of Cascade Locks, Pacific Power
Jackson	City of Ashland Electric Department, Pacific Power
Jefferson	Central Electric Cooperative, Wasco Electric Cooperative, Pacific Power
Josephine	Pacific Power
Klamath	Midstate Electric Cooperative, Pacific Power
Lake	Midstate Electric Cooperative, Central Electric Cooperative, Surprise Valley Electric Cooperative, Harney Electric Cooperative, Pacific Power
Lane	Blachly-Lane Electric Cooperative, Consumer Power Inc., Lane Electric Cooperative, Midstate Electric Cooperative, Central Lincoln People's Utility District, Emerald People's Utility District, Eugene Water & Electric Board, Springfield Utility Board, Pacific Power
Lincoln	Central Electric Cooperative, Consumer Power Inc., Central Lincoln People's Utility District, Pacific Power
Linn	Consumer Power Inc., Pacific Power
Malheur	Harney Electric Cooperative, Idaho Power Company
Marion	Consumer Power Inc., Salem Electric Cooperative, Pacific Power, Portland General Electric
Morrow	Umatilla Electric Cooperative, Columbia Basin Electric Cooperative
Multnomah	City of Cascade Locks, Pacific Power, Portland General Electric
Polk	Consumer Power Inc., Salem Electric Cooperative, City of Monmouth Power & Light, Pacific Power, Portland General Electric
Sherman	Wasco Electric Cooperative, Columbia Basin Electric Cooperative
Tillamook	Tillamook People's Utility District
Umatilla	Umatilla Electric Cooperative, Columbia Basin Electric Cooperative, Columbia Power Cooperative, Milton-Freewater City Light & Power, Pacific Power, Hermiston Energy Services
Union	Oregon Trail Electric Cooperative, Umatilla Electric Cooperative
Wallowa	Pacific Power
Wasco	Central Electric Cooperative, Wasco Electric Cooperative, Northern Wasco County PUD
Washington	West Oregon Electric Cooperative, City of Forest Grove Power & Light Dept. Portland General Electric
Wheeler	Wasco Electric Cooperative, Columbia Basin Electric Cooperative, Harney Electric Cooperative, Columbia Power Cooperative
Yamhill	West Oregon Electric Cooperative, McMinnville Water & Light, Portland General Electric

Appendix B *Energy Glossary*

Average Megawatt — An aMW is 8,760 megawatt hours. This is the continuous output of a resource with one megawatt of capacity over a full year. The Northwest Power and Conservation Council says one average megawatt is enough electricity to supply about 600 electrically heated homes for one year.

Base Load — The minimum amount of electric power or natural gas delivered or required over a given period of time at a steady rate. The minimum continuous load or demand in a power system over a given period of time usually not temperature sensitive.

Biofuels — Alcohols, ethers, esters, and other chemicals made from raw biological material such as herbaceous and woody plants, agricultural and forestry residues, and a large portion of municipal solid and industrial waste.

Biomass — Organic waste from agricultural, livestock, and lumber industry products, dead trees, foliage, etc., and is considered a renewable energy source. Biomass can be used as fuel and is most often burned to create steam that powers steam turbine generators. It is also used to make transportation fuels like ethanol and biodiesel.

Btu — British thermal unit; the amount of heat required to raise the temperature of one pound of water one degree Fahrenheit under stated conditions of pressure and temperature (equal to 252 calories, 778 foot-pounds, 1,005 joules and 0.293 watthours). It is the U.S. customary unit of measuring the quality of heat, such as the heat content of fuel.

Building Envelope — Outer walls, windows, doors, etc. of a building or the building shell.

Carbon Offset — A mechanism by which the impact of emitting a ton of CO2 can be negated or diminished by avoiding the release of a ton elsewhere, or absorbing a ton of CO2 from the air that otherwise would have remained in the atmosphere.

Carbon Sequestration — The fixation of atmospheric carbon dioxide in a carbon sink through biological or physical processes, such as photosynthesis.

Carbon Sink — A reservoir that absorbs or takes up released carbon from another part of the carbon cycle. Vegetation and soils are common carbon sinks.

CO — Carbon Monoxide

CO2 — Carbon Dioxide

Cogeneration — (also Combined Heat and Power) Production of electricity from steam, heat, or other forms of energy produced as a by-product of another process.

cf—cubic foot; the U.S. customary unit of measurement of gas volume. It is the amount of gas required to fill a volume of one cubic foot under stated conditions of temperature, pressure and water vapor. One cubic foot of natural gas equals 1,000 British thermal units under standard conditions of atmosphere (one) and temperature (60 degrees Fahrenheit).

Cooperative Electric Association or Utility — utility owned and operated by its members.

Demand — The rate at which electric energy is delivered to or by a system or part of a system, generally expressed in kilowatts (kW), megawatts (MW), or gigawatts (GW), at a given instant or averaged over any designated interval of time. Demand should not be confused with Load or Energy.

Deregulation — The elimination or restructuring of regulation from a previously regulated industry or sector of an industry.

Distillate Fuel Oil — Light fuel oils distilled during the refining process and used primarily for space heating, on-and-off highway diesel engine fuel (including railroad engine fuel and fuel for agricultural machinery), and electric power generation.

Distribution — The delivery of electricity to the retail customer's home or business through low voltage distribution lines.

DOE — U.S. Department of Energy, also called USDOE.

Electric Energy — The generation or use of electric power by a device over a period of time, expressed in kilowatt-hours (kWh), megawatt-hours (MWh), or gigawatt-hours (GWh).

Electric System Losses — Total electric energy losses in the electric system. Losses are primarily due to electric resistance within transmission system lines and transformers.

End-Use Energy — Energy consumed by end-users in the end-use sectors.

End-Use Sector — The residential, commercial, industrial, and transportation sectors of the economy.

Energy Conservation — Using less energy, either by greater energy efficiency or by decreasing the types of applications requiring electricity or natural gas to operate.

Energy Efficiency — Using less energy (electricity and/or natural gas) to perform the same function at the same level of quality. Programs designed to use energy more efficiently — doing the same with less.

EPA — U.S. Environmental Protection Agency.

Federal Energy Regulatory Commission (FERC) — The Federal Energy Regulatory Commission regulates the price, terms and conditions of power sold in interstate commerce and regulates the price, terms and conditions of all transmission services. FERC is the federal counterpart to state utility regulatory commissions.

Flex Fuel Vehicle — Also called a dual fuel vehicle, is one with an engine capable of operating on two different types of fuels.

Fossil Fuels — Sources of energy from the earth, primarily crude oil, natural gas, and coal.

Fuel Switching — The substitution of one type of fuel for another, either temporary or permanent. Permanent might include someone who replaces gasoline-powered fleet vehicles with electric cars.

Geothermal Energy — The energy from the internal heat of the Earth, which may be residual heat, friction heat, or a result of radioactive decay. The heat is found in rocks and fluids at various depths and can be extracted by drilling or pumping.

GWh — gigawatt-hour; the unit of energy equal to that expended in one hour at a rate of one billion watts. One GWh equals 1,000 megawatt-hours.

Green Tags — are created when a renewable energy facility generates electricity. Each certificate or tag represents all of the environmental attributes or benefits of a specific quantity of renewable generation. Those include the benefits that everyone receives when conventional fuels, such as coal, oil, or gas, are displaced.

Greenhouse Gases — Greenhouse gases are water vapor, carbon dioxide, tropospheric ozone, nitrous oxide, methane, and chlorofluorocarbons (CFCs).

Grid — A system of interconnected power lines and generators that is managed so that power from generators is dispatched as needed to meet the requirements of the customers connected to the grid at various points.

Hogged Fuel — The bark, sander dust and other wood-related scrap not usable in product production that is burned in biomass boilers.

Investor Owned Utility (IOU) — Common term for a privately owned (shareholder owned) gas or electric utility regulated by the Oregon Public Utilities Commission.

Interconnected System — A system consisting of two or more individual electric systems that have

connecting tie lines and whose operations are synchronized.

KV — A kilovolt equals 1,000 volts.

Kilowatt (kW) — This is a measure of demand for power. The rate at which electricity is used during a defined period (usually metered over 15-minute intervals). Utility customers generally are billed on a monthly basis; therefore, the kW demand for a given month would be the 15- minute period in which the most power is consumed.

Kilowatt-hour (kWh) — This is a measure of consumption. It is the amount of electricity that is used over some period of time, typically a one-month period for billing purposes. Customers are charged a rate per kWh of electricity used.

Load — An end use device or customer that receives power from an energy delivery system. Load should not be confused with Demand, which is the measure of power that a load receives or requires.

Load Shifting — A type of load management that shifts use from peak to off-peak periods.

Liquefied Natural Gas (LNG) — Natural gas (primarily methane) that has been liquefied by reducing its temperature to -260 degrees Fahrenheit at atmospheric pressure.

Microturbines — Small, combustion turbines used for small-scale power generation.

MW — A megawatt equals 1,000 kilowatts or 1 million watts.

MWh — A megawatt-hour; the unit of energy equal to that expended in one hour at a rate of one million watts. One MWh equals 3,414,000 Btu.

NOx — Nitrogen Oxides

PV — Photovoltaic or solar electricity

Peak Load or Peak Demand — The electric load that corresponds to a maximum level of electric demand within a specified time, usually a year.

Pulping Liquor — A substance primarily made up of lignin (the chief non-carbohydrate constituent of wood), other wood constituents and chemicals that are by-products of the manufacture of chemical pulp. It can be burned in a boiler to produce steam or electricity through thermal generation.

Radioactive Waste — Radioactive or nuclear wastes are the wastes that result from nuclear weapons production, nuclear power generation and other uses of nuclear materials. The level of radioactivity (high-level waste, transuranic wastes, and low-level waste) usually categorizes these wastes.

Regasification — The process by which LNG is heated, converting it into its gaseous state.

Reliability — Electric system reliability has two components—adequacy and security. Adequacy is the ability of the electric system to supply the aggregate electric demand and energy requirements of the customers at all times, taking into account scheduled and unscheduled outages of system facilities. Security is the ability of the electric system to withstand sudden disturbances such as electric short circuits or unanticipated loss of system facilities. Reliability also refers to the security and availability of natural gas and petroleum supply, transportation and delivery.

Renewable Resources — Renewable energy resources are naturally replenished, but flow-limited. They are virtually inexhaustible in duration but limited in the amount of energy that is available per unit of time. Some (such as geothermal and biomass) may be stock-limited in that stocks are depleted by use, but on a time scale of decades, or perhaps centuries, they can probably be replenished. Renewable energy resources include biomass, hydro, geothermal, solar and wind. In the future they could also include the use of ocean thermal, wave, and tidal action technologies.

Ship Bunker C — A very heavy, residual fuel oil left over after other fuels have been distilled from crude oil. Also called No. 6 Fuel, it is used in power plants, ships and large heating installations.

Substation — A facility for switching electric elements, transforming voltage, regulating power, or metering.

Telework — A program allowing an employee, with training, permission and the technology, to work part-or full-time in a location other than their employer's main office. The alternate location is often the teleworker's home. It conserves fuel, relieves traffic congestion and improves air quality

Therm — One hundred thousand (100,000) British thermal units (1 therm = 100,000 British thermal units). This is approximately the energy in 100 cubic feet of natural gas.

Transmission — Transporting bulk power over long distances.

Transuranic Wastes — This includes laboratory clothing, tools, plastics, rubber gloves, wood, metals, glassware and solidified waste contaminated with man-made radioactive materials.

Utility — A regulated entity that exhibits the characteristics of a natural monopoly. For the purposes of the electric industry, "utility" generally refers to a regulated, vertically integrated monopoly electric company. "Transmission utility" refers to the regulated owner/operator of the transmission system

Watt — The unit of measure for electric power or rate of doing work. The rate of energy transfer equivalent to one ampere flowing under pressure of one volt.

Wholesale Power Market — The purchase and sale of electricity from generators to resellers (who sell to retail customers and/or other resellers) along with the ancillary services needed to maintain

Appendix C *Energy Document Summaries*

Renewable Energy Plan

Governor Kulongoski also called for an Oregon Renewable Energy Action Plan. The Governor believes renewable energy offers a stable, affordable supply of energy critical to Oregon's economic recovery. ODOE has submitted two drafts of the Renewable Energy Plan for public comment. Information about the plan is available at: The draft can be viewed at: **http://www.oregon.gov/energy.**

The Plan's purpose is to encourage and accelerate the production of energy from renewable sources, stimulate economic development (particularly in rural areas), and improve the environment. The draft sets specific long- and short-term goals for both electricity generation and transportation fuels. The draft calls for a number of actions that state agencies can take administratively to encourage renewable energy. It will also suggest some legislative actions.

Oregon Strategy for Greenhouse Gas Reductions

Governor Kulongoski has committed to carry out the West Coast Governors' Global Warming Initiative. The initiative, undertaken by the governors of California, Oregon and Washington, addresses greenhouse gas emissions at a state and regional level. As part of that commitment, the Governor appointed the Governor's Advisory Group on Global Warming early in 2004 to develop an Oregon strategy. The Advisory Group's citizen members include businesses that both deliver and use energy, farmers, environmentalists, scientists and others.

Public input was received on a draft strategy. The final report, the Oregon Strategy for Greenhouse Gas Reductions, will be issued in early 2005. The strategy outlines goals and actions that Oregon can take to reduce greenhouse gas emissions. Recommended actions cover energy efficiency, renewable energy, electric generation, transportation and other areas. For more information about the report, go to **www.oregon.gov/ENERGY**. Reports are also available by calling ODOE at 1-800-221-8035.

ODOE's Economic Action Plan

Oregon's natural resource agencies prepared action plans for stimulating Oregon's economic recovery. ODOE's plan asserts that reliable, affordable energy is necessary to drive an expanding economy and that a significant portion of Oregon's incremental energy needs can be met with conservation and renewable resources. The goal of the plan is to help stimulate Oregon's economy by promoting a high level of investment in energy efficiency and conservation and to responsibly siting energy facilities and cleaning up the Hanford nuclear site. The plan lists the programs and services ODOE manages that meet the goal.

Petroleum Contingency Plan

To better respond to a severe or long-term emergency in Oregon's petroleum supply and distribution system, ODOE is restructuring the Oregon Petroleum Contingency Plan to ensure a coordinated response with the state's petroleum suppliers, law enforcement, other state agencies, and the state's 36 counties. ODOE is developing a database with sensitive information on fuel consumption, designated emergency fueling stations, and maps of emergency routes in the state.

Electricity Emergency Plan

ODOE has signed a memorandum of understanding with the Oregon Public Utility Commission that defines roles and responsibilities in electricity emergencies. The goal is to improve

the coordination and response between the two agencies when addressing potential rotating outages and other severe electricity emergencies.

ODOE's Sustainability Plan

Early in 2004 ODOE and other state agencies responded to the Governor's Executive Order by preparing plans for first steps toward operating as a sustainable organization. The plans were reviewed by the Oregon Sustainability Board and can be found at: **http://www.sustainableoregon.net/agency/index.cfm#plans.**

ODOE's programs all are related to sustainability. However, we have identified four sustainability actions to highlight and report results to the Sustainability Board. The highlighted action areas are High Performance Schools, Renewable Energy Development, West Coast Governors' Global Warming Initiative, and State Agency Assistance. These actions will influence Oregon's environment, economy, and community.

Biomass Plan for Northeast Oregon

The goal of this biomass resource assessment was to promote the cost-effective, sustainable use of biomass energy in Baker, Union and Wallowa Counties. The assessment focused on the use of biomass for electric power generation or conversion to ethanol fuel. The objectives were to identify how much biomass is generated in the region, determine how much biomass is available, and evaluate the economic and environmental impacts of biomass use.

The assessment concluded that the use of biomass for electric power or ethanol production would have net economic benefits. These economic benefits would include increased employment in a rural, natural resource-based economy. An estimated six jobs are created for each megawatt (MW) of biomass power capacity that is installed.

Northwest Power and Conservation Council's Fifth Plan

The Northwest Power and Conservation Council's Fifth Plan, approved in December 2004, concludes it makes economic sense for the Northwest to aggressively pursue cost-effective conservation, even in a time of an electricity surplus. The plan projects a surplus through 2009, during which the region should acquire more than 500 average megawatts of conservation. The plan contains extensive analysis of alternative forecasts of supply costs and demand trends and models hundreds of scenarios for how to cost-effectively meet demand. The plan can be viewed at: **http://www.nwppc.org/energy/powerplan/draftplan/Default.htm**

West Coast Governors' Global Warming Initiative

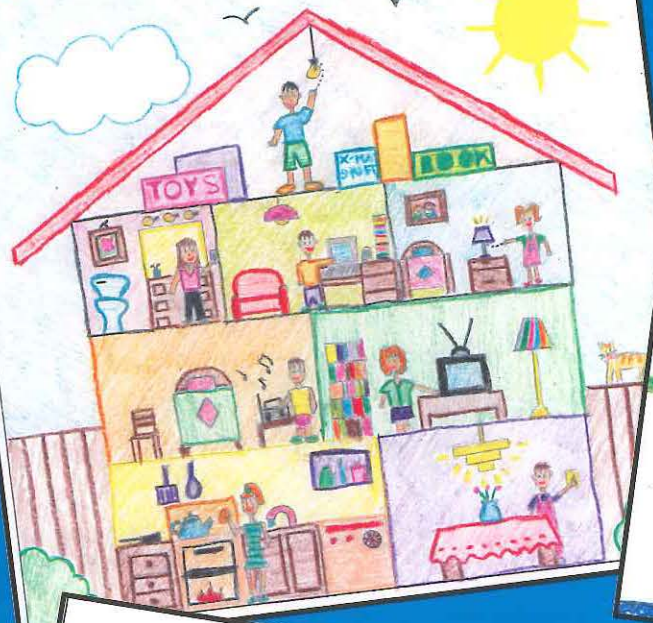
The Governors of Washington, Oregon and California approved a series of recommendations for action to combat global warming. This effort is widely considered one of leading state initiatives on climate change.

Among the recommendations are directives to:

1. Set new targets to improve performance in average annual state fleet greenhouse gas emissions.
2. Collaborate on the purchase of hybrid vehicles.
3. Establish a plan for electrification technologies at truck stops on the I-5 corridor.
4. Set goals and implement strategies and incentives to increase retail energy sales from renewable resources by 1 percent or more annually in each state through 2015.
5. Adopt energy efficiency standards for eight to 14 products not regulated by the federal government.
6. Incorporate aggressive energy efficiency measures into updates of state building energy codes.

We are Watt Watchers...

EVERYONE SAVE ENERGY



We are Watt Watchers...

Fill washer and dryer to save water and electricity.

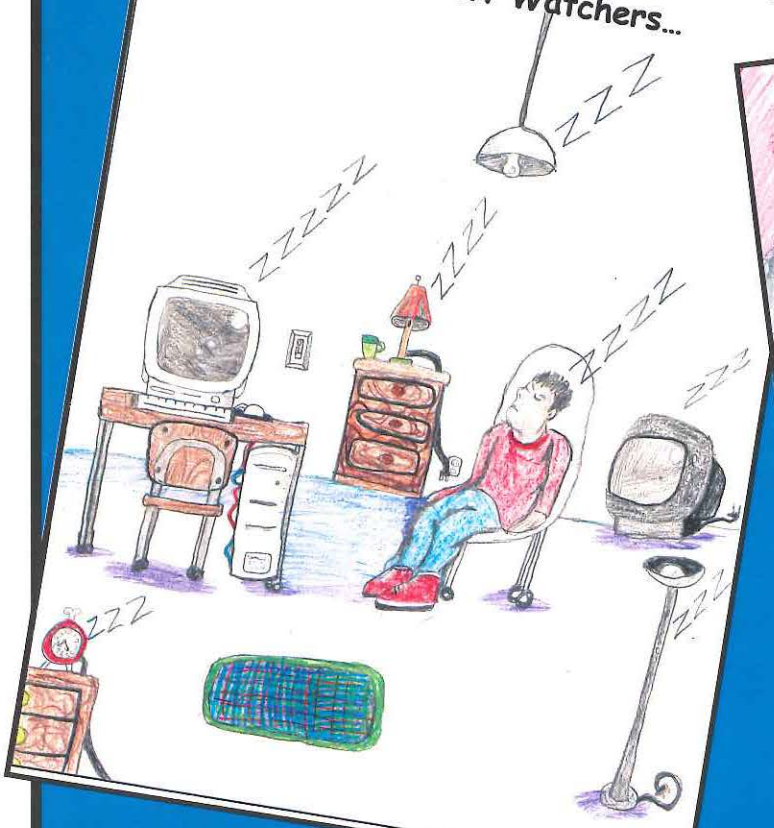
Turn off all lights and TVs when not using

Keep thermostat on 68° to save heat energy.

Turn hot water heater down to save energy.

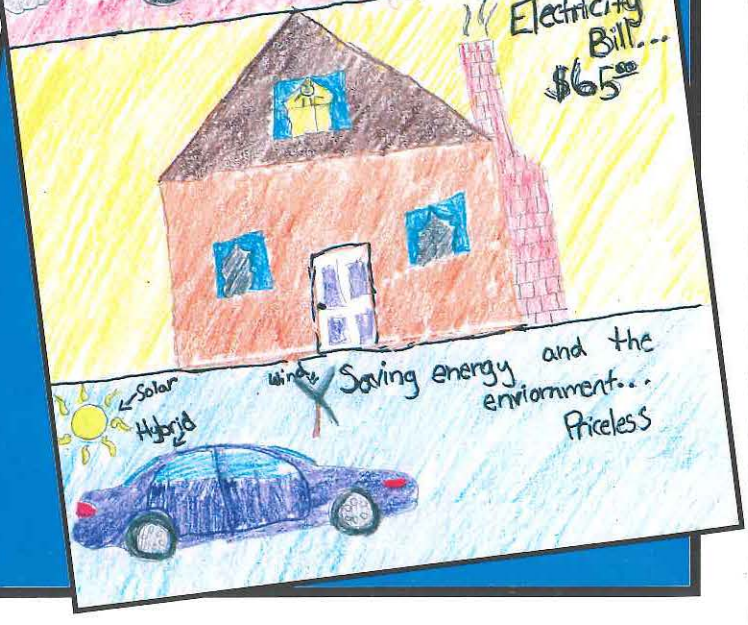
hot water heater

We are Watt Watchers...



We are Watt Watchers...

Gas for the week....$100.00



Master Agenda - internal use

Environmental Quality Commission Meeting
June 23 - 24, 2005 in Portland

Thursday, June 23

		10:00		Board tour bus at DEQ HQ (WA Mutual turnout on Yamhill)
10:00	-	10:15		Travel to VIP Tech Center: intro to VIP; preview of tour activities
10:15	-	10:45		Tour VIP Tech Center: presentation by Ted Kotsakis and Jake Jacobsen
10:45	-	11:15		Travel to Sunset VIP Clean Air Station: Overview of VIP Operations
11:15	-	12:00		Tour Sunset Station
12:00	-	12:30		Ride tour bus back to DEQ HQ: Working lunch
12:45	-	1:30		Executive Session in Room 3B

1:45 - 4:20 PM Regular EQC Meeting in Room 3A - DEQ Headquarters

1:45	-	1:50	Item A	Approval of Minutes from April 21-22, 2005, EQC Meeting in Boardman
1:50	-	2:10	Item B	Rule Adoption: General Permit Renewal 700PM/NPDES, Lauri Aunan and Scott Manzano, DEQ
2:10	-	2:40	Item C	Rule Adoption: Annual Inflation Adjustment to Air Quality Title V Permit Fees, Dave Kauth, DEQ
2:40	-	3:10	Item D	Rule Adoption: Phase out of VIP Enhanced Test, Ted Kotsakis, Jerry Coffer, DEQ
3:10	-	3:25	Break	
3:25	-	3:50	Item E	Action Item: Pollution Control Facility Tax Credit, Sally Puent and Maggie Vandehey, DEQ
3:50	-	4:05	Item X	Orphan Bond Refunding Opportunity and 0507 SRF Bond Issuance, Jim Roys, DEQ
4:05	-	4:20	Item F	Director's Dialogue, Stephanie Hallock

Friday, June 24

8:30 AM - 12:30 PM Regular EQC Meeting in Room 3A - DEQ Headquarters

8:30	-	9:00	Item G	Contested Case: Jack D. Price Contested Case, Lynne Perry, DOJ; Jane Hickman, DEQ
9:00	-	9:50	Item H	Informational Item: Update on the Status of the Umatilla Chemical Agent Disposal Facility, Dennis Murphey, DEQ
9:50	-	10:20	Item I	Rule Adoption: Align Land Quality Rules, Al Kiphut and Jeff Christensen, DEQ
10:20	-	10:35	Break	
10:35	-	11:05	Item J	Action Item: Three Basin Rules - Big Valley Woods Water Pollution Control Facilities (WPCF) Permit Modification, Dick Pedersen and Anne Cox, DEQ
11:05	-	11:50	Item K	Public Forum
11:50	-	12:00	Item L	Commissioner Reports Working Lunch

As of: 6/9/2005

Environmental Quality Commission Meeting
June 23 – 24, 2005

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

Beginning at 12:45 p.m. on June 23, prior to the regular Environmental Quality Commission meeting, 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.

Thursday, June 23 – regular meeting begins at 1:45 p.m.

A. Adoption of Minutes

The Commission will review, amend if necessary, and approve draft minutes of the April 21-22, 2005, Environmental Quality Commission meeting.

B. Rule Adoption: General Permit Renewal 700PM/NPDES

This proposed rule renews the expired NPDES General Permit for suction dredge operations. The General Permit applies statewide, and limits turbidity discharges from dredges equipped with an inside diameter suction hose no larger than 6 inches.

[Staff Report, Item B]

ATTACHMENTS, ITEM B:

A-1. Proposed Permit
A-2. Proposed Rule Revisions {redlined version}
B-1. List of Commentors
B-2. Department Response
B-3. DOJ Memorandum
C. Permit Development Chronology
D. Presiding Officer's Reports on Public Hearings:
D-1
D-2
D-3
D-4
D-5
E. Relationship to Federal Requirements Questions
F. Statement of Need and Fiscal and Economic Impact
G. Land Use Evaluation Statement

C. Rule Adoption: Annual Inflation Adjustment to Air Quality Title V Permit Fees

The Department is proposing to increase permitting fees for the Oregon Title V Operating Permits Program by 2.7 percent, which is equal to the change in the CPI during the 2004 calendar year. This proposed rule amendment would increase Base Fees, Emission Fees, and Special Activity fees.

[Staff Report, Item C]

ATTACHMENTS, ITEM C:

A. Proposed Rule Revisions
B. Presiding Officer's Report on Public Hearings
C. Relationship to Federal Requirements Questions
D. Statement of Need and Fiscal and Economic Impact
E. Land Use Evaluation Statement

D. Rule Adoption: Phase-out of VIP Enhanced Test

As one of three tests performed by VIP stations, the Enhanced test is relatively expensive but produces only moderate reductions in emissions. The Department proposes to amend rules in order to phase out the Enhanced test and continue the Basic and On-Board Diagnostic tests.

[Staff Report, Item D]

ATTACHMENTS, Item D:

A. Proposed Rule Revisions
B. Proposed SIP Revisions
C. Summary of Public Comments and Agency Responses
D. Presiding Officer's Report on Public Hearings
E. Relationship to Federal Requirements Questions
F. Statement of Need and Fiscal and Economic Impact
G. Land Use Evaluation Statement

BREAK

E. Action Item: Pollution Control Facility Tax Credits

The Department will present recommendations to the Commission on final certification of 37 facilities as well as alternate action on several other certificates.

[Staff Report, Item E]

X. Refunding of Selected OER Pollution Control Bonds

Proposed adoption of a Resolution authorizing the Department and the State Treasurer to issue and sell State of Oregon General Obligation Pollution Control Bonds, to be used to "refund" a number of existing Bonds to take advantage of lower interest rates and reduce future debt service obligations.

[Staff Report, Item X]

A. Resolution Authorizing and Requesting Issuance of Bonds
B. Candidate Pollution Control Bonds for possible Refunding
C. Pollution Control Fund and State Pollution Control Bonds

F. Director's Dialogue

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

Friday, June 24 – regular meeting begins at 8:30 a.m.

G. Contested Case No. AQ/AB-WR-02-046 regarding Jack D. Price.

Appeal by Jack Price of Proposed and Final Order imposing three civil penalties totaling $28,042 for violations of asbestos management regulations.

[Staff Report, Item G]

H. Informational Item: Update of the Status of the 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). In August 2004, the Commission gave approval to start chemical weapon destruction at UMCDF and DEQ's Chemical Demilitarization Program continues close oversight of work at the facility.

I. Rule Adoption: Alignment of Land Quality Rules

The Department will present rule amendment proposals that would align existing Land Quality Division rules with changes previously adopted by the Oregon legislature or the federal government.

[Staff Report, Item I]

ATTACHMENTS, ITEM I:

A. Proposed Rule Revisions (Appendices A-E)
B. Presiding Officer's Report
C. Summary of Public Comments and Agency Responses
D. Relationship to Federal Requirements Questions
E. Statement of Need and Fiscal and Economic Impact
F. Land Use Evaluation Statement

BREAK

J. Action Item: Three Basin Rule – Big Valley Woods Water Pollution Control Facilities (WPCF) Permit Modification

The Department requests that the Commission find that Big Valley Woods LLC's proposal to repair an existing on-site sewage disposal system and install a new system for additional house units satisfies the requirements of the three basin rule.

[Staff Report, Item J]

ATTACHMENTS, ITEM J:

A. Three Basin Rule, OAR 340-041-0350
B. DEQ Policy, 3-Basin Rule Implementation
C. Permittee's Modification Request and Site Map
D. Public Notice, Comments on Proposed Upgrade/Expansion Request, Department Response to Comments
E. Permit Evaluation Report
F. WPCF Permit Modification

K. Public Forum

L. Commissioner Reports

Adjourn

Environmental Quality Commission meeting dates for 2005 include:
August 18-19, October 20-21, December 8-9

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

Public Forum: The Commission will break the meeting at approximately 11:00 a.m. on Friday, June 24 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.

Deirdre Malarkey, Commissioner
Deirdre Malarkey graduated from Reed College and received her M.A. and Ph.D. from the University of Oregon. She has served previously on two state natural resource boards and on the Water Resources Commission and retired as a land use planner. Commissioner Malarkey was appointed to the EQC in 1999 and reappointed in 2003. Commissioner Malarkey lives in Eugene.

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

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.

Stephanie Hallock, Director
Department of Environmental Quality
811 SW Sixth Avenue, Portland, OR 97204-1390
Telephone: (503) 229-5696 Toll Free in Oregon: (800) 452-4011
TTY: (503) 229-6993 Fax: (503) 229-6124
E-mail: deq.info@deq.state.or.us
Day Marshall, Assistant to the Commission Telephone: (503) 229-5990

Approved____
Approved with Corrections____

Minutes are not final until approved by the Commission.

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

April 21-22, 2005
Regular Meeting [1]

The following members of the Oregon Environmental Quality Commission (EQC or Commission) were present for the regular meeting, which was held in the Riverfront Room at the Port of Morrow building, located at 2 Marine Drive in Boardman, Oregon:

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

Thursday, April 21, 2005

At approximately 8:30 a.m., operators of the Three Mile Canyon Farm gave the Commission an overview of activities at the Farm, which include dairy production, organic farming, nonorganic farming, and composting operations. EQC members, Oregon Department of Environmental Quality (DEQ or the Department) staff, an EPA staff member and a member of the public then attended a bus tour of the Farm.

At approximately 11:00 a.m., the EQC held an executive session to consult with counsel concerning legal rights and duties regarding current and potential litigation against the DEQ.[2] The executive session concluded approximately 12:45 p.m.

Chair Reeve called the regular meeting to order at approximately 1:00 p.m., and introduced the Commission members, DEQ Director Stephanie Hallock, Assistant Attorney General Larry Knudsen, and acting Commission Assistant Jane Hickman. Agenda items were taken in the following order:

A. Adoption of Minutes

The Commission reviewed draft minutes of the February 3-4, 2005, EQC meeting. The Commission voted unanimously to adopt the minutes as drafted.

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[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] The executive session was held pursuant to ORS 192.660(1)(h).

B. Informational Item: Results of the Columbia River 2004 Spill Season

Holly Schroeder, Water Quality Division Administrator, and staff member Agnes Lut explained that the Commission granted waivers to the U.S. Army Corps of Engineers (ACOE) and the U.S. Fish and Wildlife Service (USFW) allowing minor exceedances of the Total Dissolved Gas (TDG) water quality standard likely to occur during both involuntary spills and spills conducted deliberately to assist salmonids migrating downstream from the dams. The waivers, due to expire in 2008, apply to the Bonneville, The Dalles, John Day and McNary dams. ACOE and USFW are in compliance with their waivers with minimal TDG exceedances. ACOE and USFW monitoring of fish during the 2004 spills season showed no significant impact from TDG to the fisheries. The TDG waiver is critical in allowing fish passage past the Lower Columbia River Dams, and the Department supports the continued use of the waiver process.

C. Informational Item: Oregon's Assessment of the Oregon Plan for Salmon and Watersheds

Mary Abrams, DEQ's Laboratory Division Administrator, and Louise Solliday, Governor's Natural Resources Office, reported on the state's assessment of the Oregon Plan. The purpose of this assessment was to determine how the state is doing in its efforts to restore Coastal coho. The state has submitted its assessment to the National Oceanographic and Atmospheric Administration Fisheries Division (NOAA Fisheries) for consideration in making its final listing decision for the coho, due in June 2005. Key findings from the assessment include: (1) Coho populations within the evolutionarily significant unit (ESU) are biologically viable and contain sufficient habitat of suitable quality to sustain the populations through future adverse ocean, drought or flood conditions. (2) Historical land, water and fish management activities that were major contributing factors to coho declines have been stopped. (3) The role of water quality is considered secondary to the role of habitat complexity with respect to Coastal coho population viability. (4) The best opportunity to improve 13 of 19 coho populations within the ESU is to enhance complex freshwater overwinter rearing habitat (pools and off-channel habitat). The conclusion of the assessment is that Coastal coho are "minimally viable" -- not at risk of becoming endangered within the foreseeable future. The assessment will be used by the state to develop a conservation plan for coastal coho, which will also serve as part of the federal recovery plan if the coho are listed by NOAA Fisheries.

D. Government-to-Government Dialogue with the Confederated Tribes of the Umatilla Indian Reservation: Oregon's Water Quality Toxics Standards and the Fish Consumption Rate

The Board of Trustees of the Tribal Council of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) discussed with the Commission the importance of fish in tribal culture and the higher-than-average fish consumption rate of tribal members vs. the population at large. Pat Cirone of EPA's Risk Evaluation Program raised questions about the EPA survey that set the baseline used for the default standard it recommended to DEQ (and which the Commission used in establishing the current water quality standard for toxics). The CTUIR strongly encouraged the Commission to reconsider its May 20,

2004 adoption of a water quality standard for toxics that was based on a fish consumption rate of 17.5 grams/day. The Tribes presented a letter from a scientific panel stating that the proposed fish consumption rate of 17.5 grams per day does not provide acceptable levels of protection for tribal members who follow traditional diets rich in fish. The Tribes commissioned the panel to calculate the risk to tribal people posed by the new toxics water quality standard and lay out the science of the risk. The Tribes expect the panel to present additional scientific findings in approximately two months. Armand Minthorn, President of the CTUIR Board of Trustees, urged the Commission to delay implementing the new water quality toxics standard, which became effective on February 15, 2005, at least until the scientific panel presents its findings.

Commission members thanked the Tribes for their compelling discussion. Chairman Reeve stated at this point they would not stay the effective date of the toxics standard, especially since the pre-existing standard would go into effect during such a stay and that standard is less protective than that adopted by the Commission in May 2004. Chairman Reeve stated that last May's EQC decision was not discriminatory against the Tribes, and that Department staff had presented a full range of options for the Commission to consider. Rather than focus on this past decision, Chairman Reeve encouraged the Tribes and other stakeholders to work together to develop a current solution. Director Hallock stated that EPA should play a leadership role and establish a stricter regional water quality standard for toxics. She stated that we need to look for options short of remand for a new rulemaking if possible.

The Commission invited the scientific panel to present its findings about the impacts of the toxics water quality standard. The Commission cautioned about the far-reaching implications of adopting a new standard on municipal water providers and stated its support for measures that would prevent contamination at the source. Chair Reeve noted that it was likely that others with different views would be testifying the next day, and that the Commission will confer with staff about the options.

During the evening of April 21, the Commissioners and DEQ staff met with local government officials and with some Tribal members at the Riverfront Lodge Hotel in Boardman to hear about environmental and economic issues of local concern.

Friday, April 22, 2005

E. Director's Dialogue

Stephanie Hallock, DEQ Director, discussed current events and issues involving the Department and the state, including legislative matters, with Commissioners.

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

Dennis Murphey, DEQ Chemical Demilitarization Program Administrator, briefed the Commission on the status of recent activities at the Umatilla Chemical Agent Disposal Facility. He stated that the U.S. Army is proposing to change the sequence of agents destruction in order to reduce the time necessary for completion of the project.

G. Informational Item: Update on Agency Toxics Reduction Strategy

Mary Abrams, DEQ Laboratory Division Administrator, and Fenix Grange, Agency Toxics Coordinator, updated the Commission on the status of the Department's Toxics Reduction Strategy. In addition to traditional program commitments, DEQ and EPA have agreed to focus available resources on advancing the toxics reduction strategy, finalizing laboratory toxics data compilation, and initiating four projects designed to encourage on-the-ground improvements. The projects involve a pesticides reduction partnership, stormwater management in the Portland Harbor, improving coordination between DEQ's Land Quality and Water Quality divisions on managing hazardous waste, and cleaning up abandoned mines.

H. Informational Item: Status of the Board of Forestry Riparian Rulemaking

Holly Schroeder, Water Quality Division Administrator, Koto Kishida of the Department's Water Quality Division and Ted Lorensen of the Oregon Board of Forestry updated the Commission on the Board's adoption of riparian rules planned for 2005. The proposed riparian rule revisions will be contingent upon the outcome of legal issues associated with Ballot Measure 37. The measure states that the owner of private real property is entitled to receive just compensation when a land use law is enacted after the owner or a family member becomes the owner of the property, and the law restricts the use of the property in a manner that reduces fair market value. The Board is required by statute to consult with the Commission in adoption of practices and other rules to address nonpoint source discharges of pollutants resulting from forest operations on forestlands. DEQ staff will keep the Commission informed on the progress of the Board's rulemaking activities throughout the year.

Public Forum

At approximately 11:00 a.m., Chair Reeve asked whether any members of the audience wished to provide public comment to the Commission. The following people testified.

Janet Gillaspie, Executive Director of Association of Clean Water Agencies (ACWA), a nonprofit group with 106 members, introduced Peter Ruffier, manager of the City of Eugene's wastewater treatment facility. Mr. Ruffier stated that he was member of the policy advisory committee (PAC) that considered the water quality standard for toxics. He noted that although the PAC did not reach a consensus on a policy decision regarding which water quality standard should be adopted, ACWA did support DEQ's final recommendation of 17.5 grams/day as a fish consumption rate. Mr. Ruffier said that a water quality standard based on fish consumption rates is not scientifically effective and is just a "back door" way of additional regulation of point sources. The city of Eugene has worked to prevent pollution from mercury and other elemental metals and is working on toxics reduction programs. If the water quality standard is changed, the city would have to revise its long-term facility plans. It would take an additional $130-$140 million capital to meet new water quality standards. Environmental problems would result from brine captured from reverse osmosis and tertiary treatment. The city does not support a new water quality standard but does support additional toxics reduction programs.

Kathryn VanNatta, spokesperson for the Northwest Pulp and Paper Association (NWPPA) testified that NWPPA was a regular and active participant on the water quality standard PAC and always supported 17.5 grams/day as a fish consumption rate. NWPPA's stance is that EPA should set standards and promote certainty. Legacy and banned pollutants should not be dealt with via permit limits.

H. Commissioners' Reports

Commissioner Malarkey distributed a flyer published by the Lane Regional Air Pollution Authority. The pamphlet describes the Lane Clean Diesel Project, a joint effort among thirty participants from the public and private sectors to establish a stable, reasonably priced supply of Ultra Low Sulfur Diesel and biodiesel in Lane County.

Commissioner Williamson noted that biodiesel and ethanol are very hot topics at Oregon State University, and that there has been a P3 grant to OSU students for a project to convert cooking oils to biodiesel. The P3 program is a partnership between the public and private sectors to achieve the mutual goals of economic prosperity while protecting the natural systems of the plant and providing a higher quality of life for its people. P3 highlights people, prosperity and the plant – the three pillars of sustainability – as the next step beyond P2 or pollution prevention.

Chair Reeve adjourned the regular meeting at approximately 12:00 p.m.

After the meeting was adjourned, some EQC members and DEQ staff attended a presentation by Chem Waste officials and toured the Arlington Hazardous Waste Disposal Facility.

July 13, 2005

To: Dept. of Environmental Quality, (DEQ), and
Environmental Quality Commission, (EQC) and

Petitioners: Eastern Oregon Mining Association
Respondents: DEQ, EQC and the State of Oregon

Re: Request for Hearing, OAR340-011-0530, and ORS 183.413, which describes, "...that the citizens of this state have a right to be informed as to the procedures by which contested cases are heard by state agencies...". We also are asking for judicial review by the Court of Appeals under ORS137-001-0070.

We previously petitioned the EQC to consider not adopting the rule, however, we have heard nothing from that petition that was sent by certified mail on June 20, 2005.

The following outlines the reasons we find for requesting a State hearing of appeal concerning improper Jurisdiction of DEQ NPDES permitting for gold suction dredging. Oregon State Statutes and Administrative rules allow for an appeal hearing before an administrative law judge as a contested case.

Section A- About the petitioners.
Section 1- DEQ is in error concerning the "addition of a pollutant" under NPDES
Section 2- NPDES only applies to navigable waters; who has jurisdiction and where does this jurisdiction begin and end?
Section 3- DEQ has failed to properly recognize that small scale placer mining is exempted from NPDES under 40 CFR 440 Subpart M
Section 4- Other errors including fees, size of the dredge, and turbidity criteria concerning the length of the mixing zone.

Attachments:
A1- DEQ's stated authority, A2- Deputy Attorney General, Memo.
B- Miner's permit, version 3/3/05
C- Technical Resource Document, 1994
D1- Effects of Suction Dredging by Joe Cornell, 2001
D2- Effects of Small-Scale Gold Dredging on Arsenic, Copper, Lead, and Zinc Concentrations in the Similkameen River, March 2005
D3- Impact of suction dredging on water quality, benthic habitat, and biota in Fortymile River, Resurrection Creek, and Chatanika River, Alaska, 1999
D4- Response of fish to cumulative effects of suction dredge and hydraulic mining in the Illinois sub-basin, Siskiyou National Forest, Oregon, Peter B. Bayley April 2003
D5- Programmatic Biological Assessment, State of Oregon's Removal-Fill program, Final, September 2000, page 55,56,57
D6- Granite Area Mining Projects, Draft EIS, Umatilla National Forest, North Fork John Day Ranger District, page 4-15
E- DEQ 700PM NPDES permit and Attachments, June 6, 2005

Section A

The petitioners: Guy Michael has an extended 700J permit and filed comments during the making of the preliminary drafts and filed comments during the Public comment period; Ed Hardt, Jan and Ken Alexander and have also filed comments during the preliminary drafts and filed comments during the Public comment period; Ken Anderson filed comments during the public comment period; Robert Heitmanek has an extended 700J and filed comments during the preliminary draft. All are members of Eastern Oregon Mining Association. Jeff Boatwright is a miner and has filed comments during the public comment period. The following email address will contact the Petitioners: Edwin Hardt, President of EOMA.

Section 1: DEQ is in error concerning the "addition of a pollutant" under NPDES

The Congressional definition of "discharge of a pollutant" as quoted above is this: "...addition of any pollutant to navigable waters from any point source". There is no ambiguity from Congress. The statutory question is whether suction dredge activity within waters of the U.S. constitutes the "addition of any pollutant to navigable waters from any point source" so as to require Oregon DEQ to issue an NPDES permit for suction dredges under § 402 (NPDES). For suction dredges to be required NPDES permits, the courts have already stated five elements must be present: (1) a *pollutant* (other than dredged or fill material which is regulated by § 404) *must be* (2) *added* (3) *to navigable waters* (4) *from* (5) a *point source.*

The pollutants involved with suction dredging according to the Oregon deputy attorney general, which could be regulable under NPDES include rock, sand, biological material and cellar dirt. Dredged spoil is not a regulated pollutant under § 402 (In fact any material that is discharged as dredged material (material excavated from waters of the US) or fill material (material that changes the bottom elevation of waters of the US excluding refuse and garbage) is excluded from § 402 as it is regulable by the US Army Corps of Engineers under § 404 (33 CFR § 122.3)).

The Act does not define what constitutes the "addition" of a pollutant but, looking again to Congressional intent, the Congress Senate Committee stated (A Legislative History of the Clean Water Act): "*It should be noted that the term "thermal discharge" is defined as the introduction of water into the navigable waters ....at a temperature different from the ambient temperature of the receiving waters. It is intended that the term "thermal discharge" and the term "discharge of a pollutant" (and "discharge of pollutants") are mutually exclusive."* This shows the intent of Congress in regards to introducing pollutants from outside of navigable waters and emitting or placing them into those navigable waters from a point source. There is no ambiguity to the intent of Congress, and on this basis it is obvious that moving pollutants within the same general area within a water segment does not involve an "introduction" of pollutants just as the EPA itself has argued successfully before the Court, that concerning § 402 NPDES permits that addition from a point source occurs "*only if the point source itself physically introduces a pollutant into water from the outside world*" (Gorsuch 693 F.2d 156). Or "*Those constituents occurring naturally in the waterways or occurring as a result of other industrial discharges, do not constitute an addition of pollutants by a plant through which they pass*" (Appalachian power 545 F.2d 1351). As the Sixth Circuit Court so

aptly stated, "*Since "addition" is one of the five elements necessary to trigger the NPDES permit requirement, we need only address whether the ...facility "adds" pollutants from the outside world to Lake Michigan*". (Consumers Power 862 F.2d 580).

In the Consumer's power case, material that was being pumped and channeled through a point source that would be considered pollution and a pollutant by Congressional definition (chopped up, altered biological material) was not regulable under § 402 although it was altered by the point source. The Court stated, "*any resulting pollution in the form of entrained fish is, as in Gorsuch, an inherent result of...operation. Any water quality change resulting from the release of entrained fish ... is simply not, giving proper deference to the EPA definition, from the physical introduction of a pollutant from the outside world.*" Furthermore, "*Had Congress wanted to use CWA §402 to regulate all sources of pollution, " 'it would easily have chosen suitable language, e.g., all pollution released through a point source.' " Instead, Congress chose the word "addition." We agree with the District of Columbia Circuit "the NPDES system was limited to 'addition' of 'pollutant' 'from' a point source.*" This is highly significant in that it qualifies the clear distinction between the NPDES system and Section 404.

Dams, under certain circumstances, may "add" pollutants from the outside world, such as when they discharge grease into water passing through the outlet works. Gorsuch, 693 F.2d at 195 n. 22. In short, Congress and everyone involved in the water pollution problem knew that water flowed out of dams, and that such water was often not pristine. To the extent that no more has been shown than that unclean water flows out of the dam, Congress clearly displayed an intention to exempt dams from the Clean Water Act. However, if the dam itself added pollutants to the water, rather than merely transmitting the water coming into it, in whatever altered form, then it would be subject to the NPDES permit system." This clearly is in line with Congressional intent concerning moving small volumes of material (pollutants already occurring inside Waters of the U.S.). Senator Domenici stated that "*we never intended under § 404 that the Corps of Engineers be involved in the daily lives of our farmers, realtors, people involved in forestry, anyone that is moving a little bit of earth anywhere in this country that might have an impact on navigable streams.*" Senate Debate, *id.* at 924. Both the Senator and the Court recognized that the waters could have an altered form and effect from point sources but that they were not intended to be regulable under the Clean Water Act.

To briefly state the issue before us, suction dredges divert water including pre-existing pollutants that have previously been introduced into waters of the U.S. from non-point sources or point sources (as the case may be) and divert the "influent" through a discrete conveyance (a channel) that is partially or wholly submerged within the same water segment whereby heavy particles (some of which are desirable elements) are trapped by gravity as they flow through.

To further understand the Congressional purpose and approach of the Act in relation to the expressed intent of Congress I state testimony from another U.S. Senator concerning CWA bill:

"The bill before the Senate today starts at a different point. It says, in effect: "Do not put any pollutant in the water". Then it recognizes that very often this may not be practical, and cannot be accomplished right away. So it says, that to the extent a discharge of pollutants cannot be eliminated, you may continue to put waste into the water, provided you have first applied the best available technology for the removal of that waste. In the first period, until 1976, it is to be the "best practicable technology". In the second period, until 1981, it is to be the "best available technology." After that time, we assume that the best available technology will continue to improve. This is a very different approach. It is a pragmatic approach. I think we all acknowledge that, in the short run, it may often require larger expenditures then permitting discharges to the point where the water can be shown to be degraded for some use. But I think it is fair to say that after the most thorough examination, the committee concluded that the approach adopted in the bill promised to be a far more effective means of attacking the problems of water pollution control than the 1965 act. I believe it would be a misinterpretation to view this bill as a "no discharge" bill, if that term conveys the notion that the committee expects every outfall to be shut off, or expects river systems-which are, after all, natural drainage systems--to no longer receive elements of the industrialization and urbanization which surrounds us. I believe the quality of water to which the bill is directed is not so very different from what we originally hoped might be accomplished under the 1965 and earlier acts. But I consider also that the way a problem is approached can make all the difference in reaching a goal. And it is in this way that the committee bill makes a sharp break with present practice for the beginning point is not the degree of pollution considered tolerable, but the elimination of polluting discharges to the extent that available technology allows."

This clearly shows the intent of the CWA was to eliminate putting pollutants in the water that came from the outside world where the discharger has the opportunity to apply technological means to the extent that available technology allows removing them before introduction to waters of the U.S. This is also reinforced by the Congress stating: "*...it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985.*" and "*...it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited*". Congress hedged the purposes section by making it apply only as "*...consistent with the provisions of this [Act].*" and explicitly distinguished between the congressional "policy" to eliminate discharge of toxic pollutants and the presumably weaker "goal" of eliminating discharge of all pollutants. If we conclude that DEQ's interpretation is inconsistent with the language of the Clean Water Act, as interpreted in light of the legislative history, Democratic

see or if it "frustrate[s] the policy that Congress sought to implement," no amount of deference can save it, U.S

Misconstruction of "addition" would have frustrated Congressional and federal policy concerning mining, particularly placer mining whereby such a misconstruction of Congressional intent would be a contention that Congress' intended goal was to eliminate gold placer mining (including all suction dredging activity) by 1985 under their expressed goal of elimination of discharges of pollutants. That is especially noticeable where there exists no feasible or technological means of zero-discharge for **any** in-stream activities (suction dredging included) that move pre-existing pollutants, which

clearly is contrary to the intention of Congress. Just as Congress recognized discharges under jurisdiction of Section 404 are necessary for commerce and should not be eliminated, being recognized as essential, the Congressional Committee stated that States should have criteria "*...providing for the establishment of standards for temporary turbidity resulting from dredging and disposal of dredge material, and to take such other action as is necessary ...to assure continuation of dredging essential to our Nation's waterborne transportation.*" Congress understood the discharge of material within and excavated from waters of the U.S. to involve the moving of pollutants from one place to another. During the 1972 debates, Senator Ellender stated: "*The disposal of dredged material does not involve the introduction of new pollutants; it merely moves the material from one location to another.*"In the Appalachian power case the Court comments concerning litigation to EPA regulation: "*Industry is...required to treat and reduce pollutants other than those added by the plant process. This, we are of opinion, is beyond the scope of EPA's authority.*"

In addition, it was the stated goal of the Act, "that the discharge of pollutants into the navigable waters be eliminated by 1985". It is interesting to note that in the U.S, it was not until 1985 that the erroneous interpretation and construction of "addition" was constructed by Oregon DEQ, as they attempted to regulate suction dredges under §402. If suction dredge activity was truly of significant effect, consisting of legitimate addition, someone, be it EPA, or other group or agency, would have brought it to Congress' attention, before 1985, the expressed date for the zero discharge goal.

Within EPA NPDES regulations, the same Congressional intent is emulated in (TITLE 40,PART 122 Subpart C Sec. 122.45(g) whereby pollutants in "influent" would not require technological elimination from "*effluent if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made.*" This clearly is reinforcing expressed Congressional intent that "addition" of pollutants (from NPDES permitting standpoint) consists of an introduction of pollutants from the "outside world", even if the influent (water and pollutants) are taken from the waters of the U.S. for a commercial means used outside of those waters of the U.S. and subsequently re-introduced into that same water segment. What would however be regulated is any "addition" of pollutants from the discharger whereby it would be coming "from a point source" or if the influent, without any such addition were to enter a different waterbody. Suction dredging does not involve either.

Congress was not unclear in their structure and reasoning in the Act. Had it wanted to do so, it could easily have chosen language stating, "all pollution released through a point source." Instead, as we have seen, the NPDES system was limited to "addition" of "pollutants" "from" a point source. DEQ's construction must be upheld if, in light of the appropriate degree of deference, it is sufficiently reasonable. However there is no room for consideration or application of deference here, when the Clear intent of Congress is expressed and known and there is no "addition" of any pollutants from a suction dredge into waters of U.S., which could be regulable under §402. The Supreme Court, however, has ruled that certain radioactive materials are not "pollutants" even though they undoubtedly emit "pollution",

. Moreover, under usual rules of statutory construction, use of two different terms is presumed to be intentional, *see,*

e.g.,
, especially when the legislation specially defines both terms. EPA's policy-oriented explanation for the distinction--*that Congress purposely limited the federal NPDES permit program to certain well-recognized pollutants and left control of other water-altering substances or conditions to the states under § 208--is quite plausible.* Not to mention Congress' specific intention of segregating discharges of fill and dredged material under §404 that involve discharges of numerous pollutants. *In order to fully understand [the Act], it is necessary to recognize that certain terms ... have very specific and technical meanings. The definitions of these terms are included in section 502 of title V, and it is recommended that very special attention be accorded section 502.... [S]ome of the more important terms ... [are] "pollution" ... "pollutant"... "discharge of a pollutant" ... "thermal discharge" ..."discharge," ... [and] "point source" ....*

While recognizing that all adverse water quality changes are "pollution"--broadly defined in § 502(19), , as *"...the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water"* that is distinguishable, however, from 'discharge of pollutants,' noting that pollutant and pollution are not interchangeable within the act, each with specific definitions and meaning. Congressional intent did not state: no person shall discharge "pollution" but rather "pollutants." This also embodies their correlating intent to deal with mining pollution through §208 of the Act, whereby there would be applied feasible controls and the goal of elimination (or zero discharge) was knowingly not contemplated because of the lack of technological means.

The Oregon Deputy Attorney General, in an attempt to substantiate an addition of a pollutant, has relied on several prior Court interpretations, all of which required §404 permits (under the jurisdiction of the Secretary of the United States Army in the State of Oregon). There is no basis within the Act to determine permitting requirements or regulable discharges based on the purpose of the discharge. Section 404 of the Act was intended to regulate waste disposal of the pollutant of "dredged spoil" through regulation of discharges of dredged material (material that is excavated exclusively from waters of the U.S.) or discharges of fill material that can be comprised of waste (excluding refuse and garbage, that is discharged into waters of the U.S. changing their bottom elevation). The court has ruled in US vs. Sinclair Oil, *767 F.Supp. 200*, that if *"the defendant's redeposit of indigenous materials in the bed of the Little Bighorn River met the definition of a "discharge of dredged or fill material," the defendant must be held liable under the Clean Water Act for failure to obtain a § 404 permit".* Furthermore concerning the defendants defense in US v Sinclair Oil being based on Section 402 Case law the court stated, *"The Courts found that discharges of indigenous riverborne materials did not require permits. This Court specifically distinguishes these cases as inapposite. The cases cited by defendant concerned a separate regulatory framework under Clean Water Act... "* Similarly DEQ cannot look outside to a separate regulatory framework to try to substantiate §402 applicability. In an attempt to validate suction dredge activity as addition of pollutants regulable under NPDES, the Oregon Attorney General and DEQ have cited court interpretations showing validity of §404 permitting which is not relevant to §402 but rather Section 404. The first citation, (*Borden Ranch Partnership v. United States Army Corps of Engineers*, 261 F3d 810, 814 (9th Cir 2001)) that involved a point source (mechanized equipment that was being used to "deep rip" soil) whereby

the majority of the court believed without any addition of material, the deep ripping activity could "*transform some material from a non pollutant into a pollutant*" which would be regulable under §404. However, distinguishable in relation to deep ripping bare earth, is suction dredging, by the fact that the pollutants excavated from within the water consist of the various previously introduced pollutants of rock, sand, cellar dirt or biological material which cannot reasonably, either individually or cumulatively, be considered non-pollutants after they have already been discharged into waters of the U.S. as pollutants.

In addition *Rybachek, supra,* at 1285-1286 is cited as well. Considering Rybachek, it is distinguishable from suction dredge mining, in that, though the Rybacheks were mining for placer gold they were not suction dredging, but rather "hydraulicing" (not all placer mining methods or processes are synonymous though they have a similar objective in recoving precious metals) by using a pressurized stream of water to wash ancient stream gravels (which originally came from the streambed itself eons ago) that were not presently within the active stream channel which they then processed and the leftover gravel was discretely dumped into the water. The Ninth Circuit court states, "*if the material discharged is not from the streambed itself, but from the bank alongside, this is clearly the discharge into navigable waters of a pollutant under the Act*". Further the court stated: "*even if the material discharged originally comes from the streambed itself, such re-suspension may be interpreted to be an addition of a pollutant under the Act*". However the Oregon Deputy Attorney General or DEQ did not address this statement concerning the Rybachek mining operation from the Court. Justice Gould, in the Borden case, states: " *In Rybachek, we held that placer mining, a process in which miners excavate dirt and gravel in and around waterways and, after extracting the gold, discharge the leftover material back into the water," fell within the scope of section 404 of the Clean Water Act. Id. at 1285.*" Once again, I must reiterate that the above mentioned mining process is distinguishable from suction dredging, and that §404 discharges are not permitted by DEQ under §402 NPDES. Furthermore in response to comments on the suction dredge Permit DEQ responded by stating that a *"404 permit is not currently required from the Army Corp of Engineers"* as well as stating that 404 was applicable to suction dredging during a March 10 meeting with DEQ representatives, legislators, and miners.

Concerning mining, the expressed intent of Congress has pointed to §208 of the Act in the Legislative History. This follows recognition of this important Congressional declaration of policy: "*...that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in the development of economically sound and stable domestic mining...the study and development of methods for the disposal, control, and reclamation of mineral waste products, and the reclamation of mined land, so as to lessen any adverse impact of mineral extraction and processing upon the physical environment that may result from mining or mineral activities.*" There exists no Congressional ambiguity concerning suction dredging in light of this stated policy as a valid mining activity. Congressional intent towards mining activity found in §208 calls for plans that include feasible controls (controls to the extent that available technology allows) even though §208 would involve areas having "*...substantial water quality control problems...*", control problems in relation to State water quality standards.

Section 2: NPDES only applies to navigable waters; who has jurisdiction and where does this jurisdiction begin and end?

DEQ provided the miners with information as to why the agency believes it has authority to issue the NPDES suction dredge permit in the State of Oregon, (attachment A1). The list of ten reasons was provided at the February 3, 2005 public hearing in Baker City, Oregon. DEQ also refers the miners to the Dept. Of Justice, (DOJ) memorandum, (attachment A2), where the Clean Water Act, (CWA) is quoted by both, specifically identifying section 402 (b) where the State sought and received this authority, (reason number 7, A1), and, "*Under CWA Section 402, an NPDES permit is required for the discharge of a pollutant from any point source to waters of the United States...*" (Page 1 of DOJ memorandum).

Both statements of authority are in error, although we agree that the CWA provides for State implementation and that the State of Oregon did apply for and receive this authority to implement the provisions of the CWA. The petitioners do not accept that this authority applies to suction dredgers who operate in non-navigable waters in the public lands; I quote 33 USC 1342 (b), "*...The governor of each state desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator...*" All through the CWA the term "navigable" is used very specifically to show where the CWA authority applies. We believe it is necessary to show exactly what the CWA states concerning this:

1) 33 USC 1251 (a) (1), "*...it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;*"
2) 33 USC 1251 (a) (6), "*...to develop technology necessary to eliminate the discharge of pollutants into the navigable waters...*"
3) 33 USC 1342 (a) (5), "*...The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objectives of this chapter to issue permits for discharges into the navigable waters...*"
4) 33 USC 1344 (f) (2),"*any discharge of dredge or fill material into the navigable waters...*"
5) 33 USC 1344 (g) (1), "*The Governor of any state desiring to administer its own individual and general permit program for the discharge of dredge or fill material into the navigable waters...*"
6) Section 502 (12) (A) [33 USC 1362 (12) (A)], "*any addition of any pollutant to navigable waters from any point source...other than a vessel or other floating craft.*"

To add to this point, we must look at one of the reasons that Chief Justice Rehnquist used when the Supreme Court ruled against the Army Corps of Engineers (Corps) which was seeking authority over non-navigable state waters because of migratory birds in 531 US 159 2001 (SWANCC), "*...the term 'navigable' has at least the import of showing us what Congress had in mind as its authority for enacting the CWA: its traditional*

jurisdiction over waters that were or had been navigable in fact or which could reasonable be so made..." The Corps was using their administrative rule to encroach upon the traditional state power over non-navigable waters in that case.

Congress in the CWA spells out that nothing in this act will infringe on the states' rights to govern pollution in waters under their jurisdiction:

1.) 33 USC 1251 (b), "*...it is the policy of the Congress to recognize, preserve and protect the primary responsibilities and rights of states to prevent, reduce and eliminate pollution...of land and water resources..."*
2.) 33 USC 1251 (g), "*it is the policy of Congress that the authority of each state to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this chapter..."*
3.) 33 USC 1370, "*Except as expressly provided in this chapter, nothing in this chapter shall (1) preclude or deny the right of any state...or (2) be construed as impairing or in any manor affecting any right or jurisdiction of the states with respect to the waters (including boundary waters) of such states..."*

Each government, whether State or Federal has its own jurisdiction. NPDES applies to navigable waters and not to streams in the public domain that are not classified as navigable. To understand that there is a distinction between navigable (Federal Jurisdiction) and non-navigable (State jurisdiction), we need to look at the Federal-State framework and establish where their respective jurisdiction begins and ends. The Equal-footing Doctrine is describe by Maleys, Mining Law page 19 (6th edition):

"In the United States it has been established that each new state created out of the public domain automatically, upon its admission to the union, becomes the owner of the beds of all waters then navigable and not previously conveyed by the Federal Government into private ownership under the equal-footing doctrine. In *Banal Cattle Co. v. Arizona,* 414 *Us.* 313, 318(1973), the Supreme Court discussed the origin of the equal-footing doctrine:

> "When the original Colonies ratified the Constitution, they succeeded to the Crown's title and interest in the beds of navigable waters within their respective borders. As new States were forged out of the federal territories after the formation of the Union, they were '...admitted [with] the same rights, sovereignty and jurisdiction...as the original States possess within their respective borders.' Accordingly, title to lands beneath navigable waters passed from the Federal Government to the new States upon their admission the Union, under the equal-footing doctrine."

In addition to numerous Federal Court decisions, which affirm the State's sovereignty over the beds of navigable waters, the US Congress enacted the Submerged Land Act of May 23, 1953 (stat 29; 43 USC 1301 et seq.). This part will concern the claim owner and suction dredger on public lands. I quote 43 USC 1301 (a) (3) (f), "*the term 'lands beneath navigable waters' does not include the beds of streams in lands now or heretofore constituting a part of the public lands of the United States...* " The State of Oregon has claimed to acquire 11 navigable rivers thus far, (associated press, Baker City Herald 4/13/05 pg. 3) and that because of the Equal-footing Doctrine and the

Submerged Land Act the states have sovereign authority over lands beneath navigable waters. This includes the minerals and aquatic life, but this does not include the beds of streams in the public lands. If you have a valid mineral claim then you would own those minerals. The controls of the non-navigable waters are the states' concern. This includes water quality, but the state does not own the beds of these streams, and any permit requirements for the public benefit must be consulted with those affected, ORS 517.125. Also, the beds of streams in the public lands are managed by the Federal land management agencies.

To round out this information more completely, we must also understand that the Federal Government possesses navigational servitude, in that, although the state holds title to the beds of navigable waters, the Federal Government has control over the navigable waters itself for the purposes of navigation, see 429 US 363,375-76 (1977). In navigable waters, the Federal Government controls the water, and the States control the beds beneath, which includes the gas, oil and minerals and aquatic life. In non-navigable waters, the states control the waters, but there are exceptions in the case of private ownership, and in the public lands, the Federal Government retains title until patent or the beds of these streams are sold. The Congress knew it does not have authority over non-navigable waters; it specifically uses the term "navigable" to describe where their authority applies. Congress, in the Act, offered to each state that wished to administer the NPDES permit program in navigable waters a plan that could be administered by the states, which allowed them to cross the jurisdictional boundary, in one direction. We will point out that suction dredging will occur mostly in state, non-navigable, public domain waters and would require a state permit, if the state statutorily required it.

Seeing the need for a state permit, EOMA submitted, during the public comment period for the new 700PM permit, a Draft Miner's Permit version on 3/3/05, (Attachment B). The DEQ was trying to establish permit conditions under NPDES that were outside the mechanical ability of the dredge to comply. We stated that we required a permit that used sound science and Best Management Practices (BMP) and to be listened to when consulted. The Miner's version, with some "consulted" changes (ORS 517.125) could go quickly to public comment. The State of Oregon cannot impose Federal requirements where there is no jurisdiction to do so, since, the provision of the CWA and NPDES applies only to navigable waters.

Section 3: DEQ has failed to properly recognize that small scale placer mining is exempted from NPDES under 40 CFR 440 Subpart M

40 CFR 440 Subpart M is the rule that implements the CWA for placer gold mining operations that process more than 1,500 yards per year and dredges that process more than 50,000 yards per year. In the preamble to the revision of 40 CFR 440 Subpart M, (FR Vol. 53 No. 100 Tuesday, May 24, 1988 rules and regulation), the Regulatory Flexibility Act was the authority quoted to continue to exempt small scale gold placer mining from the requirements of the CWA (and NPDES).

40 CFR 440.140 states, "*the provisions of this subpart M are not applicable to any mines or beneficiations process which process less than 1,500 cubic yards of ore per year or to dredges which process less than 50,000 cu yd of ore per year...*" The U.S. Environmental

Protection Agency, (EPA), explains this very clearly in the document: Technical Resource Document Volume 6 Gold Placer 1994, "*The size of a placer mining operation determines whether or not it is subject to compliance with the Clean Water Act administered by the EPA under 40 CFR 440 Subpart M. Mines handling less than 1,500 cubic yards of ore per year and dredges handling less than 50,000 cubic yards annually are exempted from effluent guidelines,*" page #1-4.

This technical document was written to describe how the CWA is implemented concerning the Extraction and Beneficiation of Ores and Minerals for gold placer mining. The EPA also states, "*Small-scale extraction methods include panning, and suction dredging...*[these] *extraction methods employ the basic principal of gravity separation,*" page #1-15. The EPA document further states, "*Under section 402 of the CWA (33 USC 1301 et seq.) All point source discharges to waters of the United States from industrial and municipal sources must be permitted under the National Pollutant Discharge Elimination System NPDES...Effluent limitations may be either technology-based of water quality based...Technology-based limitations specifically applicable to the gold placer mine subcategory of the Ore Mining and Dressing Point-Source Category are codified in 40 CFR 440 Subpart M. These standards are only applicable to large placer mining operations (defined as mines which beneficiate more than 1,500 cubic yards of ore per year). There are no regulations under the CWA specific to small placer mine operations,*" page #1-48, (Attachment C).

The reasons for this section are this: from the beginning of the first preliminary draft to the 5th draft, which was released for public comment, DEQ was establishing a technology-based control. This 700 PM NPDES permit left the previous efforts, and based the permit on state water quality standards of 10% above background, which allows for a limited exceedance for legitimate uses of the water. DEQ, in the 700 PM permit, expects to now charge $300 for an Individual NPDES permit in order to receive the limited exceedance. The OAR did not say that the limited exceedance could only be regulated by an individual permit; it states that limited exceedance would be allowed for other legitimate uses. Under the previous 700J permit, DEQ allowed dredges to exceed that 10% standard, we submit that there is no technology available to reduce turbidity, only a few Best Management Practices (BMP). This is another reason why a state permit, based on sound science and BMP, will continue to protect the environment and allow suction dredging to continue.

Section 4: Other errors including fees, size of the dredge, and turbidity criteria concerning the length of the mixing zone.

The miners provided comments on the proposed fees during the preliminary draft 700J permit and DEQ did not respond to our comments, but instead, removed the fees from the permit, advising that we could comment later. Then during the public comment period, we addressed the fees again, but DEQ bypassed the Administrative Procedures Act, and submitted a bill directly to the Legislature to increase fees for the NPDES suction dredge permit without consulting the miners or addressing our comments on this issue. The miners had to scramble to get to the hearings on the fees, and none of our previous comments were made a part of the legislative record.

We understand that the Clean Water Act specifically provides financial aid to the states for implementation of the NPDES programs (33 USC 1251 (b)). It seems obvious that the money generated by using NPDES permits is one big reason why DEQ wants the permit to remain NPDES, instead of a state permit. Then, DEQ plans to be paid again, by raising fees for the permits. Scott Manzano, at the public meeting in Baker City, stated that the money raised through fees would be used to hire more employees and to fund other areas in the department.

We believe that DEQ should not charge any fees that are above the actual cost to review the application, accept payment if one is needed, issue the permit and maintain the files. Other costs, such as for new employees or projects should be funded by appropriations from the legislature. The DEQ has proposed that the, "*new annual fee of $25*"(attachment F page 1, of the 700PM permit), "*will be used to help fund DEQ's overall program costs to protect surface water statewide,*" page 2, Attachment F. The permit will be renewable every five years and they have not shown the need for the continued payment each year. A "short term" 10-day permit could be made available and we expect a $15 cost would be appropriate.

There are many problems with the content of the current NPDES proposal. In Washington and California, there is no mixing zone designated, since the science shows negligible effects from the turbidity in the dredge plume, no matter how long it remains visible. It is obvious that DEQ wants miners to pay $300 for their individual permit, but they have provided no justification for charging the higher fees. Another land use control problem is that the miner on the public lands, who has located a claim with a stream running through it, owns the minerals in those beds. DEQ's proposed NPDES permit requires that in streams where no mining has occurred before, new mining be prohibited, (page 7 of 10 Conditions for dredging on water quality limited streams (1)). This is a clear and direct violation of a miner's rights, and this prohibition is not supported by the science. The State is clearly operating outside its authority. There are likely thousands of placer deposits yet to be discovered and many of these would have streams associated with them. The streams that were considered water quality limited for sediment were previously allowed in the 700J permit, and we are not aware of any degradation from suction dredging in any streams. Under a state permit with BMP, the permit would be designed so that those who comply will ensure that suction dredging will not degrade the streams that are worked. DEQ has assumed that suction dredging will degrade those streams, and the scientific evidence previously sent by EOMA, shows that the mitigating restrictions of BMP are enough to protect the aquatic life. Can DEQ restrict the mining of private property minerals while not revealing any sign of degradation to streams caused by suction dredging? We wonder if the State of Oregon is prepared to pay individuals for the taking of their mineral rights in those streams where no mining has yet occurred? Attachment D will list the Scientific Evidence.

This NPDES permit only authorizes dredges up to 6 inches in size and all operators of dredges that are over that size are required to pay the additional $300 for an individual NPDES Permit. The science does not support DEQ by excluding the larger dredges or dredges that exceed the 300 foot turbidity distance in the general permit, since it would take a dredge 12 inches or larger even to come close to meeting the requirements of 40 CFR 440 Subpart M, ("50,000 cubic yards" of processed material). The Bibliographies

and scientific studies, (Attachment D), show clearly that dredges up to 10 inches should come under the General Permit and have benign effects on the environment.

Suction Dredging itself is basically a benign activity that requires a few BMP be met. Under a state permit, dredgers would not be allowed to dredge into the banks, they must operate during the State approved in-stream period when fish are not spawning and no eggs are in the gravels and they would leave the stream structure in the channel after the dredging is completed. Another BMP would be that when turbidity passes 400 feet, the operator would reduce his actual dredging time to six hours for that day. Studies on the effects of larger dredges, showed that after about 500 feet, the turbidity levels were back to near background levels.

DEQ's proposed NPDES permit does not consider that suction dredging is also a legitimate and beneficial use of the waters of the state. ORS 541.110 provides that, "...the use of water of lakes and running streams of Oregon for the purpose of developing the mineral resources of the State...is declared to be a public and beneficial use and a public necessity...". On the Public Lands managed by Federal authority, the Multiple Use Land Act gives to mining precedence over other uses, but will allow other non-conflicting beneficial use of the waters as well. In addition, dredgers remove mercury and lead and collect lures, fish hooks, fishing line left behind by previous era miners and fisherman. Dredgers leave deep, cold holes in the stream bottom for fish to hold in when stream temperatures rise or in the winter freeze over.

In DEQ's analysis report for the 700PM NPDES permit, the agency states that there would be no adverse effects on small business. But we find that the proposed NPDES dredge permit is too restrictive and it severely curtails the activity to a point that many dredgers cannot operate or may not be able economically to afford to continue dredging. DEQ themselves, in the Analysis Report for economic impact, estimate that 450 out of 1800 individuals, or in attachment F, page 2 of the 700PM permit, that 488 of 1950 currently permitted by DEQ will probably decide either to no longer dredge or forego buying a permit. The Economic Analysis on the Designation of Critical Habitat for Bull Trout in Baker County, Oregon, used a very conservative figure of $50.00 per day spent in the local community by each suction dredger. If they stay 60 days, you have a figure of 1.464 million dollars removed from the rural communities. It should be noted that the suction dredge season work window approved by the Oregon Fish and Wildlife, ranges from 30 days to 4 months.

The Oregon Statutes that begin the section for mining has need to be quoted here:

ORS 517.123 Legislative findings; the Legislative Assembly finds that prospecting, small-scale mining and recreational mining:
Are important parts of the heritage of the State of Oregon;
Provide economic benefits to the state and local communities; and
Can be conducted in a manor that is not harmful and may be beneficial to fish habitat and fish propagation. [1999c.354 s/s2]

Conclusions

In conclusion, this General 700PM NPDES permit and the Individual NPDES permit are unacceptable, because they are incorrectly authorized under NPDES, they incorrectly consider that suction dredges add pollutants and because these permits will hurt the small business miner and also the businesses in the rural communities. These permits will also violate the rights provided under the General Mining Law of 1872, as amended, and because the permits do not reflect the legitimate and beneficial uses of suction dredge mining as reflected in the laws of this State, they violate state law.

We therefore request that the EQC decision to implement this permit be reviewed and the permit rescinded. We are prepared to present our findings at a hearing. We further request that DEQ be advised to use the "miners permit" as a basis for a State Permit, and submit this permit for public comment at the earliest possible date.

Sincerely,

Edwin Hardt

Edwin Hardt, President
Eastern Oregon Mining Association
PO Box 932
Baker City, Oregon 97814

Enclosures

cc: State Representative Tom Butler,
State Representative Gordon Anderson
State Representative Greg Smith
State Senator, Ted Ferrioli.

State of Oregon
Department of Environmental Quality Memorandum

Date: June 6, 2005

To: Environmental Quality Commission

From: Stephanie Hallock, Director S. Hallock

Subject: Agenda Item B, Rule Adoption: Suction Dredge General Permit Renewal
June 23, 2005 EQC Meeting

Department Recommendation

The Department of Environmental Quality (DEQ, Department) recommends that the Environmental Quality Commission (EQC, Commission) adopt rules to renew the Suction Dredge NPDES General Permit as presented in Attachment A.

Background and Need for Rulemaking

This rulemaking renews the expired National Pollution Discharge Elimination System (NPDES) General Permit 700-PM (formally 700-J) for suction dredge operations that are used to recover precious metals from streambed sediments. NPDES General Permits limit the discharge of regulated pollution from point sources into Oregon surface waters and are required to be reissued every 5 years. NPDES General Permits are also required to be adopted by the Commission as Oregon Administrative Rules.

The previous General Permit for suction dredging expired in March 2002. However, NPDES permits remain valid until renewed if the permit registrant submits an application to the Department prior to the permit expiration date. In lieu of a permit, DEQ issued Mutual Agreement and Order number WQ/I-ER-02-114 to allow individuals, not covered under the expired permit, to discharge after March 2002, until the General Permit was renewed. The MAO expires December 31, 2005.

Effect of Rule

This proposed renewal adopts a new suction dredge permit and terminates the MAO. The renewal includes several key modifications, as follows:

- Clarifies dredge operation and work practices
- Clarifies the designation of streams where dredging is restricted and prohibited
- Requires turbidity limits and monitoring only for dredges with suction hoses that have an inside diameter of 4 inches or greater
- Includes new annual fees
- Allows the Oregon Department of State Lands to potentially administer the permit in the future, as a streamlining measure

Commission Authority

The Commission has authority to take this action under ORS 468B.035, and ORS 468B.050.

Stakeholder Involvement

No formal advisory committee was convened; however, DEQ initiated the permit renewal process by conducting field visits to suction dredge operations in eastern Oregon near Baker City, on the Santiam River east of Salem, and in southwest Oregon near Grants Pass in August 2004. DEQ staff arranged to meet with representative suction dredge organizations in these locations in order to observe dredging operations and discuss the range of issues that dredgers may have with the expired suction dredge permit. Prior to formal public notice, DEQ provided four preliminary drafts of the permit to the miners for review and comment, and met with miner representatives on several occasions to discuss specific issues of concern. DEQ provided the first and fourth drafts of the permit to a larger group of interested stakeholders for comment including the Northwest Environmental Defense Center, U.S. Forest Service, U.S. Bureau of Land Management, Oregon Department of Fish and Wildlife, and the Oregon Department of State Lands.

Permit fee amendments will be included in the final permit, and have been widely discussed with the mining community as the permit has been developed. The final permit includes an annual fee of $25 per year with an option to prepay $100 for the full 5 year permit term. The Department's fee proposal will be included in a bill sponsored by Representatives Butler and Anderson in the 2005 legislative session to codify the fees in statute.

A chronology of the permit development process is attached as Attachment C.

Public Comment

The public comment period extended from December 23, 2004 through March 11, 2005 and included public hearings in Portland, Salem, Grants Pass, and Baker City. DEQ received comments from 109 individuals, some representing dredging organizations. A summary of the comments and the Department's response is provided in Attachment B2.

Key Issues

The most significant concerns raised by commentors during permit development and during public comment were with 1) the Department's legal authority to regulate small scale suction dredging under the NPDES permitting program, and 2) the turbidity discharge limits and monitoring conditions proposed in the draft permit. Further discussion of these two issues is provided below.

The dredge operators also commented that the permit would impact the mining industry and its contribution to the Oregon economy, and that their ability to fully understand and therefore, fully comply with the complex draft permit is a significant concern.

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1) Legal Authority *Questions regarding DEQ's authority to regulate suction dredging through the NPDES permitting program were frequently raised throughout permit development and the public comment period.* DEQ believes that suction dredges, discharging pollutants to waters of the state, satisfy the definition as a point source subject to the NPDES permitting program. In addition, EPA provided DEQ and representative Oregon mining associations with written confirmation that suction dredges require an NPDES permit including a General Permit issued by EPA for the activity in Alaska. The Department of Justice has also provided formal advice in response to these comments to support DEQ's authority to issue an NPDES permit for this activity. That advice is provided as Attachment B3.

2) Turbidity Discharge Limits and Monitoring *The vast majority of the public comments from the mining community opposed the proposed turbidity discharge and monitoring conditions.* The turbidity requirements in the permit must apply the existing state turbidity standard which prohibits turbidity in surface water at levels greater than 10 percent above background. The turbidity standard also allows for limited duration turbidity exceedances.

The proposed turbidity requirements in the public notice version of the draft permit were developed by referencing water quality protection levels that DEQ is currently considering to revise the state turbidity standard. This approach allowed turbidity discharges that would exceed the 10 percent above background requirement for a limited time, as long as water quality protection levels for turbidity over a 30 day period were met. While this approach provided greater flexibility for dredgers to comply with the state turbidity standard on streams that have relatively high concentrations of suspended sediments, the proposed permit revisions also required additional and, in some cases, more costly monitoring. For example, visible turbidity exceeding 10 percent above background was allowed beyond the compliance distances set forth in the draft permit for up to 60 hours/month. However, the draft permit also required the dredge operators to keep a log of the exceedances, and monitor with a turbidimeter when multiple dredges operated at the same time. The permit proposed for public comment also based the visible turbidity compliance distance on the size of the stream; the larger the stream, the further the compliance distance from the working dredge.

Comments from the Pacific Environmental Advocacy Center (PEAC) largely expressed concerns that the proposed permit could allow for more turbidity discharge from dredges assigned to the permit. Specifically, the permit allowed a single dredge to discharge more turbidity than the previous permit, and allowed for a greater number of dredge operations without sufficient compliance to assure that DEQ's antidegradation requirements were met. PEAC also commented that DEQ

should apply antidegradation requirements on water quality streams limited for temperature, and that the proposed compliance distance for streams wider than 50 feet amounted to environmental backsliding.

PEAC submitted additional comments including issues related to stream bank and resource protection, other Clean Water Act requirements, and the technical basis for the proposed turbidity discharge and monitoring conditions. Those comments and the Department's response are provided in Attachment B2.

Permit Revisions

The large majority of public comments indicated that the permit proposed for public comment was difficult to understand, implement, and comply with. In the final permit, DEQ has simplified the turbidity limitation and monitoring requirements. The final permit eliminates the turbidity exceedance allowances and associated monitoring. This action addresses a large number of comments relating to the scientific basis of the proposed turbidity discharge and monitoring conditions, and issues related to potential turbidity increases in water quality limited streams. As previously provided, DEQ is currently working on revisions to the water quality criteria for turbidity, and may consider including turbidity exceedances for the next permit renewal, once the new turbidity standard is in place.

DEQ is now proposing to limit the discharge of visible turbidity at one set distance, 300 feet downstream from the back of the working dredge. This is the same compliance distance used in the previous permit and addresses the PEAC comment regarding environmental backsliding. The vast majority of sediment discharge and turbidity created from dredges assigned to this permit will fall out of the water column within distances much less than 300 feet. However, there are streambeds that contain higher silt and clay levels that, when disturbed, create persistent visible turbidity at distances beyond 300 feet. For suction dredges larger than the size restrictions of this permit, or for smaller dredges that cannot comply with the turbidity requirements, the Department intends to create a low-cost, individual suction dredge permit that will include the limited duration turbidity allowance and additional monitoring requirements.

The proposed permit included antidegradation provisions to restrict dredging in streams if they are water quality limited and have not been previously dredged. DEQ has further clarified this condition in the final permit to restrict dredging in water quality streams if those streams were not dredged under the previous 700-J and MAO. The final permit has not been revised to prohibit dredging on streams that are water quality limited for temperature. DEQ conducted this evaluation for the expired suction dredge general permit, which concluded that suction dredging

would not increase temperature if conducted in accordance with the terms and conditions of the permit.

DEQ is further simplifying the proposed final permit by requiring turbidity discharge limits and monitoring only for suction dredges with suction hoses that have an inside diameter of 4 inches or more. Dredge operations smaller than this and that comply with the other conditions of the proposed permit have no reasonable potential to violate the state turbidity criteria. DEQ is basing this determination on results obtained from field visits conducted in the summer of 2004, and in response to public comment suggesting that discharges from smaller diameter dredges have an insignificant effect on water quality. This evaluation considers that commercially available dredges with suction hoses smaller than 4 inches are equipped with a suction hose with an inside diameter of 3 inches or less. DEQ estimates the exemption will eliminate turbidity requirements for half of the dredge operations subject to this General Permit.

The final permit also retains a number of key permit applicability and best management practice conditions included in the permit proposed for public comment to further control discharges from suction dredge operations, as follows:

- The permit is only available to dredges that have up to a 6 inch inside diameter suction hose and up to 30 horsepower motors. The previous permit allowed up to a 40 horsepower motor with no size requirement on the suction hose.
- Dredging is only permitted during daylight hours. This revision ensures compliance with the visible monitoring requirement of the permit.
- Petroleum product storage and handling conditions have been modified to ensure discharges are prevented and spills are mitigated immediately.
- The permit prohibits the removal of logs, boulders and other stream infrastructure from the stream bed to protect long term habitat for fish and other aquatic life. The permit does allow moving these structures within the stream channel.
- Essential Salmon Habitat and Scenic Water Way requirements have been clarified to ensure permittees are informed of the dredging restrictions and prohibitions that exist in regulations administered by the Oregon Department of State Lands.

Next Steps

Following adoption of the General Permit by the EQC, the Department will file the new rule with the Secretary of State with an effective date of July 1, 2005. DEQ will then send applications to all those that were previously permitted under the expired permit and the MAO. Once complete applications are received by the Department, applicants will be assigned to the new permit. The Department will then send a copy of the permit and an assignment letter to the permittee.

The Department expects to process as many as 1500 applications within 30 days after the permit is adopted. A temporary position will be utilized to review applications, and send assignment letters to permittees. Fees will be collected by the DEQ business office as part of the permit assignment process.

The Rule Implementation Plan is available upon request.

Attachments

A. Proposed Rule Revisions
   1. Proposed Permit
   2. Proposed Rule Revisions {redlined version}
B. Summary of Public Comments and Agency Responses
   1. List of Commentors
   2. Department Response
   3. DOJ Memorandum
C. Permit Development Chronology
D. Presiding Officer's Reports on Public Hearings
E. Relationship to Federal Requirements Questions
F. Statement of Need and Fiscal and Economic Impact
G. Land Use Evaluation Statement

Available Upon Request

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

Approved:

Section:

Scott Manzano, Acting Manager
Surface Water Management

Division:

Holly R. Schroeder, Administrator
Water Quality Division

Report Prepared By: Scott Manzano

Phone: 503 229-5185

Attachment A1

GENERAL DISCHARGE PERMIT

Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204
Telephone: (503) 229-5279

Issued pursuant to ORS 468B.050 and section 402 of The Federal Clean Water Act

---

ISSUED TO:

SOURCES COVERED BY THIS PERMIT:

This permit covers suction dredges not to exceed 30 horsepower with an inside diameter suction hose no greater than 6 inches that are used for recovering precious metals or minerals from stream bottom sediments.

Holly Schroeder, Administrator
Water Quality Division

Date

SCOPE OF PERMITTED ACTIVITIES

This 700-PM General Discharge Permit replaces 700-J issued in 1999, and the Mutual Agreement and Order Number WQ/I-NWR-02-109. Until this permit expires or is modified or revoked, the registrant of this permit is authorized to operate a suction dredge in waters of the state in accordance with all the requirements, limitations, and conditions set forth in the attached schedules as follows:

DEFINITIONS

1. *Background Turbidity* means turbidity that represents the ambient, undisturbed turbidity as measured or observed at least 10 feet upstream from the suction dredge operation at the time dredging occurs.
2. *Visible Turbidity* means turbidity that is distinctly visible when compared to background turbidity.
3. *DEQ* or *Department* means Oregon Department of Environmental Quality.
4. *Gravel Bar* means a transitional gravel deposit that lacks any rooted vegetation, located either between the stream banks and the wet perimeter of the stream or entirely within the wet perimeter of the stream..
5. *OAR* means Oregon Administrative Rule.
6. *ODFW* means Oregon Department of Fish and Wildlife.
7. *Stream bank* means a slope of land adjoining and confining a stream channel.
8. *Wet perimeter* means the area of the stream that is underwater, or is exposed as a non-vegetated dry gravel bar island surrounded on all sides by actively moving water at the time suction dredging occurs.

HOW TO APPLY FOR COVERAGE UNDER THIS GENERAL PERMIT

Persons Seeking Coverage Under This 700-PM General Permit (2005-2010)

1. Suction dredge operators can obtain coverage under this General Permit by the following steps:

   a. Obtain a DEQ application form by:
      i. Mail or in person from the DEQ regional offices provided in Schedule C, or
      ii. Downloading the application from the DEQ website.

   b. Submit a completed application to DEQ or other DEQ agent, requesting coverage under this permit at least thirty days prior to the planned activity. The Department may accept applications filed less than thirty days from the planned activity on a case by case basis.

   c. Submit all applicable fees with the application. DEQ or another DEQ agent will review the application information and will take one of the following actions:

      i. Issue written notice of approval.

      ii. Request additional information.

      iii. Deny coverage under this permit. The applicant will be notified if the applicant's operation cannot be approved for coverage under the General Permit, and that the applicant may need to obtain an individual permit.

Persons Seeking Coverage to Renew This 700-PM General Permit After 2010

1. Assignment under this General Permit is valid until the expiration date provided on the cover page (unless terminated or extended under Other Applicable Conditions below). Suction dredge operators requiring renewal of this General Permit must renew coverage by the following steps:

   a. Submit a complete renewal application form to DEQ or a DEQ agent no later than February 1, 2010, 180 days prior to the expiration date of this permit indicated on the cover page. The DEQ Director may grant permission to submit the application less than 180 days in advance but no later than the permit expiration date.

   b. Submit all applicable fees with the permit renewal application.

2. DEQ or another DEQ agent will review the application and will take one of the following actions:

   a. Issue written notice of approval.

   b. Request additional information.

   c. Deny coverage under this permit. The applicant will be notified if the applicant's operation cannot be approved for coverage under the General Permit, and that the applicant may need to obtain an individual permit.

Other Application Conditions

1. Coverage under this permit will continue for a permittee after the expiration date if the permittee submits a complete renewal application and fee as described above.

2. Any person not wishing to be covered or limited by this general permit may apply for an individual permit in accordance with the procedures in OAR 340-045-0030. The Department will review the application information and will either request additional information in writing or will notify the applicant by mail to operate under the conditions of the new individual permit.

3. During the term of this permit, the Department may make arrangements with the Oregon Department of State Lands or other state agency to assign coverage, conduct inspections, or compile information regarding this General Permit on behalf of DEQ.

SCHEDULE A

DISCHARGE LIMITATIONS

1. Suction dredge operation in Oregon is allowed for the person assigned to this General Permit. Persons assigned to this permit may only operate one dredge at a time. Other persons not assigned to this permit may operate that dredge under the supervision of the person assigned to this permit if all conditions of this permit are met.

2. Suction dredge activities covered by this permit may not discharge except in compliance with this General Permit. This permit does not authorize mining of stream banks (highbanking) or upland areas. Such out-of-stream mining requires a General Permit WPCF 600 or an individual WPCF permit from the Department of Environmental Quality.

3. Except as restricted in Oregon Scenic Waterways or Essential Salmon Habitat, dredging is allowed into gravel bars up to 10 feet outside the wet perimeter of the stream . In no case is dredging of stream banks allowed.

4. Suction dredges with suction hoses that have an inside diameter of 4 inches or greater must not create visible turbidity beyond 300 feet downstream from a working dredge.

5. A single operating suction dredge equipped with a suction hose with an inside diameter less than 4 inches has no turbidity discharge limitation.

6. Two or more dredges, each equipped with a suction hose with an inside diameter less than 4 inches that operate at the same time, must not create visible turbidity beyond 300 feet downstream from the combined dredge operations.

7. Suction dredge operation is prohibited during non-daylight hours.

8. No wastes may be discharged and no conductivities may be conducted that will violate Water Quality Standards as adopted in OAR Chapter 340, Division 41.

SCHEDULE B

MONITORING REQUIREMENTS

1. Suction dredges with suction hoses that have an inside diameter of 4 inches or greater must visually monitor each day of operation to assure turbidity is not visible beyond 300 feet downstream at any time.

2. Suction dredges with suction hoses that have an inside diameter less than 4 inches do not have to monitor for turbidity.

3. Visual monitoring is required during daylight hours to determine compliance with the turbidity limits in Schedule A.

SCHEDULE C

SPECIAL CONDITIONS

BEST MANAGEMENT PRACTICES

1. Harassment of fish in the stream is prohibited as required in ORS 498.006.

2. Except where the Oregon Department of Fish and Wildlife (ODFW) has given expressed written authorization, suction dredging is not allowed outside the periods set out in the attached in-water work schedule (*Timing of In-Water Work To Protect Fish and Wildlife Resources*). A copy of that written ODFW approval must be in the possession of the operator or readily available during dredging activities.

3. The permittee must provide a safe passage for fish around and through the active mining area if the stream was historically or is currently inhabited by native migratory fish .

4. Moving boulders, logs, or other natural stream infrastructure within the stream channel as described in Schedule A3 is allowed. However, in no case may this infrastructure be removed entirely from the stream channel. Removal of infrastructure that extends into the stream channel from the stream bank is also prohibited.

5. Dredging stream banks is not allowed under this permit. Undercutting or eroding stream banks and removal or disturbance of boulders, rooted vegetation, or embedded woody plants from stream banks is prohibited. Boulders include cobbles and larger rocks that protect and prevent erosion of the banks from spring run runoff and storm event stream flow. Woody plants include living or dead trees and shrubs. Vegetation includes grasses, wildflowers, weeds, and other vegetation that stabilizes the stream banks or provides cover for fish or provides shade.

6. Creating areas of pooled water is allowed within the stream boundaries provided in A3. However, construction of dams that prevent fish passage is prohibited.

7. Suction dredge activity must not result in the formation of organic or inorganic deposits that are harmful to fish or other aquatic life as required in OAR 340-041-0007(13).

8. The suction dredge equipment must be properly maintained and petroleum products managed as follows:

   a. Discharging oil, grease and fuel from suction dredge activity is prohibited.

b. Equipment used for suction dredging must not release petroleum products. Equipment surfaces must be free of oils and grease, and must be checked for fuel and oil leaks prior to start of operation on a daily basis.

c. A polypropylene pad or other appropriate spill protection and a funnel or spill-proof spout must be used when refueling to prevent possible contamination of surface waters or groundwater.

d. All fuel and oil must be stored in an impermeable container and must be located at least 25 feet from the wet perimeter of the stream. For dredge locations where a 25 foot buffer is not possible, addition precaution must be taken to ensure that petroleum products cannot spill or otherwise enter the stream.

e. In the event a spill occurs, suction dredge operators must contain, remove and mitigate such spills immediately. All waste oil or other clean up materials contaminated with petroleum products must be disposed off-site.

CONDITIONS TO PROTECT OREGON SCENIC WATERWAYS AND ESSENTIAL SALMON HABITAT

1. Suction dredging is prohibited in the portions of the Clackamas River, McKenzie River, and North Santiam River subbasins that have been designated as Oregon Scenic Waterways, as provided in OAR 340-041-0350.

2. Suction dredging in other Oregon Scenic Waterways must follow the applicable requirements provided in ORS 390.835

3. Suction dredging in Oregon Scenic Waterways is restricted to recreational placer mining, and is not allowed outside the wet perimeter of the stream. Recreational placer mining as defined in Oregon Revised Statutes (ORS) 390.835(17)(b) includes the use of a motorized surface dredge having an intake of four inches or less and a motor no larger than sixteen horsepower.

4. Except when allowed by the applicable federal land management agency, suction dredging on Oregon Scenic Waterways that are located on federal lands is prohibited as provided in ORS 390.835.

5. Recreational placer mining in essential salmon habitat is restricted to the wet perimeter of the stream.

6. Until an agreement is made between DEQ and DSL to administer this permit through one agency, suction dredging in Oregon Scenic Waterways and Essential Salmon Habitat streams requires an additional, separate authorization from the DSL.

   a. Maps and lists of scenic waterways and essential salmon habitat streams are available at the following web sites:

http://www.oregonstatelands.us/esshabitat.htm

http://www.oregonstatelands.us/scenicwaterways.htm

b. This information can also be obtained from the following Division of State Lands (DSL) offices:

Division of State Lands
Salem Office
775 Summer St. NE
Salem, OR 97310
Telephone: (503) 378-3805

Division of State Lands
Bend Office
20300 Empire Avenue
Bend, OR 97701
Telephone: (541) 388-6112

CONDITIONS FOR DREDGING ON WATER QUALITY LIMITED STREAMS

1. Until a total maximum daily load (TMDL) has been completed, suction dredging is prohibited in streams that are both listed as water quality limited for sediments, turbidity or toxics on the State 303(d) list under OAR 340-041-0046, and were not placer mined under the 700-J permit after May 3, 1999.

a. Once a TMDL has been completed, mining in these streams may be authorized as indicated in the water quality management plan in the TMDL.

b. The 303(d) list of water quality limited streams is available on the DEQ website or at the following Department offices:

i. Northwest Region
2020 SW 4th Avenue, Suite 400
Portland, OR 97201
Tel. No. (503) 229-5263

ii. Western Region
750 Front Street NE, #120
Salem, OR 97301-1039
Tel. No. (503) 378-8240

iii. Eastern Region
700 SE Emigrant, #330
Pendleton, OR 97801
Tel. No. (541) 276-4063

iv. DEQ Headquarters
811 SW 6th Avenue 7th floor
Portland, OR 97204-1390
Tel No. (503) 229-5185
Tel No. (800) 452-4011 (x5029)

OTHER APPLICABLE DSL FILL AND REMOVAL REQUIREMENTS

A Removal-Fill Permit is required by DSL for any placer mining operation that alters, removes or fills more than fifty (50) cubic yards of material per year in any waterway. Furthermore, a Removal-Fill permit may be required by the DSL for operations involving less than fifty cubic yards per year. Suction dredging that meets the requirements for DSL fill and removal permit may also require

coverage under an individual or other general permit from the DEQ. The permittee must contact the DSL and/or DEQ for additional information.

DETERMINING COMPLIANCE WITH THIS PERMIT

1. As allowed by state law, other Oregon state agencies may enter into agreement with DEQ to act as an agent to determine compliance with the limits, terms, and conditions of this General Permit.

2. DEQ may require information be submitted from permittees regarding the locations of the previous three years of suction dredge activities in Oregon.

3. This permit does not authorize the permit holder to prevent or restrict the legitimate use of the waterway by other persons.

4. During dredge activities, persons covered by this general permit must have a copy of the permit in their possession or readily available for inspection at the dredge location.

FEES

1. To obtain and maintain coverage under this permit, the applicable fees provided in OAR 340-045-0075 must be received by the Department.

2. Permittees may, but are not required to prepay multiple years of coverage in advance.

3. Failure to pay applicable fees may result in termination of coverage under this permit. Coverage may be restored upon payment of the fee.

SCHEDULE D

GENERAL CONDITIONS

The following General Conditions are federal requirements to inform the person assigned to this General Discharge Permit of their legally binding compliance responsibilities. In the event of an enforcement action by DEQ, the procedures outlined in Oregon Administrative Rule 340 Division 12 will be followed.

SECTION A. STANDARD CONDITIONS

1. Duty to Comply

   The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of Oregon Revised Statutes (ORS) 468B.025 and is grounds for enforcement action; for permit termination, suspension, or modification; or for denial of a permit renewal application.

2. Penalties for Water Pollution and Permit Condition Violations

ORS 468.140 allows the Director to impose civil penalties up to $10,000 per day for violation of a term, condition, or requirement of a permit.

Under ORS 468.943, unlawful water pollution, if committed by a person with criminal negligence, is punishable by a fine of up to $25,000 imprisonment for not more than one year, or both. Each day on which a violation occurs or continues is a separately punishable offense.

Under ORS 468.946, a person who knowingly discharges, places, or causes to be placed any waste into the waters of the state or in a location where the waste is likely to escape into the waters of the state is subject to a Class B felony punishable by a fine not to exceed $200,000 and up to 10 years in prison.

3. Duty to Mitigate

The permittee must take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment. In addition, upon request of the Department, the permittee must correct any adverse impact on the environment or human health resulting from noncompliance with this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

4. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and have the permit renewed. The application must be submitted at least 180 days before the expiration date of this permit.

The Director may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date.

5. Permit Actions

Coverage under this permit may be suspended, revoked and reissued, or terminated for cause including, but not limited to, in response to any of the following:

a. Violation of any term, condition, or requirement of this permit, a rule, or a statute;
b. Obtaining this permit by misrepresentation or failure to disclose fully all material facts; or
c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
d. The permittee is identified as a Designated Management Agency or allocated a wasteload in a water quality management plan in a Total Maximum Daily Load.

6. Property Rights

Coverage under this permit does not convey any property rights of any sort, or any exclusive privilege.

SECTION B. MONITORING AND RECORDS

1. Representative Sampling

Sampling and measurements must be taken as required in Schedule B.

2. Monitoring Procedures

Turbiditmeters must be calibrated prior to their use.

3. Penalties for Tampering and Falsification

Persons who falsify, tamper with, or knowingly render inaccurate a turbidimeter used to determine compliance with this permit may, upon conviction, be punished by a fine of not more than $10,000 per violation, imprisonment for not more than two years, or both.

4. Retention of Records

The permittee must retain records of all monitoring information, including all calibration and maintenance records for this permit for a period of at least 3 years from the date of the sampling or measurement

5. Inspection and Entry

The permittee must allow the Director or an authorized representative upon the presentation of credentials to:

a. Enter upon the permittee's premises where suction dredging occurs, or where records are kept under the conditions of this permit;
b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit, and
d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by state law, any substances or parameters at any location.

SECTION C. REPORTING REQUIREMENTS

1. Twenty-Four Hour Reporting

The permittee must report any noncompliance that may endanger health or the environment. Any information must be provided orally (by telephone) within 24 hours, unless otherwise specified in this permit, from the time the permittee becomes aware of the circumstances. During normal business hours, the Department's Regional office must be called. Outside of normal business hours, the Department must be contacted at 1-800-452-0311 (Oregon Emergency Response System).

A written submission must also be provided within 5 days of the time the permittee becomes aware of the circumstances. Pursuant to ORS 468.959 (3) (a), if the permittee is establishing an affirmative defense of upset or bypass to any offense under ORS 468.922 to 468.946, delivered written notice must be made to the Department or other agency with regulatory jurisdiction within 4 (four) calendar days of the time the permittee becomes aware of the circumstances. The written submission must contain:

a. A description of the noncompliance and its cause;
b. The period of noncompliance, including exact dates and times;
c. The estimated time noncompliance is expected to continue if it has not been corrected;
d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance; and

The following must be included as information that must be reported within 24 hours under this paragraph:

a. Any upset that exceeds any effluent limitation in this permit.
b. Violation of maximum daily discharge limitation for any of the pollutants listed by the Director in this permit.

The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

2. Duty to Provide Information

The permittee must furnish to the Department within a reasonable time any information that the Department may request to determine compliance with this permit. The permittee must also furnish to the Department, upon request, copies of records required to be kept by this permit.

3. Spill Reports

The permittee must notify the Department of any spills of petroleum products into waters of the State.

Attachment A2

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
NPDES General Permit 700-PM Renewal

Proposed Rule Changes

340-045-0033

General Permits

(1) The Director may issue general permits for certain categories of minor discharge sources or minor activities where individual NPDES or WPCF permits are not necessary to adequately protect the environment. Before the Director can issue a general permit, the following conditions must be met:

(a) There must be several minor sources or activities that involve the same or substantially similar types of operations.

(b) The sources or activities must have the potential to discharge or dispose of the same or similar types of wastes.

(c) The general permit must require the same or similar monitoring requirements, effluent limitations and operating conditions for the categories.

(d) The category of sources or activities would be more appropriately controlled under a general permit than an individual permit.

(e) The Commission has adopted the general permit into rule by reference.

(2) General permits issued after the effective date of this rule will specify the following:

(a) The requirements to obtain coverage under a general permit, including application requirements and application submittal deadlines. The Department may determine that submittal of an application is not necessary after evaluating the type of discharge, potential for toxic and conventional pollutants in the discharge, expected discharge volume, availability of other means to identify dischargers, and estimated number of dischargers to be covered by the permit. The Department's evaluation must be provided in the public notice for the general permit.

(b) The process used by the Department to notify a person that coverage under a general permit has been obtained and the discharge or activity is authorized.

(3) Although general permits may include activities throughout the state, they may also be restricted to more limited geographical areas.

(4) Prior to issuing a general permit, the Department will follow the public notice and participation procedures outlined in OAR 340-045-0027, 340-045-0035(3), and ORS 183.325 to 183.410. In addition the Department will make a reasonable effort to mail notices of pending actions to those persons known by the Department who are likely to be covered by the general permit.

(5) Any person operating a discharge source or conducting an activity described in a general permit must apply for coverage under the general permit, unless the general permit does not require submission of an application pursuant to (2)(a) of this rule or the source or activity is specifically covered by an individual NPDES or WPCF permit. Any person seeking coverage under a general permit must submit an application as required under the terms of the applicable NPDES or WPCF general permit. If application requirements are not specified in the general permit, procedures in OAR 340-045-0030 or 340-071-0162, whichever is applicable, must be followed. A person who fails to submit application in accordance with the terms of the general permit, OAR 340-045-0030 or 340-071-0162, whichever is applicable, is not authorized to conduct the activity described in the permit.

(6) Any person required to have coverage under a general permit must pay permit fees as required in OAR 340-045-0070 to 340-045-0075 or 340-071-0140 to obtain and maintain coverage under that permit.

(7) Any permittee covered by an individual NPDES or WPCF permit may request that the individual permit be canceled or allowed to expire, and that it be covered by a general permit if its discharge or activity may be covered by an existing general permit. As long as the permittee is covered by an individual NPDES or WPCF permit, the conditions and limitations of the individual permit govern, until such time as it is canceled or expires.

(8) Any person not wishing to be covered by a general permit may make application for an individual permit in accordance with OAR 340-045-0030 or 340-071-0162, whichever is applicable.

(9) The Director may revoke coverage and authorization under a general permit pursuant to OAR 340-045-0060 as it applies to any person and require such person to apply for and obtain an individual NPDES or WPCF permit. Any interested person may petition the Director to take action under this section. Cases where an individual permit may be required include the following:

(a) The discharge or activity is a significant contributor of pollution or creates other environmental problems;

(b) The permittee is not in compliance with the terms and conditions of the general permit, submitted false information, or is in violation of any applicable law;

(c) A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants being discharged;

(d) For NPDES general permits, effluent limitation guidelines are promulgated for point sources covered by a general permit and the guidelines are not already in the general permit; or

(e) Circumstances have changed so that the discharge or activity is no longer appropriately controlled under a general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.

(10) The following general permits are adopted by reference in this rule and available for review at the Department:

(a) NPDES 200-J, Filter backwash (issued August 29, 1997)

(b) NPDES 500-J, Boiler blowdown (issued August 29, 1997)

(c) WPCF 600, Offstream placer mining (issued April 9, 1997)

(d) NPDES 700-~~J~~PM, Suction dredges (issued ~~May 3, 1999~~[date rule filed with Secretary of State])

(e) WPCF 800, Confined animal feeding operations (issued August 8, 1990)

(f) NPDES 900-J, Seafood processing (issued June 7, 1999)

(g) WPCF 1000, Gravel mining (issued July 26, 2002)

(h) NPDES 1200-A, Storm water runoff from sand, gravel & non-metallic quarrying & mining in Standard Industrial Classification (SIC) 14, asphalt mix batch plants, and concrete batch plants. Facilities may qualify for a conditional exclusion from the requirement to obtain a permit if there is no exposure of industrial activities and materials to storm water pursuant to 40 CFR §122.26(g); see permit for details. (issued July 26, 2002)

(i) NPDES 1200-C, Storm water runoff from construction activities, including clearing, grading, and excavation, and stockpiling that disturbs five or more acres, including activities that will disturb five or more acres over time as part of a larger common plan of development; effective December 1, 2002, construction activities that disturb one or more acre are covered (issued February 20, 2001)

(j) NPDES 1200-CA, Government agencies responsible for storm water runoff from construction activities that disturbs five or more acres; effective December 1, 2002, construction activities that disturb one or more acres are covered (issued February 20, 2001)

(k) NPDES 1200-COLS, Storm water runoff in the Columbia Slough watershed from industrial activities listed in 8(l) of this rule (issued December 22, 1999)

(l) NPDES 1200-Z, Storm water runoff from: Warehousing in SIC 4221-4225; Food processing in SIC 20; Landfills, land app. sites; Heavy industrial in SIC 28, 29, 30, 31, 32, 33 & steam electric power generating (includes coal/hogged fuel handling); Light mfg. in SIC 34, 35, 36, 37, 38 & 39 includes ship & boat building/repair; Printing in SIC 27; Textile & apparel mfg. in SIC 22 & 23; Transportation in SIC 40, 41, 42, 43, 44, 45 & 5171; Wood products mfg. in SIC 24 &

25; Metal scrap yards, battery reclaimers & auto salvage yards in SIC 5015 & 5093; Hazardous waste treatment, storage, & disposal facilities. Facilities may qualify for a conditional exclusion from the requirement to obtain a permit if there is no exposure of industrial activities and materials to storm water pursuant to 40 CFR §122.26(g); see permit for details. (issued July 26, 2002)

(m) NPDES 1300-J, Oily storm water runoff and oil/water separators (issued January 11, 2000)

(n) WPCF 1400-A, Seasonal food processing & wineries, less than 25,000 gallons/day (issued August 22, 2000)

(o) WPCF 1400-B, Other food processing, less than 25,000 gallons/day (issued August 22, 2000)

(p) NPDES 1500-A, Petroleum hydrocarbon cleanups discharged to surface waters (issued August 22, 2000)

(q) WPCF 1500-B, Petroleum hydrocarbon cleanups (issued August 22, 2000)

(r) NPDES 1700-A, Vehicle and equipment wash water discharged to surface waters (issued March 5, 1998)

(s) WPCF 1700-B, Vehicle and equipment wash water (issued March 5, 1998)

(t) NPDES 1900-J, Non-contact geothermal heat exchange (issued September 11, 1997)

(u) NPDES 01, Confined animal feeding operations (issued October 1, 2003)

Stat. Auth.: ORS 468.020, ORS 468B.020 & ORS 468B.035
Stats. Implemented: ORS 468.065, ORS 468B.015, 468B.035 & ORS 468B.050
Hist.: DEQ 28-1980, f. & ef. 10-27-80; DEQ 15-2000, f. & cert. ef. 10-11-00; DEQ 13-2001, f. & cert. ef. 10-16-01; DEQ 8-2002, f. & cert. ef. 8-9-02; DEQ 14-2002, f. & cert. ef. 10-16-02; DEQ 12-2003, f. & cert. ef. 9-2-03

340-045-0070

Permit Fees

(1) Except for a person assigned to the 700-PM general permit, a~~A~~ person required to have a WPCF or NPDES permit is subject to a three-part fee consisting of the applicable uniform non-refundable filing fee, application processing fee, and annual compliance determination fee in OAR 340-045-0075.

(a) The amount equal to the filing fee, application processing fee, and the first year's annual compliance determination fee must be submitted with any application for a new NPDES or WPCF permit.

(b) The amount equal to the filing fee and application processing fee, if applicable, must be submitted with any application for renewal or modification of a NPDES or WPCF permit.

(c) When a governmental entity has an agreement with the department to assist with implementation of a general permit, the department may in that agreement lower the general permit fees established in OAR 340-045-0075 and allow the governmental entity to collect the fee for the department and retain a portion of the fee for its services.

(2) The applicable annual compliance determination fee in OAR 340-045-0075(7) must be paid for each year a disposal system is in operation or during which a discharge to public waters occurs.

(a) The fee period corresponds with the state's fiscal year (July 1 through June 30) and must be paid annually by the date specified by the Department.

(b) Any annual compliance determination fee submitted as part of an application for a new NPDES or WPCF permit applies to the fiscal year the permitted facility is put into operation.

(c) For the first fee period a facility is placed into operation, the full annual compliance determination fee applies if the facility is placed into operation on or before May 1. No annual compliance determination fee applies for that initial year if the facility is placed into operation after May 1.

(d) The Director may alter the due date for the annual compliance determination fee upon receipt of a justifiable request from a permittee. The Commission may reduce or suspend the annual compliance determination fee if a hardship is demonstrated.

(3) A filing fee and application processing fee are not required for modification of an existing, unexpired permit if the Department initiates the modification and determines the modification does not require refiling or Department review of an application, plans, or specifications.

(4) After the Department accepts an application for filing, the filing fee is non-refundable.

(5) The application processing fee submitted with an application may be refunded in whole or in part if the Department determines that:

(a) A permit is not required; or

(b) The wrong application was filed.

(6) All fees must be made payable to the Department of Environmental Quality or the Department's agent.

(7) A person assigned to the 700-PM general permit must pay either an annual fee or an optional 5-year permit registration fee according to the schedule provided in OAR 340-045-0075. The applicable fee must be submitted with the permit application and is non-refundable unless the Department or the Department's agent determines that the permittee cannot be assigned to the general permit. Fees must be made payable to the Department of Environmental Quality.

(a) An annual fee must be paid at the time of application, and on or before June 1 for each following year that the permit is valid.

Stat. Auth.: ORS 454.625, 454.745, 468.020, 468B.020 & 468B.035
Stats. Implemented: ORS 454.745, 468.065, 468B.015, 468B.035 & 468B.050
Hist.: DEQ 113, f. & ef. 5-10-76; DEQ 129, f. & ef. 3-16-77; DEQ 31-1979, f. & ef. 10-1-79; DEQ 18-1981, f. & ef. 7-13-81; DEQ 12-1983, f. & ef. 6-2-83; DEQ 27-1994, f. & cert. ef. 11-15-94; DEQ 2-2002, f. & cert. ef. 2-12-02; DEQ 7-2004, f. & cert. ef. 8-3-04

340-045-0075

Permit Fee Schedule

(1) The fee schedule for onsite sewage disposal system permits, including WPCF permits, is found in OAR chapter 340, division 071.

(2) For permits administered by the Oregon Department of Agriculture, the following fees are applicable until superseded by a fee schedule established by the Oregon Department of Agriculture.

(a) WPCF General Permits #800 for Confined Animal Feeding Operations Filing Fee -- $50

(b) Other General Permits:

(A) Filing Fee -- $50

(B) New Applications -- $235

(C) Permit Renewals -- $35

(D) Annual Compliance Determination Fee -- $275

(c) Individual Permits:

(A) Filing Fee -- $50

(B) New Applications -- $6,280

(C) Permit Renewals (including request for effluent limit modifications) -- $3,140

(D) Permit Renewals (without request for effluent limit modifications) -- $1,416

(E) Permit Modifications (involving increase in effluent limit modifications) -- $3,140

(F) Permit Modifications (not involving an increase in effluent limitations) -- $500

(G) Annual Compliance Determination Fee for dairies and other confined feeding operations -- $705

(H) Annual Compliance Determination Fee for facilities not elsewhere classified with disposal of process wastewater -- $1,885

(I) Annual Compliance Determination Fee for facilities not elsewhere classified that dispose of non-process wastewater (e.g., small cooling water discharges, boiler blowdown, filter backwash, log ponds) -- $1,180

(d) Annual Compliance Determination Fee for facilities that dispose of wastewater only by evaporation from watertight ponds or basins -- $705

(3) The Department must consider the following criteria when classifying a facility for determining applicable fees.

(Note: Different classifications for NPDES-permitted facilities are used for reporting to the Environmental Protection Agency.)

(a) *Major industries:*

(A) Discharges large biochemical oxygen demand loads; or

(B) Is a large metals facility; or

(C) Has significant toxic discharges; or

(D) Has a treatment system that will have a significant adverse impact on the receiving stream if not operated properly; or

(E) Any other industry that the Department determines needs special regulatory control.

(b) *Major domestic:*

(A) Serves more than 10,000 people; or

(B) Serves industries that can have a significant impact on the treatment system.

(c) *Minor domestic (see OAR 340-045-0075(7)(a) for descriptions of domestic categories):*

(A) Does not meet major domestic qualifying factors; or

(B) Is a facility in categories Da or Db and discharges to surface waters; or

(C) Is a facility in categories E or F that does not discharge to surface waters and is under a Water Pollution Control Facilities permit.

(4) Filing Fee. Unless waived by this rule, a filing fee of $60 must accompany any application for issuance, renewal, modification, or transfer of a NPDES permit or WPCF permit, including registration for a General Permit pursuant to OAR 340-045-0033 and request for a Special Permit pursuant to OAR 340-014-0050. This fee is non-refundable and is in addition to any other applicable application processing fee or annual compliance determination fee. Filing fees are waived for the following facilities:

(a) ~~Small g~~Gold mining suction dredges that qualify for General Permit 700-PM ~~and have an intake hose diameter of four inches or less~~;

(b) Small gold mining operations that qualify for General Permit 600 and can process no more than five cubic yards of material per day.

(5) Application Processing Fee. Unless waived by this rule, the applicable application processing fee in this section must be submitted with each application. The amount of the fee is based on the type of facility and the required action.

(a) *New Applications:*

(A) Major industries -- $37,680

(B) Minor industries -- $7,535

(C) Major domestic -- $24,000

(D) Minor domestic:

(i) Categories Da, Db -- $4,800

(ii) Category E -- $2,400

(iii) Category F -- $600

(iv) Agricultural -- $7,535

(E) NPDES Phase II Small MS4 Permit -- $280

(b) *Permit Renewals (including request for effluent limit modification):*

(A) Major industries -- $18,840

(B) Minor industries -- $3,765

(C) Major domestic -- $12,000

(D) Minor domestic:

(i) Categories Da, Db -- $2,400

(ii) Category E -- $1,200

(E) Agricultural -- $3,765

(c) *Permit Renewals (without request for effluent limit modification):*

(A) Major industries -- $9,420

(B) Minor industries -- $1,415

(C) Major domestic -- $6,000

(D) Minor domestic:

(i) Categories Da, Db -- $900

(ii) Category E -- $600

(iii) Category F -- $240

(E) Agricultural -- $1,415

(F) NPDES Phase II Small MS4 Permit -- $40

(d) *Permit Modifications (involving increase in effluent limitations):*

(A) Major industries -- $18,840

(B) Minor industries -- $3,765

(C) Major domestic -- $12,000

(D) Minor domestic:

(i) Categories Da, Db -- $2,400

(ii) Category E -- $1,200

(E) Agricultural -- $3,765

(e) *Permit Modifications (not involving an increase in effluent limits):* All categories -- $600.

(f) *Special WPCF Permits issued pursuant to OAR 340-045-0061* -- $300.

(g) *Modifications of septage alkaline stabilization facilities permits* -- $240.

(h) *New General Permits by permit number:*

(A) 100, 200, 400, 500, 600 (over 1,500 cubic yards per year), 900, 1000, 1400-A -- $95

(B) 300, 1300, 1400-B, 1500, 1600 -- $185

(C) All other 1200, 1700 -- $280;

(D) Others not elsewhere specified -- $280

(E) The following fees are required in addition to the fees in paragraphs (5)(h)(A) through (D) of this subsection when the activities are required for the application review:

(i) Disposal system plan review -- $375

(ii) Site inspection and evaluation -- $940

(i) *Renewal of General Permits as listed in subsection (2)(h) of this rule* -- $40.

(j) *Application processing fees described in subsections (2)(h) and (i) of this rule are waived for the following facilities:*

(A) Small gold mining operations that qualify for General Permit 600 and process no more than five cubic yards of material per day or less than 1,500 cubic yards of material per year.

(B) ~~Small g~~Gold mining suction dredges that qualify for General Permit 700-PM.

(6) Technical Activities Fee. A permittee must pay a fee for NPDES and WPCF permit-related technical activities. A fee will be charged for initial submittal of engineering plans and specifications. Fees will not be charged for revisions and resubmittals of engineering plans and specifications or for facilities plans, design studies, reports, change orders, or inspections. The fee is as follows:

(a) New or substantially modified sewage treatment facility -- $5,520

(b) Minor sewage treatment facility modifications and pump stations -- $600

(c) Pressure sewer system or major sewer collection system expansion -- $420

(d) Minor sewer collection system expansion or modification -- $120

(e) New or substantially modified water pollution control facilities using alkaline agents to stabilize septage -- $600.

(7) Annual Compliance Determination Fee Schedule. Unless waived by this rule, annual compliance determination fees are as follows:

(a) *Domestic Waste Sources -- Annual compliance determination fee is based on dry weather design flow, population served by facility, type of facility, and applicable special fees as follows:*

(A) Category A1: Sewage Disposal -- 50 MGD or more -- $50,890

(B) Category A2: Sewage Disposal -- At least 25 MGD but less than 50 MGD -- $29,410

(C) Category A3: Sewage Disposal -- At least 10 MGD but less than 25 MGD -- $13,220

(D) Category Ba: Sewage Disposal -- At least 5 MGD but less than 10 MGD -- $8,040

(E) Category Bb: Sewage Disposal -- At least 5 MGD but less than 10 MGD -- Systems where treatment occurs in lagoons that discharge to surface waters -- $3,680

(F) Category C1a: Sewage Disposal -- At least 2 MGD but less than 5 MGD -- $5,010

(G) Category C1b: Sewage Disposal -- At least 2 MGD but less than 5 MGD -- Systems where treatment occurs in lagoons that discharge to surface waters -- $2,190

(H) Category C2a: Sewage Disposal -- At least 1 MGD but less than 2 MGD -- $3,010

(I) Category C2b: Sewage Disposal -- At least 1 MGD but less than 2 MGD -- Systems where treatment occurs in lagoons that discharge to surface waters -- $1,270

(J) Category Da: Sewage Disposal -- Less than 1 MGD and not otherwise categorized under category E -- $1,145

(K) Category Db: Sewage Disposal -- Less than 1 MGD -- Systems where treatment occurs in lagoons that discharge to surface waters that are not otherwise categorized under Category E -- $750

(L) Category E: Sewage Disposal systems where treatment is limited to lagoons that do not discharge to surface waters -- $720

(M) Category F: Septage alkaline stabilization facilities -- $240

(N) Category G: Sources determined by the Department to administer a pretreatment program pursuant to federal pretreatment program regulations (40 CFR, Part 403; January 28, 1981) must pay an additional $1,200 per year plus $400 for each significant industrial user specified in their annual report for the previous year.

(O) Category H: Population Based Fee -- All permittees must pay an annual fee computed as follows: population served by the facility multiplied by a rate of 0.09645.

(b) *Industrial, Commercial and Agricultural Sources (For multiple sources on one application select only the source with highest fee.):*

(A) Major pulp, paper, paperboard, hardboard, and other fiber pulping industry -- $11,300

(B) Major sugar beet processing, potato and other vegetable processing, and fruit processing industry -- $11,300

(C) Seafood Processing Industry:

(i) Bottom fish, crab, or oyster processing -- $1,270

(ii) Shrimp processing -- $1,270

(iii) Salmon or tuna processing -- $2,260

(iv) Surimi processing -- $2,260

(D) Electroplating industry (excludes facilities that do anodizing only):

(i) Rectifier output capacity of 15,000 amps or more -- $11,300

(ii) Rectifier output capacity of less than 15,000 amps but more than 5000 amps -- $5,650

(E) Primary Aluminum Smelting -- $11,300

(F) Primary smelting or refining of non-ferrous metals using sand chlorination separation facilities -- $11,300

(G) Primary smelting or refining of ferrous and non-ferrous metals not elsewhere classified above -- $5,650

(H) Alkalies, chlorine, pesticide, or fertilizer manufacturing with discharge of process waste waters -- $11,300

(I) Petroleum refineries with a capacity in excess of 15,000 barrels per day discharging process wastewater -- $11,300

(J) Cooling water discharges in excess of 20,000 BTU/sec -- $5,650

(K) Milk products processing industry that processes in excess of 250,000 pounds of milk per day -- $11,300

(L) Major mining operations (over 500,000 cubic yards per year) -- $11,300

(M) Minor mining or processing operations:

(i) Medium (100,000 to 500,000 cubic yards per year) mechanical processing -- $3,765

(ii) Medium using froth flotation -- $5,650

(iii) Medium using chemical leaching -- $7,535

(iv) Small (less than 100,000 cubic yards per year) mechanical processing -- $940

(v) Small using froth flotation -- $1,880

(vi) Small using chemical leaching -- $3,765

(N) All facilities not elsewhere classified with disposal of process wastewater -- $2,260

(O) All facilities not elsewhere classified that dispose of non-process wastewater (e.g., small cooling water discharges, boiler blowdown, filter backwash, log ponds) -- $1,415

(P) Dairies and other confined feeding operations on individual permits -- $845

(Q) All facilities that dispose of wastewater only by evaporation from watertight ponds or basins -- $845

(R) General permits, as listed under paragraphs (5)(h)(A) through (D) of this rule -- $330, except as follows:

(i) 1400-A -- $185

(ii) Annual compliance determination fees are waived for gold mining activities assigned to General Permits 600 and 700.

(c) *Storm Water: NPDES Phase II Small MS4 permit* -- $330

(8) NPDES General Permit 700-PM -- $25 for each year of registration or operator may prepay $100 for 5 years of registration under this permit.

Stat. Auth.: ORS 468.020, 468B.020 & 468B.035
Stats. Implemented: ORS 468.065, 468B.015, 468B.035 & 468B.050
Hist.: DEQ 113, f. & ef. 5-10-76; DEQ 129, f. & ef. 3-16-77; DEQ 31-1979, f. & ef. 10-1-79; DEQ 18-1981, f. & ef. 7-13-81; DEQ 12-1983, f. & ef. 6-2-83; DEQ 9-1987, f. & ef. 6-3-87; DEQ 18-1990, f. & cert. ef. 6-7-90; DEQ 10-1991, f. & cert. ef. 7-1-91; DEQ 9-1992, f. & cert. ef. 6-5-92; DEQ 10-1992, f. & cert. ef. 6-9-92; DEQ 30-1992, f. & cert. ef. 12-18-92; DEQ 20-1994, f. & cert. ef. 10-7-94; DEQ 4-1998, f. & cert. ef. 3-30-98; Administrative correction 10-22-98; DEQ 15-2000, f. & cert. ef. 10-11-00; DEQ 2-2002, f. & cert. ef. 2-12-02; DEQ 7-2004, f. & cert. ef. 8-3-04

Attachment B1

Suction Dredge General Permit – Public Comments Received

Commentor Number	Date(s) Received	Commentor
1	3/3/05	Al Hansen
2	2/21/05	Andrew Harrild
3	2/14/2005 (h)	Anonymous
4	2/6/2005 (h)	B. Park
5	1/24/2005 (h)	Bert Aylward
6	1/24/2005 (h)	Bob Hughes
7	1/26 (o), 1/27/05	Bob Mote
8	1/12/2005 (h)	Bruce Parke
9	1/24/2005 (h)	Chuck Olson
10	3/2/2005 (h)	Dale and Marsha Demaris
11	1/27 (o), 2/1 (o) 2/3 (o), 2/9/05	Dave Kelsea
12	2/10/2005 (h)	David Bargelt
13	12/24, 12/29/04	David Beals
14	2/1(h, o),2/2,3/4/05	David McCallister
15	1/26/2005 (h)	Delbert McGlachlin
16	2/15/05	Dennis Price
17	2/3/05	Dennis R. Ades
18	1/24/2005 (h)	Diane Lewallan Partee
19	2/2/2005 (h)	Don Peterson
20	3/3/2005 (h)	Don Young
21	2/11/05	Doug Heiken
22	1/8, 1/25/2005 (h), 2/6	Ed Hardt
23	1/24/2005 (h)	Edward A. and Jackie M. Bechtel
24	2/28/2005 (h)	Emory Cameron
25	3/1/05, 3/1/2005 (h)	Equal Access to Justice
26	1/24/2005 (h)	Esa Murrell (dup. comments rec. 1/27)
27	1/24/2005 (h)	Frank Hannigan
28	1/17/05	Fred Bartow
29	2/10/2005 (h)	Fred Strebe
30	2/2/2005 (h)	Gene and Marcy Terry
31	3/4/05	Gene Gattenby
32	2/3/05	George Brown
33	1/25/2005 (h)	George Cameron
34	2/14/05 (h)	Gerald Klope
35	12/28/04, 1/27, 2/3 (h), 2/5, 2/25/05	Guy Michael (hardcopy received At Baker City public hearing)
36	12/25/04	Harrison Colby
37	3/3/05	Howard Charleboix
38	2/6, 2/9/2005 (h)	Howard Conner
39	2/17/05	James O'Connor
40	2/11/05	James Sheldon, Connie Jones, Ed Bolduc (tracerjones@bellsouth.net)
41	2/19, 2/3 (o), 3/4, 3/3/2005 (h)	Jan Alexander
42	2/28/05	JB Brock
43	2/1 (o), 2/16 (fax), 3/4,	Jeff Boatwright

	3/4/2005 (h)	
45	2/1 (o, h), 2/3/05 (o, h)	Jim and Creagh Williams (hardcopy submitted at Baker and Grants Pass public hearings)
46	1/26 (h, o), 1/27 (o), 2/1 (o), 2/3, 2/7, 3/1/05	Jim Foley
47	1/24/2005 (h)	Joe Cox
48	1/12/05	Joe Johnston
49	1/9, 3/4/05	Joe Mann
50	2/14/2005 (h)	John Foster
51	1/21/2005 (h)	John Golden
52	1/24/2005 (h)	John Hays
53	3/3/2005 (h)	John Lesisz
54	1/26 (o), 1/27 (o), 2/8/05	John Tschannen
55	1/19/05	Johnandcene
56	1/27 (o), 2/1 (o), 2/6/2005 (h)	Joseph C. Greene
57	1/27 (o), 2/2, 3/3/05	Larry M. Chase
58	1/26/2005 (h)	Leroy Hackbart
59	1/26/2005 (h)	LeRoy Knott and Association
60	2/1 (o), 3/2/05	Lesa Barton
61	1/27 (o), 3/4/05	Louie Frick
62	2/16/2005 (h)	LRC Global
63	1/27/05,(h)	Mark Wagnell (hardcopy submitted at Salem public hearing)
64	3/3/05	Melissa Powers
65	1/20/2005 (h)	Michael Dunican
66	2/21/05	Mike Auxier
67	2/23/2005 (h)	Mike Tildon
68	1/24/2005 (h)	Miners Permit Committee (at Rep. Anderson Meeting)
69	2/25, 3/4/05	Nancy Hinke
70	2/8/2005 (h)	Nancy Steele
71	1/26/2005 (h)	Nils Christensen
72	3/3/2005 (h)	Pacific Environmental Advocacy Center
73	2/11/05 (h)	Pacific Northwest Treasure Hunters Assoc.
74	2/24/05	Pamela Wright
75	2/20/05	Paul & Susan Messersmith
76	2/1/2005 (h)	Pete Clapshaw
77	1/20/2005 (h)	Ray Andrews (dup. comments rec. 1/24)
78	2/14/05	Ray Moore
79	12/27/04	Ray Stanis
80	2/9/2005 (h)	Richard F. and Donald L. Kelly
81	2/4/2005 (h)	Richard Gorrell
82	1/31/05 (h)	Rodney Dewey
83	2/10/05	Ronald Wilson
84	12/26/04 (2), 1/23/05	Russ Pearce
85	12/26/04	Sandy Brown
86	1/25/05	Scott Harn
87	2/1/05 (o, h)	Shirley Tinney
88	2/7/2005 (h)	Stan Baker
89	2/16/05 (h)	Steve and Freeda Graham
90	2/24/05	Steve Williamson
91	2/1 (o), 2/2, 3/1, 3/2, 3/3, 3/4/05 (2)	Tom Kitchar
92	1/11, 1/27 (o, h), 3/4/05 (h)	Tom Quintal
93	12/25/04, 1/26/05 (o)	Tony Massimilla
94	2/15/05	Trudy Schrader

95	2/14/05	William Jones (Jenniferlev@aol.com)
96	1/24/2005 (h)	Zen Cutting
97	1/26/05 (o)	Ted Stayley
99	1/26/05 (o)	Butch Wilson
100	1/26/05 (o)	Sue Beard Buckholtz
101	2/6/05	Kenneth Anderson
102	2/16/05	Melvin Terry
103	2/1 (o), 2/3/05 (o)	Justin Peterson
104	2/1/05 (o)	Loren Kirkland
105	2/1/05 (o)	John Goldman
106	2/1/05 (o)	Frank Serrone
107	2/1/05 (o)	John Leshis
108	2/1/05 (o)	Allen Knight
109	2/1/05 (o)	Matt Vegor
110	2/1/05 (o)	William Pitner

(o) ⇔ Oral public testimony
(h) ⇔ hardcopy

Attachment B2

Response to Public Comment

The largest proportion public comment for the proposed 700-J General Permit was in regard to the proposed permit turbidity requirements and the effects of turbidity on water quality. In addition, the Department received a large volume of comments questioning the Department's authority to issue the 700-J permit. The Department is providing a legal opinion from the Oregon Department of Justice to address commentors various concerns regarding DEQ's authority to issue an NPDES permit for suction dredge operations. The DOJ opinion is provided as Attachment B3.

Commentors	Comment	Response
Legal Basis		
14, 61, 92	DEQ has no authority to regulate beyond Congressional intent to exempt the mining community, as expressed in the Clean Water Act.	See DOJ Opinion
100, 46, 14, 57, 83, 61, 75, 41, 92, 35	Dredging is not regulated by the federal Clean Water Act. Many of these commentors referred to "small-scale" suction dredging.	See DOJ Opinion
38, 41, 91	Recreational and small scale suction dredging is not a point source discharge of pollution and therefore does not require a NPDES permit.	See DOJ Opinion
11, 54, 105	DEQ lacks the authority to regulate suction dredging under the Clean Water Act.	See DOJ Opinion
43	What statutory section of the Clean Water Act applies to suction dredging?	Title IV Section 402
11	DEQ cannot apply this permit to a recreational miner or a mining claim owner.	There is no exemption for recreational mining or for mining claim owners under the NPDES permit program. Also see DOJ Opinion
92	Any NPDES permit issued by DEQ that affects the mining community is unlawful.	See DOJ Opinion
14 ,11	Oregon Legislative Representatives have written that NPDES permits are mainly for municipal water treatment plants, and the mining community should be removed from the 700-J NPDES Permit.	See DOJ Opinion
91	The state regulation of turbidity is unlawful because federal law says turbidity is not a form of pollution.	The federal Clean Water Act includes the broad category of dredge spoil in the definition for the term "pollutant". EPA also has federal water quality criteria that specifically sets recommended values for suspended solids and turbidity. Also see DOJ Opinion
46, 14, 61, 75, 11, 92, 68	The Clean Water Act and its compliance penalties apply to industry, not suction dredging. DEQ has manipulated and misinterpreted NPDES requirements to include suction dredging as a facility that requires a permit.	See DOJ Opinion
46	Writing a regulation that says an NPDES permit	See DOJ Opinion

	is required is in conflict with federal law.	
4	DEQ has no legal authority to issue an NPDES permit on federal lands.	See DOJ Opinion
25, 31	U.S. EPA does not have jurisdiction over suction dredge mining operations. Dredge spoil from a suction dredge is administered by the Secretary of the Army, not EPA. The 700-J permit is invalid, and therefore, the proposed renewal is invalid.	See DOJ Opinion
45, 70, 46, 83, 11, 56, 35	Incidental fallback is a not a pollutant subject to regulation.	See DOJ Opinion
38, 91	Moving streambed material from one location to another is not a discharge requiring a NPDES permit.	See DOJ Opinion
45, 70, 46	The federal Clean Water Act specifically defines dredge material as non-pollutants.	See DOJ Opinion
46	Turbidity is not a pollutant.	See DOJ Opinion and OAR 340-041-0002(39)
35	NPDES permits do not regulate turbidity from small scale mining. Oregon's turbidity standard could be incorporated into a state permit	See DOJ Opinion
35	The state may need to amend ORS 468B to include statutory provisions that will allow a State permit outside of the NPDES system.	Comment is not relevant to the proposed permit. Also see DOJ Opinion
1, 49, 11, 91, 8	The permit should be issued under Section 404 of the federal Clean Water Act, not Section 402.	See DOJ Opinion
35	Both Sections 404 and 402 do no apply to small scale placer mining; therefore, DEQ cannot issue an NPDES permit.	See DOJ Opinion
25, 31	Suction dredge operators will also have to comply with Section 404 of the CWA.	See DOJ Opinion
25, 31	Because DEQ failed to inform the public that an additional 404 permit is required, the public has not been fully informed.	See DOJ Opinion
25, 31	Should the state of Oregon apply for a 404 general permit for suction dredge mining operations, the state must declare conflict of interest information.	Comment is not related to the proposed permit.
63, 65, 83, 11, 56, 41, 20	The Army Corp of Engineers has decided that operating dredges of 4 inches or less are a deminimus activity.	See DOJ Opinion
92, 87, 14, 61, 1, 68	DEQ has no authority outside of federal Title 40 and no other delegated authority other than for leachate collection or dredge and fill activities under Title 33 USC.	See DOJ Opinion
1, 91, 8	The permit must include studies of environmental impart and Consultation with proper agencies.	Renewal of a state-issued General Permit is not a federal action that requires Endangered Species Act Consultation with NOAA fisheries and U.S Fish and Wildlife. This General Permit renewal was developed and noticed according to all applicable state and federal requirements.
25, 31, 8	If EPA issues the suction dredge general permit,	EPA is not issuing the permit so the renewal is

	they would have to recognize the federal Regulatory Flexibility Act.	not a federal action requiring recognition of the Regulatory Flexibility Act.
92, 87, 14, 61, 75, 68	DEQ has failed to provide adequate or meaningful notice of public hearing because DEQ has not provided the miners with sufficient knowledge of the underlying basis of the hearings.	DEQ provided adequate notice according to state law. In addition, and prior to the formal public notice, DEQ met with suction dredge representatives on numerous occasions to discuss the underlying legal basis, and rationale for preliminary permit conditions provided to them in 4 preliminary draft permits.
14	Since DEQ cannot issue an NPDES permit for suction dredging, it must create a special permit, a new administrative process, and conduct additional hearings.	See DOJ opinion
92, 35, 19, 87, 14, 94, 68	DEQ needs to provide legal references to their chain of authority to administer a NPDES for suction dredging.	See DOJ Opinion
4	Federal land use planning law preempt state land use planning requirements from applying to federal lands.	See DOJ Opinion
4, 70, 46, 41, 91, 8, 35	Federal Code of Regulations 40 CFR Part 440 Subpart M exempts placer mining in quantities less than 1500 cubic yards/year or dredges that process less than 50,000 cubic yards per year from NPDES permit requirements.	See DOJ Opinion
35, 41, 91	DEQ and EPA statements that suction dredging is a point source requiring a NPDES permit is in conflict with DEQ's Draft Turbidity Criteria that states suction dredging is non-point source of turbidity.	The referenced ***Draft*** *Technical Basis for Revising Turbidity Criteria* incorrectly lists "Dredging (commercial and recreational)" as one of the not-limited-to lists of anthropogenic non-point sources of turbidity. That document is still being modified based on comments received. It will be modified to correct that error. Suction dredge operations are point sources which require a NPDES permit in Oregon unless permitted under Section 404.
4	The Department of State Lands (DSL) cannot pre-empt 1872 mining law.	Comment is not related to the proposed permit.
105	The 1872 Mining Act can only be amended by Congress. DEQ is illegally circumventing federal law.	The suction dredge permit does not pre-empt the 1872 Mining Act. See DOJ Opinion
94, 92	DEQ should grant exclusions for miners that have mining rights under the 1872 Mining Act.	See DOJ Opinion
8	State requirements can't override federal statutes like the 1872 Mining Act, or land use authorities.	See DOJ Opinion
88	Part of the proposed suction dredge permit is illegal.	The suction dredge permit was developed according to federal and state NPDES permitting and public notice requirements.
88, 22, 5, 52, 77, 27, 11, 103, 92, 68	Miners will request compensation under measure 37 if the proposed permit is issued.	Measure 37 does not apply to federally mandated law. The federally delegated, state administered NPDES permit program is not subject compensation under Measure 37.
76, 9, 18, 9, 52,	DEQ needs to develop a suction dredge permit	See DOJ Opinion.

98, 27, 77, 61, 11, 54, 92	that is clear and does not prohibit miners from mining their mineral or else pay for the takings of the miner's property rights to these minerals.	
46	DEQ is incorrect in saying that their procedural, reporting, and monitoring requirements are the same as applicable federal law.	The comment is not correct. DEQ has delegated federal authority to implant the provisions of the Clean Water Act. Pursuant to Oregon Revised Statute 468B.035, " The Environmental Quality Commission may perform or cause to be performed any acts necessary to be performed by the state to implement within the jurisdiction of the state the provisions of the Federal Water Pollution Control Act, P.L. 92-500, as amended, and federal regulations or guidelines issued pursuant to the Act."
14, 61, 92	When is DEQ going to declare it intends to abandon or that it never intended the imposition of NPDES regulation upon mineral rights and mining community pursuits?	See DOJ Opinion
Application Requirements		
83	An application is not needed if the permit is not required under the federal Clean Water Act.	See DOJ Opinion
70	The permit application should be one page and simple.	DEQ plans to keep the application as short and simple as possible; not longer than one or two pages.
45	The application requirements will make Oregon one of the hardest states to get a suction dredge permit.	The Department is not proposing any new application requirements. The application requirements are included as a part of the permit as required by OAR 340-045-0033.
45, 46	The proposed permit includes a provision for other entities to issue suction dredge permits. DEQ must include language to control how the permit is allowed or denied.	Other entities will not be issuing a new permit, but rather, will be assigning coverage under the new permit. DEQ will stipulate the criteria for denying or assigning permit coverage in any agreement developed with an outside entity.
83	The permit condition that allows for a commercial business to issue the permit will lead to corruption, and should be deleted.	DEQ includes the provision as a future option to streamline the application processing so that the permit could be provided over-the-counter. DEQ will retain this provision, and stipulate the criteria for denying or assigning permit coverage in any agreement developed with the commercial business.
60	The application turn-around time is too long to review the application and assign the permit.	DEQ expects approximately 1500 applicants to be assigned the permit within the first 30 days after the permit is effective. After that initial assignment phase, DEQ expects to be able to assign someone to the permit within a day or two, depending on whether the application is mailed or faxed.
100, 85	The proposed submission of an application 180 days before the permit expires needs to be changed.	That requirement is not new - it is required under OAR 340-045-0030, and federal 40 CFR 122. The condition is included in the permit as reference.
60	DEQ needs to notify permittees 240 day prior to	DEQ typically sends a letter to permit holders

	permit expiration that they need to re-apply for the permit.	with applications for permit renewal nine months prior to the date the permit expires.
Definitions		
92	Provide a definition for "Wet Perimeter" as the area of the stream that is underwater, or is exposed as a non-vegetative dry gravel gar island surrounded on all sides by actively moving water at time the activity occurs.	The definition for wet perimeter exists in state statute as it applies to scenic waterways. The Department of State Lands also refers to this definition in their essential salmon habitat requirements. DEQ will replace the term "active stream channel" with "wet perimeter" throughout the permit.
45, 46, 83, 8	The definition for "active stream channel" is confusing and unenforceable. Replace it with "high water mark".	The term "high watermark" has a number of meanings to include the seasonal high water mark which DEQ does not intend to imply. DEQ will replace the term "active stream channel" with "wet perimeter" throughout the permit to be consistent with state statute.
45	Background turbidity can change depending upon upstream activity, and could "shut down" the dredger until the upstream activity stops.	The suction dredge permit is applicable only to the suction dredge activity. DEQ will amend the permit to state that the applicable turbidity limits apply to the turbidity created by the dredge.
83	"Visible turbidity" has a different meaning for someone that has vision impairment.	One of the preliminary drafts included language relating visible turbidity to a person with 20/20 eyesight. DEQ did not include that language in the proposed permit based on comments received. DEQ believes that the definition has practical meaning and is appropriate as proposed.
17	Amend the definition for "gravel bar" to ensure it protects developing riparian areas capable of supporting perennial vegetation for future TMDLs.	The permit contains a provision that addresses what the permittee may be required to do if a TMDL is developed that requires further wate quality protections and waste load reductions.
Discharge Limitations and Monitoring		
53	Allowing dredging only in the active stream channel (wet perimeter) is prohibitive.	DEQ is allowing for dredging of dry gravel bars up to 10 feet outside the wet perimeter of the stream for this permit renewal.
41, 108	Dredging should be allowed in gravel bars up to 10 feet outside the active stream channel provided the gravel bars are below the high water mark.	The final permit will allow dredging gravel bars up to 10 feet outside the wet perimeter of the stream. Adding the language "provided the gravel bars are below the high water mark" is confusing and does not add any clarity to the condition.
103	The permit needs to vary the distance of allowed dredging in dry gravel bars because each stream bank varies.	DEQ agrees that all rivers are not alike; some gravel bars could be dredged to a greater extent than others. The Department will retain the 10-foot distance for the final permit. DEQ plans to create a low-cost individual permit to provide this option if the permittee wants a permit to more closely fit a specific stream condition.
43	The permit should have language to say that dredging gravel bars is allowed within the stream channel width as long as the gravel bar is	The permit includes a definition for *wet perimeter* that references what currently exists in state statute that allows for dredging in gravel

	apart from the active stream channel.	bars within the wet perimeter of the stream.
21	DEQ must consider all aquatic life and species present in the stream throughout the year to determine the protection level for the permit.	The state turbidity standard establishes the protection level that applies to discharges in all Oregon streams. DEQ must use the existing state standard that requires that the discharge create no more than 10 percent increase in turbidity above background levels.
43	DEQ has the power to lower a standard if the standard does not cause serious degradation to an aquatic ecosystem. DEQ must show specific degradation when applying a 3 NTU or 5 NTU protection level.	DEQ must use the existing state standard that requires that no more than a 10 percent increase is allowed for turbidity causing activities. This standard applies to all point source discharges that require an NPDES permit.
65	The only reason to limit turbidity is if turbid water enters a domestic water supply.	DEQ must use the existing state standard that requires that no more than a 10 percent increase is allowed for turbidity causing activities. This standard applies to all point source discharges that require an NPDES permit.
65	Federal discharge limits are only applicable to sources outside of a waterway that enter a waterway.	DEQ must use the existing state standard that requires that no more than a 10 percent increase is allowed for turbidity causing activities. This standard applies to all point source discharges that require an NPDES permit.
56	Any use of EPA criteria by DEQ requiring adherence to turbidity standards derived from data analyzing large river and high season flow events would be a gross misuse of published research if applied to turbidity caused by suction dredge operations.	DEQ must use the existing state standard that requires that no more than a 10 percent increase is allowed for turbidity causing activities. This standard applies to all point source discharges that require an NPDES permit.
56	A number of studies (cited) show that the effects of dredging on the benthic organisms are localized and temporary.	DEQ must use the existing state standard that requires that no more than a 10 percent increase is allowed for turbidity causing activities. This standard applies to all point source discharges that require an NPDES permit.
56	US EPA has ignored the US Army Corps of Engineer's official recognition that 4-inch and small dredges have inconsequential effects on aquatic resources	DEQ must use the existing state standard that requires that no more than a 10 percent increase is allowed for turbidity causing activities. This standard applies to all point source discharges that require an NPDES permit.
38	The entire section regarding the permit's discharge limitations need to be deleted because it poses the same arguments that illegal hazardous waste dumpers use for dumping in our worlds oceans.	Discharge limitations are required to be addressed in all NPDES permits. This section will be amended to require a 300 foot visible turbidity compliance distance for dredges with suction hoses greater than a 3-inch inside diameter.
12, 45, 24, 62, 29, 38, 76, 26, 22, 9, 52, 98, 27, 77, 65, 46, 13, 55, 60, 49, 94, 56, 41, 11, 43	Disagree with the technical basis for the turbidity limits. DEQ needs to provide adequate science and analysis to substantiate the turbidity limits.	DEQ will use the existing state turbidity standard of 10% above background in the final suction dredge permit without the provisions for allowing limited duration turbidity allowances and varying visible compliance distances.
43	It seems unnecessary and arbitrary that the proposed permit is more stringent than the	The suction dredge permit developed by EPA Region 10 for Alaska considered conditions

	suction dredge permit developed by EPA Region 10.	appropriate for the beneficial uses of Alaskan waters, which are different than waters in Oregon. Also, an Oregon NPDES permit must apply the state turbidity standard.
83	The only justified measurable effect of turbidity is that it reduces sunlight.	DEQ must apply the existing state turbidity standard of 10 percent over background when establishing turbidity limits for the suction dredge permit.
11	DEQ should exempt turbidity requirements from dredges 4 inches and less.	For the final permit, DEQ will propose that dredges that have a suction hose with an inside diameter of 3 inches or less be exempt from turbidity discharge and monitoring requirements. DEQ is not going to require NTU limits in this permit. For dredges larger than 3 inches, DEQ will require that same compliance distance as in the previous permit – 300 feet downstream from the working dredge.
80, 14, 33, 26, 22, 23, 9, 52, 77, 46, 16, 101, 57, 53, 56, 41, 103, 35, 43	The proposed turbidity conditions are too low, not adequate, and too confusing. The majority of these commentors stated that DEQ should go back to the 300 foot turbidity visible compliance distance.	DEQ will use the existing state turbidity standard of 10% above background in the final suction dredge permit. DEQ will reissue the suction dredge permit using a 300 foot distance for dredges with suction hoses with an inside diameter greater than 3 inches.
41	Compliance distance should be 300-400 feet. If turbidity is visible at 400 feet, operations should be limited to 6 hours/day.	The final permit will retain the 300 foot compliance distance that was used in the expired 700-J and MAO. Allowing 6 hours per day of dredging regardless of the amount of turbidity discharged violates the state water quality standard that allows no more than a 10 percent increase above natural stream turbidity except for limited duration exceedances, which DEQ is not proposing to include in the final permit.
68, 35	The permit should allow 10 NTUs of turbidity to be discharged 180 hours each month (6 hours/day for 30 days).	For the final permit, DEQ will propose that dredges that have a suction hose with an inside diameter of 3 inches or less be exempt from turbidity discharge and monitoring requirements. DEQ is not going to require NTU limits in this permit. For dredges larger than 3 inches, DEQ will require that same compliance distance as in the previous permit – 300 feet downstream from the working dredge.
41, 35	Limited duration exceedances are allowed under state rules. DEQ should authorize 6 hours per day of limited turbidity exceedances which will result in less than 3 NTUs per 24 hour period.	Provisions for limited duration turbidity allowances will not be included in the final permit. DEQ will revisit the use of limited duration turbidity allowances for the next suction dredge permit renewal, after a new turbidity standard is established that will address turbidity exceedances.
35, 70, 23	Question why the draft permit requires different turbidity compliance distances (limits) for different stream widths. The volume of water or the flow should determine the compliance	For the final permit, DEQ will use the existing state turbidity standard of 10% above background in the final suction dredge permit without the provisions for allowing limited

	distance.	duration turbidity allowances and varying visible compliance distances. The final permit will include a 300 foot visible turbidity distance for dredges with suction hoses with an inside diameter greater than 3 inches.
94	The exceedance conditions are good but fearful that the legislature will take them away.	DEQ will eliminate the exceedance provisions for the final permit and use the existing state turbidity standard of 10% above background for the revised suction dredge permit. The final permit will include a 300 foot visible turbidity distance for dredges with suction hoses with an inside diameter greater than 3 inches.
35	DEQ's limited duration allowance should be increased because the assumed 30 NTU protection limit allowed at the proposed compliance distances will not be met.	DEQ will eliminate the exceedance provisions for the final permit and use the existing state turbidity standard of 10% above background for the revised suction dredge permit. The final permit will include a 300 foot visible turbidity distance for dredges with suction hoses with an inside diameter greater than 3 inches.
45, 83	Complying with the limited duration turbidity allowance is confusing.	Provisions for limited duration turbidity allowances will not be included in the final permit.
68	It is not reasonable to subtract time from the limited duration turbidity allowance if the dredge is idling.	DEQ will eliminate the exceedance provisions and the requirement to log durations of visible turbidity in the final permit.
99, 46	The permit does not consider if upstream turbidity, created by another source should be considered when measuring the dredge turbidity.	Monitoring to comply with the permit is intended for turbidity *above background conditions*. Measuring turbidity with a turbidimeter will not be included in the final permit. The final permit will require that turbidity must not be present further than 300 feet downstream of the working dredge.
88, 58	300 feet has always been the standard mixing zone; DEQ has provided no reason for shorter distances in the proposed permit.	DEQ provided reason for the shorter distances in the Evaluation Report that accompanied the draft permit. Regardless, the final permit will allow 300 feet as the compliance distance for dredges that have a suction hose with an inside diameter greater than 3 inches.
11	Dredge operations don't need a mixing zone since dredging is a deminimus activity.	Suction dredging, subject this General Permit is not a deminimus activity.
88, 76, 58, 71, 33, 26, 5, 9, 18, 52, 98, 77	DEQ should implement EPA's turbidity standard of 5 NTUs, 24 hours/day in place of the Oregon standard of 10 percent over background.	DEQ must apply the existing state turbidity standard because that is the current state requirement, approved by EPA.
15, 6, 65, 16, 101, 55, 102	Turbidity created by winter rains and flash floods are greater than the turbidity limits in the permit, or turbidity caused by dredging.	DEQ must apply the existing state turbidity standard of 10 percent over background when establishing turbidity limits for the suction dredge permit.
63, 45, 62, 33, 26, 22, 23, 18, 6, 52, 98, 27, 101, 75, 41, 91, 61, 20, 68, 35	Studies, including those from Forest Service fish biologists, show that suction dredge activity have little or no impact on fish, water quality or aquatic life.	DEQ must use the existing state standard as the protection level for activities that discharge turbidity. Studies that provide information regarding effects of turbidity will be considered by DEQ as part of revising the state turbidity

		standard that is currently underway.
45, 70, 26, 6, 98, 46, 56, 41, 91, 35	DEQ should not require that dredge operators move to another location after they have exceeded their limited duration turbidity allowance, in part, because it is worse for the stream environment.	Since provisions for limited duration turbidity allowances will not be included in the final permit, relocation will not be necessary.
99	The proposed permit does not say where on the river to monitor.	The proposed permit required monitoring to be conducted at the most visible part of the plume. The final permit will simply require that turbidity is not allowed to be visible more than 300 feet downstream from the working dredge.
41	Since it appears that DEQ will be writing a state permit instead of an NPDES, and include 6 hours of dredging per day, no monitoring will be necessary.	Because no limited duration turbidity allowance will be included in the final suction dredge permit, monitoring will be required once each day of operation for dredges that have suction hoses greater than 3 inches (inside diameter).
45, 10, 29, 38, 80, 88, 19, 15, 97, 83, 54, 46, 17, 13, 55, 60, 49, 79, 83, 84, 85, 93, 40, 56, 91, 11, 20, 43	The turbidimeter requirements are unreasonable, impractical, and create an economic hardship.	The final permit will not require that suction dredge operators use a turbidimeter.
70	Dredge operators should not have to use a turbidimeter if they keep a log and don't use their full turbidity allowance.	DED plans to eliminate the requirement for logs, limited turbidity allowances, and turbidimeter monitoring.
54	Monitoring for turbidity from multiple dredges needs to consider the size of the dredge.	DEQ will not propose specific monitoring requirements for multiple dredge operations in the final permit.
60	Multiple dredge operations should be given the same rules or even more lenient ones as single dredge operations.	Multiple dredges create more turbidity than a single dredge. However, the discharge and monitoring requirements of the suction dredge permit will be the same regardless of whether one or more dredges are operating.
60	Dredges under 4" should be not be monitored. Dredges over 5" should be allowed 1800 NTUs for every thirty days.	For the final permit, DEQ will propose that dredges that have a suction hose with an inside diameter of 3 inches or less be exempt from turbidity discharge and monitoring requirements. DEQ is not going to require NTU limits in this permit. For dredges larger than 3 inches, the department will require that same compliance distance as in the previous permit – 300 feet downstream from the working dredge.
45, 83, 35	Keeping a log of the limited duration turbidity allowance is confusing and unreasonable.	Provisions for limited duration turbidity allowances will not be included in the final permit, and therefore, a log will no longer be required.
45, 10, 67, 38, 80, 98, 46, 13, 57, 103, 43	Taking a turbidity reading every 2 hours is unreasonable and impractical.	Because no limited duration turbidity allowance will be included in the final suction dredge permit, monitoring will be required once each day of operation for dredges that have suction hoses greater than 3 inches (inside diameter).

43	The permit should allow for monitoring with the "black disc method" developed by Newcomb.	The final permit will not require any mechanical monitoring for turbidity.
80	DEQ needs to provide a standard log book format.	Provisions for limited duration turbidity allowances will not be included in the final permit, and therefore, a log will no longer be required.
38	Dredge sizes should be separated in the permit because different dredge sizes impact the streambed to a different degree.	DEQ plans to revise the suction dredge permit to exempt dredges with suction hoses that are 3 inches or less (inside diameter) from turbidity requirements. Dredges larger than 3 inches will have to meet the existing turbidity standard of 10 percent over background at 300 feet downstream from the working dredge.
88	The permit does not apply to an 8 inch dredge, and my 8 inch dredge does not create visible turbidity beyond 300 feet on the North Burnt River. Applying for an individual permit will cost $10,000 compared to $50 for assignment to the 700-J.	The general permit is developed so that the vast majority of dredges can comply with the conditions of the permit on all Oregon streams. The Department will issue an inexpensive, individual permit for dredging scenarios outside the scope of the general suction dredge permit.
80	DEQ should allow one permit per family if they dredge on the same creek.	The suction dredge permit allows the dredge to discharge following the discharge limitations in the permit, one dredge operating at a time per permit. More than one person, including any family member can operate the dredge as long as the person that the permit is assigned to is present.
99, 39	Does the permit apply only to the person or others that want to operate the dredge?	More than one person can operate the dredge as long as the person assigned to the permit is present.
80	DEQ should provide permits for clubs or mining groups.	Although the final suction dredge permit will apply to one dredge operating for the person assigned to the permit, DEQ plans to offer a low cost individual permit that could apply to a mining club or a large group.
Special Conditions		
45, 46, 17	Why must the permittee provide for safe fish passage if, during the in water work period, there are no migratory fish?	The condition to provide safe fish passage is required by OAR 635-412-0020 which says: "No person shall construct or maintain any artificial obstruction across any waters of this state that are inhabited, or were historically inhabited, by native migratory fish without providing passage for native migratory fish." This requirement applies regardless of the in water work period. DEQ will more clearly reflect this existing rule in the final permit.
83	A copy of the letter form ODFW that extends the in-water work periods does not need to be on-site because they would already know of the extension if they did an inspection.	The requirement for the letter to be on-site is existing language in the permit. Any documentation that permits the dredge activity must be on-site.
41	Permit should include language that allows the dredger to create area of pooled water, as long as fish passage is maintained.	DEQ understands that dredge operations create pools of water. The proposed and final permits did not prohibit this. This proposed condition

		does not add any clarity to the permit.
65	The proposed permit says" safe passage *of* fish…", and does not make sense.	DEQ will correct the sentence to say"…safe passage *for* fish…".
65	Permit lacks streambed restoration requirements, and best practices for stabilizing banks that protect fish.	The permit includes best management practices that prohibit dredging of stream banks and protections for stream infrastructure. The wet perimeter of the stream where dredging is allowed will re-establish itself each year because of high spring flows, and is expected to recover relatively quickly following the in-water work period.
89	Dredging should be allowed during high seasonal flow.	Dredging is only allowed during the in-water work schedule established by the Oregon Department of Fish and Wildlife. DEQ simply references that requirement in the suction dredge permit.
65	The permit includes a statement that boulders include cobbles, which is incorrect. Cobbles and boulders are defined in federal regulations; Cobbles are small than 12 inches in diameter, boulders are greater than 12 inches in diameter.	The Department does not believe the condition that refers to boulders and cobbles needs further clarification. DEQ will review the condition to assure that it emphasizes the intention to protect stream banks.
74	The permit should include a "no-touch" buffer around boulders and logs (say greater than 3 ft. diameter) to maintain bank and channel stability. Once large boulders and logs are moved, they no longer hold the sediment in place or function to create and maintain gravel bars. Streams are never going to meet load allocations if the channel morphology continues to be unstable and sediment out of equilibrium.	The streambed protection conditions in the draft permit clarify the requirements to protect stream banks and streambed stability. Boulders and logs that exist in the stream can be moved but must stay in the stream. These clarifications, in addition to the turbidity limits and other conditions of the permit such as limiting the size of the dredge to a 6 inch suction hose and seasonal restrictions, help assure long term adverse impacts will not occur.
83	Defining what is included as vegetation is unnecessary.	DEQ added language to clarity what vegetation meant based on comments from preliminary drafts. The permit will retain the language as written.
43	Dredging should be allowed in dry gravel bars that exist below the seasonal high water mark.	The permit includes an allowance to dredge in gravel bars up to 10 feet outside the wet perimeter. The Department can offer a separate WPCF permit for placer mining distances greater than 10 feet outside the wet perimeter.
43	Dredging of vegetation should be allowed.	The Department will retain the prohibition of dredging vegetation in the final permit to ensure stream temperature is not affected from the activity.
65	The condition that refers to the formation of organic and inorganic deposits needs additional wording to be understood.	The Department believes this provision, referencing the existing requirement in Oregon Administrative Rule 340-041-0007, needs no further clarification.
41	The permit should include language that states as long as the provisions of the permit are met suction dredging will not result in the formation of organic or inorganic deposits that are harmful to fish.	It is the permittee's responsibility to assure compliance with the permit. If the Department believed that, by following all the conditions of the permit, this condition would not be needed, the condition would not have been including in

		the permit originally.
41, 35	The permit should include language that for streams with bull trout, loose gravel shall be raked down to prevent bull trout spawning in unstable gravels.	Although DEQ does not disagree with the comment that this condition may be valuable, DEQ does not believe that it may be difficult for the dredge operator to know if bull trout live in the stream, and it would be difficult to assure compliance with the condition.
45, 46	DEQ is requiring the dredgers to maintain their equipment, prevent and respond to spills more than for motorboats and jet skis.	If jet skis and motorboats were regulated through the through the NPDES permitting program, DEQ would apply similar spill prevention and response requirements.
29, 19, 103, 11, 65, 43	Locating petroleum products 25 feet from the shore or another specified distance is not reasonable. One commenter suggested that wording be changed to say that petroleum be located so those products do no enter the waterway under foreseeable circumstances.	DEQ considers a spill of petroleum products to be a much greater threat to water quality than the turbidity created by the dredge operation, and does not consider storing petroleum products 25 feet from the stream bank, where possible, to be unreasonable. The final permit will retain the condition as worded, which also provides additional precautions when the 25 foot buffer is not possible.
41	Include language that specifies where and how fuel should be stored if it is stored closer than 25 feet from the stream.	The final permit will retain the language that requires "additional precaution" to prevent spills. This provides flexibility for the operator to develop a storage plan that is suitable for the dredge location.
83	Locating petroleum products 25 feet from the shore discriminates against miners because this same requirement is not applied to other recreational users such as snowmobiles, cycles, hiker's cars, and camp fuel in canoes, etc.	DEQ includes appropriate management practices in every NPDES permit. NPDES permits are not required for activities for snowmobiles, cycles, hiker's cars, and camp fuel in canoes, etc.
19, 46	Fuel spill kits and the related spill protections are not necessary.	DEQ considers a spill of petroleum products to be a much greater threat to water quality than the turbidity created by the dredge operation. DEQ will retain the condition as worded for the operator to use a spill proof spout, have "appropriate" spill protection, and clean up spills immediately. DEQ is not requiring "spill kits" in the final permit.
45	Include the word "qualified" in the condition "The Department may consider information from any [*qualified*] person to determine whether the permittee has complied with the limits, terms, and condition of this General Permit and state law."	DEQ will delete this condition in the final permit. DEQ will simply follow the agency's enforcement procedures if information is provided from a third party.
43	Any determination of compliance with the permit should come from an "official", not a citizen.	DEQ will delete this condition regarding considering information from third party sources in the final permit. DEQ will simply follow the agency's enforcement procedures if information is provided from a third party.
46	The condition to consider information for any person leaves miner open to lawsuits from environmentalists.	DEQ will delete this condition in the final permit. DEQ will simply follow the agency's enforcement procedures if information is provided from a third party.

46	Requesting information about dredging locations from the previous 3 years is against individual's rights under the 5th amendment.	Requesting this information from persons that have NPDES permits does not violate their 5th amendment rights.
68	The permit should not allow DEQ to request information regarding the last 3 years of dredging.	DEQ already has the authority to request information in order to determine compliances with the permit.
68	The permit should be amended to require specific procedures when DEQ receives a complaint.	DEQ has deleted the conditions regarding complaints in the final permit. DEQ will deal with complaints as provided in Department enforcement protocol.
80, 19, 2, 16	Streamline the permit process with DSL ASAP.	DEQ plans to enter into agreement with the Department of State Lands as soon as possible so that they can administer the DEQ suction dredge permit. However, DEQ dos no expect that process to be complete for at least a year after the final permit is issued.
83	This permit should not be administered by DSL because they provided no stakeholder outreach.	The Department of State Lands also regulates suction dredging in Oregon. Their requirements did not change as a result of DEQ's proposed permit. Administration of the DEQ permit through one agency is a streamlining and consolidation measure which will result in a more efficient permitting process.
57	The permit should not include separate requirements for Scenic Water Ways and Essential Salmon Habitat.	The Scenic Water Way and Essential Salmon Habitat regulations are implemented by the Oregon Department of State Lands. DEQ can not amend these rules, and simply refers to them in the suction dredge permit to inform the permittee that there are other state requirements besides those of DEQ.
60	Suction dredging in Essential Habitat is not restricted to recreational mining. The DEQ has misread ORS 390.835. Please re-read and correct this major error.	The permit does not restrict dredging in Essential Salmon Habitat to recreational mining. The permit does restrict dredging *in Oregon Scenic Waterways* to recreational placer mining, as required in ORS 390.835.
41, 92	The Scenic Waterway and Essential Salmon Habitat provisions should include language to provide exemptions to the provisions if dredging is conducted on federal land or federal mining claims.	See DOJ Opinion
92, 68	A prohibition of dredging, pursuant to DEQ's 3-Basin Rule is a taking. The permit should provide an exemption for holders of 1872 mining claims.	See DOJ Opinion
46	The permit is too long to keep at the dredge location.	The permit does not have to be on your person. It can be kept in a nearby vehicle or other area at the dredge location. DEQ will clarify this condition.
Water Quality Limited (303d) Streams		
35, 27, 41, 68	Not allowing suction dredging on 303d listed streams where no mining has occurred is a taking.	DEQ cannot allow any new or increased discharge of pollution to surface waters in Oregon if those surface waters are listed on the

		303d list for the pollutant that would be discharged from the point source.
35	DEQ has shown no evidence that 303(d) listed streams are degraded.	DEQ does not have to provide the basis of a 303(d) listing in a permit renewal. The permit must simply recognize that applicable antidegradation requirements be included in the permit.
45, 10, 38, 52, 35	It is very difficult to determine if a stream has been mined before.	DEQ agrees that in some cases no one may know that dredging has occurred in a particular stream. Regardless, the requirement is important to include in the permit so that the permittee does not inadvertently violate a water quality requirement.
46	The language in the draft permit states that suction dredging is prohibited in streams that have not been previously *dredged* is different than what is in the evaluation report. The evaluation report states that suction dredging is prohibited in streams that have not been previously been *mined.*	DEQ will use the words *placer mined* in the final permit for consistency.
43	The prohibition of mining in streams should be re-written to clarity intent.	The wording was reviewed and rewritten to clarify that the waterway must be *both* on the 303(d) list and must not have mined during the previous permit term.
64	If the price of gold soars, the proposed permit would allow a large number of new, additional dredge operations on streams that are water quality limited and have been dredged in the past, which is prohibited by the DEQ antidegradation requirements. Are dredge operations that were not assigned to the previous permit and operated illegally grandfathered in?	DEQ currently has approximately 1950 dredge operators assigned to the expired 700-J and MAO. Applications submitted for the suction dredge permit renewal will account for first-time dredge operations. Any dredge operation not previously permitted may be in violation of DEQ's antidegradation requirements if they dredge on a water quality limited stream.
64	The new permit will significantly change the compliance standards that will apply to permittees, and also regulate a much broader class of potential permittees. As a result, the proposed permit should trigger the antidegradation review mandated in OAR 340-041-0004.	DEQ reviewed and included antidegradation provisions for suction dredge activity as part of this permit renewal. DEQ disagrees that the proposed permit will regulate a much broader class of potential permittees. It is more likely that the proposed permit applies restrictions that will likely reduce the number of permittees assigned to this permit as compared to the number that were regulated under the expired permit and the MAO.
64	In 1998, Judge Snouffer of the Circuit Court of Oregon required DEQ to complete an antidegradation review of the previous 700-J permit which failed to consider the impacts of suction dredge mining on water bodies limited for temperature. *National Wildlife Federation v. Oregon DEQ*, CV 9706-04970 (Or. Circ. Ct., 4th Dist., Sept. 18, 1998). This ruling reinforces the necessity that DEQ apply the substantive antidegradation rule to the issuance of a general	DEQ responded to the court order and found that suction dredge operations, under the terms and condition of the permit issued then, do not have a measurable affect on stream temperature. Therefore, a prohibition for dredging in streams limited for temperature is not included because the conditions in the final permit are expected to prevent an increase in stream temperature.

	permit for suction dredge mining. The Proposed 700-J Permit does not comply with water quality standards for temperature.	
41	The permit should include language that allows for dredging in streams that are water quality limited for temperature.	The proposed and final permit do not prohibit dredging in streams that are listed as water quality limited for temperature. No additional language is necessary.
41	The permit should include language stating that the activities covered under this permit are not expected to cause a measurable change in temperature.	This language is not needed. DEQ is not including a prohibition for dredging in streams that are water quality limited for temperature and that were dredged during the previous permit term.
41	The permit should include language that allows dredging in streams that are water quality limited for sediments if dredge operations are limited to 6 hours.	The final permit will include language allowing dredging in streams that are water quality limited for turbidity, toxics, and sediment provided the streams were dredged during the previous permit term. No limits in dredge duration are needed because the permit does not allow dredging if turbidity is observed beyond 300 feet downstream of the working dredge.
41	The permit should prohibit dredging in streams that are water quality limited for toxics.	The final permit will allow dredging in streams that are water quality limited for toxics provided they were dredged during the previous permit term.
46	If more stream are put off limits, it will increase the demand on water quality limited streams where dredging has occurred.	Under DEQ's antidegradation rules, new or increased discharges of a particular pollutant are not allowed on water quality streams listed for that pollutant. This provision in the permit conveys that requirement.
Fees		
4, 8	The proposed permit fees are in conflict with Measure 5 of the November 1994 elections that require voter approval of all taxes.	The permit fee is not a tax which requires voter approval. However, all new fees require ratification from the Oregon Legislature.
46	DEQ does not have the authority to charge fees.	DEQ has the authority to charge fees as provided in OAR 340-045-0075.
47, 18, 7, 60, 53, 106	The fees are too high.	DEQ believes that an annual fee of $25 for this permit is reasonable. Other General Permit holders pay at least $185 per year in addition to a Filing Fee of $60 and an Application Processing Fee of at least $185 every 5 years.
41	The fees should be left as they currently exist.	Suction dredge permittees are subsidized by other fee payers and other funding sources that pay for administering NPDES permitting program in Oregon. DEQ is proposing significantly lower fees to permit this activity than any other General Permit holder, who pays at least $185 per year to help fund Oregon's water quality protection program.
78, 84, 41	Recreational dredging should be free.	DEQ believes that an annual fee of $25 for this permit is reasonable. Other General Permit holders pay at least $185 per year in addition to a Filing Fee of $60 and an Application

		Processing Fee of at least $185 every 5 years.
41	Suction dredge permits should be pamphlets, distributed to anyone who wants to dredge, and save DEQ the cost of administering the permit.	DEQ must issue an NPDES permit for suction dredge operations in Oregon.
59	A fee of $25 *per person* is too much.	The fee is for the dredge permit, and applies to the dredge itself. Friends and other family members can use the dredge that is permitted and assigned to the permittee without cost if supervised by the person assigned to the permit and the conditions of the permit are complied with.
35, 41	Fees should cover the costs of paperwork and mailing. One commenter stated that any additional costs should be paid for from state General Fund.	The projected permit fees will not cover the full costs of developing and implementing the suction dredge general permit.
83	Why are the fees needed?	Suction dredge permittees are subsidized by other fee payers and other funding sources that pay for administering NPDES permitting program in Oregon. DEQ is proposing significantly lower fees to permit this activity than any other General Permit holder, who pays at least $185 per year to help fund Oregon's water quality protection program.
10, 83	The fees are not needed. DEQ gets tax money to run their office, and is adding another fee to fund other projects.	DEQ receives approximately 30 percent of its funding from the General Fund (taxes), and approximately 60 percent of its funding from permitting fees. The remaining funding comes from federal funds. The expected revenue from the suction dredge fees will not fully cover the cost to permit the activity, and will be used to administer the suction dredge permit.
65	There is no explanation about what the fees will be used for.	The Statement of Need and Economic Impact provides an explanation of the intended use of the fees.
70, 13, 108	Allow a fee for the duration of the permit.	DEQ will create an option for dredge operators that would like to pay a one time fee for the term of this permit.
109	There should be no short-term fee. All permittees should pay the same.	DEQ will not include the short term activity fee in the final permit. An annual fee of $25 will be assessed to all permittees registered under the permit.
35, 5, 52	Charging larger fees for out of state residents is illegal. DEQ does not have the right to discriminate against out of state miners with property rights on federal lands in Oregon.	The fees for this permit will be promulgated according to Oregon state law. Regardless, for the final permit DEQ will not require higher fees from non-Oregon residents.
70, 80, 33, 23, 5, 77, 41, 45, 106, 20	Out-of-state dredgers should not pay higher fees than in-state residents.	DEQ will not require higher fees from non-Oregon residents in the final permit. An annual fee of $25 will be assessed to all permittees registered under the permit.
48, 95	Seem only fair that out-of-state residents should pay higher fees than proposed considering the out-of-state fee for dredging in California is	DEQ will not require higher fees from non-Oregon residents in the final permit. An annual fee of $25 will be assessed to all permittees

	$150 per year.	registered under the permit.
54, 100	Non-Oregon residents that own claims in Oregon own real property and must be charged the same fees as Oregon residents.	DEQ will not require higher fees from non-Oregon residents in the final permit. An annual fee of $25 will be assessed to all permittees registered under the permit.
92	The over-regulation and high fees will discourage the sale of dredging equipment, and discourage miners from dredging.	DEQ does not believe that the proposed fees will have a significant impact on business and effect Oregon's economy.
45, 10, 92	Suction dredge activity contributes to Oregon's economy. One commenter estimates $3,510,000 is contributed every two weeks to Oregon's economy, and that Oregon would loss close to 49 percent of this figure DEQ issues the permit as proposed. Another commenter estimates dredging contributes $750,000/day assuming 1500 people are dredging.	DEQ does not believe that the proposed fees or other amendments to the suction dredge permit will have a significant impact on business and affect Oregon's economy.
80, 97	What happens to a $60 fee that was paid last year for this permit; can if be applied to offset part of the new fee?	The $60 fee paid a year ago would have been for the MAO which expires is December 2005. DEQ plans to assess the new fee for assignment under the new permit without any credit for fees paid on expired, previous permits.
38	Fees should be applied to conduct scientific studies about suction dredging.	The expected revenue from the suction dredge fees will not fully cover the cost to permit the activity. DEQ is considering requesting grant money from EPA to do additional study on suction dredge activity in Oregon.
56, 90, 11	If DEQ is equating the $25 dollar annual fee to a fishing license, as it mentioned in the public hearings, than it should less than the cost of the fishing license because fishing is allowed year-round and dredging is only allowed about 3 months out of the year.	The annual cost of a fishing license is equivalent to the annual cost of a dredge permit.
56	Oregon should charge that same fee as other states charge Oregon residents. Out of state residents should be charged 2-3 time more than a resident pays, similar to the fee structure other state have for fishing licenses.	DEQ will not require higher fees from non-Oregon residents in the final permit. An annual fee of $25 will be assessed to all permittees registered under the permit.
56	Kids under 18 should be able to dredge for fee.	Friends and other family members can use the dredge that is permitted and assigned to the permittee without cost if supervised by the person assigned to the permit and the conditions of the permit are complied with.
15, 60	Dredging should be free for small operators.	DEQ considers that suction dredge fee structure simple, reasonable, and equitable. DEQ's costs to develop and implement this suction dredge permit are the same for everyone.
7	If 25 percent of the current dredgers don't get this permit because the fee is too high, it will hurt dredging clubs and memberships which promote stream stewardship and proper dredge operation.	DEQ applauds that fact that there are dredging clubs and associations that encourage appropriate dredge operations. In establishing the permit fee for this activity, DEQ took into consideration that dredge operators are individuals – not large industries, and set the fees as low as possible to retain as many fee

		paying permittees as possible.
7	DEQ and DSL should consider charging a set fee for a dredging club in lieu of requiring that each individual pay a fee for an individual permit.	The permit will require that the person assigned to the permit be on site during dredge operation. If a club wanted to introduce someone new to the activity, the new person would not have to pay an individual fee to use a dredge as long as a fee paying permittee was present and supervising the dredge operation.
65	Mining is a federally granted and protected right and should not be assessed fees.	DEQ believes that the fees for this permit are reasonable. Other General Permit holders pay at least $185 per year in addition to a Filing Fee of $60 and an Application Processing Fee of at least $185 every 5 years.
100	Will there be additional fees for the suction dredge permit if DEQ enters into an agreement with DSL or others?	DEQ does not plan to increase fees for other entities to administer the suction dredge permit.
General Conditions		
63, 41, 61, 20, 68	Penalties and fines are unreasonable and exorbitant. One comment stated that the fees are in conflict with the 4th amendment of the U.S Constitution.	The penalties provided in the General Conditions of the suction dredge permit are references to penalties that currently exist in state and federal law. DEQ is not proposing new penalties.
80	DEQ needs to designate who is authorized to enforce the conditions of the permit.	DEQ is the primary authority to take enforcement actions on behalf of the State of Oregon. However, any party can complain to DEQ and even sue a permit holder claiming non-compliance of an NPDES permit.
19, 83, 60	The permit should not require 3 year record retention.	The General Conditions of the suction dredge permit are references to conditions that currently exist in state and federal law. DEQ is simply providing the permit holder with the current requirements. However, DEQ will not require any recordkeeping or reporting for the final suction dredge permit.
76, 58, 98, 83	Miners cannot incriminate themselves by keeping records of turbidity exceedances and giving them to DEQ; it violates their rights under the constitution.	Requesting this information from persons that have NPDES permits does not violate their constitutional rights. Regardless, DEQ is not requiring a provision for limited duration turbidity allowance logs in the final suction dredge permit.
60	The penalties for suction dredgers should not be that same as large industrial wastewater plants. We suggest a $50.00 per day fine with a maximum of $500.00.	The penalties provided in the General Conditions of the suction dredge permit are references to penalties that currently exist in state and federal law. DEQ is simply providing the permit holder with the current requirements.
Misc.		
42	ORS 215.298 requires a land use permit for mining more than 1,000 cubic yards of material or excavation preparatory to mining of a surface area of more than one acre. Therefore, the 700-J permit should require a land use compatibility statement signed by the local government to	ORS 215.298 applies only to mining in an exclusive farm use zone and does not clearly apply to suction dredge operations. As provided in the Land Use Evaluation Statement, the State Agency Coordination process has determined that operations under the 700-J do not

	verify local land use approval has been granted.	significantly effect land use and therefore, do not require a Land Use Compatibility Statement.
43	The suction dredge permit needs to be developed considering ORS 517.760 Policy, which recognizes the value of mining in Oregon.	The suction dredge permit has been developed following all state and federal requirements, in addition to significant stakeholder input.
64	The proposed permit does not adequately protect Oregon waters from the impacts of suction dredging.	The proposed permit must consider the pollutants that potentially affect the beneficial used of Oregon surface waters. The pollutant of concern that is created from suction dredge operations is turbidity. For this proposed permit, DEQ proposed protection levels that meet the existing state standard that requires that the discharge create no more than 10 percent increase in turbidity above background levels. The proposed permit evaluated the effects of this pollutant in respect to the frequency, duration and magnitude of dredge operation in Oregon.
64	Heavily mined waterways have yet to recover from the effects of historical suction dredge mining.	Comment not related to the proposed permit.
64	Dislodging stream bed sediments through suction dredging negatively impacts water quality and the surrounding riparian habitat.	The final permit requires that turbidity be controlled and includes streambed protection criteria to protect the long term quality of the surface and the riparian habitat.
64	Fish populations can be negatively affected by suction dredge mining. Dredging destroys fish habitat, entrains fish, fry, and eggs, and is done in summer months when it has an increased chance of disturbing fish populations.	The final permit includes a reference to Department of Fish and Wildlife requirement that limits dredging to summer months that is the period when eggs and fry are not present and fish populations are the least affected.
64	Silt deposition suffocates fish eggs and decreases the population of benthic organisms that provide food for fish.	The in-water work period established by the Oregon Department of Fish and Wildlife, in addition to the applicability and turbidity discharge requirements of the proposed permit, minimize the effects of sedimentation and turbidity on benthic organisms and fish eggs.
64	Riparian activities that increase sedimentation and destroy stream banks magnify temperature increases.	The final permit includes applicable streambed protection and turbidity discharge requirements that will prevent an increase in temperature from suction dredge operations that could be assigned to the permit.
64	Heavy loading of fine sediments intensifies the detrimental impacts of temperature and dissolved oxygen.	The final permit includes applicability, streambed protection, and turbidity discharge requirements that will prevent an increase in temperature or a decrease in dissolved oxygen from suction dredge operations that could be assigned to the permit.
64	The proposed permit does not include any technology based effluent limitations, operational requirements, or reporting requirements that provide for uniform allocation and implementation of the permit terms. These	A technology based limitation requirement does exist for this activity which exempts dredge operations, of the size in the proposed permit, from any discharge requirements. In the event that technology based limits are not adequate to

	omissions violate the Clean Water Act.	protect water quality, DEQ is required to develop water quality based effluent limits (WQBELs) for the discharge activity. WQBELS are included in the proposed permit to control turbidity discharges. These limits, in addition to the operational and reporting requirements in the permit proposed for public comment and the final proposed permit do not violate Clean Water Act requirements. The permit also includes best management practice conditions that represent technology based requirements.
64	If any violation of water quality standards will occur as a result of suction dredge mining authorized through the proposed permit, the permit must be invalidated and individual NPDES permits should be issued that are capable of ensuring compliance with the CWA.	There is no such requirement in the Clean Water Act or federal and state NPDES regulation. The permit must be drafted to comply with the NPDES permitting program, and the permittee must then comply with the permit.
64	The proposed permit clearly creates permitting situations where effluent limitations are less stringent than those authorized by the expired 700-J permit. In the previous permit, the permittee was required to stop if there was visible turbidity 300 feet downstream of a working dredge. In the current proposed permit, in some situations visible turbidity is allowed up to 400 feet downstream from a working dredge. Moreover, under the proposed permit, operations are allowed to continue through the new application of "limited duration turbidity allowances," even when the visible turbidity standard is exceeded. These changes have the potential to greatly change the nature of the discharge and the water quality of the receiving water body.	DEQ applied the existing turbidity standard of 10% above background, which also allows for limited duration exceedances, in the proposed permit. However, for the revised suction dredge permit, DEQ will eliminate the limited duration exceedance provisions, and issue the suction dredge permit using a 300 foot distance for dredges with suction hoses with an inside diameter greater than 3 inches.
64	The proposed permit must be applied to discharges, not persons. The permit allows for multiple dredges to be operated by one person as long as the one person is on site to supervise the operators of the other dredges.	DEQ will amend the final permit to reflect that the permit conditions apply to the discharge of the dredge that is operated by the person assigned to the permit. Further, the permit will reflect that only one dredge can be operated per permit assignment.
64	The Proposed 700-J Permit does not comply with water quality standards for turbidity. The proposed permit allows for limited duration exceedances which exceed DEQ water quality standard for turbidity that allows no more than a 10 percent increase in turbidity above background.	DEQ applied the existing turbidity standard of 10% above background, which also allows for limited duration exceedances, in the proposed permit. However, for the revised suction dredge permit, DEQ will eliminate the limited duration exceedance provisions, and issue the suction dredge permit using a 300 foot distance for dredges with suction hoses with an inside diameter greater than 3 inches.
64	The exceedance levels of 30 NTUs above background are significantly higher than the turbidity limit of "visible". There is no way for	The revised suction dredge permit, DEQ will eliminate the limited duration exceedance provisions, and issue the suction dredge permit

	permittees to know if they exceed 30 NTUs, because turbidimeters are not required to measure compliance.	using a 300 foot distance for dredges with suction hoses with an inside diameter greater than 3 inches.
64	There is no evidence that the graduated turbidity compliance distances are based on scientific analysis. It is increasing the previous 300 foot boundary to 400 feet for wider streams.	The turbidity compliance distances in the proposed permit were based on the scientific basis that is currently being considered to revise DEQ's' turbidity standard. Regardless, for the final permit, DEQ will apply the 300 foot compliance distance that existed in the previous permit. Once a more rigorous procedure is in place, as part of the revised turbidity rule, DEQ will incorporate that rational during the next permit renewal cycle.
64	DEQ must include an objective monitoring and reporting system that will enable both DEQ and the public to assess whether miners are properly interpreting and complying with the visible turbidity standard.	DEQ will eliminated the complex monitoring condition in the draft permit and will simply prohibit visible turbidity at distances greater than 300 feet downstream from the working dredge.
64	The Proposed 700-J Permit does not comply with antidegradation policy for water quality limited waters. Water quality limited waters must be managed in accordance with DEQ's antidegradation policy which does not allow *any* new or increased discharge. Why would DEQ treat a water body that has one single dredge operating 20 years ago differently that if that same water body were never dredged?	The permit condition that prohibits suction dredging on streams that have not been mined in the past and are water quality limited will prohibit the activity from adding any new or increased discharge to that water body. The language "dredged in the past" is meant to apply to steams that are being dredged under the recently expired 700-J and the MAO. DEQ will clarity the condition in the final permit.
64	The proposed 700-J has less stringent water quality limitations and violates the antibacksliding prohibition of the Clean Water Act. DEQ is allowing dredging outside of the active stream channel, has increased the visible turbidity downstream compliance distance to 400 feet, and allows for limited duration turbidity exceedances.	The final permit will eliminate the limited duration turbidity allowance and will retain the 300 foot compliance distance that used in the expired 700-J and MAO. Dredging a limited distance outside the streams wet perimeter is not backsliding because the permit only allows this option in non-vegetated gravel bars that will not increase turbidity or impact stream ecology.
64	The use of compliance zones is not authorized by the Clean Water Act. DEQ's mixing zone regulations clearly require that the location, surface area, and volume of the mixing zone be based on the receiving water and effluent characteristics.	DEQ plans to retain the 300 foot visible compliance distance, used in the expired 700-J and the MAO. Until a new turbidity standard is developed that establishes additional criteria, DEQ is not considering to change the 300 foot compliance distance that has been effective for limiting the discharge of turbidity for this activity. Considering that suction dredging is allowed only during the ODFW in-water work window, and is typically conducted 3-6 hours per day, allowing 300 feet of visible turbidity in conjunction with the other conditions of the permit protect the beneficial uses of the surface water in Oregon.
64	General Permits are meant to regulate activities resulting in insignificant discharges. The impacts of suction dredging vary significantly depending on numerous environmental factors	General permits apply to both major and minor sources of pollutants. DEQ has considered that the size and number of operating dredges, in conjunction with that variation in stream

	such as stream size, dredge size, dredge density water flow, streambed materials, etc. It is more appropriate for DEQ to issue individual permits of issue a series of sub-category General Permits	characteristics will require different requirements for the various dredge operation scenarios. DEQ believes that, until a new turbidity standard is developed, the 300 foot compliance distance is appropriate and in some cases will prohibit the operation of dredges that can apply for the permit in some Oregon streams. The permit also includes references to the Department of State Lands requirements that are in place to protect the most sensitive Oregon Scenic Waterways and Essential Salmon Habitat streams. DEQ may choose to issue individual permits or sub-categories of General Permits for suction dredge activity. DEQ is proposing that a conservative, statewide General Permit is the most appropriate approach considering the potential water quality impacts associated with the backlog of expired, high priority General Permits.
64	The proposed permit fails to adequately regulate the operation of multiple dredges along the same water body.	For the final permit, DEQ will utilize the 300 foot compliance distance used in the expired 700-J and the MAO. Regardless of the number of dredges that have suction hoses with an inside diameter greater than 3 inches, visible turbidity is prohibited beyond 300 feet downstream at any time.
64	Because suction dredge activity is regulated by both DSL and DEQ, DEQ must include a condition that requires the permittee to obtain a valid DSL permit or 404 permit before the 700-J becomes effective.	A 404 permit is not currently required from the Army Corp of Engineers. Also, because the DSL permit is more restrictive than the DEQ permit, perhaps DSL should require confirmation that DEQ has issued the permit before DSL issues theirs –DEQ cannot. The DEQ permit contains a condition that allows DSL to administer the revised permit. DEQ plans to enter into agreement with DSL in the near future to streamline the administration of this permit.
64	The proposed permit does not comply with the public participation requirements of the CWA.	The permit was proposed for formal public comment following all applicable state requirements.
64	How much money has DEQ expended to develop the proposed permit and conduct the public hearings?	Comment not relevant to the proposed permit
91, 14, 57, 86	Request that DEQ extend the public comment period.	DEQ extended the public comment period from February 11, 2005 to March 4, 2005
37	DEQ needs to hold another round of hearings.	DEQ has provided substantial opportunity for formal and informal comments and will issue the permit based on comments received.
11	DEQ Administrative Rules do not properly address this suction dredge activity.	Comment is not related to the proposed permit.
11	DEQ Administrative Rules for the permit	Comment is not related to the proposed permit.

	applications interfere with mining rights.	
11	DEQ Administrative Rules for issuing General Permits to not apply to suction dredging.	Comment is not related to the proposed permit.
14, 30, 33, 23, 98, 84, 93	No reason for the new permit – DEQ should reissue the old 700-J.	NPDES permits are required to be reissued every 5 years in order to update the permit with appropriated changes that protect the beneficial uses of surface waters in Oregon.
75	The 700-J and MAO needs to be extended until the appropriate state agency drafts a new permit and provides adequate public comment.	DEQ disagrees with the comment. DEQ is the state agency that is required to issue an NPDES Permit for small suction dredge operations. DEQ plans to propose that a modified version of the suction dredge permit be adopted by the Environmental Quality Commission in June, 2005.
83	The permit implies that turbidity at certain levels is damaging in order to prevent recovery of minerals and deny a citizen their rights under the federal laws.	An NPDES permit is required to regulate the discharge of turbidity that has the reasonable potential to exceed the current state turbidity standard that prohibits the discharge of turbidity in excess of 10 percent above background stream turbidity.
45, 30, 76, 58, 71, 26, 22, 23, 5, 9, 18, 6, 52, 96, 27, 77, 2, 84, 106, 61	The permit needs to be simpler, shorter, and easy to understand. Some commentors stated that if they cannot understand it, they cannot comply with it and would not pay for it.	The Department plans to revise the permit to eliminate the short term limited duration turbidity allowance provision and exempt dredges with suction hoses that have an insider diameter up to 3 inches from the turbidity requirements.
23, 33, 63, 41, 11	DEQ has ignored miner's needs and should draft a permit that most dredgers can comply with.	DEQ cannot issue a permit that does not protect the beneficial uses of Oregon waters. That includes horsepower and suction hose size restrictions on order to assure permittees can comply with the turbidity limits on most Oregon streams.
92	No other recreational activity is regulated to the degree by state and federal agencies like Recreational and Small Scale Gold Mining. DEQ needs to stop over-regulating this activity.	Comment is not related to the proposed permit.
38, 65, 57, 103, 20	All recreation watershed users should be held to the same standards proposed in the suction dredge permit.	The suction dredge permit is required because the activity requires an NPDES permit. Boaters, swimmers, and people who fish are not required to have an NPDES permit to "operate".
2	The proposed permit is not applicable to all water user groups.	Not all water users are defined as point sources that discharge a regulated pollutant. DEQ is required to issue an NPDES permit for all point sources that discharge to surface water in Oregon.
57	DEQ cannot ignore other industrial sources of pollution while focusing on mining.	Comment is not related to the proposed permit. DEQ is not ignoring other point sources of pollution.
38	Protecting beneficial uses implies that dredging reduces the beneficial use of the stream by others.	Compliance with the state turbidity standard is intended to protect the beneficial use of stream in Oregon. If the dredge activity complies with the standard, the beneficial use is considered to

		be protected.
26, 102, 41	DEQ has ignored the input from the miners to develop the proposed suction dredge permit.	DEQ conducted field visits during the summer of 2004, met with suction dredge representatives on numerous occasions, and requested comments on 4 preliminary drafts of the suction dredge permit before formal proposal in December 2004.
41	Because the permit is so unreasonable, many suction dredgers will not get the permit which will not be good for water quality.	DEQ will revise the final permit to have less complex compliance requirements than the expired 700-J or the MAO. DEQ will eliminate the provisions for limited duration turbidity allowances and associated monitoring requirements. DEQ will use the existing turbidity standard of 10% above background for the final suction dredge permit for suction dredges that have a suction hose with an inside diameter greater than 3 inches.
14, 11, 92	DEQ has not provided adequate response to miners during the permit development. One commenter stated that DEQ only provided one draft to comment on before the formal public draft.	DEQ conducted field visits during the summer of 2004, met with suction dredge representatives on numerous occasions, and requested comment on 4 preliminary drafts of the suction dredge permit before formal proposal in December 2004. DEQ also provided written response to all questions posed by the Mining Committee regarding the third preliminary draft of the suction dredge permit.
35	Can DEQ re-issue the extended 700-J until issues with the proposed permit are resolved?	DEQ will renew the suction dredge permit with modifications that exempt smaller dredges from turbidity requirements and require that larger dredges meet the current state turbidity standard of 10 percent over background. Until the renewed permit is filed with the Oregon Secretary of State, the expired 700-J General Permit remains in effect.
92	DEQ is proposing excessive restrictions that will create a hardship on small scale miners that make a claim on a federal mining claim.	The proposed permit provided additional opportunity to dredge when turbidity occurred; the expired permit did not. In the final permit, DEQ plans to eliminate turbidity requirements for approximately 50 percent of suction dredge operators because they have no reasonable potential to exceed the state turbidity standard.
53	Proposal is a deterrent to the mining industry.	For most suction dredge operators, the proposed and final permit contains less stringent turbidity limits, and operational requirements than the expired suction dredge permit. The proposed $25 fee is not expected to deter mining in Oregon.
70	Recreational dredge operators do not compare to commercial dredging operations and should not be regulated the same way.	All point sources that discharge pollutants into Oregon's surface water are required to get an NPDES permit before they can operate. The suction dredge general permit applies to small scale dredges, and is relatively simple and inexpensive compared to individual permits that

		are required for commercial dredge operations. However, all point sources that discharge turbidity must comply with the same state standard.
35, 68	The permit should apply dredges with up to a 50 horsepower motor.	Dredges that have motors greater than 30 horsepower are not typically used in conjunction with a 6-inch inside diameter hose, which is the other applicability criteria for the suction dredge permit. DEQ plans to issue a low-cost individual permit for suction dredges that have larger suction hoses or greater horsepower engines.
19	The permit should apply to 8 inch dredges, and up to 50 horsepower motors.	DEQ is concerned that 8-inch suction dredges cannot comply with the conditions of this permit on most Oregon streams. DEQ plans to issue a low-cost individual permit for suction dredges that have larger suction hoses or greater horsepower engines.
20	The size and horsepower of the dredge is self-limiting by the size of the stream.	DEQ plans to issue a low-cost individual permit for suction dredges that are larger than allowed under this General Permit.
33, 22, 23, 88, 76, 5, 98, 77, 57, 41, 35	The suction dredge permit should apply to 8 inch dredges.	DEQ is concerned that 8-inch suction dredges cannot comply with the conditions of this permit on most Oregon streams. DEQ plans to issue a low-cost individual permit for suction dredges that have larger suction hoses or greater horsepower engines.
11	DEQ does not have the authority to regulate the size of the dredge.	NPDES permits must include conditions that do not allow a pollutant standard to be violated. The Department will provide a lower cost, individual permit for larger dredge operations.
24, 67, 71, 18, 83, 2, 28, 16	Dredging does not cause any harm, and is beneficial for streams.	Dredging may create turbidity that exceeds the current state standard that prohibits the discharge of turbidity in excess of 10 percent above background stream turbidity.
45, 71, 65, 98, 95, 57, 93, 103	Dredging provides food and is beneficial for fish.	Comment is not related to the proposed permit.
45, 10, 70, 3, 38, 71, 33, 2, 28, 55, 40, 103, 11	Dredging is beneficial because dredge operations recover lead and mercury.	Comment is not related to the proposed permit.
24	Limiting dredging will destroy the industry and supporting markets.	DEQ has simplified the final permit so it will have no economic impact when compared to the previously issued 700-J or MAO. DEQ plans to eliminate provisions in the proposed permit that allow limited durations of visible turbidity. This action also eliminates the monitoring requirements that included the use of a turbidimeter. DEQ will use the existing turbidity standard of 10 percent above background for the revised suction dredge permit, and will reissue the suction dredge permit with a turbidity limit exemption for

		dredges with suction hoses with an inside diameter greater than 3 inches.
67, 62, 50, 33, 22, 23, 52, 77, 2, 28, 101, 55, 60, 79, 83, 85, 93, 40, 11, 56, 41, 91, 61, 92, 35	The permit, if is issued as proposed, will result in a large impact on Oregon's businesses and economy.	DEQ does not believe that the proposed permit would have had a significant effect on Oregon's economy. Regardless, DEQ plans to propose a permit that applies the existing turbidity standard in a similar fashion as is the expired 700-J, and exempt any turbidity requirements from dredges with suction hoses up to 3 inches in diameter. DEQ expects that the final permit will have no economic impact when compared to the previously issued 700-J or MAO.
11	The state should not have the right to write overly restrictive requirements to a specific user group.	DEQ issues NPDES permits as required by state and federal law.
29	Why did DEQ not use an advisory committee?	DEQ conducted field visits during the summer of 2004, met with suction dredge representatives on numerous occasions and send out 4 preliminary drafts of the suction dredge permit before formal proposal in December 2004.
38	Agencies must remain neutral regarding regulatory decisions and enforcement. Elements of the permit are bias and discriminatory to limit/exclude citizens from enjoying recreational activities.	The suction dredge permit was developed according to federal and state NPDES permitting and public notice requirements.
38	The 700-J permit has not expired and needs to be extended to anyone who want to dredge in 2005.	The 700-J NPDES permit expired on March 31, 2002. People that were both assigned to the 700-J and submitted an application prior to the March 31, 2002 were provided with an administrative extension of the expired permit until a new suction dredge permit is available.
13	How long is the permit valid?	The permit expires 5 years after it is issued by DEQ.
38	Any action to limit turbidity for recreational dredging is bias, discriminatory, and unconstitutional.	The suction dredge permit was developed according to federal and state NPDES permitting and public notice requirements.
38	DEQ is treating recreational dredging like an industry. DEQ should be permitting people, not the dredge operation.	The suction dredge permit allows the dredge to discharge under the condition of the permit. The source of the discharge is required to be permitted, and the person assigned to the permit is responsible to assure that the source of the discharge meets the discharge limitations of the permit.
92, 45, 67, 62, 3, 38, 46, 2, 36, 101, 102, 84, 93, 11, 92, 56	DEQ is or may be requiring an NPDES permit, and writing the conditions in the suction dredge permit in response to pressure from environmentalists and other third party groups.	The suction dredge permit was developed according to federal and state NPDES permitting and public notice requirements.
46	Interested third parties have been allowed access to take part in drafting the permit, while those that will be affected are excluded.	DEQ conducted field visits during the summer of 2004, met with suction dredge representatives on numerous occasions, and requested comment on 4 preliminary drafts of the suction dredge permit before formal proposal in December 2004. DEQ also provided written response to

		all questions posed by the Mining Committee regarding the third preliminary draft of the suction dredge permit.
38	Dredgers often belong to clubs that promote recreations benefits and stewardship.	Comment is not related to the proposed permit.
22, 26, 77	DEQ has wasted tax dollars to develop this permit.	Comment is not related to the proposed permit.
58, 95	The suction dredge permit does not reflect and needs to consider the benefits of suction dredging for a stream or river.	The suction dredge permit only includes conditions that the permittee must comply with for the permitted activity.
51	The Copper River in Alaska has much more turbidity than Oregon rivers and has more salmon – could one conclude that salmon like muddy water over clear water?	DEQ must use the existing state standard as the protection level for activities that discharge turbidity. Studies that provide information regarding effects of turbidity will be considered as part of the state turbidity standard revision that is now underway.
51	The 5th Amendment of the U.S Constitution gives American Citizens the right to refuse to sign any document that may be used against them in a court of law.	Comment is not related to the proposed permit.
98	Dredging provides physical therapy and exercise for disabled dredgers	Comment is not related to the proposed permit.
46, 8	Though you are a government official, you can be sued personally under a number of provisions in federal law.	Comment is not related to the proposed permit.
13	Does the permittee need to tell DEQ where they plan to dredge?	Because the general permit applies statewide there is no requirement up-front to inform DEQ about the dredging location. However, the permit contains a condition that allows DEQ to request information from permittees regarding the location of the last 3 years of dredging.
13	Attachment A includes assumptions for percentages that if added, do not equal 100 percent.	The percentages are percentages for independent topics and are no intended to be added together or equal 100 percent.
13	Does DEQ have the resources to enforce the conditions in the permit?	DEQ does not regularly inspect dredging operations, and typically addresses suction dredge issues based on complaints we receive.
48	DEQ received a comment regarding language that existed in the expired permit, not the proposed permit.	Comment is not related to the proposed permit.
39	Instead of issuing a NPDES permit, DEQ should use a decal on the dredge similar to what is used on boats and ATVs to show that the dredge is permitted.	DEQ must issue an NPDES permit for the dredge activity. A decal on the dredge does not verify that the person using the dredge is the person assigned to the permit; also, the person assigned to this permit may have more than one dredge.
53	The mining season coincides with the fire season which shuts down all dredging.	Comment is not related to the proposed permit.
54	By issuing the MAO and the state of Oregon are culpable, and potentially liable for damages suffered by dredge operators working their claims.	Comment is not related to the proposed permit.

41	DEQ should use the word "authorize" instead of "approved" because dredging is not a federal action.	Comment is not related to the proposed permit.
41	DEQ has not coordinated the drafting of this permit with any state or federal agency.	DEQ circulated preliminary drafts and the formal draft permit to the U.S. Forest Service, U.S. Bureau of Land Management, Oregon Department of State Lands, Oregon Department of Fish and Wildlife, Oregon Department of Parks and Recreation, and the Oregon Water Resources Department.
11	The expired 700-J and MAO were Class II permits. DEQ is proposing to reissue the suction dredge permit as a more restrictive Class IV permit.	Both the expired and the proposed suction dredge permit are NPDES General Permits. The proposed permit is no different in "class" than the expired permit.
11	I demand that the suction dredge permit include the words "incidental take" because fishing licenses are based on incidental take.	Comment is not related to the proposed permit.
60	The permit needs to be defendable from the miner's point of view. If permit isn't workable, the miners can pull together and do that same thing that the environmentalists do.	Comment is not related to the proposed permit.
91	The final draft permit is probably workable for the vast majority of suction dredgers in Oregon.	DEQ agrees. However, DEQ is simplifying the final version of the permit and will revisit the limited turbidity allowance provisions in a future suction dredge permit renewal once a new turbidity standard is in place.

HARDY MYERS
Attorney General

PETER D. SHEPHERD
Deputy Attorney General

Attachment B3

DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM

DATE: April 19, 2005

TO: Mark Charles, Manager of Surface Water Management Section
Scott Manzano

FROM: Larry Knudsen, Assistant Attorney General
Natural Resources Section

SUBJECT: Applicability of NPDES Permit Requirements to Recreation Suction Dredge Mining

EQ is preparing to renew the expired 700-J permit. This is an National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402 [33 USC § 1342], and it covers the operation of suction dredges of 40 horsepower or less used for recovering precious metals from stream bottom sediments. As the name implies, these dredges pull sand and other materials from the stream bed. The material is then mechanically processed to remove a significant percentage of the heavy metals and the remainder of the material is discharged back into the water column as waste.

DEQ accepted formal comments on the proposed renewal of the 700-J permit from December 23, 2004 through March 4, 2005. A number of the individuals and groups commenting on the proposed permit have asserted that discharges from these dredges are not properly regulated under CWA section 402. Instead, they claim that the discharges are not subject to regulation at all, should be regulated only under CWA Section 404 (33 USC § 1344) or should be regulated only under a state water pollution control facility (WPCF) permit. Each of these arguments is discussed below.

The CWA Regulation under Section 402

Under CWA Section 402, an NPDES permit is required for the discharge of a pollutant from any point source to waters of the United States. These suction dredges at issue are required to have such a permit before discharging. This conclusion clearly follows from the applicable statutory and regulatory definitions, as well as the federal court decisions interpreting these definitions.

Point Source. The CWA defines a point source as "any discernible, confined, and discrete conveyance," including pipes and conduits. CWA Section 502(14) [33 USC § 1362(14)]. There does not appear to be any reasonable argument that discharges from the suction dredge apparatus do not fall under the definition of point source. *See League of Wilderness Defenders v. Forsgren*, 309 F3d 1181, 1184-1185 (9th Cir 2002); *Rybachek v. United States Environmental Protection Agency*, 904 F2d 1276, 1285 note 8 (9th Cir 1990).

Pollutant. The term "pollutant" is broadly defined and includes dredge spoils, rock, sand, and almost all other forms of waste. CWA Section 502(6). The federal Environmental Protection Agency (EPA) has determined that the re-introduction of waste materials from the stream bed into the water column through the process of suction dredging and sluicing constitutes the addition of a pollutant. The federal Ninth Circuit Court of Appeals has reviewed and upheld EPA's decision. *See Rybachek, supra,* at 1285-1286; *see also Borden Ranch Partnership v. United States Army Corps of Engineers*, 261 F3d 810, 814 (9th Cir 2001). *See also, Washington Wilderness Coalition v. Hecla Mining Co.*, 870 F Supp 983, 988 (ED Wash) (and authorities cited therein).

Some of the comments assert that a permit is not appropriate because the discharges from small suction dredges are relatively insignificant. There is, however, no exception to CWA Section 402 permitting requirements based on the relative significance of the discharge. *Sierra Club v. Union Oil Co.*, 813 F2d 1480, 1490-1491 (9th Cir 1986), *rev'd on other grounds, Union Oil Co. v. Sierra Club*, 108 S Ct. 1102 (1988); *Save our Bays & Beaches v. City and County of Honolulu*, 904 F Supp 1098, 1105 (D. Hawaii, 1994). Similarly, under the CWA, the determination of the need for permit effluent limits or other regulatory conditions must be made in the context of the water quality of the specific receiving water and the standards applicable to the receiving water. CWA Sections 301, 303, and 402. The existing record for this general permit does not, and probably could not, include substantial evidence upon which to base a determination that **all** of the covered discharges are in fact insignificant. *See also, Natural Resources Defense Council, Inc. v. United States EPA*, 966 F2d 1292, 1306 (9th Cir 1992).

Waters of the U.S. A number of comments assert that suction dredge mining is not subject to the federal Clean Water Act because the discharges take place on waters that are not navigable in fact. These assertions are misplaced because the requirements under CWA Sections 402 and 404 apply to any discharge to "waters of the United States including the territorial seas." 33 USC § 502(7) (defining "navigable waters" as used in the CWA). The waters of the U.S. include streams that are tributaries of navigable waters even if those streams are not themselves navigable. *Headwaters, Inc. v. Talent Irrigation District*, 243 F 3d 526, 533 (9th Cir 2001). It also includes wetlands and ponds adjacent to navigable waters and their tributaries. *See, e.g., San Francisco Baykeeper v. Cargill Salt Division*, __ F Supp 3d ___ (2003 US Dist LEXIS 8247) (N Dist CA, 2003) (and authorities cited therein).

Unitary Waters Theory. At least one comment argues that a permit is not needed because of the so-called "unitary water theory." This is a relatively new concept that the United States Department of Justice used to argue that permit is not required when water is transferred

from one relatively polluted water body to another relatively less polluted water body. *See South Florida Water Management District v. Miccosukee Tribe of Indians*, 124 US 1537 (2004). Essentially, the theory holds that all waters of the U.S. are the same and thus no permit is required to move water from one water body to another water body.

At this time, the unitary water theory has not been adopted by the Supreme Court or any other court. Assuming for the sake of argument that the theory becomes law at some future date, it is not relevant to the issue of permitting suction dredge mining. Such mining does not move polluted waters between water bodies. Rather, pollutants are introduced to the water body by the dredging and sluicing and not by the transfer of water. *See Rybachek, supra; see* also Brief for the United States, at 22 note 7, in *South Florida Water Management District v. Miccosukee Tribe of Indians*, 124 US 1537 (2004). In this fundamental regard, discharges from dredging are not distinguishable from most other industrial and municipal discharges.

Effluent Limit Guidelines. A number of comments assert that NPDES permits are not required because EPA has promulgated specific effluent limit guidelines (ELGs) as technology-based requirements for certain placer mining activities, and these ELGs do not apply to dredges processing less than 5,000 cubic yards per year. 40 CFR § 440.140 to 440.148. With one exception discussed below,[1] the existence of ELGs is irrelevant to the issue of whether an NPDES permit is required.

NPDES permits are required to have, at a minimum, all effluent limits needed to meet the technology-based requirements of the CWA. CWA Sections 301, 304, 306, and 402. Permits are also required to have any additional effluent limits needed to ensure that the permitted activities do not cause or contribute to a violation of a water quality standard. CWA Sections 301, 303 and 402.

The CWA directs EPA to adopt ELGs to implement technology-based requirements for various industrial categories. CWA Section 304(b). The CWA recognizes, however, that ELGs will not be prepared for all sources. For the remainder of point sources not covered by an ELG, permit writers are directed to impose technology-based effluent requirements using best professional judgment. 40 CFR § 125.3(c)(2). Thus the absence of an ELG only means that technology-based effluent limits must be established by the permit writer using best professional judgment. It does not mean that the discharge is exempt from permitting requirements.

Section 404 Exemption. CWA Section 404 [33 USC § 1344] is a companion provision in the Clean Water Act that authorizes the Army Corps of Engineers to issue permits for the discharge of dredged or fill materials into navigable waters. Several of the comments argue that the suction dredge mining at issue should be regulated by a Section 404 permit rather than a Section 402 permit. Others argue that a Section 402 permit is not required simply because the discharge includes dredged materials regardless of whether the Corps regulates the activity or exempts it from regulation.

The provisions of Section 404 of the Clean Water Act do not apply to the discharges from suction dredges used for mining. The courts have treated the wastes from sluicing or other

[1] See discussion of the CWA Section 404 exemption at page 4.

beneficiation processes as distinct from dredged materials as that term is used in Section 404. *National Mining Ass'n v. United States Army Corps of Engineers,* 145 F3d 1399, 1406 (DC Cir 1998). This position is consistent with EPA's treatment of the issue and the position taken by the United States Department of Justice in recent litigation. United States of America's Memorandum in Support of Motion for Judgment on the Pleadings, *Templeton v. United States of America,* C1V02-320-C-EJL (D Idaho, 9/28/2004).

Historically, the Corps has not regulated the other (i.e. unprocessed) discharges from suction dredges because they were viewed as insignificant or "incidental fall back." Under the regulations adopted by the Corps, incidental fall back is defined as: "the redeposit of small volumes of dredged material that is incidental to excavation activities ... when such materials falls back to substantially the same place as the initial removal." 33 CFR 323.2(d)(1). Separate provisions clarify that no permit is required for redeposit of dredged materials that does not destroy or degrade waters of the US. *Id. at* (4). And it expressly recognizes a "de minimis" (i.e. inconsequential) effect when considered individually or cumulatively. *Id.* at (6).

Section 404 also covers the discharge of certain fill materials. The definition of fill has been the subject of much litigation and recent rulemaking.[2] Historically, the Corps defined fill to include only materials placed in the water for a purpose other than disposal, such as creating dry land or raising the elevation of the land under the water. 33 CFR § 209.120(1975). Eventually, this became known as the "primary purpose" test. 30 CFR § 323.2 (2001). EPA for its part, however, adopted an "effects based test." 40 CFR 232.2 (1976). In 2000, the Corps and EPA proposed a single definition that essentially adopted an effects-based test and that excluded most wastes. 65 FR 21,292 (4/20/200). In 2002, the agencies adopted a slightly different effects-based test that excludes trash and garbage. 33 CFR pt 323, 40 CFR pt 232.

As a part of the 2002 regulations, the Corps and EPA deleted provisions that specifically addressed discharges covered by ELGs, water quality standards or permits issued under CWA section 402 from the definition of fill. In doing so, however, the agency noted that they did not view this as a significant change in regulatory approach and the agencies clearly noted that while some discharges covered by such provisions, including those addressing suspended or settleable solids can raise bottom levels over time, the agencies do not consider such pollutants to be fill materials for purposes of Section 404. 67 FR 31129, 31135 (5/9/2002).

Based on the nature of the suction dredge mining at issue, there is no reason to believe that the change in regulations leads to a conclusion that the suction dredge discharges in question are properly regulated as fill material. There is nothing to suggest that the actual effect of the activities on bottom levels would be significant or that the existence or lack of an ELG would change the analysis.

It is also worth noting that even if one were to assume for the sake of argument that discharges from these suction dredges are dredge spoils and not waste, the requirement for a Section 402 permit likely would not change. EPA's regulations expressly exempt dredge and fill

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[2] *See, e.g.,* Note, Shifting the Boundary Between the Sections 402 and 404 Permitting Program by Expanding the Definition of Fill Material, 31 BC Envtl Aff L Rev 617 (2004).

activities from Section 402 permitting requirements **only** when the activities are actually subject to regulation by the Corps. 40 CFR §123.2. As noted previously, to date the Corps has determined that dredge mining is not subject to regulation under Section 404.

State Permitting Authority

Several of the persons commenting on the permit took the position that regulation of suction dredging is appropriate only under state law. Others argued that state law does not authorize such regulation. Oregon law clearly authorizes DEQ regulation of suction dredges, both through the Clean Water Act's NPDES permit program and under independent provisions of state law.

Oregon Statutes dating back to the 1950's, and, in some cases earlier, have declared water pollution to be contrary to public policy and have authorized DEQ to take all those actions necessary to protect, maintain and improve water quality. ORS 468B.010, 468B.015 and 468B.020. For more than three decades, Oregon Law has expressly required DEQ permits for any discharge of wastes into waters of the state from any industrial or commercial activity or any disposal system. ORS 468B.050.

In 1973, the states water quality statutes were amended to authorize the Environmental Quality Commission to adopt all rules and take any other actions necessary to implement the Clean Water Act. ORS 468B.035. This includes all actions required for EPA approval to operate the NPDES permit program established by CWA Section 402.

With a few exceptions not relevant here, federal agencies and federal lands are subject to both the requirements of the federal Clean Water Act and state water quality requirements arising under state law. CWA Section 313 [33 USC § 1323]; CWA Section 401 [33 USC § 1341]. EPA determines whether a state will administer the NPDES permit program established by CWA Section 402. If EPA delegates the NPDES permit program to a state, it suspends its own permitting program. EPA also decides which lands within the state are subject to the state program, but typically,[3] a state program must include all discharges, even those arising on federal lands. 40 CFR § 123.2(g)(1). And in Oregon, EPA did not reserve permitting authority except with respect to Tribal lands.

Further, and as discussed in more detail below, the U.S. Supreme Court has held that federal mining laws and the federal regulations implementing those statutes and federal land management statutes and the federal regulations implementing those statutes do not pre-empt state environmental regulation of mining activities. *California Coastal Comm'n v. Granite Rock Co.*, 480 US 572, 581-586 (1987). This includes both the laws applicable to U.S. Forest Service lands and lands under the jurisdiction of the Bureau of Land Management.

Mining Law of 1872

[3] A different regulatory regime often exists for tribal lands. 40 CFR § 123(g)(2); §123.31. EPA often reserves regulatory authority over reservations unless the tribe has been approved for "treatment as a state" status. CWA Section 518 [33 USC § 1377].

A number of comments assert that the Mining Law of 1872, 30 USC § 21 *et seq.* pre-empts CWA and state permitting requirements. Neither assertion is supported by the law.

The U.S. Supreme Court has previously held that the Mining Act of 1872 "expressed no legislative intent on the....subject of environmental regulation." *California Coastal Comm'n, supra*, at 581 (1987). The Court also held that the subsequent amendments to federal mining law known as the Multiple Use Mining Act (30 USC § 601 *et. seq.*) and federal agency implementing regulations did not pre-empt state or federal environmental regulation. *Id.* at 582.

Further, the Oregon Court of Appeals has expressly rejected the notion that the federal mining laws create **any** right to use waters of the state for the purpose of waste disposal. *Kinross reconsideration*, 163 Or App 357 (1999), *cert den*, 531 US 960 (2000).[4]

Finally, there is nothing in text, context or legislative history of the more recent CWA that suggests a general exemption from permitting requirements for mining on federal lands.[5] CWA Sections 313 and 402. Subsequent amendments to federal mining, environmental and land management statutes all provide strong evidence against any inference of pre-emption. *See, e.g.*, 30 USC § 21(a); 30 USC §§ 601 *et seq.*; 42 USC §§ 4321 to 4370d.

Land Use Issues

Questions also have been raised regarding DEQ's authority and responsibility to require certification that dredging operations are consistent with statewide land use planning goals and acknowledged local comprehensive plans and regulations implementing those plans. DEQ is required to obtain such certification for water quality permits under ORS 197.180 and the rules of the Environmental Quality Commission (EQC) and Land Conservation and Development Commission (LCDC) that implement this statute. OAR chap 340, div 18; chap 660, div 30 and chap 660, div 31.

The state's land use statutes require LCDC to determine which activities on federal lands are subject to regulation under the state land use program and which are pre-empted. ORS 197.390 to 197.395. LCDC has not fulfilled this statutory directive. Rather, state agencies and local governments have been left to determine which federal activities are subject to regulation.

The U.S. Supreme Court has assumed, without actually deciding, that states and localities are pre-empted from extending actual land use designations to federal lands. *Granite Rock, supra*, at 586-587. In other words, a state cannot dictate to a federal agency what specific land uses are or are not allowed on federal lands. The Court concluded, however, that states could impose state environmental regulations as conditions on state or local land use permits. *Id.* Moreover, Oregon's courts have recognized that some components of the statewide planning

[4] At least for all claims made after 1877. *Kinross, supra* at 523.
[5] There is an express limited exemption from stormwater requirements for some mining activities. CWA Section 402(1).

system are in fact environmental regulations. *Arnold Irrigation Dist. v. DEQ*, 79 Or App 136, 143, *rev den*, 301 Or 765 (1986).

Given the unsettled state of affairs, DEQ has reasonably interpreted the land use statutes and implementing rules to require submission of a Land Use Compatibility Statement. The Department has further concluded, however, that in any given case the local government may properly determine that its acknowledged comprehensive plan and land use regulations do not impose relevant conditions on the land use activities conducted on the federal lands in question.

ljk:lal/GENM2439

Attachment C

Chronology of DEQ Development of the General NPDES Permit for Suction Dredge Miners

Date	Activity
April 1997	The previous NPDES General Permit (700-J) for suction dredge mining is issued.
May 1999	The 700-J General Permit is modified per court order following a permit challenge by Northwest Environmental Defense Center (NEDC).
April 2002	The 700-J General Permit expires – registrants are administratively continued. DEQ issues MAO number WQ/I-ER-02-114 to new suction dredge operators until the 700-J is reissued.
April 2004	NEDC transmits Notices of Intent (NOIs) to sue under the Clean Water Act to un-permitted miners.
May 2004	DEQ meets with NEDC and agrees to reissue the 700-J General Permit if NEDC does not follow through on its lawsuits.
June 2004	DEQ sends a letter to every miner covered under the expired 700-J General Permit as well as mining clubs and organizations across the State informing them of the decision to reissue the 700-J General Permit by summer 2005.
June/July 2004	DEQ reviews the expired 700-J General Permit and the approach other States have taken on suction dredge mining. DEQ meets with the Oregon Department of State Lands (which has co-jurisdiction on in-stream mining in State Scenic Waters and Essential Salmon Habitat).
August 6, 2004	DEQ and DSL meet with miners on the North Santiam River to observe demonstrations of several 2 and 4 inch dredges (as well as a small high bank dredge).
August 9-10, 2004	DEQ meets with miners in the Powder and Burnt River Subbasins to observe demonstrations of several dredges sized from 2 to 6 inches.
August 23-24, 2004	DEQ meets with miners in the Applegate, Rogue and Illinois subbasins to observe demonstrations of the several dredges sized between 4 and 6 inches. Representative Anderson attends, along with a representative of the U.S. Forest Service.

September 17, 2004	DEQ transmits the 1st preliminary draft of the suction dredge permit to the mining and the environmental communities and takes informal comments for nearly a month.
October 25, 2004	DEQ transmits the 2nd preliminary draft of the suction dredge permit for additional comments and discussion. DEQ meets with miners in Eugene to discuss 2nd draft.
November 4, 2004	DEQ transmits the 3rd preliminary draft for additional comments and discussion.
November 5, 2004	DEQ meets with miners in Baker City to discuss the 3rd draft and take informal comments.
November 29, 2004	DEQ transmits the 4th (and final) preliminary draft for final informal comments and discussion.
November 29, 2004	DEQ provides written responses to questions regarding the 3rd preliminary draft to the Mining Committee (39 pages of questions and DEQ responses)
December 23, 2004	DEQ sends draft permit for formal public comment scheduled to end February 11, 2005.
January 25, 2005	DEQ meets with miners and Legislative Representatives to explain the need for the permit and answer questions.
Jan 26 - Feb 3, 2005	DEQ holds public hearings and information sessions in Grants Pass, Salem, Portland, and Baker City.
February 3, 2005	DEQ extends public comment period until March 4, 2005 upon request from Mining Committee.
March 5, 2005	DEQ meets with miners and Legislative Representatives to discuss potential approaches to a final permit.
June 3, 2005	DEQ meets with NEDC to discuss potential issues with the proposed permit.
June 23, 2005	DEQ will propose new suction dredge permit (700-PM) for adoption by the Environmental Quality Commission.

Attachment D

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
NPDES General Permit 700-PM Renewal

Presiding Officer's Reports on Public Hearings

State of Oregon

Department of Environmental Quality — Memorandum

To: File **Date:** February 1, 2005

From: Ranei Nomura
Surface Water Management, Water Quality Division

Subject: January 26, 2005 Public hearing for renewal of NPDES general permit #700-J

A public hearing was held to receive comments on the proposed National Pollutant Discharge Elimination System (NPDES) General Permit 700-J renewal. The hearing was held on January 26, 2005 at DEQ Headquarters, 811 SW 6th Ave., Portland, OR.

An informal discussion session began at 5:00 p.m. with Scott Manzano, Water Quality Division, presenting an overview of the permit revisions and answering questions. 46 people signed the attendance forms (attached).

The formal hearing began at 7:20 p.m. The following people provided oral testimony:

1) Ted Staley, Millennium Diggers Club, Keizer,Oregon
2) Tony Massimilla, Rhododendron, Oregon
3) Ronald Wilson, Graham, Washington
4) John Tschanner, Puyallup, Washington
5) Butch Wilson, Renton, Washington
6) Bob Mote, Vancouver, Washington
7) Sue Beard-Bucholz, Yamhill, Oregon
8) James Foley, La Pine, Oregon

State of Oregon
Department of Environmental Quality — Memorandum

To: File **Date:** February 1, 2005

From: Mark D. Charles
Surface Water Management, Water Quality Division

Subject: January 27, 2005 Public hearing for renewal of NPDES general permit #700-J

A public hearing was held to receive comments on the proposed National Pollutant Discharge Elimination System (NPDES) General Permit 700-J renewal. The hearing was held on January 27, 2005 at the Oregon Department of State Lands, 773 Summer Street, Salem, Oregon.

An informal discussion session began at 5:00 p.m. with Scott Manzano, Water Quality Division, presenting an overview of the permit revisions and answering questions. 37 people signed the attendance forms (attached).

The formal hearing began at 7:30 p.m. The following people provided oral testimony:

1) Dave Kelsea, Salem, Oregon
2) James Foley, LaPine, Oregon
3) John Tschannen, Puyallup, Washington
4) Larry M. Chase, Springfield, Oregon
5) Louie Frick, Jefferson, Oregon
6) Joseph Greene, Philomath, Oregon
7) Tom Quintal, Salem, Oregon

State of Oregon

Department of Environmental Quality — Memorandum

To: File **Date: February 23, 2005**

From: Jon Gasik, MS, PE
WR/WQ-Medford Office

Subject: **Public hearing for the 700J NPDES permit renewal**

A public hearing was held to receive comments on the proposed National Pollutant Discharge Elimination System (NPDES) General Permit 700-J renewal. The hearing was held on February 2, 2005 at the Anne Basker Auditorium, 604 NW 6th Street, Grants Pass, Oregon.

An informal discussion session began at 5:00 p.m. Scott Manzano, ODEQ WQ Portland, presented an overview of the revisions to the permit. There was a question and answer section. Sixty two people were in attendance. The list of attendees is attached to this memo.

The formal hearing began at 8:10 p.m. The following people provided oral testimony:

1) Loren Kirkland, PO Box 395, Rogue River, Oregon
2) John Golden, 2555 Merlin Road, Grants Pass, Oregon
3) Jim Williams, PO Box 2056, La Pine, Oregon
4) Frank Serroni, 2735 Merlin Road, Grants Pass, Oregon
5) Justin Peterson, 6061 Gath Road SE, Salem, Oregon
6) Jeff Miner, no address given, Albany, Oregon
7) John J. Lesisz, 2496 Allen Creek Road, Grants Pass, Oregon
8) Jim Foley, 15961 Woodchip Lane, La Pine, Oregon
9) Joe Greene, 33180 Dorset Lane, Philomath, Oregon
10) Allen Knight, PO Box 290, Prospect, Oregon
11) Lesa Barton, 2041 NW Vine Street, Grants Pass, Oregon
12) Shirley Tinney, 220 Elst Lane, Glendale, Oregon
13) David McAllister, 1320 Applegate Ave., Grants Pass, Oregon
14) Matt Vegar, PO Box 519, Lakeside, Oregon
15) William L. Pith, 300 Pine Street, Sutherlin, Oregon
16) Tom Kitchar, PO Box 1371, Cave Junction, Oregon
17) Dave Kelsea, 4159 D Market Street, Salem, Oregon

The hearing was closed at 10:10 p.m.

State of Oregon
Department of Environmental Quality — Memorandum

To: File **Date:** February 8, 2005

From: Mitch Wolgamott
Easter Oregon Region, Water Quality Program Manager

Subject: February 3, 2005 Public hearing for renewal of NPDES general permit #700-J

A public hearing was held to receive comments on the proposed National Pollutant Discharge Elimination System (NPDES) General Permit 700-J renewal. The hearing was held on February 3, 2005 at Baker City Hall, 1655 First Street, Baker City, Oregon.

An informal discussion session began at 5:00 p.m. with Scott Manzano, Water Quality Division, presenting an overview of the permit revisions and answering questions. 16 people signed the attendance forms (attached).

The formal hearing began at 7:30 p.m. The following people provided oral testimony:
1) Jan Alexander, Unity, Oregon
2) Jim Williams, LaPine, Oregon.
3) Justin Peterson, Salem, Oregon
4) Guy Michael, Durkee, Oregon
5) Dave Kelsea, Salem, Oregon

The hearing was adjorned at 8:35 p.m.

Attachment E

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
700-J NPDES General Permit Renewal

Relationship to Federal Requirements

Answers to the following questions identify how the proposed rulemaking relates to federal requirements and potential justification for differing from federal requirements. The questions are required by OAR 340-011-0029.

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

   Yes. Title 40 of the Code of Federal Regulation, Parts 122-125, 130, 131, and 133 for the administration and implementation of the National Pollutant Discharge Elimination System (NPDES) permit program are applicable to this situation.

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

   The requirements are both performance-base and technology-based with the most stringent controlling.

3. **Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?**

   Yes, the applicable federal requirements address issues of concern in Oregon. Data and information used to establish the federal requirement can be reasonably assumed to reflect the situation in Oregon. Controlling pollution discharges to surface water in Oregon have the same importance and consequence as water pollution control requirements in all other states.

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

The existing general permit required sources to monitor turbidity to assure compliance with water quality standards. The proposed permit renewal provides certainty by determining that a permit limit for turbidity is required, and establishing that limit.

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

   Not applicable

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

   No. The proposed rulemaking renews an NPDES General Permit, which is required to be reissued every 5 years. The NPDES program requires permits renewals on this frequency in order to consistently review and maintain necessary water pollution control requirements to protect surface water in Oregon.

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

   Yes. All of the facilities that are assigned to this permit have to meet the same pollution control requirements.

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

   No.

9. **Does the proposed requirement include procedural requirements, reporting or monitoring requirements that are different from applicable federal requirements? If so, Why? What is the "compelling reason" for different procedural, reporting or monitoring requirements?**

   No.

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

    Yes. However, there may be situations in certain streams where dredging must be curtailed in order to meet the proposed discharge requirement.

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

    The proposed requirement may reduce discharges from suction dredge activity that create turbidity if suction dredge operators opt to use smaller dredges that are not charged fees.

Attachment F

700-J SUCTION DREDGE NPDES GENERAL PERMIT

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT

Title of Proposed Rulemaking:	NPDES Suction Dredge General Permit Renewal
Need for the Rule	National Pollutant Discharge Elimination System (NPDES) General Permit 700-J expired on March 31, 2002, and must be renewed through rulemaking as required by Oregon Administrative Rule (OAR) 340-045-0033.
Documents Relied Upon for Rulemaking	Documents relied upon to provide the basis for this proposal include: 1) Title 40 of the Code of Federal Regulation, Parts 122-125, 130, 131, and 133 2) Oregon Revised Statutes (ORS) 183.310, 468B.035, and 468B.050 3) OAR Chapter 340, Divisions 41 and 45 4) Draft Evaluation Report for NPDES 700-J General Permit Renewal, DEQ, November 2004 Copies of these documents can be reviewed at the Department of Environmental Quality's (DEQ's) office at 811 S.W. 6th Avenue, Portland, Oregon.
Fiscal and Economic Impact	
Overview	**Facilities affected:** This proposed rule renews the NPDES General Permit for suction dredge operations, which covers discharges from suction dredges that do not exceed 30 horsepower, or have suctions hoses with an insider diameter no greater than 6 inches. Suction dredges are used to recover precious metals or minerals from stream bed sediments. Most suction dredges operate on a small scale, meaning that they operate periodically during a 3-4 month work window from mid-June to mid-September. **New requirements:** For this permit renewal, DEQ is amending the discharge limits and monitoring requirements for turbidity created by suction dredge activity. The discharge limits and permit conditions are proposed to meet the existing water quality standard for turbidity that protects the beneficial use of waters of the state. Visual monitoring is allowed to determine if turbidity is visible 300 feet downstream from operating dredges that are equipped with a suction hose having an inside diameter greater than 3 inches. Dredges with smaller diameter suction hoses do no have to monitor for turbidity. DEQ is also proposing to charge a new annual fee of $25 to permittees registered under the new suction dredge permit. The fee will be used to help fund DEQ's Water Quality Division program costs to protect waters of the state in Oregon.

	Cost of compliance: There are no proposed monitoring requirements that will increase the cost of complying with the new suction dredge permit. **Impacts on business:** DEQ does not expect that this proposed renewal will have an impact on business in Oregon.
General public	Most operators register under this permit are individuals that operate for limited periods. The proposed revisions to this permit are not expected to affect the general public.
Small Business	The proposed revisions to this permit are not expected to affect small business. DEQ does not expect the proposed permit to significantly change the amount of seasonal suction dredge activity in Oregon
Large Business	The proposed revisions to this permit are not expected to affect large business. DEQ does not expect the proposed permit to significantly affect the amount of seasonal suction dredge activity in Oregon
Local Government	The proposed revisions to this permit are not expected to affect local government. Local government has no role to implement or administer the regulation of this activity
State Agencies	Suction dredge operations registered under this permit may also be regulated by the Department of State Lands (DSL). The proposed permit renewal allows DSL to administer the permit on behalf of DEQ. DEQ may allocate a portion of the permit fees to fund DSL activities.
DEQ	The proposed fees help fund DEQ's overall program costs to protect surface water statewide.
Other agencies	Suction dredge operations registered under this permit may also be regulated by the U.S. Forest Service and the Bureau of Land Management. The proposed revisions to this permit are not expected to affect those agencies
Assumptions	Approximately 1950 individuals are currently permitted by DEQ to suction dredge in Oregon. DEQ estimates that approximately 25 percent of the 1950 individuals currently permitted by DEQ will not pay fees or obtain a permit because they decide not to continue dredging activities or because of the cost of a permit or because they assume they assume they will not be caught.
Housing Costs	DEQ has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.
Administrative Rule Advisory Committee	DEQ staff developed this proposed general permit based on input from staff and sources covered under the existing permit. Staff conducted site visits, met with representative suction dredge operators, and provided preliminary drafts of proposed permit changes to key stakeholders for comment. An advisory committee was not established for this rulemaking.

Attachment G

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
NPDES General Permit 700-J Renewal

Land Use Evaluation Statement

1. **Explain the purpose of the proposed rules.**

   National Pollutant Discharge Elimination System (NPDES) General Permit 700-J expired on March 31, 2002, and must be renewed through a rulemaking action as required by Oregon Administrative Rule (OAR) 340-045-0033.

2. **Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?**

   Yes __ No X

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

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

      Yes __ No X (if no, explain):
      Through its State Agency Coordination process, the Department has determined that some NPDES General do not require a land use compatibility statement determination by local government. The 700-J General Permit falls under this determination.

   c. **If no, apply the following criteria to the proposed rules.**
      NPDES permits generally require an approved local government land use compliance determination before issuance. As provided above, a determination has been made that the 700-J General Permit will not significantly affect land use.

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

Not Applicable

Division	Intergovernmental Coord.	Date
		12-14-04

State of Oregon
Department of Environmental Quality Memorandum

Date: June 2, 2005

To: Environmental Quality Commission

From: Stephanie Hallock, Director S. Hallock

Subject: Agenda Item C, Rule Adoption: Oregon Title V Clean Air Act Operating Permit Program CPI Fee Increase (OAR 340-220-0030 through 0050)
June 23, 2005 EQC Meeting

Department Recommendation

The Oregon Department of Environmental Quality (Department) recommends that the Environmental Quality Commission (Commission) amend OAR 340-220-0030 through 0050 to increase the fee charged to Oregon Title V Air sources by the 2004 Consumer Price Index, as presented in Attachment A.

Background and Need for Rulemaking

Title V of the federal Clean Air Act requires that each major industrial source of air pollution obtain and comply with an operating permit. The Clean Air Act also requires that all sources subject to permitting under Title V pay fees sufficient to cover all reasonable costs of the Title V permitting program (Program). Oregon statute establishes these Title V permit fees, and provides for inflationary adjustments to the fees based on the change in the consumer price index (CPI) to ensure that the funding requirement is met. Title V permitting fees have increased each year since 1993 except for 2001, when the Program was expected to be adequately funded based on the projected end-of-year fund balance.

The Department is proposing to increase Title V permitting fees by 2.7 percent, which is equal to the change in the CPI during the 2004 calendar year. This proposed rule amendment would increase Base Fees, Emission Fees, and Special Activity fees. The amendment is necessary to fund the Oregon Title V Operating Permit Program for fiscal year (FY) 2006 (July 1, 2005 – June 30, 2006). Costs to implement and administer the Program are projected to rise in FY 2006 due to inflation and increases in personnel service costs that will apply to all state agencies.

Effect of Rule

This proposed rule increases fees for all Oregon Title V Operating Permit Program sources. Title V permittees are the largest stationary emission sources in Oregon and include power generation, wood and paper products, and fiberglass manufacturing facilities. Smaller sources, such as wood refinisher and fiberglass reinforced plastic (FRP) facilities, are also subject to Title V if they have the potential to emit more than 10 tons of hazardous air pollutants. The Department projects that 128 sources will be regulated under Title V in FY 2006.

The CPI increase of 2.7 percent was used to calculate the following proposed increase for three fee types:

- Base Fee – assessed to all sources subject to Title V permitting regardless of emission quantities (from $3178 to $3268 per year),
- Emission Fee – assessed based on actual or allowable emissions from the individual source (from $37.03 to $38.08 per ton of emissions), and
- Specific Activity Fees – assessed when a source owner or operator wants to modify a permit
    - Administrative (from $318 to $327);
    - Simple (from $1272 to $1307);
    - Moderate (from $9536 to 9804);
    - Complex (from $19,073 to $19,607);
    - Ambient Review (from $2543 to $2614).

  The Specific Activity Fees reflect different levels of complexity in changes requested by the source owner or operator.

Commission Authority

The Commission has authority to take this action under ORS 468A.315.

Stakeholder Involvement

An advisory committee was not convened to develop the proposed rules because no policy issues were identified. Fee payers are familiar with the Department's authority to increase Title V fees. The Department presented the proposed rule to Title V industry representatives in February 2005. The Department mailed copies of the proposed rule and information about the March 15, 2005 public hearing to Title V businesses and interested parties in February 2005.

Public Comment

A public comment period extended from February 15, 2005 to March 22, 2005 and included a public hearing in Portland on March 15. Results of public input are provided in Attachment B. No one provided oral or written comments.

Key Issues

Even with this fee increase and projected future CPI-based fee increases, the Department will have to reduce Title V positions in the 2005-2007 biennium to balance the budget. The Department plans to work with stakeholders on long-term funding for the Title V program and will likely propose legislation to increase the fee by greater than the CPI in the 2007 legislature.

Next Steps

If adopted by the Commission, this rule will become effective upon filing with the Secretary of State. Invoices to Title V sources reflecting the new fee schedule will be mailed in July for payment in August 2005. Since this is a continuation of an existing program, no additional resources or training will be needed to implement the rule.

Attachments

A. Proposed Rule Revisions
B. Presiding Officer's Report on Public Hearings
C. Relationship to Federal Requirements Questions
D. Statement of Need and Fiscal and Economic Impact
E. Land Use Evaluation Statement

Available Upon Request

1. Legal Notice of Hearing
2. Cover Memorandum from Public Notice
3. Rule Implementation Plan

Approved:

Section: David P. Kauth for Cheryll Hutchens

Division: Jeny T. Reeder for Andrew Ginsburg

Report Prepared By: David Kauth

Phone: 503-229-5655

340-220-0030

Annual Base Fee

The Department will assess an annual base fee of ~~$3,178~~3268 for each source subject to the Oregon Title V Operating Permit program. The fee covers the period from November 15 of the current calendar year to November 14 of the following year.

Stat. Auth.: ORS 468 & 468A
Stats. Implemented: ORS 468 & 468A
Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2580; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04

340-220-0040

Emission Fee

(1) The Department will assess an emission fee of ~~$37.03~~38.08 per ton to each source subject to the Oregon Title V Operating Permit Program.

(2) The emission fee will be applied to emissions from the previous calendar year based on the elections made according to OAR 340-220-0190.

Stat. Auth.: ORS 468 & 468A
Stats. Implemented: ORS 468 & 468A
Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995. f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2590; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04

340-220-0050

Specific Activity Fees

The Department will assess specific activity fees for an Oregon Title V Operating Permit program source as follows:

(1) Existing Source Permit Revisions:

(a) Administrative* -- $~~318~~327;

(b) Simple -- $~~1,272~~1307;

(c) Moderate -- $~~9,536~~9,804;

(d) Complex -- $~~19,073~~19,607;

(2) Ambient Air Monitoring Review -- $~~2,543~~2,614.

*includes revisions specified in OAR 340-218-0150(1)(a) through (g). Other revisions specified in OAR 340-218-0150 are subject to simple, moderate or complex revision fees.

Stat. Auth.: ORS 468 & 468A
Stats. Implemented: ORS 468 & 468A
Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2600; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04

Agenda Item C Attachment B
Rule Adoption: Oregon Title V Clean Air Act Operating Permit Program CPI Fee Increase
June 23, 2005 EQC Meeting

State of Oregon
Department of Environmental Quality **Memorandum**

Date: May 16, 2005

To: Environmental Quality Commission

From: David Kauth

Subject: Presiding Officer's Report for Rulemaking Hearing
Title of Proposal: Oregon Title V Clean Air Act Operating Permit Program CPI Fee Increase
Hearing Date and Time: March 15, 2005, 3:00 PM
Hearing Location: Conference Room 3A, 811 SW 6th Avenue, Portland, Oregon

The Department convened the rulemaking hearing on the proposal referenced above at 3:00 PM and closed it at 3:40 PM. Signs were posted asking people to sign registration forms if they wished to present comments. Signs were also posted to provide notice that the hearing was being recorded.

No one attended the hearing; no one testified.

Staff was prepared to briefly explain the rulemaking proposal and procedures for the hearing if interested parties attended the hearing.

No written or oral comments were received at the hearing or during the public comment period.

Oregon Department of Environmental Quality
Proposed Rule Change:
Oregon Title V Clean Air Act Operating Permit Program CPI Fee Increase

Relationship to Federal Requirements

Answers to the following questions identify how the proposed rulemaking relates to federal requirements and potential justification for differing from federal requirements. The questions are required by OAR 340-011-0029.

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

   Yes. The Title V portion of the federal Clean Air Act and EPA rules (40 CFR Part 70) requires Title V fees to fully pay for the cost of the Title V program. Federal law allows fees to be increased annually to keep pace with inflation. Federal law also specifies which sources must obtain Title V permits. This rulemaking does not differ from federal requirements.

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

   Not Applicable

3. Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?

   Yes. The federal fee requirement assures that sources subject to Title V pay for the permitting program.

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

   Not Applicable

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

Not Applicable

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

   Not Applicable

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

   Not Applicable

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

   Not Applicable

9. Does the proposed requirement include procedural requirements, reporting or monitoring requirements that are different from applicable federal requirements? If so, Why? What is the "compelling reason" for different procedural, reporting or monitoring requirements?

   Not Applicable

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

    Not Applicable

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

    Not Applicable

Oregon Department of Environmental Quality
Proposed Rule Change:
Oregon Title V Clean Air Act Operating Permit Program CPI Fee Increase

Need And Fiscal And Economic Impact

Title of Proposed Rulemaking:	Oregon Title V Clean Air Act Operating Permit Program CPI Fee Increase
Need for the Rule	This proposed rule amendment is necessary to cover increases to personal service costs for all state employees, for existing staff supporting the Title V program for fiscal year (FY) 2006 (July 1, 2005 – June 30, 2006). To respond to the increases, the Department is proposing to increase Title V fees 2.7%, which is equal to the change in the Consumer Price Index (CPI) from FY 2004, when Program fees were last increased. Oregon statute provides for fee increases according to the CPI in order to maintain the Program as approved. The federal Clean Air Act requires states to assess fees to fully fund their Title V programs, and Oregon law authorizes the Department to increase the Title V fee by the CPI if needed to keep pace with inflation.
Documents Relied Upon for Rulemaking	Documents relied upon to provide the basis for this proposal include: 1) 2003-2005 Biennium Legislatively Approved Budget 2) Fiscal Year 2006 Projected Title V Revenue 3) Department of Administrative Services Consumer Price Index Projections (December, 2004) 4) Federal Clean Air Act Amendments of 1990 5) Oregon Statutes (ORS 468.065, ORS 468A.040, and ORS 468A.315) Copies of these documents may be reviewed at the Department of Environmental Quality's office at 811 S.W. 6th Avenue, Portland, Oregon.
Fiscal and Economic Impact	
Overview	The Title V Program applies to small and large businesses with emissions large enough to trigger Title V thresholds. The Department received full program approval from the U.S. Environmental Protection Agency (EPA) in 1995, which delegated program authority from EPA to the Department. Oregon statute provides for assessing an annual Base Fee, Emission Fees (per ton), Special Activity Fees, and authorizes annual fee increases according to the Consumer Price Index (CPI) in order to maintain the Program as approved.
General public	The general public is not expected to be affected except for the possibility that fees are passed through, which may result in a modest increase in costs for products or services from Title V sources.

Small Business	Typically, the Title V program covers larger businesses, but applicability is dependent on potential emission levels rather than business size, so some smaller businesses, such as fiberglass reinforced plastic manufacturers, and smaller wood product and cabinet surface coating operations, are subject to the Program because their potential emissions are high enough to trigger Title V thresholds. The annual increase to a small Title V business that emits 50 tons per year would be $143, for both Base and Emission fees.
Large Business	The Oregon Title V Operating Permit Program covers the highest emitters of regulated air pollutants in the state. Approximately 65 percent of Title V businesses emit between 100 to 1000 tons of regulated pollutants per year. The proposed increase for businesses subject to Title V (small or large) is $90 increase to Base fees, and $1.05/ton increase to Emission Fees. This would transfer into an increase of $195 for a source that emits 100 tons per year and $1140 for a source that emits 1000 tons per year.
Local Government	Currently, Coos County and Metro are the local government agencies that are required to have a Title V operating permit. With a 2.7% increase, Coos County would pay projected annual fees of $10,299 for FY 2006, an increase of $271 over current fees; Metro would pay $5317 for FY 2006, an increase of $139 over current fees. These projections assume emissions are the same in comparative years.
Other State Entities	Oregon State University and Oregon Health Sciences University are currently the only state entities required to have Title V Operating Permits. Oregon State University would pay projected annual fees of $10,907 in FY 2006, an increase of $287 over current fees. For FY 2006, Oregon Health Sciences University would pay annual fees of $22,354, an increase of $588 over current fees. These projections assume emissions are the same in comparative years.
DEQ	The Department of Environmental Quality will not incur any additional costs to implement this proposed rulemaking. Even with the proposed fee increase, the Department plans to reduce the Title V staffing level by 3 positions to balance the budget for FY 2006.
Other agencies	No other agencies will be affected by this proposed rulemaking.
Assumptions	Estimated revenue forecasts and expenditures are based on the assumption that all facilities subject to the Program have been identified, and that facility emissions will remain at the same level as in previous years. The Department projects 128 sources will be subject to Title V permitting and fee requirements in FY 2006.
Housing Costs	The Department has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.
Administrative Rule Advisory Committee	An advisory committee was not convened to develop the proposed rules because no policy issues were identified. The proposed rule was presented to Title V industry representatives in February, 2005. A mailing on the rule and information about the March 15, 2005 public hearing was distributed to Title V businesses and interested parties in February, 2005.

Agenda Item C Attachment D
Rule Adoption: Oregon Title V Clean Air Act Operating Permit Program CPI Fee Increase
June 23, 2005 EQC Meeting

Prepared by:	David Kauth Printed name	February 3, 2005 Date
Approved by DEQ Budget Office:	Luciano Garza Printed name	Date

Oregon Department of Environmental Quality
Proposed Rule Change:
Oregon Title V Clean Air Act Operating Permit Program CPI Fee Increase

Land Use Evaluation

1. Explain the purpose of the proposed rules.

This proposed rule amendment is necessary to cover increases to personal service costs for all state employees, for existing staff supporting the Title V program for fiscal year (FY) 2006 (July 1, 2005 – June 30, 2006). To respond to the increases, the Department is proposing to increase Title V fees 2.7%, which is equal to the change in the Consumer Price Index (CPI) from FY 2004, when Program fees were last increased. Oregon statute provides for fee increases according to the CPI in order to maintain the Program as approved. The federal Clean Air Act requires states to assess fees to fully fund their Title V programs, and Oregon law authorizes the Department to increase the Title V fee by the CPI if needed to keep pace with inflation.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?

Yes X No_

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

The proposal amends Oregon Administrative Rules for Oregon Title V Operating Permit Fees (see Attachment A for proposed rule language). The Oregon Title V program regulates air emissions from major industrial businesses.

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

Yes X No_____ (if no, explain):

The proposed rules would be implemented through the Department's existing stationary source permitting program. An approved Land Use Compatibility Statement is required from local government before an air permit is issued.

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

Not applicable

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

   Not Applicable

State of Oregon
Department of Environmental Quality Memorandum

Date: June 2, 2005

To: Environmental Quality Commission

From: Stephanie Hallock, Director S. Hallock

Subject: Agenda Item D, Rule Adoption: Vehicle Inspection Program Enhanced Test Phase-out, OAR Chapter 340, Division 256, June 23, 2005, EQC Meeting

Department Recommendation

The Department of Environmental Quality (DEQ) recommends that the Environmental Quality Commission (EQC) adopt proposed rules to 1) phase out the DEQ Vehicle Inspection Program (VIP) Enhanced test and use only the Basic and On-Board Diagnostic (OBD) tests; 2) eliminate the gas cap and gas tank vapor recovery tests (Cap and Purge); and 3) implement HB 2546 of the 2003 Oregon Legislative Session (fleet testing frequency requirements).

Background and Need for Rulemaking

DEQ tests pollution from vehicles in both Medford and Portland as one of the ways to ensure clean air that meets or exceeds the federal Clean Air Act healthy air standards. DEQ uses the following three test methods: Basic, Enhanced and On-Board Diagnostic (OBD). The Basic test is relatively inexpensive to operate and is the least effective in reducing pollution. The Enhanced test is very expensive to operate and is moderately effective in reducing vehicle emissions. The OBD test is the least expensive to operate, but the most effective in reducing emissions. The OBD test can only be used for 1996 and newer model year vehicles because it relies on equipment that is only present on these vehicles. In Medford, DEQ conducts the Basic and OBD tests. In Portland, DEQ currently performs all three tests: Basic for 1975-80 model year vehicles, Enhanced for 1981-95 model years, and OBD for 1996 and newer model years.

Because vehicles that receive the OBD test are a large and increasing percentage of the vehicle population, and because of a corresponding decline in the percentage of vehicles that receive the Enhanced test, DEQ is now able to replace the Enhanced test with the Basic test for 1981-1995 model year vehicles without significantly affecting Portland's air quality. This change will have no effect on the Medford area vehicle inspection program because DEQ does not conduct the Enhanced test in Medford.

DEQ proposes the following phase-out schedule:

Date	Model Yr	Est. Number of Vehicles
June 2005	1981-88	196,000
June 2006	1989-92	195,000
January 2007	1993-95	164,000

This schedule will redistribute DEQ's Portland area testing in the next few years as estimated in the table below:

Date	Basic	Enhanced	OBD
Present-6/05	4%	48%	48%
7/05-7/06	16%	26%	58%
7/06-1/07	22%	10%	68%
1/07	25%	0%	75%

These rule changes are needed as part of DEQ's efforts to provide excellent customer service and efficient operations in the Vehicle Inspection Program by using innovative testing technologies and approaches.

Phasing out the Enhanced test will maintain good air quality in the Portland area while allowing DEQ to conduct the testing operations more quickly and with fewer employees. DEQ is able to achieve this operational cost reduction without significantly impacting air quality due to the effectiveness of the OBD test method DEQ introduced in December 2000. The OBD system keeps 1996 and newer vehicles clean by very precisely controlling all aspects of the vehicle operation. The OBD system is only present on 1996 and newer model year vehicles which now make up approximately 50 percent of the Portland area vehicles. As shown in the table above, the number of OBD vehicles is forecast to grow to 75 percent by January 2007 when the proposed Enhanced test phase-out is expected to be complete.

In addition to the Enhanced test phase-out, DEQ is proposing other rule changes that provide improved customer service at reduced costs. DEQ has already implemented House Bill 2546, enacted by the 2003 Oregon Legislature. House Bill 2546 reduced the frequency of testing required for self-testing fleets from once a year to once every other year. The City of Portland and Multnomah County are examples of

Another proposed change is to eliminate the requirement for two elements of the vehicle inspection test operations that have been difficult to implement: gas cap and purge testing. The gas cap test is designed to reduce emissions by ensuring that the vehicle's gas cap has an adequate seal on the vehicle's fuel tank as part of the Basic and Enhanced tests. However, the device developed for this test gives inaccurate results. The purge test is designed to ensure that gasoline fumes from the fuel tank are captured and then subsequently burned by the vehicle's engine as part of the Enhanced test. No successful test method was ever developed and the purge test was never approved as a viable test by the U.S. Environmental Protection Agency (EPA). DEQ does not anticipate that the manually performed gas cap and purge tests will be required in the future as OBD systems automatically monitor and ensure dependability of purge operations and components to prevent fuel evaporation. Finally, additional rule changes were made to correct grammatical errors, citations and definitions.

Effect of Rule

Phasing out Enhanced testing for 1981-95 model year vehicles and replacing it with the Basic test will reduce repair costs for vehicle owners whose vehicles fail the emission inspection tests. DEQ studies, as well as those by the EPA, indicate the average repair cost for a vehicle failing an Enhanced test is $300 compared to $150 for the Basic test.

Automotive repair shops are expected to see a small drop in business since it is anticipated that the cost of repairs required to pass a Basic test will be less than the cost of repairs to pass the phased-out Enhanced test. However, shops are expected to gain significant business in the near future as the rapidly growing OBD vehicle population ages and experiences higher failure rates.

In addition, using the Basic test for 1981-95 model year vehicles will make it easier for automotive repair shops to perform emissions repairs since most of these shops have Basic test equipment on premise. Very few repair shops purchased the expensive enhanced testing equipment.

Finally, there are a small number of self-testing fleets that are currently using Enhanced test equipment. They will be able to replace this expensive testing procedure with the Basic test for 1981-1995 model year vehicles.

Commission Authority

The EQC is authorized under ORS 468A.380(1)(c) to "establish criteria and examinations for the testing of motor vehicles."

Commission Authority

The EQC is authorized under ORS 468A.380(1)(c) to "establish criteria and examinations for the testing of motor vehicles."

Stakeholder Involvement

On October 21, 2004 DEQ met with the following stakeholders:

Barbara Crest	Northwest Automobile Trades Association
Jim Houser	Hawthorne Auto Clinic
Elliott Eki	American Automobile Association
Rhett Lawrence	Oregon State Public Interest Research Group
Gina Bonifacino	EPA Region 10
Don Taylor	City of Portland-Fleets

The stakeholders agreed that it is appropriate to make the transition from Enhanced to Basic on DEQ's proposed schedule.

Public Comment

A public comment period extended from December 15, 2004 to January 21, 2005 and included one public hearing in Portland. Results of public input are provided in Attachment C. No written or oral comments were received.

Key Issues

1. How will DEQ ensure the EPA approval of the Enhanced test phase-out schedule?

Recommendation: DEQ must demonstrate to EPA that the changes will not affect long term attainment of the Carbon Monoxide and Ozone clean air standards in the Portland area. Air quality standards have been met for the last six years, and DEQ must demonstrate that it will continue to meet standards for at least ten years into the future. For Carbon Monoxide, this requirement was addressed when the EQC adopted the renewal to the Carbon Monoxide maintenance plan in December 2004. This plan demonstrated continued attainment of the Carbon Monoxide standard without the Enhanced test. For Ozone, this requirement will be addressed when DEQ develops a maintenance plan for the new 8-hour ozone standard within the next two years.

In the interim, DEQ's preliminary calculations show that the phase-out will not affect attainment. These calculations, using EPA's MOBILE 6 emission model, indicate that motor vehicle emissions of ozone-forming substances will slightly increase in 2007 and will return to current or lower emissions levels after that.

evaluate options such as additional transit or carpooling measures, incentives to use lower-emitting products, or a slightly smaller than anticipated growth allowance for industry.

2. How will DEQ meet the Enhanced test phase-out schedule when the phase-out is dependent on availability of new Basic testing equipment which replaces existing aging Basic test equipment?

Recommendation: DEQ is in the process of replacing all Basic and OBD testing equipment and software on a timeline that will provide the new equipment in the Fall of 2005. The phase-out schedule shifts approximately one-third of the Enhanced vehicle tests to Basic in June 2005. DEQ's current Basic testi ng equipment can accommodate the initial phase-out stage until the new equipment is available.

A number of existing Basic test lanes have two Basic analyzers so that two vehicles may be tested in the lane at one time. During the first part of the phase-out, DEQ will close only one Enhanced lane at each test center. When the initial Enhanced lanes are decommissioned, DEQ will move one of the two Basic analyzers from a two position lane into the former Enhanced lane. This will enable DEQ to conduct either a Basic or OBD test in former Enhanced lanes, because current testing software allows an OBD test to be conducted in either a Basic or an Enhanced test lane. Further details of the replacement schedule are provided in the following section (Next Steps).

Next Steps

In June 2005, one Enhanced test lane at each of the five primary Portland area vehicle emission testing Clean Air Stations will be taken out of service, and a Basic analyzer that is in a test lane with two Basic analyzers will be moved to the deactivated Enhanced test lane. DEQ will discontinue testing 1981-88 model year vehicles using the Enhanced test and these vehicles will instead be tested using the Basic test. At a future date, DEQ will have a contractor remove the Enhanced testing equipment from the out of service Enhanced test lanes, completing the decommissioning phase. This includes removing a treadmill and laboratory grade exhaust gas measuring equipment. A contractor will replace the current Basic and OBD equipment with new Basic and OBD equipment in the fall of 2005.

In June 2006, DEQ will decommission a second Enhanced test lane at each of the five primary Portland area testing facilities. The analyzer rooms, inspector booths and customer waiting rooms will be modified, and the new Basic and OBD equipment will be installed in those lanes. DEQ will then transition 1989-92 model year vehicles from the Enhanced to the Basic test.

In January 2007, the remaining Enhanced test lanes will be decommissioned, the building modification made and the new Basic and OBD equipment installed in those lanes. DEQ will then transition 1993-95 model year vehicles from the Enhanced to the Basic test.

If the proposed revisions are adopted by the Commission, they will be submitted to EPA Region 10 as a revision of the State Clean Air Act Implementation Plan (SIP).

Attachments

A. Proposed Rule Revisions
B. Proposed SIP Revisions
C. Summary of Public Comments and Agency Responses
D. Presiding Officer's Report on Public Hearings
E. Relationship to Federal Requirements Questions
F. Statement of Need and Fiscal and Economic Impact
G. Land Use Evaluation Statement

Available Upon Request

1. Legal Notice of Hearing
2. Cover Memorandum from Public Notice
3. Rule Implementation Plan
4. Stakeholder Committee Report

Approved:

Section: _____
Ted Kotsakis

Division: _____
Andy Ginsburg

Report Prepared By: Jerry Coffer

Phone: 503-731-3050 E 229

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 256

MOTOR VEHICLES

340-256-0010
Definitions

The definitions in OAR 340-200-0020, 340-204-0010, and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-204-0010, the definition in this rule applies to this division.
(1) "Basic test" means an inspection and maintenance program designed to measure exhaust emission levels during an unloaded idle or an unloaded raised idle mode as described in OAR 340-256-0340.
(2) "Carbon dioxide" means a compound consisting of the chemical formula (CO2).
(3) "Carbon monoxide" means a compound consisting of the chemical formula (CO).
(4) "Certificate of Compliance" means a hard copy or electronic certification issued by a Private Business Fleet, a Public Agency Fleet Vehicle Emission Inspector, a Vehicle Emissions Inspector employed by the Department of Environmental Quality, or an Independent Contractor that the vehicle identified on the certificate is equipped with the required functioning motor vehicle pollution control systems and otherwise complies with the Commission's emission control criteria, standards, and rules.
(5) "Certified Repair Facility" means an automotive repair facility, possessing a current and valid certificate issued by the Department, that employs automotive technicians certified by the Department's Automotive Technician Emission Training Program (ATETP).
(6) "Clean-Screening" means a procedure by which the Department determines that a vehicle has acceptable emissions and then allows the vehicle owner to bypass the traditional centralized emissions inspection station test. The Department's decision may be the result of remotely sensing the emissions, the status of emissions equipment, or another means determined by the Department.
(7) "Commission" means the Environmental Quality Commission.
(8) "Crankcase emissions" means substances emitted directly to the atmosphere from any opening leading to the crankcase of a motor vehicle engine.
(9) "Dealer" means any person who is engaged wholly or in part in the business of buying, selling, or exchanging, either outright or on conditional sale, bailment lease, chattel mortgage, or otherwise, motor vehicles.
(10) "Dealership" means a business involved in the sale of vehicles that is franchised with an automobile manufacturer as defined in ORS 650.120(1).

(11) "Department" means the Department of Environmental Quality.
(12) "Diesel motor vehicle" means a motor vehicle powered by a compression-ignition internal combustion engine.
(13) "Director" means the director of the Department.
(14) "DMV" means the Driver and Motor Vehicle Division of the Oregon Department of Transportation.
(15) "Electric vehicle" means a motor vehicle that uses a propulsive unit powered exclusively by electricity.
(16) "Emissions Inspection Station" means an inspection facility, operated by the Department of Environmental Quality or an Independent Contractor, for the purpose of conducting emissions inspections of all vehicles required to be inspected pursuant to this Division.
(17) "Enhanced test" means an inspection and maintenance program designed to measure exhaust and fuel evaporative system emissions levels using a loaded transient driving cycle and other measurement techniques as described in OAR 340-256-0350.
(18) "Exhaust emissions" means substances emitted into the atmosphere from any opening downstream from the exhaust ports of a motor vehicle engine.
(19) "Factory-installed motor vehicle pollution control system" means a motor vehicle pollution control system installed by the vehicle or engine manufacturer to comply with United States motor vehicle emission control laws and regulations.
(20) "Gas analytical system" means a device that measures the amount of contaminants in the exhaust emissions of a motor vehicle, and that has been issued a license by the Department pursuant to OAR 340-256-0450 and ORS 468A.380.
(21) "Gaseous fuel" means, but is not limited to, liquefied petroleum gases and natural gases in liquefied or gaseous forms.
(22) "Gasoline motor vehicle" means a motor vehicle powered by a spark-ignition internal combustion engine.
(23) "GPM" means Grams Per Mile.
(24) "Gross vehicle weight rating" or "GVWR" means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.
(25) "Heavy duty motor vehicle" means any motor vehicle rated at more than 8500 pounds GVWR or that has an actual vehicle curb weight as delivered to the ultimate purchaser of 6000 pounds or over.
(26) "Hydrocarbon gases" means a class of chemical compounds consisting of hydrogen and carbon.
(27) "Idle speed" means the unloaded engine speed when accelerator pedal is fully released.
(28) "Independent Contractor" means any person with whom the Department enters into an agreement providing for the construction, equipment, maintenance, personnel, management or operation of emissions inspection stations or activities pursuant to ORS 468A.370.
(29) "Inspection and Maintenance Program (I/M) means a program of conducting

regular inspections of motor vehicles, including measurement of air contaminants in the vehicle exhaust and an inspection of emission control systems, to identify vehicles that do not meet the standards of this Division or that have malfunctioning, maladjusted or missing emission control systems, and, when necessary, of requiring the repair or adjustment of vehicles to make the emission control systems function as intended and to reduce tailpipe emissions of air contaminants.
(30) "In-use motor vehicle" means any motor vehicle ~~which~~that is not a new motor vehicle.
(31) "Light-duty motor vehicle" means any motor vehicle rated at 8500 pounds GVWR or less and has an actual vehicle curb weight as delivered to the ultimate purchaser of under 6000 pounds.
(32) "Medford-Ashland Air Quality Maintenance Area (AQMA)" has the meaning given in OAR 340-204-0010.
(33) "Model year" means the annual production period of new motor vehicles or new motor vehicle engines designated by the calendar year in which such period ends. If the manufacturer does not designate a production period, the model year with respect to such vehicles or engines means the 12-month period beginning January of the year in which production thereof begins.
(34) "Motorcycle" means any motor vehicle, including mopeds, having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground and having a mass of 680 kilograms (1500 pounds) or less with manufacturer recommended fluids and nominal fuel capacity included.
(35) "Motor vehicle" means any self-propelled vehicle used for transporting persons or commodities on public roads.
(36) "Motor vehicle pollution control system" means equipment designed for installation on a motor vehicle for the purpose of reducing the pollutants emitted from the vehicle, or a system or engine adjustment or modification that causes a reduction of pollutants emitted from the vehicle, or a system or device that inhibits the introduction of fuels that can adversely affect the overall motor vehicle pollution control system.
(37) "Motor Vehicle Fleet Operation" means ownership, control, or management or any combination thereof by any person of five or more motor vehicles.
(38) "New motor vehicle" means a motor vehicle whose equitable or legal title has never been transferred to a person who in good faith purchases the motor vehicle for purposes other than resale.
(39) "Noise level" means the sound pressure level measured by use of metering equipment with an "A" frequency weighting network and reported as dBA.
(40) "OBD" means the On Board Diagnostic system in a vehicle that tracks the effectiveness of the vehicle's emissions control systems. These OBDII (or higher systems) have typically been placed on 1996 and newer motor vehicles.
(41) "OBD Test" means an emissions related test in which the vehicle's On Board Diagnostic computer is downloaded, supplying diagnostic information to evaluate the effectiveness of the vehicle emissions control systems.

(42) "On-Site Vehicle Test" means an emissions related test that is conducted at the vehicle owner's location. Such test will be performed by DEQ using DEQ's test equipment and is only available as a service for automobile dealerships.
(43) "Owner" means the person having all the incidents of ownership in a vehicle. Where the incidents of ownership are in different persons, it means the person, other than a security interest holder or lessor, entitled to the possession of a vehicle under a security agreement or a lease for a term of ten or more successive days.
(44) "Opacity" means the degree to which transmitted light is obscured, expressed in percent.
(45) "Oxides of Nitrogen" or NOx means oxides of nitrogen except nitrous oxides.
(46) "Person" means any individual, public or private corporation, political subdivision, agency, board, department, or bureau of the state, municipality, partnership, association, firm, trust, estate, or any other legal entity whatsoever that is recognized by law as the subject of rights and duties.
(47) "Portland Vehicle Inspection Area" has the meaning given in OAR 340-204-0010.
(48) "PPM" means parts per million by volume.
(49) "Private Business Fleet" means ownership by any person of 100 or more Oregon-registered, in-use, motor vehicles, excluding those vehicles held primarily for the purpose of resale.
(50) "Private Business Fleet Vehicle Emissions Inspector" means any person employed on a full-time basis by a Private Business Fleet that possesses a current and valid license issued by the Department pursuant to OAR 340-256-0440 and ORS 468A.380.
(51) "Propulsion exhaust noise" means that noise created in the propulsion system of a motor vehicle that is emitted into the atmosphere from any opening downstream from the exhaust ports. This definition does not include exhaust noise from vehicle auxiliary equipment such as refrigeration units powered by a secondary motor.
(52) "Public Agency Fleet" means ownership of 50 or more government-owned vehicles registered pursuant to ORS 805.040.
(53) "Public Agency Fleet Vehicle Emissions Inspector" means any person employed on a full-time basis by a Public Agency Fleet that possesses a current and valid license issued by the Department pursuant to OAR 340-256-0440 and ORS 468A.380.
(54) "Public roads" means any street, alley, road, highway, freeway, thoroughfare, or section thereof used by the public or dedicated or appropriated to public use.
(55) "Regional Authority" means a regional air quality control authority established under the provisions of ORS 468A.005 to 468A.035, 468A.075, 468A.100 to 468A.130, and 468A.140 to 468A.175.
(56) "Remote Sensing" means a technique for determining the level of a vehicle's emissions without connecting equipment directly to the vehicle. The vehicle's emissions can be determined by either optically measuring the pollutants in the vehicle's exhaust plume, by remotely receiving a vehicle's emissions diagnostic

information, or by other means determined by the Department.
(57) "Ringlemann Smoke Chart" means the Ringlemann Smoke Chart with instructions for use as published in May, 1967, by the U.S. Department of Interior, Bureau of Mines.
(58) "RPM" means engine crankshaft revolutions per minute.
(59) "Self-Service Test Lane" means a technique for vehicle testing offered by the Department where the vehicle owner or representative can perform an emissions test on the vehicle at a facility provided by the Department using remote sensing, plug-in OBD emissions testing, or other means designated by the Department.
(60) "Two-stroke cycle engine" means an engine in which combustion occurs, within any given cylinder, once each crankshaft revolution.
(61) "Vehicle Emission Inspector" means any person employed by the Department or an Independent Contractor that possesses a current and valid license issued by the Department pursuant to OAR 340-256-0440 and ORS 468A.380.
(62) "Visible Emissions" means those gases or particulates, excluding uncombined water, that separately or in combination are visible upon release to the outdoor atmosphere.
[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 467.030 & 468A.360
Stats. Implemented: ORS 467.030 & 468A.350 - ORS 468A.400
Hist.: [DEQ 8, f. 4-7-70, ef. 5-11-70; DEQ 4-1993, f. & cert. ef. 3-10-93]; [DEQ 89, f. 4-22-75, ef. 5-25-75; DEQ 139, f. 6-30-77, ef. 7-1-77; DEQ 9-1978, f. & ef. 7-7-78; DEQ 22-1979, f. & ef. 7-5-79; DEQ 18-1980, f. & ef. 6-25-80; DEQ 12-1982, f. & ef. 7-21-82; DEQ 23-1984, f. 11-19-84, ef. 4-1-85; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1996, f. & cert. ef. 11-26-96]; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-024-0005 & 340-024-0305; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 11-2001, f. & cert. ef. 10-4-01; DEQ 14-2003, f. & cert. ef. 10-24-03

Visible Emissions

340-256-0100
Visible Emissions -- General Requirements, Exclusions

(1) No person ~~shall~~may operate, drive, or cause or permit to be driven or operated any motor vehicle upon a public street or highway ~~which~~that emits into the atmosphere any visible emission.
(2) Excluded from this rule are those motor vehicles:
(a) Powered by compression ignition or diesel cycle engines;
(b) Excluded by written order of the Department by ORS 468A.075.
(3) No person may operate, drive, or cause or permit to be driven or operated any motor vehicle upon a public street or highway if any element of the factory-installed motor vehicle pollution control system has been modified or altered in such a manner that decreases its efficiency or effectiveness in controlling air pollution in violation of ORS 815.305, except as noted in ORS 815.305(2).

Stat. Auth.: ORS 468 & ORS 468A & ORS 815
Stats. Implemented: ORS 468A.360
Hist.: DEQ 8, f. 4-7-70, ef. 5-11-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-024-0010

340-256-0130

Motor Vehicle Fleet Operation

(1) ~~The Department may, by written notice, require any motor vehicle fleet operation to certify annually that its motor vehicles are maintained in good working order, and if applicable, in accordance with motor vehicle manufacturer's specifications and maintenance schedule as may or tend to affect visible emissions. R~~Motor vehicle fleet operation records pertaining to observations, tests, maintenance, and repairs performed to control or reduce visible emissions from individual motor vehicles ~~shall~~ must be available for review and inspection by the Department.

(2) The Department, by written notice, may require any motor vehicle of a motor vehicle fleet operation to be tested for compliance with OAR 340-256-0100 and 340-256-0110.

(3) A regional authority, within its territory, may perform the functions of the Department as set forth in sections (1) and (2) of this rule, upon written directive of the Department permitting such action.

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468A.360
Hist.: DEQ 8, f. 4-7-70, ef. 5-11-70; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-024-0025

Emission Control System Inspection

340-256-0300

Scope

Pursuant to ORS 467.030, 468A.350 to 468A.400, 803.350, and 815.295 to 815.325, OAR 340-256-0300 through 340-256-0465 establish the criteria, methods, and standards for inspecting motor vehicles to determine eligibility for obtaining a Certificate of Compliance or inspection. Any person subject to these rules must obtain a Certificate of Compliance as required under ORS 803.350. Any person seeking an exemption from the inspection requirements of this rule must prepare and submit to the Department or DMV a statement describing the grounds for the exemption on forms as provided by the Department or DMV.

(1) Except as provided in sections (3) and (4) of this rule, any person owning or leasing 1975 and newer model year vehicles in the Portland Vehicle Inspection Area must ensure the vehicles meet the requirements of one of the following emission tests:

(a) Basic test. A light duty vehicle ~~that is a 1975 through 1980~~ of the model years specified in this paragraph must meet the basic test requirements of OAR 340-256-0340, 340-256-0380, 340-256-0400, and 340-256-0430.

(A) Until July 1, 2005, model years 1975 through 1980;

(B) Beginning July 1, 2005 and until July 1, 2006, model years 1975 through 1988;

(C) Beginning July 1, 2006 and until January 1, 2007, model years1975 through 1992;

(D) Beginning January 1, 2007, model years 1975 through 1995.

(b) Enhanced Test. A light duty vehicle ~~that is a 1981 through 1995~~of the model years specified in this paragraph must meet the enhanced test requirements of OAR 340-256-0350 and 340-256-0410. These vehicles found to be safe but unable to be dynamometer tested due to drive line configuration and these vehicles equipped with All Wheel Drive (AWD) will meet the basic test requirements of OAR 340-256-0340, 340-256-0380, 340-256-0400, and 340-256-0430.

(A) Until July 1, 2005, model years 1981 through 1995;

(B) Beginning July 1, 2005 and until July 1, 2006, model years1989 through 1995;

(C) Beginning July 1, 2006 and until January 1, 2007, model years 1993 through 1995;

(D) Beginning January 1, 2007, no vehicles will be required to meet the enhanced test requirements of OAR 340-256-0350 and 340-256-0410.

(c) A light duty vehicle that is a 1996 and newer model year must meet the OBD test requirements of OAR 340-256-0355. For those vehicles that cannot be OBD tested due to manufacturer defects in the vehicle (where EPA has not issued an associated recall), vehicle incompatibility with the OBD test system, or other similar manufacturing problems, the vehicle must meet either the enhanced test requirements of OAR 340-256-0350 and 340-256-0410, the basic test requirements of OAR 340-256-0340, 340-356-0380, 340-256-0400, or other test criteria as determined by the Department.

(d) A heavy duty vehicle must meet the basic test requirements of OAR 340-256-0340, 340-256-0390, and 340-256-0420, except gasoline powered heavy duty vehicles equipped with OBDII or higher systems must meet the OBD test requirements of OAR 340-256-0355. For those vehicles that cannot be OBD tested due to manufacturer defects in the vehicle (where EPA has not issued an associated recall), vehicle incompatibility with the OBD test system, or other similar manufacturing problems, the vehicle must meet either the enhanced test requirements of OAR

340-256-0350 and 340-256-0410, the basic test requirements of OAR 340-256-0340, 340-356-0380, 340-256-0400, or other test criteria as determined by the Department.

(2) Except as provided in section (3) of this rule, any person owning or leasing vehicles that are up to 20 model years in age in the Medford-Ashland Air Quality Maintenance Area must ensure the vehicles meet the requirements of one of the following emission tests:

(a) A light duty vehicle that is a 1996 and newer model year must meet the OBD test requirements of OAR 340-256-0355. For those vehicles that cannot be OBD tested due to manufacturer defects in the vehicle (where EPA has not issued an associated recall), vehicle incompatibility with the OBD test equipment, or other similar manufacturing problems, the vehicle must meet the basic test requirements of OAR 340-256-0340, 340-256-0380, 340-256-0400, and 340-256-0430 or other test criteria as determined by the Department.

(b) A light-duty vehicle that is 20 model years in age through 1995 model year must meet the basic test requirements of OAR 340-256-0340, 340-256-0380, 340-256-0390, 340-256-0400, and 340-256-0420.

(c) A heavy duty vehicle must meet the basic test requirements of OAR 340-256-0340, 340-256-0390, and 340-256-0420. All gasoline powered heavy duty vehicles equipped with OBDII or higher systems must meet the OBD test requirements of OAR 340-256-0355. For those vehicles that cannot be OBD tested due to manufacturer defects in the vehicle (where EPA has not issued an associated recall), vehicle incompatibility with the OBD test equipment, or other similar manufacturing problems, the vehicle must meet the basic test requirements of OAR 340-256-0340, 340-256-0380, 340-256-0400, and 340-256-0430 or other test criteria as determined by the Department.

(3) The Department may test any gasoline powered heavy duty or light duty vehicle using one of the following procedures as an alternative to the test procedure otherwise required by this rule:

(a) Clean-Screen Testing following the procedures of OAR 340-256-0357 or

(b) Self-Service Testing following the procedures of OAR 340-256-0358.

(4) Vehicle owners may apply for a waiver from the enhanced test requirements in section (1)(b) of this rule and OAR 340-256-0350. Vehicle owners are eligible in the year 2000 if their net household income is less than or equal to that established by multiplying the year 2000 Federal Poverty Guideline amounts by 1.3. For each year after the year 2000, the calculated year 2000 numbers are adjusted using the Oregon Consumer Price Index for the Portland Metro Regional Area. The Department may require Pproof of eligibility and vehicle ownership ~~may be required by the Department~~. Providing false information may result in revocation of the low income waiver. If the Department approves the waiver, the owner must pass the basic motor vehicle emissions test requirements in OAR 340-256-0300(1)(a) and 340-256-0340 and pay the required fees in order to receive a certificate of compliance.

[**NOTE**: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

[ED. NOTE: The chart referenced in this rule is available from the agency.]

Stat. Auth.: ORS 467.030 & 468A.350 - ORS 468A.400

Stats. Implemented: ORS 468A.350-400, 803.350 & 815.295

Hist.: DEQ 89, f. 4-22-75, ef. 5-25-75; DEQ 139, f. 6-30-77, ef. 7-1-77; DEQ 23-1984, f. 11-19-84, ef. 4-1-85; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 25-1996, f. & cert. ef. 11-26-96; DEQ 2-1998, f. & cert. ef. 3-5-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-024-0300; DEQ 4-2000(Temp), f. & cer. ef. 2-17-00 thru 8-9-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 14-2003, f. & cert. ef. 10-24-03

340-256-0310

Government-Owned Vehicle, Permanent Fleet Vehicle and United States Government Vehicle Testing Requirements

(1) All motor vehicles registered as government-owned vehicles under ORS 805.040 ~~which~~that are required to be certified pursuant to ORS 815.300 ~~shall~~must, as means of that certification, obtain a Certificate of Compliance.

~~(a) Government-owned vehicles in a fleet of 50 or more vehicles must be certified annually.~~

~~(b)~~ Government-owned vehicles ~~in a fleet of less than 50 vehicles~~ must be certified biennially~~bi-annually~~.

(2) All motor vehicles registered as permanent fleet vehicles under ORS 805.120 ~~which~~that are required to be certified pursuant to ORS 803.350 and 815.295 to 815.325 ~~shall~~must, as means of that certification, obtain a Certificate of Compliance.

(3) Any motor vehicle ~~which~~that is to be registered under ORS 805.040 or 805.120~~,~~ but is not a new motor vehicle~~, shall obtain~~must have a Certificate of Compliance issued to it before~~prior to~~ it is registered, ~~that registration~~ as required by ORS 803.350 and 815.295 to 815.325.

(4) All motor vehicles owned by the United States Government and operated in the Portland Vehicle Inspection Area or the Medford-Ashland Air Quality Maintenance Area (AQMA) ~~shall~~must ~~annually obtain~~have a Certificate of Compliance issued to it biennially.

(a) United States Government tactical military vehicles are not required to be certified.

(b) Federal installations located within the Portland Area Vehicle Inspection Program and the Medford-Ashland AQMA must provide a listing to the Department of all federal employee-

owned vehicles operated on the installation and demonstrate that these vehicles have complied with this Division. Inspection results ~~shall~~must be reported to the Department on a quarterly basis, and the list ~~is~~ must be updated annually.

(5) For the purposes of providing a staggered certification schedule for vehicles registered as government-owned vehicles under ORS 805.040 or permanent fleet vehicles under ORS 805.120, such schedule ~~shall~~must, except as provided by section (6) of this rule, be on the basis of the final numerical digit contained on the vehicle license plate. Such certification ~~shall~~must be completed by the last day of the month as provided below (last digit and month or year, respectively):

(a) 1 - January;

(b) 2 - February;

(c) 3 - March;

(d) 4 - April;

(e) 5 - May;

(f) 6 - June;

(g) 7 - July;

(h) 8 - August;

(i) 9 - September;

(j) 0 - October;

(k) Even - even numbered years for vehicles that are tested ~~bi-annually~~biennially;

(l) Odd - odd numbered years for vehicles that are tested ~~bi-annually~~biennially.

(6) In order to accommodate a fleet's scheduled maintenance practices, the Department may establish a specific separate schedule for vehicles registered as government-owned vehicles under ORS 805.040 or permanent fleet vehicles under ORS 805.120 if these vehicles are owned by a Public Agency Fleet or Private Business Fleet licensed under OAR 340-256-0440.

(7) Every agency or organization owning vehicles described in this rule ~~shall~~must ~~annually~~ report the following information to the Department, in either electronic or printed form, annually~~to the Department the following information~~:

(a) The vehicle make;

(b) The vehicle model;

(c) The vehicle identification number (VIN);

(d) The number of Certificates of Compliance issued; and

(e) The date on which the motor vehicles were issued Certificates of Compliance.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468A.360 & 468A.363
Stats. Implemented: ORS 468A.365 - ORS 468A.385
Hist.: DEQ 3-1978, f. 3-1-78, ef. 4-1-78; DEQ 19-1983, f. 11-29-83, ef. 12-31-83; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 25-1996, f. & cert. ef. 11-26-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-024-0306

340-256-0340

Light Duty Motor Vehicle and Heavy Duty Gasoline Motor Vehicle Emission Control Test Method for Basic Program

(1) General Requirements:

(a) Vehicles having coolant, oil or fuel leaks or any other such defect that is unsafe to allow the emission test to be conducted ~~shall be~~ must be rejected from the testing area. The Inspector ~~is prohibited from~~ may not conduct~~ing~~ the emissions test until the defects are corrected.

(b) The vehicle transmission ~~is to~~must be placed in neutral gear if equipped with a manual transmission~~,~~ or in park position if equipped with an automatic transmission. The hand or parking brake ~~is to~~must be engaged. If the brake is ~~found to be~~ defective, then wheel chocks ~~are to~~must be placed in front of ~~and~~/or behind the vehicle's tires, or both when appropriate.

(c) All accessories are to be turned off.

(d) The Inspector must insure that the motor vehicle is equipped with the required functioning motor vehicle pollution control system in accordance with the criteria of OAR 340-256-0380 or OAR 340-256-0390. For vehicles not meeting this criteria upon completion of the testing process, the Inspector ~~shall~~must issue a report to the driver stating all reasons for noncompliance.

(e) Exhaust gas sampling algorithm. The analysis of exhaust gas concentrations will begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations will be analyzed at a rate of two times per second. The measured value for pass/fail determinations will be a simple running average of the measurements taken over five seconds.

(f) Pass/fail determinations. A pass or fail determination will be made for each applicable test mode based on a comparison of the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420 and the measured value for HC and CO and described in subsection (1)(a) of this rule. A vehicle will pass the test mode if any pair of simultaneous values for HC and CO are below or equal to the applicable standards. A vehicle will fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards.

(g) Void test conditions. ~~The test will immediately end and any exhaust gas measurements will be voided.~~ If the measured concentration of CO plus CO_2 falls below the applicable standards listed in OAR 340-256-0380 and OAR 340-256-0390, or if the vehicle's engine stalls at any time during the test sequence, the test will end, and any exhaust gas measurements will be voided.

(h) Multiple exhaust pipes. Exhaust gas concentrations from vehicle engines equipped with multiple exhaust pipes will be sampled simultaneously.

(i) The test will be ~~immediately~~ terminated upon reaching the overall maximum test time.

(2) Test sequence.

(a) The test sequence will consist of a first-chance test and a second chance test as follows:

(A) The first-chance test, as described in section (3) of this rule, will consist of an idle mode followed by a high-speed mode.

(B) The second-chance high-speed mode, as described in section (3) of this rule, will immediately follow the first-chance high-speed mode. It will be performed only if the vehicle fails the first-chance test. The second-chance idle mode, as described in section (4) of this rule, will follow the second chance high speed mode and be performed only if the vehicle fails the idle mode of the first-chance test.

(b) The test sequence will begin only after the following requirements are met:

(A) The vehicle will be tested in as-received condition with the transmission in neutral or park and all accessories turned off. The engine will be at normal operating temperature (as indicated by a temperature gauge, temperature lamp, touch test on the radiator hose, or other visual observation for overheating).

(B) The tachometer will be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(C) The sample probe will be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension will be used.

(D) The measured concentration of CO plus CO_2 will be greater than or equal to the applicable standards listed in OAR 340-256-0380 and OAR 340-256-0390.

(3) First-chance test and second-chance high-speed mode. The test timer will start (tt=0) when the conditions specified in section (2)(b) of this rule are met. The first-chance test and second-chance high-speed mode will have an overall maximum test time of 390 seconds (tt=390). The first-chance test will consist of an idle mode followeding immediately by a high-speed mode. ~~This is followed immediately by a~~An additional second-chance high-speed mode will follow immediately, if necessary.

(a) First-chance idle mode.

(A) Except for diesel vehicles, the mode timer will start (mt=0) when the vehicle engine speed is between 550 and 1300 rpm. If engine speed exceeds 1300 rpm or falls below 550 rpm, the mode timer will reset to zero and resume timing. The minimum idle mode length will be determined as described in section (3)(a)(B) of this rule. The maximum idle mode length will be 30 seconds (mt=30) elapsed time.

(B) The pass/fail analysis will begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination will be made for the vehicle, and the mode will be terminated as follows:

(i) ~~The vehicle will pass the idle mode and the mode will be immediately terminated if~~If, ~~prior to~~before an elapsed time of 30 seconds (mt=30), measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420, the vehicle will pass the idle mode, and the mode will be terminated.

(ii) The vehicle will fail the idle mode and the mode will be terminated if the provisions of section (3)(a)(B)(i) of this rule ~~is~~are not satisfied within an elapsed time of 30 seconds (mt=30).

(iii) The vehicle may fail the first-chance and second-chance test will be omitted if no exhaust gas concentration less than 1800 ppm HC is found by an elapsed time of 30 seconds (mt=30).

(b) First-chance and second-chance high-speed modes. This mode includes both the first-chance and second-chance high-speed modes, and follows immediately upon termination of the first-chance idle mode.

(A) Except for diesel vehicles, the mode timer will reset (mt=0) when the vehicle engine speed is between 2200 and 2800 rpm. If engine speed falls below 2200 rpm or exceeds 2800 rpm for more than two seconds in one excursion, or more than six seconds over all excursions within 30 seconds of the final measured value used in the pass/fail determination, the measured value will be invalidated and the mode continued. If any excursion lasts for more than ten seconds, the mode timer will reset to zero (mt=0) and timing resumed. The minimum high-

speed mode length will be determined as described under paragraphs (3)(b)(B) and (C) of this rule. The maximum high-speed mode length will be 180 seconds (mt=180) elapsed time.

(B) Ford Motor Company and Honda vehicles. For 1981-1987 model year Ford Motor Company vehicles and 1984-1985 model year Honda Preludes, the pass/fail analysis will begin after an elapsed time of 10 seconds (mt=10) using the following procedure.

(i) A pass or fail determination, as described below, will be used, for vehicles that passed the idle mode, to determine whether the high-speed test should be terminated ~~prior to~~before or at the end of an elapsed time of 180 seconds (mt=180).

(I) ~~The vehicle will pass the high-speed mode and the test will be immediately terminated i~~If, ~~prior to~~before an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420, the vehicle will pass the high-speed mode, and the test will be terminated.

(II) Restart. If at an elapsed time of 30 seconds (mt=30) the measured values are greater than the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420, the vehicle's engine will be shut off for not more than 10 seconds after returning to idle and then will be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=30) and resume upon engine restart. The pass/fail determination will resume as follows after 40 seconds have elapsed (mt=40).

(III) ~~The vehicle will pass the high-speed mode and the test will be immediately terminated i~~If, at any point between an elapsed time of 40 seconds (mt=40) and 60 seconds (mt=60), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420, the vehicle will pass the high-speed mode, and the test will be terminated.

(IV) ~~The vehicle will pass the high-speed mode and the test will be immediately terminated i~~If, at a point between an elapsed time of 60 seconds (mt=60) and 180 seconds (mt=180), both HC and CO emissions continue to decrease and measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 or OAR 340-256-0420, the vehicle will pass the high-speed mode, and the test will be terminated .

(V) ~~The vehicle will fail the high-speed mode, and the test will be terminated, if neither of sections (3)(b)(B)(i)(I), (III) or (IV) of this rule is not satisfied by an elapsed time of 180 seconds (mt=180).~~ If neither of sections (3)(b)(B)(i)(I), (III) or (IV) of this rule is satisfied by an elapsed time of 180 seconds (mt=180), the vehicle will fail the high-speed mode, and the test will be terminated.

(ii) A pass or fail determination will be made for vehicles that failed the idle mode and the high-speed mode terminated at the end of an elapsed time of 180 seconds (mt=180) as follows:

(I) The vehicle will pass the high-speed mode, and the mode will be terminated at an elapsed time of 30 seconds (mt=30), if any measured values of HC and CO exhaust gas concentrations during the high-speed mode are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(II) Restart. If at an elapsed time of 30 seconds (mt=30) the measured values of HC and CO exhaust gas concentrations during the high-speed mode are greater than the applicable short test standards as described in subsection (1)(b) of this rule, the vehicle's engine will be shut off for not more than 10 seconds after returning to idle and then will be restarted. The probe may be removed from the tailpipe or the sample pump turned off it necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=30) and resume upon engine restart. The pass/fail determination will resume as follows after 40 seconds (mt=40) have elapsed.

(III) The vehicle will pass the high-speed mode, and the mode will be terminated at an elapsed time of 60 seconds (mt=60), if any measured values of HC and CO exhaust gas concentrations during the high-speed mode are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(IV) ~~The vehicle will pass the high-speed mode and the test will be immediately terminated if~~If, at a point between an elapsed time of 60 seconds (mt=60) and 180 seconds (mt=180), both HC and CO emissions continue to decrease, and measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 or OAR 340-256-0420, the vehicle will pass the high-speed mode, and the test will be terminated.

(V) ~~The vehicle will fail the high-speed mode and the test will be terminated if~~If neither of sections (3)(b)(B)(ii)(I), (III) or (IV) of this rule is satisfied by an elapsed time of 180 seconds (mt=180), the vehicle will fail the high-speed mode, and the test will be terminated.

(C) All other light-duty vehicles. The pass/fail analysis for vehicles not specified in section (3)(b)(B) of this rule will begin after an elapsed time of 10 seconds (mt=10) using the following procedure.

(i) A pass or fail determination will be used for 1981 and newer model year vehicles that passed the idle mode, to determine whether the high-speed mode should be terminated ~~prior to~~before or at the end of an elapsed time of 180 seconds (mt=180). For pre-1981 model year vehicles, no high speed idle mode test will be performed.

(I) ~~The vehicle will pass the high-speed mode and the test will be immediately terminated if~~If, ~~prior to~~before an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420, the vehicle will pass the high-speed mode, and the test will be terminated.

(II) ~~The vehicle will pass the high-speed mode and the test will be immediately terminated if~~If emissions continue to decrease after an elapsed time of 30 seconds (mt=30) and if, at any point between an elapsed time of 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420, the vehicle will pass the high-speed mode, and the test will be terminated.

(III) The vehicle will fail the high-speed mode, and the test will be terminated, if neither of the provisions of section (3)(b)(C)(i)(I) or (II) of this rule is satisfied.

(ii) A pass or fail determination will be made for 1981 and newer model year vehicles that failed the idle mode and the high-speed mode terminated ~~prior to~~before or at the end of an elapsed time of 180 seconds (mt=180). For pre-1981 model year vehicles, the duration of the high speed idle mode will be 30 seconds, and no pass or fail determination will be used at the high speed idle mode.

(I) The vehicle will pass the high-speed mode, and the mode will be terminated at an elapsed time of 30 seconds (mt=30), if any measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(II) ~~The vehicle will pass the high-speed mode and the test will be immediately terminated if~~If emissions continue to decrease after an elapsed time of 30 seconds (mt=30) and if, at any point between an elapsed time of 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable standards listed in OAR 340-256-0400 and OAR 340-256-0420, the vehicle will pass the high-speed mode, and the test will be terminated.

(III) ~~The vehicle will fail the high speed mode and test will be terminated if~~If neither of the provisions of section (3)(b)(C)(ii)(I) or (II) of this rule is satisfied, the vehicle will fail the high speed mode, and the test will be terminated.

(4) Second-chance idle mode. If the vehicle fails the first-chance idle mode and passes the high-speed mode, the mode timer will reset to zero (mt=0), and a second chance idle mode will commence. The second-chance idle mode will have an overall maximum mode time of 30 seconds (mt=30). The test will consist on an idle mode only.

(a) The engines of 1981-1987 Ford Motor Company vehicles and 1984-1985 Honda Preludes will be shut off for not more than 10 seconds and restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure.

(b) Except for diesel vehicles, the mode timer will start (mt=0) when the vehicle engine speed is between 550 and 1300 rpm. If the engine speed exceeds 1300 rpm or falls below 550 rpm the mode timer will reset to zero and resume timing. The minimum second-chance idle mode length will be determined as described in section (4)(c) of this rule. The maximum second-chance idle mode length will be 30 seconds (mt=30) elapsed time.

(c) The pass/fail analysis will begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination will be made for the vehicle and the second-chance mode will be terminated as follows:

(A) ~~The vehicle will pass the second-chance idle mode and the test will be immediately terminated if~~If, ~~prior to~~before an elapsed time of 30 seconds (mt=30), any measured values are less than or equal to 100 ppm HC and 0.5 percent CO, the vehicle will pass the second-chance idle mode and the test will be terminated.

(B) The vehicle will pass the second-chance idle mode, and the test will be terminated at the end of an elapsed time of 30 seconds (mt=30) if, ~~prior to~~before that time, the criteria of paragraph (4)(c)(A) of this rule are not satisfied, and the measured values during the time period between 25 and 30 seconds (mt=25-30) are less than or equal to the applicable short test standards listed in OAR 340-256-0400 and OAR 340-256-0420.

(C) ~~The vehicle will fail the second-chance idle mode and the test will be terminated if~~If neither of the provisions of sections (4)(c)(A) or (B) of this rule are satisfied by an elapsed time of 30 seconds (mt=30), the vehicle will fail the second-chance idle mode, and the test will be terminated .

(5) If the vehicle is capable of being operated with both gasoline and gaseous fuels, then the steps in section (2) of this rule are to be followed so that emission test results are obtained from both fuels.

~~(6) The Inspector must remove the fuel cap from the vehicle and test it to insure the cap is capable of properly sealing the fuel tank's fumes. The Inspector must insert the cap onto a container with fittings representing that of the vehicle's fuel filler pipe. The container will be pressurized with inert gas to detect any leaks. The gas cap leak test standard will be equivalent to the United States Environmental Protection Agency (EPA) leak down standard; however, the time for leak down or the leak detection method may vary from the EPA specified time and method. The provisions of this section will apply only within the Portland Vehicle Inspection Area.~~

(~~6~~7) If ~~it is judged~~the inspector suspects that the vehicle ~~may be~~is emitting propulsion exhaust noise in excess of the noise standards of OAR 340-256-0430, adopted pursuant to ORS 467.030, then a noise measurement ~~is to~~will be conducted and recorded while the engine is at the speed specified in section (3)(b)(A) of this rule. A reading from each exhaust outlet ~~shall~~must be recorded at the raised engine speed. This provision for noise inspection ~~shall apply~~applies only within the Portland Vehicle Inspection Area.

(78) If ~~it is determined that~~ the vehicle complies with OAR 340-256-0380 through 340-256-0430, ~~and~~ ORS 467.030, 468A.350 through 468A.400, ORS 803.350, and 815.295 through 815.325, then, following receipt of the required fees, the Private Business Fleet Vehicle Emission Inspector, Public Agency Fleet Vehicle Emission Inspector, or Vehicle Emission Inspector ~~shall~~must issue the required Certificate of Compliance.

[**NOTE:** This rule~~, excluding section (6)~~ is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468A.360
Stats. Implemented: ORS 468A.350 - ORS 468A.385
Hist.: DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1996, f. & cert. ef. 11-26-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-024-0309

340-256-0350

Light Duty Motor Vehicle Emission Control Test Method for Enhanced Program

(1) General Requirements.

(a) Data Collection. The following information ~~shall~~must be determined for the vehicle being tested and used to automatically select the dynamometer inertia and power absorption settings:

(A) Vehicle type: LDPC, LDT1 or LDT2;

(B) Chassis model year;

(C) Make;

(D) Model;

(E) Gross vehicle weight rating; and

(F) Number of cylinders, or cubic inch displacement of the engine.

(b) Ambient Conditions. The ambient temperature, absolute humidity, and barometric pressure ~~shall~~must be recorded continuously during the transient driving cycle or as a single set of readings up to 4 minutes before the start of the transient driving cycle.

(c) Restart. If shut off, the vehicle ~~shall~~must be restarted as soon as possible before the test and ~~shall~~must be running at least 30 seconds ~~prior to~~before the transient driving cycle.

(2) Pre-inspection and Preparation.

(a) Accessories. The Inspector must ~~i~~ensure that all accessories (air conditioning, heat, defogger, radio, automatic traction control if switchable, etc.) will be turned off.

(b) Leaks. The vehicle ~~shall~~must be inspected for exhaust leaks. Vehicles with leaking exhaust systems ~~shall~~will be rejected from testing. Vehicles having coolant, oil or fuel leaks or any other such defect that is unsafe to allow the emission test to be conducted ~~shall~~will be rejected from the testing area. The Inspector is prohibited from conducting the emission test until the defects are corrected.

(c) Operating Temperature. Vehicles in overheated condition ~~shall~~will be rejected from testing.

(d) Tire Condition. Vehicles will be rejected from testing if the tire cords, ~~or~~ bubbles, cuts, or other damage are visible. Vehicles will be rejected that have space-saver spare tires on the drive axle. Vehicles may be rejected that do not have reasonably sized tires. Vehicle tires will be visually checked for adequate pressure level. Drive wheel tires that appear low will be inflated to approximately 30 psi~~,~~ or to tire sidewall pressure~~,~~ or manufacturers recommendations.

(e) Ambient Background. Background concentrations of hydrocarbons, carbon monoxide, oxides of nitrogen, and carbon dioxide (HC, CO, NO_x, and CO_2, respectively) will be sampled to determine background concentration of constant volume sampler dilution air. The sample will be taken for a minimum of 15 seconds within 120 seconds of the start of the transient driving cycle, using the same analyzers used to measure tailpipe emissions. Average readings over the 15 seconds for each gas will be recorded in the test record. Testing will be prevented until the average ambient background levels are less than 20 ppm HC, 35 ppm CO, and 2 ppm NO_x.

(f) Sample System Purge. While a lane is in operation, the CVS will continuously purge the CVS hose between tests, and the sample system will be continuously purged when not taking measurements.

(g) Negative Values. Negative gram per second readings will be integrated as zero and recorded as such.

(3) Equipment Positioning and Setting.

(a) Roll Rotation. The vehicle will be maneuvered onto the dynamometer with the drive wheels positioned on the dynamometer rolls. ~~Prior to~~Before ~~test initiation~~ the test begins, the rolls will be rotated until the vehicle laterally stabilizes on the dynamometer. Drive wheel tires will be dried if necessary to prevent slippage during the initial acceleration.

(b) Purge Equipment. After the vehicle is positioned on the dynamometer, the vehicle gas cap is removed. A replacement cap with a ported hole through the cap is installed on the vehicle and the tubing to duct Helium to vehicle is connected to the port on the replacement cap. Helium flow into the cap is computer controlled to match the timing of the transient driving cycle. The evaporative canister purge will be measured during the transient driving cycle by inputting Helium under pressure into the test vehicle's fuel tank. Helium is measured in the vehicle exhaust

with a detection device and accumulated volume of Helium is compared with the standard of 0.45 liters of Helium to determine pass/fail.

(c) Cooling System. Testing will not begin until the test-cell cooling system is positioned and activated. The cooling system will be positioned to direct air to the vehicle cooling system, but will not be directed at the catalytic converter.

(d) Vehicle Restraint. Testing will not begin until the vehicle is restrained and, for front-wheel drive vehicles, ~~. In addition,~~ the parking brake is ~~will be set for front wheel drive vehicles prior to the start of the test~~.

(e) Dynamometer Settings. Dynamometer power absorption and inertia weight settings will be automatically chosen from an EPA supplied electronic look-up table that will be referenced based upon the vehicle identification information obtained in section (1)(a) of this rule. Vehicles not listed will be tested using default power absorption and inertia settings as follows: [Table not included. See ED. NOTE.]

(f) Exhaust Collection System. The exhaust collection system will be positioned to ~~i~~ensure that ~~complete capture of~~ the entire exhaust stream from the tailpipe is captured during the transient driving cycle.

(4) Vehicle Emission Test Sequence.

(a) Transient Driving Cycle. The Oregon enhanced test cycle consists of a single 31 second symmetrical peak with a maximum speed of 30.1 miles per hour (MPH). If the vehicle exceeds the emission standards established in OAR 340-256-0410, additional cycles up to a maximum of four (4) will be driven. If the vehicle passes the standards during any of the four cycles, the test will be terminated. After ~~receipt of~~ receiving the required fees, the Inspector will issue the required Certificate of Compliance. If after four cycles the vehicle still has not passed the test, the vehicle fails, ~~an algorithm is will be used to extrapolate the emission readings through a sixth testing cycle. If the algorithm shows the vehicle meets the standards in the hypothetical sixth cycle, the vehicle will~~has passed ~~the enhanced emissions test. The extrapolation algorithm consists of extrapolating the emissions readings linearly from the first four cycles to the hypothetical sixth cycle using least squares regression line.~~ The vehicle will be driven over the following cycle: [Table not included. See ED. NOTE.]

(b) Driving Trace. The Inspector will follow an electronic, visual depiction of the time/speed relationship of the transient driving cycle (hereinafter, the trace). The visual depiction of the trace will be of sufficient magnification and adequate detail to allow accurate tracking by the Inspector and will permit the Inspector to anticipate upcoming speed changes. The trace will also clearly indicate gear shifts as specified in section (4)(c) of this rule.

(c) Shift Schedule. For vehicles with manual transmissions, Inspectors will shift gears according to the following shift schedule: [Table not included. See ED. NOTE.] Gear shifts will occur at the points in the driving cycle where the specified speeds are obtained.

(d) Speed Excursion Limits. Speed excursion limits will apply as follows:

(A) The upper limit is 2 mph higher than the highest point on the trace within 1 second of the given time.

(B) The lower limit is 2 mph lower than the lowest point on the trace within 1 second of the given time.

(C) Speed variations greater than the tolerances (such as may occur during gear changes) are acceptable provided they occur for no more than 2 seconds on any occasion.

(D) Speeds lower than those prescribed during accelerations are acceptable provided the vehicle is operated at maximum available power during such accelerations until the vehicle speed is within the excursion limits.

(E) Exceedances of the limits in (A) through (C) of this section will automatically result in a void test. The station manager can override the automatically void ~~of a~~ test if the manager determines that the conditions specified in section (4)(d)(D) of this rule occurred. Tests will be aborted if the upper excursion limits are exceeded. Tests may be aborted if the lower limits are exceeded.

(e) Speed Variation Limits.

(A) A linear regression of feedback value on reference value will be performed on each transient driving cycle for each speed using the method of least squares, with the best fit equation having the form: $y = mx + b$, where:

(i) y = The feedback (actual) value of speed;

(ii) m = The slope of the regression line;

(iii) x = The reference value; and

(iv) b = The y-intercept of the regression line.

(B) The standard error of estimate (SE) of y on x will be calculated for each regression line. A transient driving cycle lasting the full 31 seconds that exceeds the following criteria will be void and the test will be repeated:

(i) SE = 2.0 mph maximum.

(ii) m = 0.96–1.01.

(iii) r2 = 0.97 minimum.

(iv) b = ±2.0 mph.

(f) Distance Criteria. The actual distance traveled for the transient driving cycle and the equivalent vehicle speed (i.e., roll speed) will be measured. If the absolute difference between the measured distance and the theoretical distance for the actual test exceeds 0.05 miles, the test will be void.

(g) Vehicle Stalls. Vehicle stalls during the test will result in a void and a new test. Three (3) stalls will result in test failure or rejection from testing.

(h) Dynamometer Controller Check. For each test, the measured horsepower, and inertia if electric simulation is used, will be integrated from 55 seconds to 81 seconds (divided by 26 seconds), and compared with the theoretical road-load horsepower (for the vehicle selected) integrated over the same portion of the cycle. The same procedure will be used to integrate the horsepower between 189 seconds to 201 seconds (divided by 12 seconds). The theoretical horsepower will be calculated based on the observed speed during the integration interval. If the absolute difference between the theoretical horsepower and the measured horsepower exceeds 0.5 hp, the test will be void. Alternate error checking methods may be used if shown to be equivalent.

(i) Inertia Weight Selection. Operation of the inertia weight selected for the vehicle will be verified as specified in OAR 340-256-0460. For systems employing electrical inertia simulation, an algorithm identifying the actual inertia force applied during the transient driving cycle will be used to determine proper inertia simulation. For all dynamometers, if the observed inertia is more than 1% different from the required inertia, the test will be void.

(j) Constant Volume Sampling (CVS) Operation. The CVS operation will be verified for each test for a Critical Flow Venturi (CFV) type CVS by measuring either the absolute pressure difference across the venturi or measuring the blower vacuum behind the venturi for minimum levels needed to maintain choke flow for the venturi design. The operation of an Subsonic Venturi (SSV) type CVS will be verified throughout the test by monitoring the difference in pressure between upstream and throat pressure. The minimum values will be determined from system calibrations. Monitored pressure differences below the minimum values will void the test.

(k) Fuel Economy. For each test, the health of the overall analysis system will be evaluated by checking a test vehicle's fuel economy for reasonableness, relative to upper and lower limits, representing the range of fuel economy values normally encountered for the test inertia and horsepower selected. For each inertia selection, the upper fuel economy limit will be determined using the lowest horsepower setting typically selected for the inertia weight, along with statistical data, test experience, and engineering judgment. A similar process for the lower fuel economy limit will be used with the highest horsepower setting typically selected for the inertia weight. For test inertia selections where the range of horsepower settings is greater than 5 horsepower, at least two sets of upper and lower fuel economy limits will be determined and appropriately used for the selected test inertia. Tests with fuel economy results in excess of 1.5 times the upper limit will result in a void test.

(5) Emission Measurements.

~~(a) Exhaust Measurement.~~ The emission analysis system will sample and record dilute exhaust HC, CO, CO_2, and NO_x during the transient driving cycle.

~~(b) Purge Measurement. The analysis system will sample and record the purge flow by measuring Helium concentration observed in the vehicle exhaust sample. The total volume of Helium flow will be calculated over the course of the actual driving cycle.~~

~~(c) Pressure Measurement. The Department may include the fuel system vapor leak test as an element of the evaporative control system test if it is necessary to maintain the ozone standard as specified in OAR 340-202-0090.~~

~~(d) Fuel Cap test. The Inspector must remove the fuel cap from the vehicle and test it to insure the cap is capable of properly sealing the fuel tank's fumes. The Inspector must insert the cap onto a container with fittings representing that of the vehicle's fuel filler pipe. The container will be pressurized with inert gas to detect any leaks. The gas cap leak test standard will be equivalent to the United States Environmental Protection Agency (EPA) leak down standard; however, the time for leak down or the leak detection method may vary from the EPA specified time and method.~~

(6) If it is determined that the vehicle complies with OAR 340-256-0400 and ORS 815.310 through 815.325, then, after receiving ~~following receipt of~~ the required fees, the Private Business Fleet Vehicle Emission Inspector, Public Agency Fleet Vehicle Emission Inspector, or Vehicle Emission Inspector ~~shall~~must issue the required Certificate of Compliance.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

[ED. NOTE~~Tables~~: The table(s) referred to in this rule are available from the agency.]

Stat. Auth.: ORS 468A.360 & ORS 468A.363
Stats. Implemented: ORS 468A.350 - ORS 468A.385
Hist.: DEQ 25-1996, f. & cert. ef. 11-26-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-024-0312

340-256-0380

Light Duty Motor Vehicle Emission Control Test Criteria for Basic Program

(1) No vehicle emission control test is valid if the vehicle exhaust system leaks in such a manner as to dilute the exhaust gas being sampled by the gas analytical system. For the purpose of the emission control tests conducted at state facilities, except for diesel vehicles, tests are invalid if the exhaust gas is diluted to such an extent that the sum of the carbon monoxide and carbon dioxide

concentrations recorded for the idle speed reading from an exhaust outlet is six percent or less, and on 1975 and newer vehicles with air injection systems seven percent or less.

(2) No vehicle emission control test is valid if the engine idle speed exceeds the manufacturer's idle speed specifications by over 200 RPM.

(3)(a) No vehicle emission control test for a 1975 or newer model vehicle is valid if ~~any~~ the gas cap or catalyst ~~element of the following factory-installed motor vehicle pollution control systems have~~ has been disconnected, plugged, or otherwise made inoperative in violation of ORS 815.305(1), ~~, except that for 1975 through 1980 model year vehicles the inspection shall be limited to the catalytic converter system and gas cap component of the evaporative control system~~ except as noted in ORS 815.305(2) or as provided for by **40 CFR 85.1701-1709 (published July 1,** 20031991~~)~~. ~~The gas cap component of the evaporative control system will not be checked in the Medford-Ashland Air Quality Maintenance Area. Motor vehicle pollution control systems include, but are not necessarily limited to:~~

~~(A) Positive crankcase ventilation (PCV) system;~~

~~(B) Exhaust modifier system, including:~~

~~(i) Air injection reactor system;~~

~~(ii) Thermal reactor system; and~~

~~(iii) Catalytic converter system.~~

~~(C) Exhaust gas recirculation (EGR) systems;~~

~~(D) Evaporative control system including the gas cap;~~

~~(E) Spark timing system, including:~~

~~(i) Vacuum advance system; and~~

~~(ii) Vacuum retard system.~~

~~(F) Special emission control devices, including:~~

~~(i) Orifice spark advance control (OSAC);~~

~~(ii) Speed control switch (SCS);~~

~~(iii) Thermostatic air cleaner (TAC);~~

~~(iv) Transmission controlled spark (TCS);~~

~~(v) Throttle solenoid control (TSC);~~

~~(vi) Fuel filler inlet restrictor;~~

~~(vii) Oxygen sensor;~~

~~(viii) Emission control computer.~~

~~(G) Maintenance indicators or on-board diagnostic indicators on 1996 or newer model year vehicles, unless appear to be~~

(b) The Department may provide alternative criteria for those required under subsection (a) of this section if it determines ~~when it can be determined~~ that the component or an acceptable alternative is unavailable. Such alternative criteria may be granted on the basis of the nonavailability of the original part, replacement part, or comparable alternative solution.

~~(4)~~ Before~~No vehicle emission control test for a 1981 or newer model year vehicle is valid if any element of the factory installed motor vehicle pollution control system has been modified or altered in such a manner so as to decrease its efficiency or effectiveness in the control of air pollution in violation of ORS 815.305(1), except as noted in ORS 815.305(2). For the purposes of this section, the following applysdo not apply:~~

(~~c~~a) The use of a nonoriginal equipment aftermarket part (including a rebuilt part) as a replacement part is not ~~considered to be~~ a violation of ORS 815.305, if a reasonable basis exists for knowing that such use will not adversely ~~e~~affect emission control efficiency. The Department will maintain a list~~ing~~ of those parts that have been determined to adversely ~~e~~affect emission control efficiency;

(~~d~~b) The use of a nonoriginal equipment aftermarket part or system as a add-on, auxiliary, augmenting, or secondary part of system, is not ~~considered to be~~ a violation of ORS 815.305~~,~~ if such part or system is on the ~~exemption~~ list of "**Modifications to Motor Vehicle Emission Control Systems Exempted Under California Vehicle Code Section 27156**" granted by the California Air Resources Board, ~~or~~ is on the ~~list maintained by the~~ U.S. Environmental Protection Agency's list of "**Certified to EPA Standards**," or the Department has ~~been~~ determined after reviewing ~~of~~ testing data ~~by the Department~~ that there is no decrease in the efficiency or effectiveness in the control of air pollution;

(~~e~~e) Adjustments or alterations of particular part or system parameter, if done for purposes of maintenance or repair according to the vehicle or engine manufacturer's instructions, are not ~~considered~~ violations of ORS 815.305.

(~~5~~5) A 1981 or newer model vehicle that has been converted to operate on gaseous fuels is not in violation of ORS 815.305 when elements of the factory-installed motor vehicle air pollution control system are disconnected for the purpose of conversion to gaseous fuel as authorized by ORS 815.305.

(56) For a 1975 through 1980 model year vehicle in which the original engine has been replaced, if either the vehicle body/ or chassis original engine, as (per registration/ or title) or replacement engine (as manufactured) had a catalytic converter system, it must be present, intact, and operational before a Certificate of Compliance may be issued.

(67) For a 1981 or newer model year vehicle in which the original engine has been replaced, the emission test standards and applicable emissions control equipment for the year, make, and model of the vehicle body/ or chassis, as (per registration/ or title), or replacement engine, whichever is newer, apply. For those diesel powered vehicles that have been converted to operate on gasoline or gasoline equivalent fuel(s), the emission test standards and applicable emission control equipment for the year, make, and model of the gasoline equivalent powered engine as originally manufactured, for the vehicle body/ or chassis, (per the registration) or replacement engine, whichever is newer, shall apply.

(78) For those vehicles registered/ or titled as a 1981 or newer model year that were assembled by other than a licensed motor vehicle manufacturer, such as an Assembled, Reconstructed, or Replica Vehicle, Department personnel must determine the applicable emission test standards based upon the vintage of the vehicle engine. The year of the engine is presumed to be that stated by the vehicle owner, unless Department personnel determine, after physical inspection, that the year of the engine is other than that stated by the owner.

(89) An imported nonconforming motor vehicle that has been imported under a certificate of conformity or modification/test procedure pursuant to **40 CFR Part 85, Subpart P**, must comply with the emission control equipment requirements of such certificate or procedure.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

[Publication: The Publication(s) referred to or incorporated by reference in this rule are available from the office of the Department of Environmental Quality.]

Stat. Auth.: ORS 468A.360
Stats. Implemented: ORS 468A.350 - ORS 468A.385
Hist.: DEQ 89, f. 4-22-75, ef. 5-25-75; DEQ 116(Temp), f. & ef. 7-27-76; DEQ 121, f. & ef. 9-3-76; DEQ 139, f. 6-30-77, ef. 7-1-77; DEQ 9-1978, f. & ef. 7-7-78; DEQ 22-1979, f. & ef. 7-5-79; DEQ 6-1980, f. & ef. 1-29-80; DEQ 18-1980, f. & ef. 6-25-80; DEQ 12-1982, f. & ef. 7-21-82; DEQ 19-1983, f. 11-29-83, ef. 12-31-83; DEQ 6-1985, f. & ef. 5-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 21-1988, f. & cert. ef. 9-12-88; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1996, f. & cert. ef. 11-26-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-024-0320

340-256-0390

Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria

(1) No vehicle emission control test is valid if the vehicle exhaust system leaks in such a manner as to dilute the exhaust gas being sampled by the gas analytical system. For the purpose of emission control tests conducted at state facilities, tests will not be considered valid if the exhaust gas is diluted to such an extent that the sum of the carbon monoxide and carbon dioxide concentrations recorded for the idle speed reading from an exhaust outlet is six percent or less.

(2) No vehicle emission control test is valid if the engine idle speed exceeds 1300 RPM.

(3)(a) No vehicle emission control test for a 1981 or newer model vehicle is valid if the gas cap or catalyst has ~~any element of the following factory-installed motor vehicle pollution control systems have~~ been disconnected, plugged, or otherwise made inoperative in violation of ORS 815.305(1), except as noted in ORS 815.305(2).~~:~~

~~(A) Positive crankcase ventilation (PVC) system;~~

~~(B) Exhaust modifier system, including:~~

~~(i) Air injection system;~~

~~(ii) Thermal reactor system; or~~

~~(iii) Catalytic converter system.~~

~~(C) Exhaust gas recirculation (EGR) system;~~

~~(D) Evaporative control system including the gas cap;~~

~~(E) Spark timing system, including:~~

~~(i) Vacuum advance system; or~~

~~(ii) Vacuum retard system.~~

~~(F) Special emission control devices, including:~~

~~(i) Orifice spark advance control (OSAC);~~

~~(ii) Speed control switch (SCS);~~

~~(iii) Thermostatic air cleaner (TAC);~~

~~(iv) Transmission controlled spark (TCS);~~

~~(v) Throttle solenoid control (TSC);~~

~~(vi) Fuel filler inlet restrictor;~~

~~(vii) Oxygen sensor; or~~

~~(viii) Emission control computer.~~

~~(C) Maintenance indicators or on-board diagnostic indicators on 1996 or newer model year vehicles, unless~~appear to be

(b) The Department may provide alternative criteria for those required under subsection (a) of this section if it ~~when it can be determined~~determines that the component or an acceptable alternative is unavailable. Such alternative criteria may be granted on the basis of the nonavailability of the original part, replacement part, or comparable need for an alternative solution.

~~(4) No vehicle emission control test conducted for a 1981 or newer model vehicle is valid if any element of the factory installed motor vehicle pollution control system has been modified or altered in such a manner so as to decrease its efficiency or effectiveness in the control of air pollution in violation of ORS 815.305(1), except as noted in ORS 815.305(2). For the purposes of this section, the following apply ~~do not apply~~:~~

(~~c~~a) The use of a nonoriginal equipment aftermarket part (including a rebuilt part) as a replacement part is not ~~considered to be~~ a violation of ORS 815.305, if a reasonable basis exists for knowing that such use will not adversely affect emission control efficiency. The Department will maintain a list~~ing~~ of those parts that have been determined to adversely ~~e~~affect emission control efficiency;

(~~d~~b) The use of a nonoriginal equipment aftermarket part or system as an add-on, auxiliary, augmenting, or secondary part or system, is not ~~considered to be~~ a violation of ORS 815.305, if such part or system is listed on the Department's exemption list ~~maintained by the Department~~;

(~~e~~e) Adjustments or alterations of a particular part or system parameter, if done for purposes of maintenance or repair according to the vehicle or engine manufacturer's instructions, are not ~~considered~~ violations of ORS 815.305.

(~~5~~) A 1981 or newer model motor vehicle ~~which~~that has been converted to operate on gaseous fuels is in violation of ORS 815.305 ~~when~~if elements of the factory-installed motor vehicle air pollution control system are disconnected for the purpose of conversion to gaseous fuel as authorized by ORS 815.305.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.]

Stat. Auth.: ORS 468A.360
Stats. Implemented: ORS 468A.350- ORS 468A.385
Hist.: DEQ 136, f. 6-10-77, ef. 7-1-77; DEQ 22-1979, f. & ef. 7-5-79; DEQ 12-1982, f. & ef. 7-21-82;

DEQ 19-1983, f. 11-29-83, ef. 12-31-83; DEQ 6-1985, f. & ef. 5-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 21-1988, f. & cert. ef. 9-12-88; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1996, f. & cert. ef. 11-26-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-024-0325

Attachment B Proposed SIP Revisions
Agenda Item D, Rule adoption: Vehicle Inspection Program
Enhanced Test Phase-out
June 23, 2005 EQC meeting
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State Implementation Plan

STATE OF OREGON
AIR QUALITY CONTROL PROGRAM
Volume 2 - The Federal Clean Air Act Implementation Plan

5.4.7 Test Procedures and Standards

The authority to establish test procedures and standards is contained in Oregon statutes ORS 468A.360 through 468A.460 in Section 2.2.11 of the Oregon SIP. The test procedures and test standards are specified in the regulation in Section 2.2.7 of the Oregon SIP.

In the Portland area the current testing schedule is:

The newest~~first~~ four~~two~~ model years ~~are~~ will be exempt.
1996 to five~~three~~ year old vehicles – OBD test
1981 - 1995 model year vehicles - enhanced test
1975 -1980 model year vehicles - basic test

In the Portland area as of January 1, 2007 the testing schedule will be:

The newest four model years will be exempt
1996 to five year old vehicles – OBD test
1975-95 model year vehicles – basic test

In the Medford area:

The ~~first~~newest four model years are exempt
1996 – five year old vehicles – OBD test
20 year old - 1995 model year vehicles – basic test

In both the Portland and Medford test areas, vehicles are rejected for unsafe conditions, including overheating, fluid leaks, or other conditions determined to be unsafe to the inspection program operations.

For the basic test, vehicles 1981 and newer must pass both an idle and 2500 rpm emissions standards for carbon monoxide and hydrocarbons. Subject vehicles with model years older than 1981 are not judged at the 2500 rpm test point. All basic tested vehicles are given a second chance idle test.

~~In the Portland area, a gas cap test will be performed for all basic tests. Also, a cap test and an evaporative system purge test will be done as part of all Portland area tailpipe enhanced tests. In the Medford area, neither the cap nor the purge test will be performed in conjunction with their basic test. The purge tests will not be done as an add-on to the OBD test in either the Medford or Portland area. The cap test may be done on OBD tested vehicles in Portland and Medford.~~

~~The enhanced test is a 31 second loaded transient cycle as outlined in the test procedures.~~

Detailed testing procedures for the basic test are shown in Appendix H and Appendix K Section 710.00. Detailed testing procedures for the enhanced test are shown in OAR 340-256-0350 and OAR 340-256-0410. The OBD test procedure is outlined in OAR 340-256-0355.

Both the Portland and Medford inspection areas will continue using self-testing fleet operations, including requiring that these fleets perform OBD tests on 1996 and newer vehicles where OBD testing is required as a part of the centralized testing operations.

DEQ began on-site vehicle testing of manufacture franchised dealership vehicles on January 2, 2002. In this program, approximately 25,000 vehicles per year are tested at the dealers' locations. DEQ performs the testing operations. The program is operated using test methods and standards that provide ~~essentially~~ no emissions reduction loss from the process where vehicles are tested in DEQ's centralized test lanes.

DEQ will initiate ~~On-Road Clean Screen~~ on-road Remote OBD testing beginning winter~~fall~~, 200~~6~~4. In this program DEQ will track the vehicle OBD diagnostics to determine the status of the vehicle's emissions ~~identify a clean vehicle~~ as it is driven on the roads, and exempt the vehicle from the requirement of centralized testing. ~~DEQ will use either optical remote sensing equipment or vehicle broadcast OBD data stream to determine the status of the on-road vehicle's emissions~~. A vehicle

owner or his or her representative may choose to use this program in lieu of the otherwise required test.

DEQ will initiate Self-Service testing beginning winterfall, 2006. In this program, DEQ will allow drivers to test their own vehicles in a highly automated testing environment. DEQ will use either optical remote sensing equipment. vehicle broadcast OBD data stream, or direct cable hookup to vehicle OBD connector to determine the status of the vehicle's emissions. A vehicle owner or his or her representative may choose to use this program in lieu of the otherwise required test.

Summary of Public Comment and Agency Response

Vehicle Inspection Program Enhanced Test Phase-out

Prepared by: Shari Jay **Date: January 19, 2005**

Comment period

The public comment period opened on December 15, 2004 and closed at 5:00 p.m. on January 21, 2005. DEQ held public hearings at 6:00 p.m. on January 18, 2005 at the Vehicle Inspection Program Technical Center located at 1240 S.E. 12th Avenue in Portland, Oregon. No one attended the meeting other than the Public hearings officer and the rule writer.

No one submitted any written or oral comments during the comment period or at the public hearing.

Organization of comments and responses

No comments or responses were received.

State of Oregon
Department of Environmental Quality **Memorandum**

Date: January 19, 2005

To: Environmental Quality Commission

From: Shari Jay

Subject: Presiding Officer's Report for Rulemaking Hearing
Title of Proposal: Vehicle Inspection Program Enhanced Test Phase-out
Hearing Date and Time: January 18, 2005, 6:00 p.m.
Hearing Location: 1240 S.E. 12th Avenue, Portland, Oregon 97214

The Department convened the rulemaking hearing on the proposal referenced above at 6:00 p.m. and closed it at 6:30 p.m. Registration forms were provided if anyone attending the hearing wished to present comments.

No one attended the hearing.

Attachment E Relationship to Federal Requirements Questions
Agenda Item D, Rule adoption: Vehicle Inspection Program Enhanced Test Phase-out
June 23, 2005 EQC Meeting
Page 1 of 3

Relationship to Federal Requirements

Answers to the following questions identify how the proposed rulemaking relates to federal requirements and potential justification for differing from federal requirements. The questions are required by OAR 340-011-0029.

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

Vehicle inspection is included in the federally-enforceable State Implementation Plan (SIP) to attain and maintain air quality standards in Oregon. Any changes to the program must be approved by the U.S. Environmental Protection Agency (EPA) as a SIP revision. Federal rules do not require or prohibit the phase-out of the Enhanced test for 1981-95 model year vehicles, with subsequent transition of these vehicles to Basic testing. However, DEQ is required to demonstrate that this testing alternative will not lead to violations of air quality air standards for carbon monoxide and ozone in the Portland airshed. The proposed vehicle testing change will result in very small increases in hydrocarbons and nitrogen oxides emissions and will not lead to violations of federal standards.

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

The federal requirements are performance based. DEQ must demonstrate to EPA that the collection of air quality strategies in the maintenance plans, including vehicle inspection, will enable the Portland area to continue to meet air quality standards.

3. Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?

Not applicable.

4. Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting

requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?

The proposed rules for phasing out the Enhanced test will reduce the cost of repairing a 1981-95 model year vehicle that fails the emissions test. Typically it costs about $300 to repair a vehicle to enable it to pass the Enhanced test and $150 to pass a Basic test.

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

Not applicable.

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

DEQ has already demonstrated that the current test is not needed to maintain compliance with the carbon monoxide standard and will have minimal effect on the emissions that contribute to ozone formation. This rule change will be followed up with a more detailed ozone maintenance plan that will demonstrate how the area will continue to maintain clean air through 2015 while accommodating future growth.

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

Not applicable.

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

Not applicable.

9. Does the proposed requirement include procedural requirements, reporting or monitoring requirements that are different from applicable federal requirements? If so, Why? What is the "compelling reason" for different procedural, reporting or monitoring requirements?

Not applicable.

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

Yes. The Basic testing equipment that meets DEQ specifications is available from many sources.

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

Yes. Phasing out the Enhanced test will maintain good air quality in the Portland area while reducing DEQ's costs to conduct the tests.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT
This form accompanies a Notice of Proposed Rulemaking

Title of Proposed Rulemaking:	Vehicle Inspection Program Enhanced Test Phase-out
Need for the Rule(s)	**Why are rule changes needed?** These rule changes are needed as part of DEQ's efforts to provide excellent customer service and control costs in the Vehicle Inspection Program by using innovative testing technologies and approaches. Phasing out the Enhanced test will maintain good air quality in the Portland area while allowing DEQ to conduct the testing operations more quickly and with fewer employees. DEQ is able to achieve this operational cost reduction without significantly impacting air quality due to the effectiveness of the On Board Diagnostic (OBD) test method DEQ introduced in December 2000. The OBD system keeps 1996 and newer vehicles clean by very precisely controlling all aspects of the vehicle operation. The OBD system is only present on 1996 and newer model year vehicles which now make up approximately 50 percent of the Portland area vehicles. The number of OBD vehicles is forecast to grow to 75 percent by January 2007 when the proposed Enhanced test phase-out is expected to be complete. In addition to the Enhanced test phase-out, DEQ is proposing other rule changes that provide better customer service at reduced costs. DEQ has already implemented House Bill 2546, enacted by the 2003 Oregon Legislature. House Bill 2546 reduced the frequency of testing required for self-testing fleets from once a year to once every other year The City of Portland and Multnomah County are examples of government entities that operate vehicle self-testing programs. This change will make our rules consistent with the statute. Another proposed change is to eliminate the requirement for two ineffective elements of the vehicle inspection test: Gas Cap and Purge testing. The Gas Cap test is designed to reduce emissions by insuring that the cap has a good seal on the vehicle's gas tank as part of the Basic and Enhanced tests. However, the device used to test the gas caps gives inaccurate results. The purge test

	is designed to insure that gasoline fumes from the gas tank are captured and then subsequently burned by the vehicle's engine as part of the Enhanced test. However, because no successful test method was ever developed, the Purge test was never approved as a viable test by the U.S. Environmental Protection Agency (EPA). Because the OBD system monitors for fuel system leaks and purge system failures were ineffective, the Gas Cap and Purge tests can be eliminated without significantly affecting air quality. Finally additional rule changes were made to correct grammatical errors, citations and definitions.
Documents Relied Upon for Rulemaking	• EPA's Mobile-6 model calculation results for vehicle emissions. • Summary of October 21, 2004 Meeting of Advisory Workgroup. Both documents are available at Department of Environmental Quality, Vehicle Inspection Program, 1240 SE 12th Avenue, Portland, OR 97214.
Fiscal and Economic Impact	
Overview	DEQ proposes to phase out the Enhanced test for 1981-95 model year vehicles. By January 2007 all 1981-95 model year vehicles will be tested using the Basic test. This transition will reduce labor costs for both DEQ and self-testing fleets that currently use the Enhanced test. DEQ will use its cost savings to delay future fee increases. The Enhanced test phase-out will also reduce the cost of repairs necessary in order for 1981-95 model year vehicles to pass the emissions test.
General public	Phasing out Enhanced testing for 1981-95 model year vehicles and replacing it with the Basic test will reduce repair costs for vehicle owners whose cars fail vehicle inspection tests. DEQ studies, as well as those by the federal Environmental Protection Agency (EPA), indicate the average repair cost for a vehicle failing an Enhanced test is $300 compared to $150 for the Basic test.
Small Business	Repair shops are expected to see a small drop in business since it is expected that the cost of repairs required to pass a Basic test will be less than the cost of repairs to pass the phased-out Enhanced test. On the other hand, shops are expected to gain significant business from the fast growing OBD vehicle population as these vehicles age and experience higher failure rates.

	In addition, using the Basic test for 1981-95 model year vehicles will make it easier for shops to perform emissions repairs since most shops have Basic test equipment in the shop. Very few shops purchased the expensive enhanced testing equipment.
Large Business	Some large businesses with large vehicle fleets are using Enhanced testing equipment to test their own vehicles. When DEQ phases out the Enhanced test, these fleets will be able to use Basic test equipment which is much less expensive to operate.
Local Government	Some local government fleets will be able to phase-out their Enhanced testing operations and replace them with Basic testing at some cost savings.
State Agencies	
DEQ	The transition from Enhanced to Basic testing for 1981-95 MY vehicles will reduce the cost of testing. These savings will allow DEQ to delay future fee increases.
Other agencies	As with private fleets, government fleets that currently use the Enhanced test for self-testing will have reduced operational costs.
Assumptions	None.
Housing Costs	The Department has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.
Administrative Rule Advisory Committee	The Department used an Advisory Workgroup to help establish the direction of the proposed testing operations.

Prepared by ________ Printed name: Jerry Coffer ________ Date: 12/13/04

Approved by: DEQ Budget Office ________ Printed name: LUCIANO GARZA ________ Date: 12-10-2004

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
For
Phase-out of Vehicle Inspection Program Enhanced Test and Rule Housekeeping

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

This proposal would phase out the Enhanced test for 1981-95 model year vehicles in the Portland area Vehicle Inspection Program by January 2007, and replace it with a Basic test for these vehicles. The Enhanced test has been used by DEQ since September 1997. This change will have no effect on Medford area vehicle inspections because Enhanced testing was never implemented in Medford.

Phasing out the Enhanced test will maintain good air quality in the Portland area while reducing DEQ's costs to conduct the tests. Reducing operating costs will allow DEQ to postpone the date of any future fee increases. We are able to achieve this cost savings without significantly impacting air quality due to the effectiveness of a test method DEQ introduced in December 2000 called the On-Board Diagnostic (OBD) test. The OBD system keeps 1996 and newer vehicles clean by very precisely controlling all aspects of the vehicle operation. The OBD system is only present on 1996 and newer model year vehicles which now make up approximately 50 percent of the Portland area vehicles. The number of OBD vehicles is forecast to grow to 75 percent by January 2007 when the proposed Enhanced test phase-out is complete.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?

Yes___ No X

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

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

Yes____ No____ (if no, explain):

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

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

It has been previously determined through the DEQ SAC program that the Vehicle Inspection Program is not a program that significantly affects land use. These proposed rules, which address only a switch in the testing procedure generally for newer model year vehicles, do not contain program changes that significantly affect land use.

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

N/A

OD
Division

Intergovernmental Coord.

12-13-07
Date

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

Yes____ No____ (if no, explain):

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

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

It has been previously determined through the DEQ SAC program that the Vehicle Inspection Program is not a program that significantly affects land use. These proposed rules, which address only a switch in the testing procedure generally for newer model year vehicles, do not contain program changes that significantly affect land use.

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

N/A

OD — Division

Intergovernmental Coord.

12-13-07 — Date

State of Oregon
Department of Environmental Quality

Memorandum

Date: June 2, 2005

To: Environmental Quality Commission

From: Stephanie Hallock, Director

Subject: Agenda Item E, Action Item: Tax Credit Consideration
June 24, 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

Any application may be postponed to a future meeting if the Environmental Quality Commission (EQC, 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 **37** facilities as provided in Attachment B;
- Revoke **one** certificate, reissue **nine** certificates, and transfer **two** certificates as presented in Attachment C.

Attachments

A. Summary of Recommendations
B. Background and References for Final Certifications
C. Certificate Administration
D. Tax Expenditure Report
E. Certified Wood Chipper Report

Available Upon Request

ORS 468.150 to 468.190 & OAR 340-016-0005 to 340-016-0080

Approved:

Section:

Division:

Report Prepared By: Maggie Vandehey
Phone: 503-229-6878

Attachment A
Summary of Recommendations

App #	Media	Applicant	Claimed	Certified	Difference	% Allocable	Maximum Percent	GF Liability	EQC Action
Recommended for Approval - Attachment B									
6315	Water	Hampton Lumber Mills, Inc.	1,881,487	1,768,307	(113,180)	100%	50%	884,154	
6490	Air:Alt. FB	Peter W. & William E. Domes	42,000	42,000	0	100%	35%	14,700	
6778	Water	Viesko Redi-Mix, Inc.	26,149	24,889	(1,260)	100%	35%	8,711	
6840	Mat. Rec.	East County Recycling Company	187,803	187,803	0	100%	35%	65,731	
6842	Water	Murrayhill Pediatric Dentistry, PC	1,950	1,950	0	100%	35%	683	
6864	NPS	Gary Rea	97,500	97,500	0	100%	35%	34,125	
6873	HW	Emmett's Line-Up & Auto Repair Center, Inc.	2,995	2,995	0	100%	35%	1,048	
6875	Mat. Rec.	East County Recycling Company	53,000	53,000	0	100%	35%	18,550	
6880	Mat. Rec.	Waste Connections of Oregon, Inc.	9,880	9,880	0	100%	35%	3,458	
6889	Mat. Rec.	L & M K Enterprises, LLC	16,592	16,592	0	100%	35%	5,807	
6890	Water	Lorin Rice, D.M.D., P.C.	1,890	1,890	0	100%	35%	662	
6892	Mat. Rec.	Waste Connections of Oregon, Inc.	8,993	8,993	0	100%	35%	3,148	
6903	Air:Alt. FB	Edward Scheffel	309,459	305,959	(3,500)	100%	35%	107,086	
6909	NPS	Kenneth Poole	5,516	5,261	(255)	100%	35%	1,841	
6912	HW	Kevork Parseghian	2,395	2,395	0	100%	35%	838	
6913	Mat. Rec.	Umpqua Bank Leasing	92,233	92,233	0	100%	35%	32,282	
6914	Mat. Rec.	Umpqua Bank Leasing	64,500	64,500	0	100%	35%	22,575	
6918	Water	Downtown Dental Associates	656	656	0	100%	35%	230	
6922	HW	Miller Automotive Repair	3,230	2,995	(235)	100%	35%	1,048	
6923	Mat. Rec.	Garbarino Disposal & Recycling Service, Inc.	195,863	195,863	0	50%	35%	34,276	
6924	Mat. Rec.	Global Leasing, Inc.	115,385	115,385	0	60%	35%	24,231	
6929	Water	Kevin James Kwiecien, DMD (50%); Carl Vorhies, DMD (50%)	1,465	1,465	0	100%	35%	513	
6930	Mat. Rec.	Global Leasing, Inc.	2,475	2,475	0	100%	35%	866	
6931	Mat. Rec.	Global Leasing, Inc.	7,494	7,494	0	100%	35%	2,623	
6932	Mat. Rec.	Global Leasing, Inc.	9,829	9,829	0	100%	35%	3,440	

Attachment A
Summary of Recommendations

6936	Air:Alt. FB	Daniel D. Sandau (50%) and Stephen C. Sandau (50%)	120,809	114,235	(6,574)	84%	35%	33,585	
6939	Mat. Rec.	Global Leasing, Inc.	24,150	24,150	0	100%	35%	8,453	
6943	Mat. Rec.	B & J Garbage Company	24,461	24,461	0	100%	35%	8,561	
6944	Mat. Rec.	Canby Disposal Company	13,564	13,564	0	100%	35%	4,747	
6948	HW	Andy's Auto Supply, Inc.	2,995	2,995	0	100%	35%	1,048	
6949	HW	Rodney S. Green	2,995	2,995	0	100%	35%	1,048	
6950	Air	Tosoh Quartz, Inc.	145,802	145,802	0	100%	35%	51,031	
6958	Mat. Rec.	Waste Connections of Oregon, Inc.	1,500	1,500	0	100%	35%	525	
6959	Mat. Rec.	Waste Connections of Oregon, Inc.	26,303	26,303	0	100%	35%	9,206	
6960	Mat. Rec.	Waste Connections of Oregon, Inc.	2,875	2,875	0	100%	35%	1,006	
6961	Mat. Rec.	Waste Connections of Oregon, Inc.	9,965	9,965	0	100%	35%	3,488	
6980	HW	Mark Latham Excavation	2,995	2,995	0	100%	35%	1,048	
37 Applications			Sum	3,503,318	3,378,314	-125,004			1,390,829
			Average	100,177	96,605	-3,572			39,767
			Minimum	656	656	-113,180			230
			Maximum	1,881,487	1,768,307	0			884,154

Recommended Certificate Administration - Attachment C

Revoke 1 Certificate
Reissue 9 Certificates
Transfer 2 Certificates

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. Air
2. Alternatives to Field Burning (shown as *Alt FB* on the tab)
3. Hazardous Waste (shown as *HW* on the tab)
4. Material Recovery (shown as *Mat Rec* on the tab)
5. Nonpoint Source Pollution Control (shown as *NPS* on the tab)
6. Water

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
• Land • Structure • Building • Installation • Excavation • Machinery • Equipment • Devices	Prevents, Controls, or Reduces: • Air pollution • Water pollution • Solid waste • Hazardous waste • Used oil	Required - Principal primary and most important purpose is to achieve the environmental benefit by complying with DEQ/EPA/LRAPA requirements Voluntary - Sole sole or exclusive purpose is to achieve the environmental benefit - the benefit must be substantial

Statutory Definition of "Pollution Control Facility"

ORS 468.155 Definitions for ORS 468.155 to 468.190 and 468.962

(1)(a) As used in ORS 468.155 to 468.190 and 468.962, unless the context requires otherwise, "pollution control facility" or "facility" means any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device reasonably used, erected, constructed or installed by any person if:

(A) The principal purpose of such use, erection, construction or installation is to comply with a requirement imposed by the Department of Environmental Quality, the federal Environmental Protection Agency or regional air pollution authority to prevent, control or reduce air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil; or

(B) The sole purpose of such use, erection, construction or installation is to prevent, control or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste; or to recycle or provide for the appropriate disposal of used oil.

...

(2)(a) As used in ORS 468.155 to 468.190 and 468.962, "pollution control facility" or "facility" includes a nonpoint source pollution control facility.

...

Eligibility and Purpose

OAR 340-016-0060 Eligibility

(1) Eligible Facilities. Facilities eligible for pollution control tax credit certification shall include any land, structure, building, installation, excavation, machinery, equipment or device, or alternative methods for field sanitation and straw utilization and disposal. An eligible facility shall be reasonably used, erected, constructed or installed as:
(a) A new facility;
(b) An addition or improvement to an existing facility; or
(c) The reconstruction or replacement of an existing facility.

(2) Purpose of Facility. The facility shall meet the principal purpose requirement to be eligible for a pollution control facility tax credit certification, or if the facility is unable to meet the principal purpose requirement, the facility shall meet the sole purpose requirement to be eligible for a pollution control tax credit:

(a) Principal Purpose Requirement. The principal purpose of the facility is the most important or primary purpose of the facility. Each facility shall have only one principal purpose. The facility shall be established to comply with environmental requirements imposed by the Department, the federal

Environmental Protection Agency or a regional air pollution authority to control, reduce, or prevent air, water or noise pollution, or for the material recovery of solid waste, hazardous waste or used oil; or

(b) Sole Purpose Requirement. The sole purpose of the facility shall be the exclusive purpose of the facility. The only function or use of the facility shall be the control, reduction, or prevention of air, water or noise pollution; or for the material recovery of solid waste, hazardous waste or used oil.

BACKGROUND
APPROVALS: Air Pollution Control Facilities

The Department recommends that the Environmental Quality Commission approve the following application for certification as an air pollution control facility. Air pollution control facilities dispose of or eliminate air pollution with the use of air cleaning devices.

Summary of Air Pollution Control Facilities

App #	Applicant		Certified	% Allocable	Maximum Percent	GF Liability
6950	Tosoh Quartz, Inc.		$145,802	100%	35%	$51,031
1 App		**Sum**	**145,802**			**51,031**

Statutory Definition of an "Air Pollution Control Facility"

ORS 468.155 Definitions for ORS 468.155 to 468.190 and 468.962

...

(b) Such prevention, control or reduction required by this subsection shall be accomplished by:

...

(B) The disposal or elimination of or redesign to eliminate air contaminants or air pollution or air contamination sources and the use of air cleaning devices as defined in ORS 468A.005;

...

ORS 468A.005 provides the following pertinent definitions.

"Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

"Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby.

"Air contamination source" means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who the person may be who owns or operates the building, premises or other property in, at or on which such source is located, or the facility, equipment or other property by which the emission is caused or from which the emission comes.

An "Air-cleaning device" means any method, process or equipment that removes, reduces or renders less noxious air contaminants prior to their discharge in the atmosphere.

Eligibility

OAR 340-016-0060 Eligibility

...

(4) Eligible Activities. The facility shall prevent, reduce, control, or eliminate:

(a) Air contamination by use of air cleaning devices as defined in ORS 468A.005 or through equipment designed to prevent, reduce or eliminate air contaminants prior to discharge to the outdoor atmosphere;

...

State of Oregon
Department of
Environmental
Quality

Tax Credit Review Report

Pollution Control Facility: Air
Final Certification
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0080

Director's *Recommendation*

Approve Application No.**6950**

Applicant: **Tosoh Quartz, Inc.**

Certification of:

Facility Cost		$145,802
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$51,031**

Certificate Period: **10 years**

Applicant Identification

14380 NW Science Park Drive
Portland, OR 97229

Organized as: C Corp
Taxpayer ID: 93-0667456

Facility Identification

Same as the applicant's address.

The certificate will identify the facility as:

One - Hydrokenetic System model FRP-60-5-V wet scrubber
One – Chicago Blower three phase fan

Technical Information

Tosoh Quartz, Inc. produces quartz glassware used for processing integrated circuits in the semiconductor industry. The applicant installed a hydrofluoric (HF) acid scrubber system to remove HF acid fumes emitted during the glass etching process. The system uses a scrubbing solution of water with NaOH (sodium hydroxide.) The solution has a pH >6 prior to discharge to the Rock Creek Wastewater Treatment Plant. Before the company installed the air scrubber, the company vented approximately 6.1 tons of hydrofluoric acid emission to the atmoshpere each year. The new scrubber has a 99.8% efficiency rating for capturing acid in the exhaust stream. Prior to installing the wet scrubber, roof vents B and D vented the HF emissions from the etching process to the atmosphere.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Tosoh Quartz, Inc. **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 11/22/2004 and filed the application on 3/18/2005. The applicant also submitted the application after completing construction and placing the facility into service on 11/22/2004.

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 air pollution.

"Air Pollution" is the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby. ORS 468A.005

Applied to this Application
The **sole purpose** of the wet scrubber is to reduce approximatly **6.1 tons of HF emissions a year** (12,187 pounds/year.) With the wet scrubber, the HF emissions are now 13 pounds per year.

Method
ORS 468.155 (1)(b)(B)

Criteria
The prevention, control, or reduction must be accomplished by the disposal or elimination of air contaminants, air pollution, or air contamination sources; and the use of an air cleaning device as defined in ORS 468A.005.

Applied to this Application
The wet scrubber reduces HF emissions. The scrubber **meets the definition** of an air-cleaning device and HF emissions meets the definition of an air contaminate as defined by ORS 468A.005:

Dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. These items are ineligible for certification.

Applied to this Application
There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. However, there are two exceptions. The applicant replaced the facility:

1. because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. before the end of its useful life.

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.

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 3/18/2005, and the certified facility cost is **$145,802**.

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**.

$ 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. The cost represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion		Claimed
	No deductions	Claimed	$145,802
		Certified	**$145,802**

% Certification
ORS 468.170(1)

Criteria
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 air pollution.

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.

Percentage
ORS 468.190(1)

Criteria
The following factors establish the portion of costs properly allocable to air pollution control for facilities that cost more than $50,000.

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 10-year useful life. The claimed facility does not produce a salable or useable commodity, and it does not have revenue or cost savings 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 and there are no other relevant factors.

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

Greg Grunow in ODEQ's Northwest Region states the facility is in compliance with Department rules and statutes, and with EQC orders. The DEQ issued an Industrial Wastewater Discharge Permit (# 1330461) to the applicant at this site on April 29, 2003.

Reviewer: Maggie Vandehey

BACKGROUND
APPROVALS: Alternatives to Open Field Burning Facilities

The Department recommends the Commission approve the following applications for certification as alternatives to open field-burning.

Summary of Alternatives to Open Field Burning

App #	Applicant	Certified	% Allocable	Maximum Percent	GF Liability
6490	Peter W. & William E. Domes	$42,000	100%	35%	$14,700
6903	Edward Scheffel	$305,959	100%	35%	$107,086
6936	Daniel D. Sandau (50%) and Stephen C. Sandau (50%)	$114,235	84%	35%	$33,585
3 Apps	**Sum**	**462,194**			**155,371**
	Average	154,065			51,790
	Minimum	42,000			14,700
	Maximum	305,959			107,086

The Department and the Commission have traditionally treated alternatives to open field burning as *principal purpose* facilities. This means that the applicant installed the facility to meet a DEQ or EPA requirement. DEQ required that the state reduce the maximum number of acres that are open-burned in compliance with acreage limitations and allocations under OAR 340-266-0060.

Statutory Definition of "Alternatives to Field Burning"

ORS 468.150 Field sanitation and straw utilization and disposal methods as "pollution control facilities."

After alternative methods for field sanitation and straw utilization and disposal are approved by the Department of Environmental Quality, "pollution control facility," as defined in ORS 468.155, shall include such approved alternative methods and persons purchasing and utilizing such methods shall be eligible for the benefits allowed by ORS 468.155 to 468.190 and 468.962.
[1975 c.559 §15; 1999 c.59 §136]

> Note: 468.150 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Eligibility

OAR 340-016-0060 Eligibility

...

(4) Eligible Activities. ...

...

(b) Alternatives to Open Field Burning. The facility shall reduce or eliminate:

(A) Open field burning and may include equipment, facilities, and land for gathering, densifying, handling, storing, transporting and incorporating grass straw or straw based products;

(B) Air quality impacts from open field burning and may include propane burners or mobile field sanitizers; or

(C) Grass seed acreage that requires open field burning. The facility may include:

(i) Production of alternative crops that do not require open field burning;

(ii) Production of rotation crops that support grass seed production without open field burning; or

(iii) Drainage tile installations and new crop processing facilities.

State of Oregon
Department of
Environmental
Quality

Tax Credit Review Report

Director's Recommendation

Approve Application No.**6490**

Applicant: **Peter W. Domes 50%**
William E. Domes 50%

Certification of:

Facility Cost		$42,000
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$14,700**

Certificate Period: **7 years**

Pollution Control Facility: Alternative to Field Burning
Final Certification
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0080

Applicant Identification

8380 Bethel Road
Rickreall, OR 97371

Organized as: Individuals
Taxpayer ID: Social Security Numbers

Facility Identification

8380 Bethel Road
Rickreall, OR 97371

The certificate will identify the facility as:

One – Model 4690 Heston 3 String Baler, Serial # B46900734

Technical Information

William and Peter Domes produce grass seed. The co-applicants purchased a baler as a method of straw removal from their grass-seed acreage. Peter Domes owns 80 acres and leases 455 acres. Of this acreage, 200 acres are in perennial grass-seed cultivation and 200 are in fescue grass-seed cultivation. William Domes owns 595 acres that is in perennial grass-seed cultivation. Prior to purchasing the baler, the co-applicants flailed the straw back onto the fields or hired a custom baling company to remove it from the fields. According to the Oregon Department of Agriculture, the co-applicants last burned 10 acres in 1993.

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.

Applied to this Application

DEQ will report the following information to the Department of Revenue: Peter W. Domes and William E. Domes **own** the business that uses the grass seed acreage that requires the alternative to open field burning.

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 co-applicants **timely filed** the application. The co-applicants submitted the application after completing construction and placing the facility into service on 3/12/2003. The co-applicants took possession of the claimed facility on 12/27/2002 and submitted the application on 4/9/2003. The co-applicants filed the application within the one-year filing requirement.

Purpose: Required
ORS 468.155 (1)(a)(A)
OAR 340-016-0060(2)(a)

Criteria

The principal purpose of the new facility is to reduce air pollution by reducing the maximum acreage to be open-burned in compliance with OAR 340-266-0060 (Acreage Limitations, Allocations). That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

"Air Pollution" is the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby. ORS 468A.005

Applied to this Application
The straw baler complies with OAR 340-016-0060 by reducing the maximum acreage to be open-burned in the Willamette Valley. The primary or most important purpose of the claimed facility is to reduce air pollution.

Method
ORS 468.150
OAR 340-016-0060 (4)(b)

Criteria
Alternatives to Open Field Burning. The facility must reduce or eliminate:

(a) Open field burning and may include equipment, facilities, and land for gathering, densifying, handling, storing, transporting and incorporating grass straw or straw based products;

(b) Air quality impacts from open field burning and may include propane burners or mobile field sanitizers; or

(c) Grass seed acreage that requires open field burning. The facility may include:

- Production of alternative crops that do not require open field burning;
- Production of rotation crops that support grass seed production without open field burning; or
- Drainage tile installations and new crop processing facilities.

Applied to this Application
The effects of field burning **meets the definition** of an air contaminant as defined by ORS 468A.005. The straw baler meets the definition of an alternative to field burning.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification.

Applied to this Application
There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria

The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions. The applicant replaced the facility:

1. because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. before the end of its useful life.

Applied to this Application
The State of Oregon has not issued any previous Pollution Control Facilities Tax Credit Certificates to either co-applicant. 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 4/9/2003, and the certified facility cost would be $42,000.

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.**

$ 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.

Referenced Section	Description	Cost
	Claimed	$42,000
	Certified	**$42,000**

Facility Cost Allocable to Pollution Control

% 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.

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 air pollution.

Applied to this Application

The certified facility cost is **$42,000** and the applicant uses the facility **100%** 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

State of Oregon
Department of
Environmental
Quality

Tax Credit Review Report

Director's Recommendation

Approve Application No.**6903 @ a Reduced Cost**

Applicant: **Edward Scheffel**

Certification of:

Facility Cost		$305,959
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$107,086**

Certificate Period: **10 years**

Pollution Control Facility: Alternative to Field Burning
Final Certification
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0080

Applicant Identification

30060 Nixon Drive
Halsey, OR 97348

Organized as: Individual

Facility Identification

Same as the applicant's address.

The certificate will identify the facility as:

One - 32'x128'x250' Steel Straw Storage Building with gravel floor and concrete footing

Technical Information

Edward Scheffel is a grass seed grower in Linn County. He claims a 32'x128'x250' steel storage building with a gravel floor and a concrete footing. The building provides dry storage for approximately 2,400 tons of baled grass-seed straw. The grower cultivates 800 acres of perennial grass-seed and 350 acres of annual grass-seed. The resulting grass straw averages 3.5 tons per acre. Nine hundred forty-eight acres have been removed from open field burning by the use of the storage building.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Edward Scheffel **owns** the business that uses the grass seed acreage that requires the alternative to open field burning.

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 5/30/2004 and submitted the application on 12/6/2004. The applicant also submitted the application after completing construction and placing the facility into service on 7/1/2004.

The applicant removed approximately one acre from production to place the building on it. This was land owned prior to the timing of the building project. The Department deducted the $3,500 cost from the claimed facility cost under the *Facility Cost* section below.

Purpose: Required
ORS 468.155 (1)(a)(A)
OAR 340-016-0060(2)(a)

Criteria
The **sole purpose** of the **new facility** is to reduce air pollution by reducing the maximum acreage to be open-burned in compliance with OAR 340-266-0060 (Acreage Limitations, Allocations). That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

> "Air Pollution" is the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby. ORS 468A.005

Applied to this Application
The primary and most important purpose of the building is to comply with OAR 340-266-0060 by reducing the maximum acreage that will be open-burned and to reduce air pollution

Method
ORS 468.150
OAR 340-016-0060 (4)(b)

Criteria
Alternatives to Open Field Burning. The facility must reduce or eliminate:

(a) Open field burning and may include equipment, facilities, and land for gathering, densifying, handling, storing, transporting and incorporating grass

straw or straw based products;

(b) Air quality impacts from open field burning and may include propane burners or mobile field sanitizers; or

(c) Grass seed acreage that requires open field burning. The facility may include:

- Production of alternative crops that do not require open field burning;
- Production of rotation crops that support grass seed production without open field burning; or
- Drainage tile installations and new crop processing facilities.

Applied to this Application
The straw storage building is an approved alternative method for field sanitation and straw utilization and disposal. The effects of field burning meet the definition of an air contaminant as defined by ORS 468A.005:

> Dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

Storage protects the straw from inclement weather and ensures timely removal of straw from the fields.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification. Removal of equipment replaced by the facility except for tanks as set forth in paragraph (2)(k)(A) of this rule;

Applied to this Application
There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions. The applicant replaced the facility:

1. because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. before the end of its useful life.

Applied to this Application
The claimed facility is **not a replacement** facility.

Maximum Credit
ORS 468.173(3)(h)

Criteria
The maximum tax credit is 35% if the applicant submitted the application between January 1, 2002 and December 31, 2008, inclusively, and the facility is

located within a designated distressed area as defined by the Economic and Community Development Department in ORS 285A.010.

Applied to this Application
The maximum tax credit is **35%** because the applicant submitted the application on 12/6/2004, and the facility is located in a designated **economic distressed area.**

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.**

$ 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
There was no invoice for the land but the applicant states: "The straw storage facility and loading area sit on approximately one acre of farm land that could otherwise be under production. The land is valued at $3,500." Invoices substantiated the eligible building costs. The building costs represent the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion		Claimed
		Claimed	$309,459
Timely Filing	Value of land		-3,500
		Certified	**$305,959**

Facility Cost Allocable to Pollution Control

% Certification
ORS 468.170(1)

Criteria
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 air pollution.

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.

Percentage
ORS 468.190(1)

Criteria
The following factors establish the portion of costs properly allocable to material recovery or recycling for facilities that cost more than $50,000.

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 20-year useful life. The applicant does not sell the straw but stores it for shipment overseas. The annual operating expenses for the building are $1,250 and there is no cost savings associated with the storage building. The 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

State of Oregon
Department of
Environmental
Quality

Tax Credit Review Report

Director's Recommendation

Approve Application No.**6936 @ Reduced Cost**

Applicant: **Daniel D. Sandau (50%) and Stephen C. Sandau (50%)**

Certification of:

Facility Cost		$114,235
Percentage Allocable	X	84%
Maximum Percentage	X	35%
Tax Credit		**$33,585**

Certificate Period: **6 years**

Pollution Control Facility: Alternative to Field Burning
Final Certification
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0080

Applicant Identification

775 78th Avenue NE
Salem, OR 97301

Organized as: Individual
Taxpayer ID:

Facility Identification

Same as the applicant's address.

The certificate will identify the facility as:

One - Used Case 9150 Tractor, Serial # JCB0001583
One- New Case-IH lbx432 Baler, Serial No. 354352029
Drainage Tile: 14' of 24", 280' of 8", 4900' of 6", and 2825' of 4"

Technical Information

Daniel D. Sandau and Stephen C. Sandau own 850 acres and lease an additional 470 acres. One thousand one hundred and thirty eight of those acres are under perennial grass-seed cultivation. The applicants purchased a new baler and a used tractor to bale grass seed straw on 920 acres identified as:

- 240' of 8", 2000' of 6", 1925' of 4" tile on property ID T1975 (Spelbrink lease)
- 20' of 8", 500' of 6", 200' of 4" tile on new property ID R29147
- 7' of 24", 20' of 8", 900 feet of 6", 500' of 4" tiling North Edmunson Drive (Mader Farms lease) property ID R28099
- 7' of 24", 1500' of 6", 200' of 4" tiling Center Edmunson Drive (Mader Farms lease) property ID R28099

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.

Applied to this Application

DEQ will report the following information to the Department of Revenue: Daniel D. Sandau (50%) and Stephen C. Sandau (50%) **own** 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 applicants **timely filed** the application. The applicants submitted the application after completing construction and after placing the facility into service on 7/28/2004. The applicants completed the installation of the claimed facility on 7/28/2004 and submitted the application on 2/25/2005.

Purpose: Required
ORS 468.155 (1)(a)(A)
OAR 340-016-0060(2)(a)

Criteria

The **principal purpose** of the **new facility** is to reduce air pollution by reducing the maximum acreage to be open-burned in compliance with OAR 340-266-0060 (Acreage Limitations, Allocations). That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

"Air Pollution" is the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby. ORS 468A.005

Applied to this Application
The primary and most important purpose of the building is to comply with OAR 340-266-0060 by reducing the maximum acreage that will be open-burned and to reduce air pollution.

Method
ORS 468.150
OAR 340-016-0060 (4)(b)

Criteria
Alternatives to Open Field Burning. The facility must reduce or eliminate:

(a) Open field burning and may include **equipment**, facilities, and land **for gathering, densifying**, handling, storing, transporting and incorporating grass straw or straw based products;

(b) Air quality impacts from open field burning and may include propane burners or mobile field sanitizers; or

(c) Grass seed acreage that requires open field burning. The facility may include:

- Production of alternative crops that do not require open field burning;
- Production of rotation crops that support grass seed production without open field burning; or
- **Drainage tile** installations and new crop processing facilities.

Applied to this Application
The equipment and the tile installation are **approved alternative method** for field sanitation and straw utilization and disposal. The effects of field burning **meet the definition of** an air contaminant as defined by ORS 468A.005:

> Dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification. The regulations specifically excludes the owner's time.

Applied to this Application
The applicant's included $6,574 as payment for their own time. The Department deducted the costs associated with the ineligible item(s) from the Facility Cost section below.

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions. The applicant replaced the facility:

1. because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or

2. before the end of its useful life.

Applied to this Application
The State of Oregon has issued **two** Pollution Control Facilities Tax Credit Certificates to the applicant at this location. The claimed facility is **not a replacement** of previously certified facilities.

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 9/27/2004, and the recommended certified facility cost is **$114,235**.

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.**

$ 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. The cost represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion		Claimed
		Claimed	$120,809
Exclusions	Owner's time		-6,574
		Certified	**$114,235**

Facility Cost Allocable to Pollution Control

% 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 air pollution.

Applied to this Application

The Department determined that **84%** of the facility cost is allocable to pollution control as discussed in the *Percentage* subsections below.

Percentage Criteria

ORS 468.190(1) The following factors establish the portion of costs properly allocable to material recovery or recycling for facilities that cost more than $50,000.

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 6-year useful life. The claimed facility does not produce a saleable or useable commodity, and it does not have revenue or cost savings 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.

The applicant uses the tractor to operate the baler on 920 acres. The standard average annual operating hours for the tractor is 450 hours. The baler is capable of baling 4 acres of straw an hour or 230 hours a year (920 acres/4 acres per hour). The tractor is used 51 % of the time to operate the baler. The applicant uses the baler and the tiling 100% of the time as an alternative to open field burning.

Tractor	$ 43,000.00	51%	$ 21,930.00
Baler	$ 73,000.00	100%	$ 73,000.00
Tiling	$ 19,305.00	100%	$ 19,305.00
	$ 135,305.00	84%	$114,235.00

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

BACKGROUND
APPROVALS: Hazardous Waste Facilities

The Department recommends the Commission approve the following applications for certification as hazardous waste facilities.

Summary of Hazardous Waste Facilities

App #	Applicant	Certified	% Allocable	Maximum Percent	GF Liability
6873	Emmett's Line-Up & Auto Repair Center, Inc.	$2,995	100%	35%	$1,048
6912	Kevork Parseghian	$2,395	100%	35%	$838
6922	Miller Automotive Repair	$2,995	100%	35%	$1,048
6948	Andy's Auto Supply, Inc.	$2,995	100%	35%	$1,048
6949	Rodney S. Green	$2,995	100%	35%	$1,048
6980	Mark Latham Excavation	$2,995	100%	35%	$1,048
6 Apps	**Sum**	**17,370**			**6,080**
	Average	2,895			1,013
	Minimum	2,395			838
	Maximum	2,995			1,048

Statutory Definition of "Hazardous Waste"

ORS 468.155 Definitions for ORS 468.155 to 468.190 and 468.962

...

(b) Such prevention, control or reduction required by this subsection shall be accomplished by:

...

E) The treatment, substantial reduction or elimination of or redesign to treat, substantially reduce or eliminate hazardous waste as defined in ORS 466.005.

Definition in ORS 466.005

...

(7) "Hazardous waste" does not include radioactive material or the radioactively contaminated containers and receptacles used in the transportation, storage, use or application of radioactive waste, unless the material, container or receptacle is classified as hazardous waste under paragraph (a), (b) or (c) of this subsection on some basis other than the radioactivity of the material, container or receptacle. Hazardous waste does include all of the following which are not declassified by the commission under ORS 466.015 (3):

(a) Discarded, useless or unwanted materials or residues resulting from any

substance or combination of substances intended for the purpose of defoliating plants or for the preventing, destroying, repelling or mitigating of insects, fungi, weeds, rodents or predatory animals, including but not limited to defoliants, desiccants, fungicides, herbicides, insecticides, nematocides and rodenticides.

(b) Residues resulting from any process of industry, manufacturing, trade or business or government or from the development or recovery of any natural resources, if such residues are classified as hazardous by order of the commission, after notice and public hearing. For purposes of classification, the commission must find that the residue, because of its quantity, concentration, or physical, chemical or infectious characteristics may:

(A) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(c) Discarded, useless or unwanted containers and receptacles used in the transportation, storage, use or application of the substances described in paragraphs (a) and (b) of this subsection.

Eligibility

OAR 340-016-0060 Eligibility

...

(4) Eligible Activities. The facility shall prevent, reduce, control, or eliminate:

...

(c) Hazardous Waste. The facility shall treat, substantially reduce or eliminate hazardous waste as defined in ORS 466.005 or utilize material as set forth in subsection (4)(e) of this rule;

...

State of Oregon
Department of
Environmental
Quality

Tax Credit Review Report

Pollution Control Facility:
Hazardous Waste
Final Certification
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0080

Director's *Recommendation*

Approve Application No.**6873**

Applicant: **Emmett's Line-Up and Auto Repair Center, Inc.**

Certification of:

Facility Cost		$2,995
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$1,048**

Certificate Period: **5 years**

Applicant Identification

3515 Washburn Way
Klamath Falls, OR 97603

Organized as: C Corp
Taxpayer ID: 93-0868410

Facility Identification

Same as the applicant's address.

The certificate will identify the facility as:

One Renegade Parts Washer, Model TMB4000US, Serial #6367

Technical Information

Emmett's Line-Up and Auto Repair Center, Inc. is an automotive repair business located in Klamath Falls, Oregon. The applicant claims an aqueous parts washer that uses water and a special non-polluting detergent, rather than solvents, to clean auto parts. The system includes three types of filtration: a 500-micron stainless steel basket with a 75 micron micro bag; a 100/100/100 micron triple inline filter; and a 30/10/5 micron triple inline micro filter.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Emmett's Line-Up & Auto Repair Center, Inc. **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 purchasing the facility and placing it into service. If the applicant purchased the facility on or after January 1, 2002, the applicant must submit the application within one year after the purchase date.

Applied to this Application
The applicant **timely filed** the application. The applicant purchased the claimed facility on 6/2/2004 and filed the application on 11/12/2004. The applicant also submitted the application after purchasing the facility and placing it into service on 6/2/2004.

Purpose: Voluntary
ORS 468.155 (1)(a)(B)
ORS 466.005 (7)(b)

Criteria
The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of hazardous waste pollution.

> "Hazardous Waste Pollution" is the presence of residues resulting from any process of industry, manufacturing, trade or business or government or from the development or recovery of any natural resources, if such residues cause or contribute to an increase in mortality or an increase in serious irreversible illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of."

Applied to this Application
The sole purpose of the parts washer is to reduce hazardous waste. Prior to purchasing the aqueous parts washer, the applicant used a system that cleaned parts with solvents containing Toluene and Benzene. Toluene is known to cause birth defects or other reproductive harm. Benzene is known to cause cancer. The new parts washer eliminates the use of Toluene and Benzene and **reduces** the company's **hazardous waste stream by 80%.**

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.

Applied to this Application
The aqueous parts washer eliminates the use of mineral spirits containing Toluene and Benzene and the associated hazardous waste stream.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. These items are ineligible for certification.

Applied to this Application
There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. However, there are two exceptions. The applicant replaced the facility:

1. because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. before the end of its useful life.

Applied to this Application
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 11/12/2004, and the certified facility cost is **$2,995**.

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**.

$ 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. The cost represents the taxpayer's **own** cash investment.

Referenced Section	Description of Ineligible Portion		Claimed
		Claimed	$2,995
	No deductions		0
		Certified	**$2,995**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3) Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of hazardous waste bears to the entire time the facility is used for any purpose.

Applied to this Application
The certified facility cost is **$2,995** and the applicant uses the facility **100%** 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

State of Oregon
Department of
Environmental
Quality

Tax Credit Review Report

Pollution Control Facility:
Hazardous Waste
Final Certification
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0080

Director's *Recommendation*

Approve Application No.**6912**

Applicant: **Kevork Parseghian**

Certification of:

Facility Cost		$2,395
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$ 838**

Certificate Period: **5 years**

Applicant Identification

10275 SW Parkway
Portland, OR 97225

Organized as: Partnership

Facility Identification

Same as the applicant's address.

The certificate will identify the facility as:

One - Renegade Parts Washer, Model TMB4000, Serial #6537

Technical Information

Kevork Parseghian owns an automotive repair business known as Kevork's Auto Care, located in Portland, Oregon. The applicant claims an aqueous parts washer that uses water and a special non-polluting detergent, rather than solvents, to clean auto parts. The system includes three types of filtration: a 500-micron stainless steel basket with a 75 micron micro bag; a 100/100/100 micron triple inline filter; and a 30/10/5 micron triple inline micro filter.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Kevork Parseghian **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 8/14/2004 and filed the application on 1/3/2005. The applicant also submitted the application after completing construction and placing the facility into service on 8/14/2004.

Purpose: Voluntary
ORS 468.155 (1)(a)(B)
ORS 466.005 (7)(b)

Criteria
The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of hazardous waste pollution.

> "Hazardous Waste Pollution" is the presence of residues resulting from any process of industry, manufacturing, trade or business or government or from the development or recovery of any natural resources, if such residues cause or contribute to an increase in mortality or an increase in serious irreversible illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of."

Applied to this Application
The sole purpose of the parts washer is to reduce hazardous waste. Prior to purchasing the aqueous parts washer, the applicant used a system that cleaned parts with solvents containing Toluene and Benzene. Toluene is known to cause birth defects or other reproductive harm. Benzene is known to cause cancer. The new parts washer eliminates the use of Toluene and Benzene and **reduces** the company's **hazardous waste stream by 80%.**

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.

Applied to this Application
The aqueous parts washer eliminates the use of mineral spirits containing Toluene and Benzene and the associated hazardous waste stream.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. These items are ineligible for certification.

Applied to this Application
There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. However, there are two exceptions. The applicant replaced the facility:

1. because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. before the end of its useful life.

Applied to this Application
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 1/3/2005, and the certified facility cost is **$2,395**.

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**.

$ 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. The cost represents the taxpayer's **own** cash investment.

Referenced Section	Description of Ineligible Portion		Claimed
		Claimed	$2,395
	No deductions		0
		Certified	**$2,395**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3) Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of hazardous waste bears to the entire time the facility is used for any purpose.

Applied to this Application
The certified facility cost is **$2,395** and the applicant uses the facility **100%** 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

State of Oregon
Department of
Environmental
Quality

Tax Credit Review Report

Pollution Control Facility:
Hazardous Waste
Final Certification
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0080

Director's *Recommendation*

Approve Application No.**6922 @ Reduced Cost**

Applicant: **Miller Automotive Repair**

Certification of:

Facility Cost		$2,995
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$1,048**

Certificate Period: **3 years**

Applicant Identification

127 South Bartlett Street
Medford, OR 97501

Organized as: S Corp
Taxpayer ID: 02-0585189

Facility Identification

Same as the applicant's address.

The certificate will identify the facility as:

One - Renegade Model TMB Aqueous Parts Washer

Technical Information

Miller Automotive Repair is located in Medford, Oregon. The applicant claims an aqueous parts washer that uses water and a special non-polluting detergent to clean auto parts rather than solvents. The system includes three types of filtration: a 500-micron stainless steel basket with a 75-micron micro bag; a 100/100/100 micron triple inline filter; and a 30/10/5 micron triple inline micro filter.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Miller Automotive Repair **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 12/29/2004 and filed the application on 1/12/2005. The applicant also submitted the application after completing construction and placing the facility into service on 12/29/2004.

Purpose: Voluntary
ORS 468.155 (1)(a)(B)
ORS 466.005 (7)(b)

Criteria
The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of hazardous waste pollution.

> "Hazardous Waste Pollution" is the presence of residues resulting from any process of industry, manufacturing, trade or business or government or from the development or recovery of any natural resources, if such residues cause or contribute to an increase in mortality or an increase in serious irreversible illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of."

Applied to this Application
The sole purpose of the parts washer is to reduce hazardous waste. Prior to purchasing the aqueous parts washer, the applicant used a system that cleaned parts with solvents containing Toluene and Benzene. Toluene is known to cause birth defects or other reproductive harm. Benzene is known to cause cancer. The new parts washer eliminates the use of Toluene and Benzene and **reduces** the company's **hazardous waste stream between 50% and 80%.**

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.

Applied to this Application
The aqueous parts washer eliminates the use of mineral spirits containing Toluene and Benzene and the associated hazardous waste stream.

Exclusions
ORS 468.155 (3)
OAR 340-016-070(3)

Criteria
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. The regulations specifically exclude items for maintenance, operation, or repair of a facility, including spare parts.

Applied to this Application
The applicant claims additional supplies **used in the operation** of the parts washer. The Department deducted the cost of the sulfuric acid from the claimed facility cost under the *Facility Cost* section below.

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. However, there are two exceptions. The applicant replaced the facility:

1. because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. before the end of its useful life.

Applied to this Application
The claimed facility is **not a replacement** facility. The State of Oregon has not issued any Pollution Control Facilities Tax Credit Certificates to the applicant.

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 1/12/2005, and the certified facility cost is **$2,995**.

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** additional **subtractions**.

$ 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. The cost represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion		Claimed
		Claimed	$3,230
Exclusions	Supplies		-235
		Certified	**$2,995**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3)

Criteria
If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of hazardous waste bears to the entire time the facility is used for any purpose.

Applied to this Application
The certified facility cost is **$2,995** and the applicant uses the facility **100%** 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

State of Oregon
Department of
Environmental
Quality

Tax Credit Review Report

Pollution Control Facility:
Hazardous Waste
Final Certification
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0080

Director's *Recommendation*

Approve Application No.**6948**

Applicant: **Andy's Auto Supply, Inc.**

Certification of:

Facility Cost		$2,995
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$1,048**

Certificate Period: **5 years**

Applicant Identification

2141 SE Powell Blvd.
Portland, OR 97202

Organized as: S Corp
Taxpayer ID: 93-0819233

Facility Identification

Same as the applicant's address.

The certificate will identify the facility as:

One - Renagade Parts Washer, serial # 6556

Technical Information

Andy's Auto Supply, Inc. claims an aqueous parts washer that uses water and a special non-polluting detergent to clean auto parts rather than solvents. The system includes three types of filtration: a 500-micron stainless steel basket with a 75-micron micro bag; a 100/100/100 micron triple inline filter; and a 30/10/5 micron triple inline micro filter.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Andy's Auto Supply, Inc. 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 11/16/2004 and filed the application on 3/16/2005. The applicant also submitted the application after completing construction and placing the facility into service on 11/16/2004.

Purpose: Voluntary
ORS 468.155 (1)(a)(B)
ORS 466.005 (7)(b)

Criteria
The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of hazardous waste pollution.

> "Hazardous Waste Pollution" is the presence of residues resulting from any process of industry, manufacturing, trade or business or government or from the development or recovery of any natural resources, if such residues cause or contribute to an increase in mortality or an increase in serious irreversible illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of."

Applied to this Application
The sole purpose of the parts washer is to reduce hazardous waste. Prior to purchasing the aqueous parts washer, the applicant used a system that cleaned parts with solvents containing Toluene and Benzene. Toluene is known to cause birth defects or other reproductive harm. Benzene is known to cause cancer. The new parts washer eliminates the use of Toluene and Benzene and **reduces** the company's **hazardous waste stream between 50% and 80%.**

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.

Applied to this Application
The aqueous parts washer eliminates the use of mineral spirits containing Toluene and Benzene and the hazardous waste stream.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. These items are ineligible for certification.

Applied to this Application
There are **no exclusions**.

Exclusions
ORS 468.155 (3)
OAR 340-016-070(3)

Criteria
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
ORS 468.155(3)(e)

Criteria

The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. However, there are two exceptions. The applicant replaced the facility:

1. because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. before the end of its useful life.

Applied to this Application
The claimed facility is **not a replacement** facility. The State of Oregon has not issued any Pollution Control Facilities Tax Credit Certificates to the applicant.

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 3/16/2005, and the certified facility cost is **$2,995**.

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** additional **subtractions**.

$ 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. The cost represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion		Claimed
		Claimed	$2,995
	No deductions		0
		Certified	**$2,995**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3)

Criteria
If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of hazardous waste bears to the entire time the facility is used for any purpose.

Applied to this Application
The certified facility cost is **$2,995** and the applicant uses the facility **100%** 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

State of Oregon
Department of
Environmental
Quality

Tax Credit Review Report

Pollution Control Facility:
Hazardous Waste
Final Certification
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0080

Director's *Recommendation*

Approve Application No.**6949**

Applicant: **Rodney S. Green**

Certification of:

Facility Cost		$2,995
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$1,048**

Certificate Period: **5 years**

Applicant Identification

PO Box 796
Merrill, OR 97633

Organized as: Sole Proprietor
Taxpayer ID: 93-0810970

Facility Identification

Same as the applicant's address.

The certificate will identify the facility as:

One - Renegade 4000 parts washer, serial # 6060-01

Technical Information

Rodney S. Green, doing business as R & J Auto Repair, claims an aqueous parts washer that uses water and a special non-polluting detergent to clean auto parts rather than solvents. The system includes three types of filtration: a 500-micron stainless steel basket with a 75-micron micro bag; a 100/100/100 micron triple inline filter; and a 30/10/5 micron triple inline micro filter.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Rodney S. Green **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 1/12/2005 and filed the application on 4/11/2005. The applicant also submitted the application after completing construction and placing the facility into service on 1/12/2005.

Purpose: Voluntary
ORS 468.155 (1)(a)(B)
ORS 466.005 (7)(b)

Criteria
The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of hazardous waste pollution.

> "Hazardous Waste Pollution" is the presence of residues resulting from any process of industry, manufacturing, trade or business or government or from the development or recovery of any natural resources, if such residues cause or contribute to an increase in mortality or an increase in serious irreversible illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of."

Applied to this Application
The parts washer has a sole purpose of reducing hazardous waste. Prior to purchasing the aqueous parts washer, the applicant used a system that cleaned parts with solvents containing Toluene and Benzene. Toluene is known to cause birth defects or other reproductive harm. Benzene is known to cause cancer. The new parts washer eliminates the use of Toluene and Benzene and **reduces** the company's **hazardous waste stream between 50% and 80%.**

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.

Applied to this Application
The aqueous parts washer eliminates the use of mineral spirits containing Toluene and Benzene and the associated hazardous waste stream.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. These items are ineligible for certification.

Applied to this Application
There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. However, there are two exceptions. The applicant replaced the facility:

1. because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. before the end of its useful life.

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** facilities.

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 3/15/2015, and the certified facility cost is **$2,995**.

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**.

$ 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
	Claimed	$2,995
	No deductions	0
	Certified	**$2,995**

Facility Cost Allocable to Pollution Control

% 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%** of the facility cost is 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

State of Oregon
Department of
Environmental
Quality

Tax Credit Review Report

Pollution Control Facility:
Hazardous Waste
Final Certification
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0080

Director's *Recommendation*

Approve Application No.**6980**

Applicant: **Mark Latham Excavation**

Certification of:

Facility Cost		$2,995
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$1,048**

Certificate Period: **1 year**

Applicant Identification

84 SE 5th Street #100
Bend, OR 97702

Organized as: S Corp
Taxpayer ID: 93-0987638

Facility Identification

Same as the applicant's address.

The certificate will identify the facility as:

One - Renegade Solvent Free Parts Washer

Technical Information

Mark Latham Excavation is a medium size residential and commercial excavation company. The company claims a parts washer used in the process of repairing its equipment.

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.

Applied to this Application

DEQ will report the following information to the Department of Revenue: Mark Latham Excavation **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 installation of the claimed facility on 1/12/2005 and filed the application on 4/11/2005. The applicant also submitted the application after completing construction and placing the facility into service on 1/12/2005.

Purpose: Voluntary
ORS 468.155 (1)(a)(B)
ORS 466.005 (7)(b)

Criteria
The sole purpose, meaning the 'exclusive' purpose, of the claimed facility must be to prevent, control, or reduce a substantial quantity of hazardous waste pollution.

> "Hazardous Waste Pollution" is the presence of residues resulting from any process of industry, manufacturing, trade or business or government or from the development or recovery of any natural resources, if such residues cause or contribute to an increase in mortality or an increase in serious irreversible illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of."

Applied to this Application
The parts washer has a sole purpose of reducing hazardous waste. Prior to purchasing the aqueous parts washer, the applicant used solvents to clean the parts. Solvents contain Toluene and Benzene. Toluene is known to cause birth defects or other reproductive harm. Benzene is known to cause cancer. The new parts washer eliminates the use of Toluene and Benzene and **reduces** the company's **hazardous waste stream between 50% and 80%.**

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.

Applied to this Application
The aqueous parts washer **eliminates** the use of mineral spirits containing Toluene and Benzene and the associated hazardous waste stream.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. These items are ineligible for certification.

Applied to this Application
There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria

The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. However, there are two exceptions. The applicant replaced the facility:

1. because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. before the end of its useful life.

Applied to this Application
The State of Oregon has not issued any Pollution Control Facilities Tax Credit Certificates to the applicant or to this location. 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 4/11/2005, and the certified facility cost is **$2,995**.

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**.

$ 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. The cost documentation represents the taxpayer's **own** cash investment.

Referenced Section	Description of Ineligible Portion		Claimed
	No deductions	Claimed	$2,995
		Certified	**$2,995**

Facility Cost Allocable to Pollution Control

% 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%** of the facility cost is 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

BACKGROUND
APPROVALS: Material Recovery Facilities

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
6840	East County Recycling Company	$187,803	100%	35%	$65,731
6875	East County Recycling Company	$53,000	100%	35%	$18,550
6880	Waste Connections of Oregon, Inc.	$9,880	100%	35%	$3,458
6889	L & M K Enterprises, LLC	$16,592	100%	35%	$5,807
6892	Waste Connections of Oregon, Inc.	$8,993	100%	35%	$3,148
6913	Umpqua Bank Leasing	$92,233	100%	35%	$32,282
6914	Umpqua Bank Leasing	$64,500	100%	35%	$22,575
6923	Garbarino Disposal & Recycling Service, Inc.	$195,863	50%	35%	$34,276
6924	Global Leasing, Inc.	$115,385	60%	35%	$24,231
6930	Global Leasing, Inc.	$2,475	100%	35%	$866
6931	Global Leasing, Inc.	$7,494	100%	35%	$2,623
6932	Global Leasing, Inc.	$9,829	100%	35%	$3,440
6939	Global Leasing, Inc.	$24,150	100%	35%	$8,453
6943	B & J Garbage Company	$24,461	100%	35%	$8,561
6944	Canby Disposal Company	$13,564	100%	35%	$4,747
6958	Waste Connections of Oregon, Inc.	$1,500	100%	35%	$525
6959	Waste Connections of Oregon, Inc.	$26,303	100%	35%	$9,206
6960	Waste Connections of Oregon, Inc.	$2,875	100%	35%	$1,006
6961	Waste Connections of Oregon, Inc.	$9,965	100%	35%	$3,488
19 Apps	**Sum**	**39,143**			**13,700**
	Average	13,048			4,567
	Minimum	2,875			1,006
	Maximum	26,303			9,206

Statutory Definition of "Material Recovery"

ORS 468.155 Definitions for ORS 468.155 to 468.190 and 468.962

...

(b) Such prevention, control or reduction required by this subsection shall be accomplished by:

...

(D) 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; or ...

Eligibility

OAR 340-016-0060 Eligibility

...

(4) Eligible Activities. The facility shall prevent, reduce, control, or eliminate:

...

(d) Hazardous Waste, Solid Waste and Used Oil Material Recovery. 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

Director's Recommendation

Approve Application No. **6840**

Applicant: **East County Recycling Company**

Certification of:

Facility Cost		$187,803
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$65,731**

Certificate Period: **7 years**

Applicant Identification

PO Box 20096
Portland, OR 97294

Organized as: C Corp
Taxpayer ID: 93-0915760

Facility Identification

12409 NE San Rafael
Portland, OR 97230

The certificate will identify the facility as:

One - IBC AT-B65 EXP-50 Baler

Technical Information

East County Recycling Company (ECR) accepts recyclable and waste materials from various commercial and private haulers. The company purchased and installed a baler to more effectively handle cardboard. The installation includes a concrete slab and electrical service.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: East County Recycling Company **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 7/1/2004 and submitted the application on 11/3/2004. The applicant also submitted the application after completing construction and placing the facility into service on 7/1/2004.

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
ECR uses the baler exclusively to reduce solid waste. The applicant bales approximately **7,020 tons** of cardboard, plastic and carpet a year compared to the 620 tons of material bailed by the previous baler.

Method
ORS 468.155 (1)(b)(D)

Criteria
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)
OAR 340-016-0060(4)(e)

Criteria

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

ECR employees sort approximately 46,000 tons of incoming materials a year. They separate the cardboard from other recyclable materials and move it to the claimed facility for bailing. The company then sells the baled cardboard as secondary fiber to mills that incorporate it into new products.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria

The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification.

Applied to this Application

There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria

The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions:

1. The applicant replaced the facility because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. The applicant replaced the facility before the end of its useful life.

Applied to this Application
The State of Oregon has issued 4 Pollution Control Facilities Tax Credit Certificates to the applicant at this location. The claimed facility is **not a replacement** of any previously certified facilities.

Maximum Credit
ORS 468.170(3)(d)
ORS 468.155(1)(b)(D)

Criteria
The maximum tax credit is 35% 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%** because the applicant submitted the application on 11/3/2004, and the facility is used in a material recovery process.

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
The applicant deducted the salvage value of the previous baler before claiming the facility cost. There are **no subtractions**.

$ Certification
ORS 468.170(1)

Criteria
The certified cost is limited to the actual cost of the material recovery portion of the 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	Claimed
		Claimed $187,803
	No deductions	0
		Certified **$187,803**

Facility Cost Allocable to Pollution Control

% 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%** 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 claimed facility 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% greater than could be or were without the facility; or

d. The applicant's operating expenses for the facility are at least 50% 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

ORS 468.190(1) Criteria

The following factors establish the portion of costs properly allocable to material recovery or recycling if the **facility cost exceeds $50,000**.

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 7-year useful life. The claimed facility allows the applicant to recover a substantial quantity of solid waste for use as secondary fiber in new consumer products. The applicant used their estimated revenue from the cardboard and the expenditures associated with sorting and baling it 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. No cost savings occurred as a result of the claimed facility though there were operating cost increases.

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. The DEQ issued Solid Waste Disposal Permit Number 387 to ECR on October 10, 1995.

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

Director's Recommendation

Approve Application No. **6875**

Applicant: **East County Recycling Company**

Certification of:

Facility Cost		$53,000
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$18,550**

Certificate Period: **7 years**

Applicant Identification

PO Box 20096
Portland, OR 97294

Organized as: C Corp
Taxpayer ID: 93-0915760

Facility Identification

12409 NE San Rafael
Portland, OR 97230

The certificate will identify the facility as:

One - Used Kamatsu WA150-1 Wheel Loader, Serial #10427
One - Used Yutani/Kobleco Hydraulic Excavator, Serial #yQ0318

Technical Information

East County Recycling Company (ECR) accepts recyclable and waste materials from various commercial and private haulers. ECR hand sorts incoming materials into like materials such as wood, metal, cardboard, concrete, etc. The company transfers any residual waste to an approved landfill. The applicant claims a loader and an excavator to spread out the materials for more efficient sorting and to move the sorted materials to areas for additional processing and for loading onto trailers.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: East County Recycling Company **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 10/2/2004 and submitted the application on 11/12/2004. The applicant also submitted the application after completing construction and placing the facility into service on 10/2/2004.

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 claimed facility has an exclusive purpose to reduce a substantial quantity of solid waste. Each year, the claimed equipment processes

approximately 46,000 tons of discarded materials and recovering materials such as metal, wood, cement, and cardboard.

Method
ORS 468.155 (1)(b)(D)

Criteria
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)
OAR 340-016-0060(4)(e)

Criteria
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
ECR uses the loader and the excavator to segregate recyclable materials then sells them to the appropriate mills for incorporation into new products.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification.

Applied to this Application
There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions:

1. The applicant replaced the facility because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. The applicant replaced the facility before the end of its useful life.

Applied to this Application
The State of Oregon has issued 4 Pollution Control Facilities Tax Credit Certificates to the applicant. The claimed facility is **not a replacement** of a previously certified facility.

Maximum Credit
ORS 468.170(3)(d)
ORS 468.155(1)(b)(D)

Criteria
The maximum tax credit is 35% 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%** because the applicant submitted the application on 11/12/2004, and the facility is used in a material recovery process.

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**.

$ Certification
ORS 468.170(1)

Criteria
The certified cost is limited to the actual cost of the material recovery portion of the 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
		Claimed	$53,000
	No deductions		0
		Certified	**$53,000**

Facility Cost Allocable to Pollution Control

% Certification
ORS 468.170(1)

Criteria
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%** of the facility cost is allocable to pollution control.

Integral Facility
OAR 340-016-0075(4)(a)

Criteria
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, 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% greater than could be or were without the facility; or

d. The applicant's operating expenses for the facility are at least 50% 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
ORS 468.190(1)

Criteria
The following factors establish the portion of costs properly allocable to material recovery or recycling if the **facility cost exceeds $50,000**.

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 7-year useful life. The claimed facility allows the applicant to recover a substantial quantity of solid waste by converting it into materials that may be used to manufacture new products. The applicant used their estimated revenue from the sale of the materials and the expenditures associated with operations and maintenance 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 that the facility and site are in compliance with Department rules and statutes, and with EQC orders. The DEQ issued Solid Waste Disposal Permit Number 387 to ECR on October 10, 1995.

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

Director's Recommendation

Approve Application No. **6880**

Applicant: **Waste Connections of Oregon, Inc.**

Certification of:

Facility Cost		$9,880
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$3,458**

Certificate Period: **5 years**

Applicant Identification

35 Iron Point Circle
Suite 200
Folsom, CA 95630-8589

Organized as: C Corp
Taxpayer ID: 93-0599115

Facility Identification

12820 NE Marx
Portland, OR 97230

The certificate will identify the facility as:

633 - used 65-gallon wheeled recycle carts

Technical Information

Waste Connections of Oregon, Inc. provides solid waste collection and disposal service to its residential and commercial customers throughout Multnomah County. The applicant claims collection carts for organic yard debris placed with its residential customers. After collecting the yard debris, the applicant delivers it to a composting facility for additional processing.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Waste Connections of Oregon, Inc. **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 purchased the facility on or after January 1, 2002, the applicant must submit the application within one year after the purchase date. The applicant must submit the final application after purchasing the facility and placing it into service.

Applied to this Application
The applicant **timely filed** the application. The applicant purchased the claimed facility on 11/14/2003 and submitted the application on 11/13/2004. The applicant also submitted the application after purchasing and placing the claimed facility into service on 11/14/2003.

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.

"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.

Applied to this Application
The applicant uses the wheeled carts to recycle organic yard debris, thereby reducing solid waste by approximately **493,740 pounds** a year.

Method
ORS 468.155 (1)(b)(D)

Criteria
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.

"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.

OAR 340-016-0010(7)
OAR 340-016-0060(4)(e)

Criteria

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 yard waste is taken to a composting center and processed into compost. The applicant sells the compost to nurseries, landscapers, farmers, organic growers, and homeowners who use it as a soil amendment.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria

The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification.

Applied to this Application

There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria

The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions:

1. The applicant replaced the facility because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. The applicant replaced the facility before the end of its useful life.

Applied to this Application

The applicant purchased the used carts from Mt. Sanitary Services; the State of Oregon did not previously certify the carts to Mt. Sanitary Services. Additionally, the State of Oregon has not issued any Pollution Control Facilities Certificates to this location. The claimed facility is **not a replacement** facility.

Maximum Credit
ORS 468.170(3)(d)
ORS 468.155(1)(b)(D)

Criteria

The maximum tax credit is 35% 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%** because the applicant submitted the application on 11/13/2004, and the facility is used in a material recovery process.

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**.

$ Certification
ORS 468.170(1)

Criteria
The certified cost is limited to the actual cost of the material recovery portion of the 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	Claimed
	Claimed	$9,880
	No deductions	0
	Certified	**$9,880**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3)

Criteria
If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of solid waste 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%** the time for recycling yard debris.

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

Director's Recommendation

Approve Application No. **6889**

Applicant: **L & M K Enterprises, LLC**

Certification of:

Facility Cost		$16,592
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$5,807**

Certificate Period: **7 years**

Applicant Identification

PO Box 17669
Salem, OR 97305

Organized as: LLC
Taxpayer ID: 20-0215126

Facility Identification

Pacific Sanitation Inc.
3475 Blossom Drive Northeast
Salem, OR 97305

The certificate will identify the facility as:

Recycling Containers:

Five – Model 74E-Tall 3-yard containers, Serial #182893-182897;
Ten – Model 75E 4-yard containers, Serial #182898-182907;
Fifteen – Model 76E-Tall 6-yard containers, Serial #182908-182922

Technical Information

L & M K Enterprises, LLC leases commercial machinery and equipment primarily to recycling and garbage collection companies. The applicant claims thirty expanded metal front-load recycling containers for cardboard which they lease to Pacific Sanitation Inc.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: L & M K Enterprises, LLC **owns** the claimed facility which they lease to Pacific Sanitation Inc. for recycling or material recovery.

Eligibility

Timely Filing
2001 Edition ORS 468.165(6)

Criteria
If the applicant purchased the facility on or after January 1, 2002, the applicant must submit the application within one year after the purchase date. The applicant must submit the final application after purchasing the facility and placing it into service.

Applied to this Application
The applicant **timely filed** the application. The applicant purchased the containers on 11/28/2003 and submitted the application on 11/26/2004. The applicant also submitted the application after purchasing them and then placing them into service on 12/2/2003.

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.

"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.

Method
ORS 468.155 (1)(b)(D)

Criteria
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.

> "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.

OAR 340-016-0010(7)
OAR 340-016-0060(4)(e)

Criteria
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 cardboard collection containers remove approximately **300 tons** of waste cardboard from the waste stream every year. The lessee delivers the cardboard to Garten Services in Salem for additional processing. The cardboard will be used for its fiber content in the manufacture of new products.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification.

Applied to this Application
There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions:

1. The applicant replaced the facility because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or

2. The applicant replaced the facility before the end of its useful life.

Applied to this Application
The claimed facility is **not a replacement** facility.

Maximum Credit
ORS 468.170(3)(d)
ORS 468.155(1)(b)(D)

Criteria
The maximum tax credit is 35% 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%** because the applicant submitted the application on 11/26/2004, and the facility is used in a material recovery process.

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**.

$ Certification
ORS 468.170(1)

Criteria
The certified cost is limited to the actual cost of the material recovery portion of the 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	Claimed
	Claimed	$16,592
	No deductions	0
	Certified	**$16,592**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3) Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of solid waste bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost is **$16,592** and the lessee uses the facility **100%** of the time for collecting waste cardboard to be recycled.

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. The 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

Director's Recommendation

Approve Application No. **6892**

Applicant: **Waste Connections of Oregon, Inc.**

Certification of:

Facility Cost		$8,993
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$3,148**

Certificate Period: **7 years**

Applicant Identification

35 Iron Point Circle, Suite 200
Folsom, CA 95630-8589

Organized as: C Corp
Taxpayer ID: 93-0599115

Facility Identification

58597 Old Portland Road
St Helens Oregon, 97051

12820 NE Marx
Portland, OR 97230

3432 Cedar
Coos Bay, OR 97420

The certificate will identify the facility as:

750 – 14-gallon recycle bins
75 – 65-gallon recycle carts
50 – 95-gallon recycle carts

Technical Information

Waste Connections of Oregon, Inc. provides solid waste collection and disposal service to its residential and commercial customers in St. Helens, Portland and Coos Bay. The company claims 14-gallon recycle bins for collecting co-mingled recyclable materials, and 65-gallon recycle carts and 95-gallon carts for collecting yard debris from its residential customers. After collecting the recyclable material, the applicant then delivers it to a material recovery facility or a composting facility.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Waste Connections of Oregon, Inc. **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 purchased the facility on or after January 1, 2002, the applicant must submit the application within one year after the purchase date. The applicant must submit the final application after purchasing the facility and placing it into service.

Applied to this Application
The applicant **timely filed** the application. The applicant purchased the claimed facility on 12/31/2003 and submitted the application on 12/8/2004. The applicant also submitted the application after purchasing the bins and cart6s and placing the facility into service on 12/31/2003.

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.

"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.

Applied to this Application
The bins and carts reduce solid waste by approximately **1,000 tons a year**.

Method
ORS 468.155 (1)(b)(D)

Criteria
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.

> "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.

OAR 340-016-0010(7)
OAR 340-016-0060(4)(e)

Criteria
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 sends the recyclable material to a material recovery processor and the yard debris to a composting center for additional processing.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification.

Applied to this Application
There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions:

1. The applicant replaced the facility because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. The applicant replaced the facility before the end of its useful life.

Applied to this Application
The claimed facility is **not a replacement** facility.

Maximum Credit
ORS 468.170(3)(d)
ORS 468.155(1)(b)(D)

Criteria
The maximum tax credit is 35% 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%** because the applicant submitted the application on 12/8/2004, and the facility is used in a material recovery process.

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.**

$ Certification
ORS 468.170(1)

Criteria
The certified cost is limited to the actual cost of the material recovery portion of the 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	Claimed
	Claimed	$8,993
	No deductions	0
	Certified	**$8,993**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3)

Criteria
If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of solid waste 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%** of the time for reduction of solid waste by collecting recyclable materials and yard debris from residential customers.

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

Director's Recommendation

Approve Application No. **6913**

Applicant: **Umpqua Bank Leasing**

Certification of:

Facility Cost		$92,233
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$32,282**

Certificate Period: **5 years**

Applicant Identification

Dooling Lease Management Corporation
6400 SW Corbett Avenue
Portland, OR 97239

Organized as: **C Corp**
Taxpayer ID: **93-1261319**

Facility Identification

Pride Disposal Company
13980 Tualatin Sherwood Road
Sherwood, OR 97140

The certificate will identify the facility as:

One –Used 1999 Peterbilt Recycling Truck, Model 320, Serial #711809;
Recycling Containers for Cardboard:
Ten – 4-yard, Serial #184152-184161;
Three – 2-yard, Serial #184694-184696;
Three – 2-yard, Serial #184691-184693;
Three – 2-yard, Serial #185205-185207;
Three – 2-yard, Serial #185202-185204;
Twelve – 4-yard, Serial #185312-185323;
Six – 2-yard, Serial #186221-186226;
Ten – 4-yard, Serial #187003-187012

Technical Information

Umpqua Bank Leasing, a commercial bank, purchased a 1999 Peterbilt truck and fifty recycling containers of various sizes. The applicant leases the claimed facility to Pride Disposal Company, a residential recycling company in Sherwood, Oregon. The lessee will use the truck in its residential yard debris collection program and the containers in its co-mingled commercial recyclable program.

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.

Applied to this Application

DEQ will report the following information to the Department of Revenue: Umpqua Bank Leasing owns the 1999 Peterbilt truck and containers and leases them to Pride Disposal Company. Pride Disposal Company uses the truck and containers 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 purchased the claimed facility on 12/27/2004 and submitted the application on 12/30/2004. The applicant also submitted the application after purchasing the facility and placing the facility into service on 12/27/2004.

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.

"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 controls a substantial quantity of solid waste. The containers will increase the lessee's annual recycling tonnage from **5,500 tons to 6,100 tons** and the truck will help increase the yard debris recycling from **7,580 tons to 8,400 tons.**

Method
ORS 468.155 (1)(b)(D)

Criteria
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.

"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.

OAR 340-016-0010(7)
OAR 340-016-0060(4)(e)

Criteria
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 leesee uses the truck to collects yard debris and the containers to collect commingled recyclable materials. The leesee delivers the yard debris to Grimms Fuel and to Best Buy where it is recycled into a soil amendment. The lessee takes the commingled materials to Far West Fibers for additional sorting and shipment to the appropriate mills to be incorporated into new products.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification.

Applied to this Application
There are **no exclusions.**

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions:

1. The applicant replaced the facility because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. The applicant replaced the facility before the end of its useful life.

Applied to this Application
The claimed facility is **not a replacement** facility.

Maximum Credit
ORS 468.170(3)(d)
ORS 468.155(1)(b)(D)

Criteria
The maximum tax credit is 35% 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%** because the applicant submitted the application on 12/30/2004, and the facility is used in a material recovery process.

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**.

$ Certification
ORS 468.170(1)

Criteria
The certified cost is limited to the actual cost of the material recovery portion of the 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		Claimed
		Claimed	$92,233
	No deductions		0
		Certified	**$92,233**

Facility Cost Allocable to Pollution Control

% Certification
ORS 468.170(1)

Criteria
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.

Applied to this Application
The Department determined that **100%** of the facility cost is allocable to pollution control after considering the factors in the *Integral Facility* and *Percentage* subsections below.

Integral Facility
OAR 340-016-0075 (4)(a)

Criteria
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, 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% greater than could be or were without the facility; or

d. The applicant's operating expenses for the facility are at least 50% 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) The following factors establish the portion of costs properly allocable to material recovery or recycling if the **facility cost exceeds $50,000**.

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 5-year useful life. The claimed facility allows the lessee to collect and transport a substantially increased quantity of solid waste that will be incorporated into a salable and useable materials. Based on Umpqua Bank's lease income and the cost to service the lease, the facility's return on investment (ROI) is less than the National ROI for 2004, the facility's construction completion year. The applicant and Pride Disposal Company 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

Director's Recommendation

Approve Application No. **6914**

Applicant: **Umpqua Bank Leasing**

Certification of:

Facility Cost		$64,500
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$22,575**

Certificate Period: **5 years**

Applicant Identification

Dooling Lease Management Corporation
6400 SW Corbett Avenue
Portland, OR 97239

Organized as: C Corp
Taxpayer ID: 93-1261319

Facility Identification

Mel Deines Sanitary Service, Inc.
9301 SE Stanley Avenue
Portland, OR 97222

The certificate will identify the facility as:

One – Used 1995 International Recycling Truck, Model 4900, Serial # 1HTSHAAR5SH211609, equipped with a Labrie Expert 2000 Sideloader, Serial #CL95THL

Technical Information

Umpqua Bank Leasing, a commercial bank, purchased a used 1995 International Recycling Truck with a Labrie sideloader. The applicant leases the truck to Mel Deines Sanitary Service, Inc., a residential and commercial solid waste and recycling collector in Portland, Oregon. The recycling truck will collect recyclable materials and yard debris from new 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

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: Umpqua Bank Leasing **owns** the claimed facility and leases it to Mel Deines Sanitary Service, Inc that will use it 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 12/1/2004 and submitted the application on 12/30/2004. The applicant also submitted the application after purchasing and modifying the truck, and after placing the facility into service on 12/1/2004.

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 recycling truck prevents approximately **109 tons of recyclable** materials and **180 tons of yard debris** from disposal in a landfill each year.

Method
ORS 468.155 (1)(b)(D)

Criteria
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)
OAR 340-016-0060(4)(e)

Criteria
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 lessee delivers the recyclable materials and the yard debris to K.B. Recycling in Clackamas, Oregon for additional processing. K.B. Recycling then sells the material to the appropriate mills for eventual use in the manufacture of new products.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification.

Applied to this Application
There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions:

1. The applicant replaced the facility because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. The applicant replaced the facility before the end of its useful life.

Applied to this Application
The claimed facility is **not a replacement** facility. The State of Oregon has issued 15 Pollution Control Facilities Tax Credit Certificates to Umpqua Bank and no certificates to Mel Deines Sanitary Service, Inc.

Maximum Credit
ORS 468.170(3)(d)
ORS 468.155(1)(b)(D)

Criteria
The maximum tax credit is 35% 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%** because the applicant submitted the application on 12/30/2004, and the facility is used in a **material recovery process**.

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**.

$ Certification Criteria
ORS 468.170(1) The certified cost is limited to the actual cost of the material recovery portion of the 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	Claimed
	Claimed	$64,500
	No deductions	0
	Certified	**$64,500**

Facility Cost Allocable to Pollution Control

% 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%** of the facility cost is allocable to pollution control after considering *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, 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% greater than could be or were without the facility; or

d. The applicant's operating expenses for the facility are at least 50% 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
ORS 468.190(1)

Criteria
The following factors establish the portion of costs properly allocable to material recovery or recycling if the **facility cost exceeds $50,000**.

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 **5-year useful life**. The claimed facility allows the lessee to recover a substantial quantity of solid waste and convert it into a usable commodity. The applicant used their estimated revenue and the expenditures associated with the lease to determine the facility's return on investment (ROI). The resulting facility ROI is less than the National ROI for 2004, the year of purchase. 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

Director's Recommendation

Approve Application No. **6923**
Applicant: **Garbarino Disposal & Recycling Service**

Certification of:		
Facility Cost		$195,863
Percentage Allocable	X	50%
Maximum Percentage	X	35%
Tax Credit		**$34,276**

Certificate Period: **7 years**

Applicant Identification

PO Box 250
North Plains, OR 97133

Organized as: **S Corp**
Taxpayer ID: **93-0563390**

Facility Identification

30966 NW Hillcrest Street
North Plains, OR 97133

The certificate will identify the facility as:

One - Brattain International engine and Chassis VIN# 5VCDC6PEX5H201414,
One - General Equipment Loader attachment, serial # SF04103VNA

Technical Information

Garbarino Disposal & Recycling Service, Inc. collects waste materials from commercial and residential customers in Washington County. The applicant claims a truck and loader used to collect recyclable materials from its new residential customers and to transport it to a material recovery facility.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Garbarino Disposal & Recycling Service **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 12/1/2004 and submitted the application on 1/27/2005. The applicant also submitted the application after purchasing and modifying the truck and after placing the facility into service on 12/1/2004.

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 sole purpose of the truck and loader is to divert approximately **2,000 tons per year** of household waste from disposal in a landfill.

Method
ORS 468.155 (1)(b)(D)

Criteria
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)
OAR 340-016-0060(4)(e)

Criteria

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 truck and the loader are part of a material recovery process for obtaining useful materials from household solid waste. The applicant delivers the recyclable materials to a material recovery facility where additional segregation takes place. The sorted materials are then sold to the appropriate mills that incorporate the material into a useful product.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria

The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification.

Applied to this Application

There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions:

1. The applicant replaced the facility because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. The applicant replaced the facility before the end of its useful life.

Applied to this Application
The State of Oregon has issued 15 Pollution Control Facilities Tax Credit Certificates through Global Leasing, Inc. to facilities at this location and one to Garbarino Disposal & Recycling Service at this location. The claimed facility is **not a replacement** of any of these previously certified facilities.

Maximum Credit
ORS 468.173(3)(f)

Criteria
The maximum tax credit available to the applicant is 35% if the application was filed between January 1, 2002 and December 31, 2008, inclusively; and the certified facility cost is less than $200,000.

Applied to this Application
The maximum tax credit is **35%** because the applicant filed the application on 1/27/04 and the certified facility cost is $195,863.

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**.

$ Certification
ORS 468.170(1)

Criteria
The certified cost is limited to the actual cost of the material recovery portion of the 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 represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion	Claimed
	Claimed	$195,863
	No deductions	0
	Certified	**$195,863**

Facility Cost Allocable to Pollution Control

% Certification
ORS 468.170(1)

Criteria

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 **50%** of the facility cost is allocable to pollution control considering the *Integral Facility* and *Percentage* subsections below.

Integral Facility
OAR 340-016-0075 (4)(a)

Criteria

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, 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% greater than could be or were without the facility; or

d. The applicant's operating expenses for the facility are at least 50% 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

ORS 468.190(1) Criteria

The following factors establish the portion of costs properly allocable to material recovery or recycling if the **facility cost exceeds $50,000**.

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 7-year useful life. The claimed facility allows the applicant to convert 2,000 tons of solid waste into a useable commodity. The applicant used their estimated revenue and expenditures associated with the truck and the loader 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. The applicant uses the truck and the loader **50% of the time for activities other than recycling or material recovery**.

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

Director's Recommendation

Approve Application No. **6924**

Applicant: **Global Leasing**

Certification of:

Facility Cost		$115,385
Percentage Allocable	X	60%
Maximum Percentage	X	35%
Tax Credit		**$24,231**

Certificate Period: **7 years**

Applicant Identification

PO Box 250
North Plains, OR 97133

Organized as: S Corp
Taxpayer ID: 93-1097105

Facility Identification

30966 NW Hillcrest
North Plains, OR 97133

The certificate will identify the facility as:

One - Brattain International engine and Chassis VIN# 5VCDC6LF9H200378,
One - General Equipment Loader roll-off system, serial # GE0611004

Technical Information

Global Leasing purchased a truck and a loader that it leases to Garbarino Disposal & Recycling Service, Inc. for collecting recyclable materials and waste from the lessee's new commercial customers in Washington County.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Global Leasing **owns** the claimed facility that they lease to Garbarino Disposal & Recycling Services, Inc. The lessee uses it 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 took possession of the truck on 10/1/2004 and submitted the application on 1/27/2005. The applicant also submitted the application after purchasing and modifying the truck and after placing it into service on 10/1/2004.

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 truck and the loader prevent approximately **1,500 tons** of solid waste from disposal in a landfill each year.

Method
ORS 468.155 (1)(b)(D)

Criteria
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)
OAR 340-016-0060(4)(e)

Criteria

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 lessee uses the truck and loader to collect and transport recyclable materials to a material recovery facility for additional processing and shipment to the appropriate recycling mills for incorporation into useful products.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria

The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification.

Applied to this Application

There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria

The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions:

1. The applicant replaced the facility because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. The applicant replaced the facility before the end of its useful life.

Applied to this Application
The State of Oregon has issued 15 Pollution Control Facilities Tax Credit Certificates through Global Leasing, Inc. to facilities at the lessee's location and one to Garbarino Disposal & Recycling Service at this location. The claimed facility is **not a replacement** of any of these previously certified facilities.

Maximum Credit
ORS 468.173(3)(f)

Criteria
The maximum tax credit available to the applicant is 35% if the application was filed between January 1, 2002 and December 31, 2008, inclusively; and the certified facility cost is less than $200,000.

Applied to this Application
The maximum tax credit is **35%** because the applicant filed the application on 1/27/04 and the certified facility cost is $115,385.

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.**

$ Certification
ORS 468.170(1)

Criteria
The certified cost is limited to the actual cost of the material recovery portion of the 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		Claimed
		Claimed	$115,385
	No deductions		0
		Certified	**$115,385**

Facility Cost Allocable to Pollution Control

% 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 **60%** of the facility cost is allocable to pollution control after considering 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, 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% greater than could be or were without the facility; or

d. The applicant's operating expenses for the facility are at least 50% 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) The following factors establish the portion of costs properly allocable to material recovery or recycling if the **facility cost exceeds $50,000**.

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 7-year useful life. The claimed facility allows the lessee to convert a substantial quantity of solid waste into a usable commodity. The applicant used their estimated revenue and expenditures associated with the lease 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 lessee did not investigate an alternative technology. The lessee however uses the claimed **facility 60% of the time for recycling activities** and 40% of the time for collecting and hauling non-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

Director's Recommendation

Approve Application No. **6930**

Applicant: **Global Leasing, Inc.**

Certification of:

Facility Cost		$2,475
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$ 866**

Certificate Period: **7 years**

Applicant Identification

PO Box 250
North Plains, OR 97133

Organized as: S Corp
Taxpayer ID: 93-1097105

Facility Identification

30966 NW Hillcrest Street
North Plains, OR 97133

The certificate will identify the facility as:

500 red 14-gallon recycling bins

Technical Information

Global Leasing purchased recycling bins that it leases to Garbarino Disposal & Recycling Service, Inc. for collecting recyclable materials from the lessee's new residential customers in Washington County.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Global Leasing **owns** the claimed facility that they lease to Garbarino Disposal & Recycling Services, Inc. The lessee uses it 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 purchased the claimed facility on 8/1/2004 and submitted the application on 2/22/2005. The applicant also submitted the application after taking possession of the bins and after placing them into service on 8/1/2004.

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 bins prevent approximately **195 tons** of solid waste from disposal in a landfill each years.

Method
ORS 468.155 (1)(b)(D)

Criteria
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)
OAR 340-016-0060(4)(e)

Criteria
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
Garbarino Disposal & Recycling Service, Inc. collect recyclable materials in the bins. The lessee then delivers the contents to a material recovery facility for additional processing and then shipment to the appropriate recycling mills for incorporation into useful products.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification.

Applied to this Application
There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions:

1. The applicant replaced the facility because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. The applicant replaced the facility before the end of its useful life.

Applied to this Application
The State of Oregon has issued 15 Pollution Control Facilities Tax Credit Certificates through Global Leasing, Inc. to facilities at the lessee's location and one to Garbarino Disposal & Recycling Service at this location. The claimed facility is **not a replacement** of any of these previously certified facilities.

Maximum Credit
ORS 468.173(3)(f)

Criteria
The maximum tax credit available to the applicant is 35% if the application was filed between January 1, 2002 and December 31, 2008, inclusively; and the certified facility cost is less than $200,000.

Applied to this Application
The maximum tax credit is **35%** because the applicant filed the application on 8/1/04 and the certified facility cost is $2,475.

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**.

$ Certification
ORS 468.170(1)

Criteria
The certified cost is limited to the actual cost of the material recovery portion of the 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
	Claimed	$2,475
	No deductions	0
	Certified	**$2,475**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3)

Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost is $2,475. The applicant uses the facility **100% of the time** for material recovery or recycling.

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

Director's Recommendation

Approve Application No. **6931**

Applicant: **Global Leasing, Inc.**

Certification of:

Facility Cost		$7,494
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$2,623**

Certificate Period: **7 years**

Applicant Identification

PO Box 250
North Plains, OR 97133

Organized as: S Corp
Taxpayer ID: 93-1097105

Facility Identification

30966 NW Hillcrest
North Plains, Or 97133

The certificate will identify the facility as:

Ten model 75, front loading 4-yard recycling containers

Technical Information

Global Leasing purchased ten recycling containers that it leases to Garbarino Disposal & Recycling Service, Inc. for collecting recyclable materials from the lessee's new residential and commercial customers in Washington County.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Global Leasing **owns** the claimed facility that they lease to Garbarino Disposal & Recycling Services, Inc. The lessee uses it 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 purchased the containers on 1/12/2005 and submitted the application on 2/22/2005. The applicant also submitted the application after taking possession of the containers and placing the facility into service on 1/12/2005.

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 containers help prevent approximately **156 tons** of solid waste from landfill disposal each year.

Method
ORS 468.155 (1)(b)(D)

Criteria
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)
OAR 340-016-0060(4)(e)

Criteria

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 lessee uses the containers to collect recyclable materials from its customers. The lessee then transports the contents to a material recovery facility for additional processing and subsequent shipment to appropriate recycling mills for incorporation into useful products.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria

The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification.

Applied to this Application

There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria

The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions:

1. The applicant replaced the facility because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. The applicant replaced the facility before the end of its useful life.

Applied to this Application
The State of Oregon has issued 15 Pollution Control Facilities Tax Credit Certificates through Global Leasing, Inc. to facilities at the lessee's location and one to Garbarino Disposal & Recycling Service at this location. The claimed facility is **not a replacement** of any of these previously certified facilities.

Maximum Credit
ORS 468.170(3)(d)
ORS 468.155(1)(b)(D)

Criteria
The maximum tax credit is 35% 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%** because the applicant submitted the application on 2/22/2005, and the facility is used in a **material recovery process**.

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**.

$ Certification
ORS 468.170(1)

Criteria
The certified cost is limited to the actual cost of the material recovery portion of the 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		Claimed
		Claimed	$7,494
	No deductions		0
		Certified	**$7,494**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3)

Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost is $7,494 and the applicant uses the facility **100%** of the time for material recovery or recycling.

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

Director's Recommendation

Approve Application No. **6932**

Applicant: **Global Leasing, Inc.**

Certification of:

Facility Cost		$9,829
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$3,440**

Certificate Period: **7 years**

Applicant Identification

PO Box 250
North Plains, OR 97133

Organized as: S Corp
Taxpayer ID: 93-1097105

Facility Identification

30966 NW Hillcrest
North Plains, OR 97133

The certificate will identify the facility as:

250 casters and 20 lids to fit 4-yard front load recycling containers

Technical Information

Global Leasing purchased 250 casters and 20 lids that it leases to Garbarino Disposal & Recycling Service, Inc. for collecting recyclable materials from the lessee's new residential and commercial customers in Washington County.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Global Leasing **owns** the claimed facility that they lease to Garbarino Disposal & Recycling Services, Inc. The lessee uses it 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 purchased the castors and lids on 9/22/2004 and submitted the application on 2/22/2005. The applicant also submitted the application after taking possession of the claimed facility and after placing them into service on 12/1/2004.

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 casters and lids prevent approximately **156 tons** of solid waste from landfill disposal each year.

Method
ORS 468.155 (1)(b)(D)

Criteria
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)
OAR 340-016-0060(4)(e)

Criteria

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 lessee uses the casters and lids in a material recovery process. They aid in the collection and protection of recyclable materials. The lessee transports the contents to a material recovery facility for additional processing and subsequent shipment to appropriate recycling mills for incorporation into useful products.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria

The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification.

Applied to this Application

There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria

The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions:

1. The applicant replaced the facility because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. The applicant replaced the facility before the end of its useful life.

Applied to this Application
The State of Oregon has issued 15 Pollution Control Facilities Tax Credit Certificates through Global Leasing, Inc. to facilities at this location and one to Garbarino Disposal & Recycling Service at this location. The claimed facility is **not a replacement** of any of these previously certified facilities.

Maximum Credit
ORS 468.170(3)(d)
ORS 468.155(1)(b)(D)

Criteria
The maximum tax credit is 35% 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%** because the applicant submitted the application on 2/22/2005, and the facility is used in a **material recovery process**.

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**.

$ Certification
ORS 468.170(1)

Criteria
The certified cost is limited to the actual cost of the material recovery portion of the 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		Claimed
		Claimed	$9,829
	No deductions		0
		Certified	$9,829

Facility Cost Allocable to Pollution Control

ORS 468.190 (3)

Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost is $9,829 and the applicant uses the facility **100% of the time** for material recovery or recycling.

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

Director's Recommendation

Approve Application No. **6939**

Applicant: **Global Leasing, Inc.**

Certification of:

Facility Cost		$24,150
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$8,453**

Certificate Period: **3 years**

Applicant Identification

PO Box 250
North Plains, OR 97133

Organized as: S Corp
Taxpayer ID: 93-1097105

Facility Identification

30966 NW Hillcrest
North Plains, OR 97133

The certificate will identify the facility as:

Two 20-yard DeWald Northweat drop boxes, Serial numbers 13321 & 13322
Two - 20-yard drop boxes, Serial numbers 13308 & 13309
Two - 30-yard DeWald Northweat drop boxes, Serial numbers 13310 & 13311

Technical Information

Global Leasing purchased the six drop boxes that it leases to Garbarino Disposal & Recycling Service, Inc. for collecting waste materials from the lessee's new customers in Washington County.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Global Leasing **owns** the claimed facility that they lease to Garbarino Disposal & Recycling Services, Inc. The lessee uses it 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 purchased the drop boxes on 9/22/2004 and submitted the application on 9/22/2005. The applicant also submitted the application after taking possession of the drop boxes and after placing them into service on 9/22/2005.

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 drop boxes prevent approximately **1,222 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) OAR 340-016-0060(4)(e) Criteria

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 lessee uses the drop boxes to collect recyclable materials from its customers. The lessee then transports the contents to a material recovery facility for additional processing and subsequent shipment to appropriate recycling mills for incorporation into useful products.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification.

Applied to this Application
There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions:

1. The applicant replaced the facility because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. The applicant replaced the facility before the end of its useful life.

Applied to this Application
The State of Oregon has issued 15 Pollution Control Facilities Tax Credit Certificates through Global Leasing, Inc. to facilities at this location and one to Garbarino Disposal & Recycling Service at this location. The claimed facility is **not a replacement** of any of these previously certified facilities.

Maximum Credit
ORS 468.170(3)(d)
ORS 468.155(1)(b)(D)

Criteria
The maximum tax credit is 35% 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%** because the applicant submitted the application on 3/3/2005, and the facility is used in a **material recovery process**.

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**.

$ Certification Criteria

ORS 468.170(1) The certified cost is limited to the actual cost of the material recovery portion of the 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	Claimed
		Claimed $24,150
	No deductions	0
		Certified **$24,150**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3) Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost is $24,150 and the applicant uses the facility **100%** of the time for material recovery or recycling.

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

Director's Recommendation

Approve Application No. **6943**

Applicant: **B & J Garbage Company**

Certification of:

Facility Cost		$24,461
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$8,561**

Certificate Period: **5 years**

Applicant Identification

PO Box 1110
Canby, OR 97013-1110

Organized as: C Corp
Taxpayer ID: 93-0626674

Facility Identification

9602 SE Clackamas Road
Clackamas, OR 97015

The certificate will identify the facility as:

500 14-gallon bins, no serial #s
564 95-gallon carts, serial #s R95 000001-R95 000631

Technical Information

B&J Garbage Company provides garbage and recyclable material collection services to its residential and commercial customers in North Clackamas County. In its recycling service, the company handles ferrous and non-ferrous metal, all grades of paper, plastic and container glass. The applicant claims bins and carts for its expanded service. The 1,064 containers are 14-gallon bins to collect glass and 95-gallon carts used to collect the other mixed recyclable materials. The applicant delivers the recyclable materials to KB Recycling for additional sorting, cleaning, baling, compacting, or reloading into drop boxes for shipment to markets in the Pacific Northwest, California or Asia.

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.

Applied to this Application

DEQ will report the following information to the Department of Revenue: B&J Garbage Company **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 purchased the bins and carts on 9/21/2004 and submitted the application on 3/9/2005. The applicant also submitted the application after taking possession of the containers and after placing the facility into service on 9/21/2004.

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 claimed bins prevent approximately **955 tons** of materials from being discarded as solid waste in a landfill each year.

Method
ORS 468.155 (1)(b)(D)

Criteria
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)
OAR 340-016-0060(4)(e)

Criteria
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
Manufacturers use the recycled glass to make container glass and fiberglass. Local or international markets purchase the metals and paper for incorporation into new products.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification.

Applied to this Application
There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions:

1. The applicant replaced the facility because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. The applicant replaced the facility before the end of its useful life.

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.

Maximum Credit
ORS 468.170(3)(d)
ORS 468.155(1)(b)(D)

Criteria
The maximum tax credit is 35% 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%** because the applicant submitted the application on 9/7/2004, and the facility is used in a material recovery process.

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**.

$ Certification Criteria
ORS 468.170(1) The certified cost is limited to the actual cost of the material recovery portion of the 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
	Claimed	$24,461
	No deductions	0
	Certified	**$24,461**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3) Criteria
If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application
The certified facility cost would be less than $50,000. The applicant uses the facility **100%** of the time for recycling.

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

Director's Recommendation

Approve Application No. **6944**

Applicant: **Canby Disposal Company**

Certification of:

Facility Cost		$13,564
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$4,747**

Certificate Period: **5 years**

Applicant Identification

PO Box 550
Canby, OR 97013-0550

Organized as: C Corp
Taxpayer ID: 93-0627092

Facility Identification

1600 SE 4th
Canby, OR 97013

The certificate will identify the facility as:

1,000 14-gallon bins
217 95-gallon carts, serial #s R95 005501 - R95 005717

Technical Information

Canby Disposal Company is a solid waste and recyclable material collection company that provides service to residential and commercial customers in the City of Canby. The company handles ferrous and non-ferrous metal, all grades of paper, plastic and container glass. In its effort to expand service to its residential and commercial customers, the applicant claims 1,217 bins and carts. The 95-gallon carts collect commingled recyclables with the exception of glass and the 14-gallon bins collect the glass.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Canby Disposal Company **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 purchased the bins and carts on 6/7/2004 and submitted the application on 3/9/2005. The applicant also submitted the application after taking possession of the claimed facilty and after placing it into service on 6/7/2004.

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 claimed facility prevents approximately **116 tons** of solid waste from landfill disposal each year.

Method
ORS 468.155 (1)(b)(D)

Criteria
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)
OAR 340-016-0060(4)(e)

Criteria
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 and delivers the recyclable materials to KB Recycling who bales, compacts and containerizes the materials for shipment to markets in the Pacific Northwest, California, and Asia. The glass is recycled into container glass. KB Recycling sells the metals to local or international markets and sells clean sorted and graded paper directly to Oregon and Washington mills for use as secondary fiber.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification.

Applied to this Application
There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions:

1. The applicant replaced the facility because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. The applicant replaced the facility before the end of its useful life.

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.

Maximum Credit
ORS 468.170(3)(d)
ORS 468.155(1)(b)(D)

Criteria
The maximum tax credit is 35% 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%** because the applicant submitted the application on 3/9/2005, and the facility is used in a material recovery process.

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.**

$ Certification
ORS 468.170(1)

Criteria
The certified cost is limited to the actual cost of the material recovery portion of the 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
		Claimed	$13,564
	No deductions		0
		Certified	**$13,564**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3)

Criteria
If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application
The certified facility cost would be less than $50,000. The applicant uses the facility **100%** of the time for material recovery.

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

Director's Recommendation

Approve Application No. **6958**

Applicant: **Waste Connections of Oregon, Inc.**

Certification of:

Facility Cost		$1,500
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$ 525**

Certificate Period: **7 years**

Applicant Identification

35 Iron Point Circle
Folsom, CA 95630

Organized as: C Corp
Taxpayer ID: 93-0599115

Facility Identification

Curray Transfer
17498 Carpenterville Road
Brookings, OR 97415

The certificate will identify the facility as:

250 A-1 blue 18-gallon recycling bins, model 1019

Technical Information

Waste Connections of Oregon, Inc. provides collection and disposal of solid waste services to its residential and commercial customers throughout Curry County. The applicant claims bins placed with its new residential customers for recycling fiber, metal and glass. After collecting the recyclable material, the applicant delivers it to a material recovery facilities for additional processing or to mills for incorporation into new products.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Waste Connections of Oregon, Inc. **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 10/26/2004 and submitted the application on 3/25/2005. The applicant also submitted the application after completing construction and placing the facility into service on 10/26/2004.

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 collection bins prevent about **65 tons** of solid waste from landfill disposal each year.

Method
ORS 468.155 (1)(b)(D)

Criteria
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)
OAR 340-016-0060(4)(e)

Criteria
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 uses the containers to collect fiber, metal and glass and then delivers the material to mills for incorporation into new products, or to a material recovery facility for additional sorting and shipment to the appropriate mills.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification.

Applied to this Application
There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions:

1. The applicant replaced the facility because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. The applicant replaced the facility before the end of its useful life.

Applied to this Application
The State of Oregon has not issued any Pollution Control Facilities Tax Credit Certificates to any taxpayer at this location. The claimed facility is **not a replacement** facility.

Maximum Credit
ORS 468.170(3)(d)
ORS 468.155(1)(b)(D)

Criteria
The maximum tax credit is 35% 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%** because the applicant submitted the application on 3/25/2005, and the facility is used in a material recovery process.

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**.

$ Certification
ORS 468.170(1)

Criteria
The certified cost is limited to the actual cost of the material recovery portion of the 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		Claimed
		Claimed	$1,550
	No deductions		0
		Certified	**$1,550**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3)

Criteria
If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application
The certified facility cost would be less than $50,000. The applicant uses the facility **100%** of the time to collect 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

Director's Recommendation

Approve Application No. **6959**

Applicant: **Waste Connections of Oregon, Inc.**

Certification of:

Facility Cost		$26,303
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$9,206**

Certificate Period: **7 years**

Applicant Identification

35 Iron Point Circle
Folsom, CA 95630

Organized as: C Corp
Taxpayer ID: 93-0599115

Facility Identification

County Transfer & Recycling
85040 Highway 101 South
Florence, OR 97439

The certificate will identify the facility as:

700 - 95-gallon grey Schaefer yard-debris carts, Model USD95B with 12" Polyflex snap-on wheels

Technical Information

Waste Connections of Oregon, Inc. provides solid waste collection and disposal services to its residential and commercial customers throughout Lane County. The applicant claims 700 carts placed with its residential customers for collecting yard debris. After collecting the recyclable material, the applicant then delivers it to a composting facility for additional processing. This is a new service for these 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

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: Waste Connections of Oregon, Inc. **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 purchased the carts on 9/30/2004 and submitted the application on 3/25/2005. The applicant also submitted the application after taking possession of the carts and after placing them into service on 9/30/2004.

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 bins prevent approximately **328,000** pounds of yard waste from disposal as solid waste each year.

Method
ORS 468.155 (1)(b)(D)

Criteria
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)
OAR 340-016-0060(4)(e)

Criteria
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 uses the containers to collect yard-debris and then delivers the debris to a company that uses it to produce compost or soil amendments.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification.

Applied to this Application
There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions:

1. The applicant replaced the facility because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. The applicant replaced the facility before the end of its useful life.

Applied to this Application
The State of Oregon has not issued any Pollution Control Facilities Tax Credit Certificates to a taxpayer at this location. The claimed facility is **not a replacement** facility.

Maximum Credit
ORS 468.170(3)(d)
ORS 468.155(1)(b)(D)

Criteria
The maximum tax credit is 35% 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%** because the applicant submitted the application on 3/25/2005, and the facility is used in a material recovery process.

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**.

$ Certification
ORS 468.170(1)

Criteria
The certified cost is limited to the actual cost of the material recovery portion of the 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		Claimed
		Claimed	$26,303
	No deductions		0
		Certified	**$26,303**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3) Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application
The certified facility cost would be less than $50,000. The applicant uses the facility **100%** of the time to reduce solid waste.

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

Director's Recommendation

Approve Application No. **6960**

Applicant: **Waste Connections of Oregon, Inc.**

Certification of:

Facility Cost		$2,875
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$1,006**

Certificate Period: **7 years**

Applicant Identification

35 Iron Point Circle
Folsom, CA 95630

Organized as: C Corp
Taxpayer ID: 93-0599115

Facility Identification

Les' Sanitary Service
3432 Cedar
North Bend, OR 97459

The certificate will identify the facility as:

500 - Model 1019 light blue, 18-gallon curbside recycling bins

Technical Information

Waste Connections of Oregon, Inc. provides solid waste collection and disposal services to its residential and commercial customers throughout Lane County. The applicant claims 500 bins placed with its residential customers for collecting fiber, metal and glass. After collecting the recyclable material, the applicant then delivers it to mills for incorporation into new products or to material recovery facilities for additional processing.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Waste Connections of Oregon, Inc. **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 11/19/2004 and submitted the application on 3/25/2005. The applicant also submitted the application after completing construction and after placing the facility into service on 11/19/2004.

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 recycling bins recover approximately **130 tons** of recyclable materials in Coos County each year.

Method
ORS 468.155 (1)(b)(D)

Criteria
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)
OAR 340-016-0060(4)(e)

Criteria

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 uses the containers to collect fiber, metal and glass and then delivers the material to mills for incorporation into new products, or to a material recovery facility for additional sorting and shipment to the appropriate mills.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria

The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification.

Applied to this Application

There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria

The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions:

1. The applicant replaced the facility because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. The applicant replaced the facility before the end of its useful life.

Applied to this Application
The State of Oregon has not issued any Pollution Control Facilities Tax Credit Certificates to any taxpayer at this location. The claimed facility is **not a replacement** facility.

Maximum Credit
ORS 468.170(3)(d)
ORS 468.155(1)(b)(D)

Criteria
The maximum tax credit is 35% 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%** because the applicant submitted the application on 3/25/2005, and the facility is used in a material recovery process.

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**.

$ Certification
ORS 468.170(1)

Criteria
The certified cost is limited to the actual cost of the material recovery portion of the 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	Claimed
	Claimed	$2,875
	No deductions	0
	Certified	**$2,875**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3) Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application
The certified facility cost would be less than $50,000. The applicant uses the facility **100%** of the time for material recovery.

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

Director's Recommendation

Approve Application No. **6961**

Applicant: **Waste Connections of Oregon, Inc.**

Certification of:

Facility Cost		$9,965
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$3,488**

Certificate Period: **7 years**

Applicant Identification

35 Iron Point Circle
Folsom, CA 95630

Organized as: C Corp
Taxpayer ID: 93-0599115

Facility Identification

Sweet Home Sanitation
1001 Long Street
Sweet Home, OR 97386

The certificate will identify the facility as:

250 - 95-gallon grey Schaefer yard-debris carts, Model USD95B with 12" Polyflex snap-on wheels

Technical Information

Waste Connections of Oregon, Inc. provides solid waste collection and disposal services to its residential and commercial customers throughout Lane County. The applicant claims 250 carts placed with its new residential customers for collecting yard debris. After collecting the yard debris, the applicant delivers it to a composting facility for additional processing.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Waste Connections of Oregon, Inc. **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 purchased the carts on 6/17/2004 and submitted the application on 3/25/2005. The applicant also submitted the application after taking possession of the carts and after placing them into service on 6/17/2004.

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 containers prevent **195,000 pounds** of yard waste annually from disposal in landfills.

Method
ORS 468.155 (1)(b)(D)

Criteria
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)
OAR 340-016-0060(4)(e)

Criteria

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 uses the containers to collect yard-debris and then delivers the debris to a company that uses it to produce compost or soil amendments.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria

The regulations exclude over 40 items from the definition of a Pollution Control Facility. Any items that do not meet the definition are ineligible for certification.

Applied to this Application

There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria

The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions:

1. The applicant replaced the facility because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. The applicant replaced the facility before the end of its useful life.

Applied to this Application
The State of Oregon has not issued any Pollution Control Facilities Tax Credit Certificates to a taxpayer at this location. The claimed facility is **not a replacement** facility.

Maximum Credit
ORS 468.170(3)(d)
ORS 468.155(1)(b)(D)

Criteria
The maximum tax credit is 35% 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%** because the applicant submitted the application on 3/25/2005, and the facility is used in a material recovery process.

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.**

$ Certification
ORS 468.170(1)

Criteria
The certified cost is limited to the actual cost of the material recovery portion of the 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	Claimed
	Claimed	$9,965
	No deductions	0
	Certified	**$9,965**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3) Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost would be less than $50,000. The applicant uses the facility **100%** of the time for collecting yard debris.

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

BACKGROUND
APPROVALS: Nonpoint Source Pollution Control Facilities

The Department recommends the Commission approve the following applications for certification as nonpoint source pollution control facility.

When the Commission adopted the nonpoint source pollution control rules in 2001, members speculated that piping and covering irrigation ditches would most likely qualify for the credit under the adopted rule. In application number 6909, Mr. Kenneth Poole presents the first application for this type of project. Mr. Poole constructed the project according the United States Department of Agriculture, Natural Resource Conservation Service specifications. These specifications and a letter from the District Manager for Malheur County Soil and Water Conservation District (attached to Review Report) support the ability of the project to reduce nonpoint source pollution.

Summary of NPS Pollution Control Facilities

App #	Applicant		Certified	% Allocable	Maximum Percent	GF Liability
6864	Gary Rea		$97,500.00	100%	35%	$34,125
6909	Kenneth Poole		$5,261.00	100%	35%	$1,841
2 Apps		**Sum**	**102,761**			**35,966**
		Average	51,381			17,983
		Minimum	5,261			1,841
		Maximum	97,500			34,125

The law defines nonpoint source pollution control facilities as "...a facility that the Environmental Quality Commission has identified by rule as reducing or controlling significant amounts of nonpoint source pollution."[1] The Commission adopted rules that define "nonpoint source pollution"[2] and identify eligible "nonpoint source pollution control facilities"[3] as shown below.

Statutory Definition of a "Nonpoint Source Pollution Control"

ORS 468.155 provides the definitions for ORS 468.155 to 468.190 and 468.962 provided in part below.

...

(b) Such prevention, control or reduction required by this subsection shall be accomplished by:

...

(2)(a) As used in ORS 468.155 to 468.190 and 468.962, "pollution control facility" or "facility" includes a nonpoint source pollution control facility.

---

[1] ORS 468.155(2)(b)
[2] OAR 340-016-0010(8)
[3] OAR 340-016-0060(4)(h)

(b) As used in this subsection, "nonpoint source pollution control facility" means a facility that the Environmental Quality Commission has identified by rule as reducing or controlling significant amounts of nonpoint source pollution.

...

OAR 340-016-0010 provides the following pertinent definitions.

"Nonpoint Source Pollution" means pollution that comes from numerous, diverse, or widely scattered sources of pollution that together have an adverse effect on the environment. The meaning includes:

(a) The definition provided in OAR 340-041-0006(17): "Nonpoint Sources" refers to diffuse or unconfined sources of pollution where wastes can either enter into or be conveyed by the movement of water to public waters; or

(b) Any sources of air pollution that are:

(A) Mobile sources that can move on or off roads; or

(B) Area sources.

Eligibility

340-016-0060 Eligibility

...

(4) Eligible Activities. The facility shall prevent, reduce, control, or eliminate:

...

(h) Nonpoint Source Pollution. Pursuant to ORS 468.155(2)(b), the EQC has determined that the following facilities reduce, or control significant amounts of nonpoint source pollution:

(A) Any facility that implements a plan, project, or strategy to reduce or control nonpoint source pollution as documented:

...

(B) Any facility effective in reducing nonpoint source pollution as documented in supporting research by:

...

(C) Wood chippers used to reduce openly burned woody debris; or

(D) The retrofit of diesel engines with a diesel emission control device, certified by the U.S. Environmental Protection Agency.

...

State of Oregon
Department of Environmental Quality

Tax Credit Review Report

Pollution Control Facility: NPS
Final Certification
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0080

Director's Recommendation

Approve Application No.**6864**

Applicant: **Gary Rea**

Certification of:

Facility Cost		$97,500
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$34,125**

Certificate Period: **10 years**

Applicant Identification

63201 Howton Lane
Ione, OR 97843

Organized as: **Individual**

Facility Identification

Same as the applicant's address.

The certificate will identify the facility as:

One 2003 Case IH STX 450 Quad Trak tractor, Serial #JEE0102411;
One Used 1995 Concord Air Drill, Model 4812, Serial #ATD-1274;
One Used 1995 Concord Air Cart, Model 2480, Serial #ES20-0148

Technical Information

Gary Rea is a dryland wheat farmer in Morrow County. He claims a reduced tillage farming system that includes a Quad Trak Tractor, a Concord Air Drill and a Concord Air Cart. The system maintains surface residue, increases the efficiency of fertilizers and herbicides and increases the aggregate stability of the soil. The air cart is used together with the air drill to place a dry fertilizer along with the seed in the soil. The tractor pulls the drill and air cart. The applicant will use the system on the acreage identified as:

- 924 acres in the following fields: Map C17L Tract 450, Fields 1, 2, 201; Maps C17H & C18H Tract 862, Fields 1, 201, 202; Maps 17H, C18H, D17H & D18H Tract 863, Fields 201 through 204;
- 868 acres in the following fields: Maps B18H & C 18H, Tract 349, Field 1 trough 6, and Fields 201 through 211;
- 263 acres in the following fields: Tract 399, Fields 1 trough 6, and Fields 201 through 211; and
- 262 acres in the following fields: Tract 398, Fields 1, 2, 3 and 201 through 205; Tracts 397, Fields 1 through 8 and 201 through 208.

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.

Applied to this Application

DEQ will report the following information to the Department of Revenue: Gary Rea **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 purchasing the facility and placing it into service. If the applicant purchased the facility on or after January 1, 2002, the applicant must submit the application within one year after the purchase date.

Applied to this Application

The applicant **timely filed** the application. The applicant purchased the claimed facility on 12/5/2003 and filed the application on 11/4/2004. The applicant filed the application within the one-year filing requirement. The applicant also submitted the application after taking possesion of the claimed facility and after placing it into service on 12/5/2003.

Purpose: NPS
ORS 468.155 (1)(a)(B)
OAR 340-016-0060(2)(a)

Criteria

The purpose of the claimed facility must be to prevent, control, or reduce a substantial quantity of Nonpoint Source Pollution (NPS).

"Nonpoint source pollution control facility" means a facility that the Environmental Quality Commission has identified by rule as reducing or controlling significant amounts of nonpoint source pollution. The EQC determined that the following facilities reduce, or control significant amounts of nonpoint source pollution:

(A) Any facility that **implements a** plan, **project**, or strategy to reduce or control nonpoint source pollution as documented:

(i) By **one or more partners** listed in the Oregon Nonpoint Source Control Program Plan; or

(ii) In a Federal Clean Air Act State Implementation Plan for Oregon; or

(B) Any facility effective in reducing nonpoint source pollution as documented in supporting research by:
(i) Oregon State University, Agricultural Experiment Station; or
(ii) The **United States Department of Agri**culture, Agriculture Research Service; or
a. The **Oregon Department of Agriculture**;

"Nonpoint Source Pollution" means pollution that comes from numerous, diverse, or widely scattered sources of pollution that together have an adverse effect on the environment. The meaning includes:

b. The definition provided in OAR 340-041-0006(17); or

c. Any sources of air pollution that are:

- Mobile sources that can move on or off roads; or
- Area sources.

OAR 340-041-0006(17) "Nonpoint Sources" refers to diffuse or unconfined sources of pollution where wastes can either enter into or be conveyed by the movement of water to public waters.

"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
Larry Lutcher, Ph.D., an Oregon State University Agronomist assigned to Morrow County Extention Office, provided the attached letter on the applicant's behalf. The letter discusses the effectiveness of reduced tillage systems at reducing non-point source pollution.

Prior to using the claimed facility, the applicant made at least five passes over the field with equipment to spray, chisel plow, fertilize, weed, and seed the land for wheat farming. The reduced tillage system retains plant residue on the soil surface, reducing soil loss through water and wind erosion. By using the air cart and drill concurrently, the applicant places the fertilizer and seed in one pass through the soil. When the soil has a high percentage of plant material on the

surface, it is less prone to soil and wind erosion. This reduces sediment buildup in the rivers and dust in Morrow county. Less disturbance of the soil also reduces the amount of greenhouse gasses (CO_2) released into the atmosphere and results in more carbon storage in the soil.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. These items are ineligible for certification.

Applied to this Application
There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria

The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions. The applicant replaced the facility:

1. because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. before the end of its useful life.

Applied to this Application
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 11/4/2004, and the certified facility cost is **$97,500**.

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.**

$ 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		Claimed
		Claimed	$97,500
	No deductions		0
		Certified	**$97,500**

Facility Cost Allocable to Pollution Control

% 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.

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.

Percentage Criteria
ORS 468.190(1) The following factors establish the portion of costs properly allocable to material recovery or recycling for facilities that cost more than $50,000.

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 ten-year useful life. The claimed facility is part of a process that produces income. There are cost savings in labor, fuel, fertilizers, and equipment maintenance associated with fewer passes over the field. The annual revenues exceed expenditures but the Facility ROI is still less than the National ROI for 2003, the facility's construction completion year. The applicant did not investigate an alternative technology and there are no other relevant factors.

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

Heppner Office
120 South Main
PO Box 397
Heppner, OR 97836
Telephone 541-676-9642
Fax 541-676-5451

OREGON STATE UNIVERSITY
EXTENSION SERVICE

Boardman Office (4H only)
101 NW Boardman Avenue
PO Box 1270
Boardman, OR 97818
Telephone 541-481-6610
Fax 541-481-2006

October 13, 2003

Ms. Maggie Vandehey
Tax Credit Manager
Department of Environmental Quality

Dear Ms. Vandehey:

I am writing this letter on behalf of Mr. and Mrs. Gary Rea—Morrow County producers. They asked me to provide you with an explanation of effects of a no-till system on non-point source pollution. These "effects" are described in the following paragraphs.

A no-till cropping system, which is a reduced tillage system, requires use of no-till seeding equipment (a drill and tractor of adequate horsepower). Utilization of this equipment can reduce non-point source pollution by: (1) improving aggregate stability of the soil, (2) maintaining surface residue, and (3) increasing nutrient-use efficiency.

Aggregate stability, which occurs when soil particles bind together, is facilitated by reduced tillage. Particles that bind together form larger and heavier structural units. The weight of these structural units, and the forces that bind them together, resist erosion by wind and water. The result is less potential for off-site transport of soil and attached chemical compounds.

The ability to maintain surface residue (residue from a previous crop) is improved with a no-till cropping system. Surface residue enhances aggregate stability and can act as a physical barrier to wind currents (wind erosion). Residues also are capable of absorbing water and will improve infiltration rates (the soil's ability to absorb water). Maintaining surface residue reduces soil transport to off-site areas.

No-till drills can be used to place fertilizer in close proximity to the seed. This "placement" increases nutrient-use efficiency (utilization of nutrients by the growing crop) and has a beneficial effect on early-season growth and development. Increases in biomass (e.g., bigger wheat) reduces erosion as well.

Please feel free to contact me if you have questions.

Sincerely,

L. K. Lutcher

Larry Lutcher
Agronomist, Ph.D.
Morrow County Extension Office
Oregon State University
541-676-9642

State of Oregon
Department of
Environmental
Quality

Tax Credit Review Report

Pollution Control Facility: NPS
Final Certification
ORS 468.150 -- 468.190
OAR 340-016-0005 -- 340-016-0080

Director's Recommendation

Approve Application No.**6909 @ a Reduced Cost**

Applicant: **Kenneth Poole**

Certification of:

Facility Cost		$5,261
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$1,841**

Certificate Period: **10 years**

Applicant Identification

601 NW 12th Street
Ontario, OR 97914

Organized as: Individual

Facility Identification

Same as the applicant's address.

The certificate will identify the facility as:

1,130 feet of irrigation pipe

Technical Information

Kenneth Poole is a Malheur County farmer who grows apples, alfalfa and owns pastureland. He claims a 1,130-foot irrigation pipeline installed to prevent nonpoint source pollution. He constructed the pipeline according to the United States Department of Agriculture's Natural Resource Conservation Service's construction specification. The project included seeding the covered pipe with native grasses to reduce the intrusion of noxious weeds and act as a filter strip in heavy storm events. The pipeline replaced an open dirt ditch that supplied irrigation water for several one to five acre parcels identified as: Map 18 47 4, Tax Lots 300, 400, 500, 2000, 2100, 2200, 2300.

Taxpayer Allowed Credit

ORS 315.304(4) Criteria

The Department of Revenue determines that a 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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Kenneth Poole **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 installing the pipeline on 2/1/2004 and filed the application on 12/27/2004. The applicant also submitted the application after completing construction and after placing the facility into service on 4/1/2004.

Purpose: NPS
ORS 468.155 (1)(a)(B)
OAR 340-016-0060(2)(a)

Criteria
The purpose of the claimed facility must be to prevent, control, or reduce a substantial quantity of Nonpoint Source Pollution (NPS).

"Nonpoint source pollution control facility" means a facility that the Environmental Quality Commission has identified by rule as reducing or controlling significant amounts of nonpoint source pollution. The EQC determined that the following facilities reduce, or control significant amounts of nonpoint source pollution:

(A) Any facility that **implements a** plan, **project**, or strategy to reduce or control nonpoint source pollution as documented:

- (i) By **one or more partners** listed in the Oregon Nonpoint Source Control Program Plan; or
- (ii) In a Federal Clean Air Act State Implementation Plan for Oregon; or

(B) Any facility effective in reducing nonpoint source pollution as documented in supporting research by:

- (i) Oregon State University, Agricultural Experiment Station; or
- (ii) The **United States Department of Agri**culture, Agriculture Research Service; or
- (iii) The **Oregon Department of Agriculture**;

"Nonpoint Source Pollution" means pollution that comes from numerous, diverse, or widely scattered sources of pollution that together have an adverse effect on the environment. The meaning includes:

b. The definition provided in OAR 340-041-0006(17); or

c. Any sources of air pollution that are:

- Mobile sources that can move on or off roads; or
- Area sources.

OAR 340-041-0006(17)

"Nonpoint Sources" refers to diffuse or unconfined sources of pollution where wastes can either enter into or be conveyed by the movement of water to public waters.

"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 United States Department of Agriculture, Natural Resources Conservation Service developed the construction specifications for the pipeline project to control soil erosion and sedimentation while reducing the use of herbicides and conserving water. The pipeline project **meets the definition** of a nonpoint source pollution control, and runoff and erosion meet the definition of a nonpoint source pollution as defined by OAR 340-016-0010.

Lance Phillips, District Manager for Malheur County Soil and Water Conservation District, provided the attached letter that the Poole Pipeline Project met the goals of **SB 1010** in reducing erosion and met Malheur Watershed Council's plan for reducing runoff, erosion, and increasing water conservation. The pipeline also eliminates the use of herbicide on ditch banks, which leeched into the runoff to the river. The applicant's farmland is adjacent to a housing development where children played in the open ditch.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria

The regulations exclude over 40 items from the definition of a Pollution Control Facility that are ineligible for certification including:

...

(q) Owner's time;

...

Applied to this Application
The applicant claims his own time for dirt placement and seeding. The Department deducted the associated cost of the owner's own time from the claimed cost in the *Facility Cost* section below.

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. There are two exceptions. The applicant replaced the facility:

1. because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. before the end of its useful life.

Applied to this Application
The State of Oregon has not issued any Pollution Control Faculties Tax Credits to the applicant. The pipeline is **not a replacement** facility.

Maximum Credit
ORS 468.173(3)(c)
ORS 468.155(2)

Criteria
The maximum tax credit is 35% if the applicant submitted the application between January 1, 2002 and December 31, 2008, inclusively, and the facility controls nonpoint source pollution.

Applied to this Application
The maximum tax credit is **35%** because the applicant submitted the application on 12/27/2004, and the facility is defined as a nonpoint source pollution control facility.

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
The total project cost was $11,489 and the applicant subtracted the Oregon Watershed Enhancement Board small grant for $5,973 prior to claiming the facility cost of $5,516. There are **no other subtractions**.

$ 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 represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion		Claimed
		Claimed	$5,516
Exclusions	Owner's own times		-255
		Certified	**$5,261**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3) Criteria
If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application
The certified facility cost is **$5,261**. The pipeline is used **100%** of the time to meet the applicant's SB 1010 plan, which includes water conservation.

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

Exhibit E
Poole Pipeline Project

MALHEUR COUNTY SOIL AND WATER CONSERVATION DISTRICT

2925 S.W. 6TH AVENUE, SUITE 2
ONTARIO, OREGON 97914

(541) 889-2588
FAX (541) 889-4304

September 13, 2004

I am writing on behalf of Ken Poole and the Oregon Watershed Enhancement Board (OWEB) – Small grant project #24-02-001. In July of 2002 the Malheur Watershed Council (MWC), Malheur Soil & Water Conservation District (SWCD) and OWEB wrote and approved a 5,973.00 50% / 50% cost share grant to install a much needed pipeline through the property of Ken Poole. The irrigation drain was a constant source of erosion as well a potential threat to power utilities.

Through the installation of 1130' of 6" PVC pipe a source of sediment transport and erosion was removed. The practice (430DD) met NRCS specifications and was inspected by the Malheur Field office engineer in late 2003. The final seeding of the pipeline concluded the grant in early 2004. The seeding was a mix of native grasses that will reduce intrusion of noxious weeds and enhance wildlife benefit as well as act as a filter strip in heavy storm events.

Overall the project met the goals of SB 1010 in reducing erosion and the MWC Basin plan of reducing runoff, erosion, and increasing water conservation. The project was one that helped define the future of the OWEB small grant program during its first year of implementation and increase awareness of conservation in Malheur County.

If you have any questions concerning the project the report is available from the OWEB or may be obtained via landowner permission from the Malheur County SWCD.

Sincerely,

Lance Phillips
District Manager
Malheur County SWCD

BACKGROUND
APPROVALS: Water Pollution Control Facilities

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
6315	Hampton Lumber Mills, Inc.	$1,768,307	100%	50%	$884,154
6778	Viesko Redi-Mix, Inc.	$24,889	100%	35%	$8,711
6842	Murrayhill Pediatric Dentistry, PC	$1,950	100%	35%	$683
6890	Lorin Rice, D.M.D., P.C.	$1,890	100%	35%	$662
6918	Downtown Dental Associates	$656	100%	35%	$230
6929	Kevin James Kwiecien, DMD (50%); Carl Vorhies, DMD (50%)	$1,465	100%	35%	$513
6 Apps	**Sum**	**1,799,157**			**894,951**
	Average	299,860			149,159
	Minimum	656			230
	Maximum	1,768,307			884,154

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

...

(b) Such prevention, control or reduction required by this subsection shall be accomplished by:

...

(A) 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 which 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 Eligibility

...

(4) Eligible Activities. The facility shall prevent, reduce, control, or eliminate:

...

(d) 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

Director's Recommendation

Approve Application No.**6315** @ **Reduced Cost**

Applicant: **Hampton Lumber Mills, Inc.**

Certification of:

Facility Cost		**$1,768,307**
Percentage Allocable	X	100%
Maximum Percentage	X	50%
Tax Credit		**$884,154**

Certificate Period: **8 years**

Applicant Identification

Tillamook Lumber Company
9600 SW Barnes Rd., Ste. 200
Portland, OR 97225

Organized as: C Corp
Taxpayer ID: 93-0589650

Facility Identification

3111 3rd St.
Tillamook, OR 97141

The certificate will identify the facility as:

Paving of log scaling bays and log handling area, and a stormwater collection and settling system

Technical Information

Hampton Lumber Mills manufactures kiln-dried lumber at its Tillamook Lumber mill site. The company temporarily stores and scales logs at the Tillamook site where they constructed storm water controls to comply with their storm water permit.

The applicant paved 165,000 square feet of log storage and scaling area with 12 inches of asphalt over a gravel base. The paved area is graded to flow into a 575,000 square feet settling pond. The applicant constructed and hydro-seeded an 11,000 square feet berm located on the east and the south sides of the constructed settling pond. The pond allows the slow discharge of treated storm water through a gravel and rock bed into Holden Creek. The applicant also claims a 81,000 square feet hydro-seeded berm, the rebuild of a railroad crossing, and the relocation of the scaling shack.

Prior to installing the claimed facility, the applicant temporarily stored and processed the logs in the storage and scaling area. The area's surface was rock, gravel and dirt. During wet weather, traffic caused decomposing bark, wood waste, dirt, rocks, and storm water to mix. This caused the discharge of excess turbid and TSS laden industrial wastewater to the surrounding area and directly into Holden Creek. The previous railroad crossing also funneled runoff from the log yard directly into Holden Creek during heavy rains. The applicant hauled the waste/mud/rock mixture to the landfill as part of its site maintenance.

Taxpayer Allowed Credit

ORS 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: Hampton Lumber Mills, Inc. **owns** the business that uses the Oregon property requiring the pollution control.

Eligibility

Timely Filing

1999 Edition OAR 340-0016-0070
OAR 468.165(6)

Criteria

If the applicant completed constructing the facility on or before December 31, 2001, the applicant must submit the application within two years 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 two-year filing requirement. They completed construction on 4/1/2001 and submitted the application on 10/16/2002. The applicant submitted the application after they completed construction and after they placed the facility into service on 4/1/2002.

Purpose: Required

ORS 468.155 (1)(a)(A)
OAR 340-016-0060(2)(a)

Criteria

The principal purpose of the claimed facility must be to comply with a requirement imposed by DEQ or EPA to prevent, reduce, or control water pollution. That principal purpose must be the most important or primary purpose of the facility. The facility must have only one primary purpose.

"Water Pollution" means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof. ORS 468B.005

Applied to this Application
The primary and most important purpose of paving the storage and scaling area and of constructing the detention and settling systems is pollution control. On May 13, 1999, representatives from DEQ and EPA visited Tillamook Lumber as a follow up to the applicant's 1997 Notice Of Noncompliance – NWR-99-097. Storm water runoff samples taken from the outfalls into Holden Creek showed excessive amounts of TSS was being discharged in storm water leaving the scaling yard and that the mill had not implemented best practices to reduce discharges. In a letter dated August 25, 1999, DEQ suggested corrective actions such as paving the log deck area and constructing bioswales to reduce the Total Suspended Solids (TSS) and turbidity found at Holden Creek.

The primary and most important purpose of the fencing around the settling pond, the southwest berm (81,000 square feet), the sanitary services, the rebuild of a railroad crossing, and the relocation of the scaling shack is not pollution control. Their respective purposes are for security and safety, to create a barrier to neighbors, to provide sanitary services for employees and visitors, to accommodate yard access, and for employee workspace. See *Exclusions* section below.

Method
ORS 468.155 (1)(b)(A)

Criteria
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
Storm water mixed with wood waste **meets the definition** of industrial waste. Paving of the log storage and scaling area, the bioswales, the diversions installed in the railroad rebuild, and the settling pond meet the definition of a treatment works.

Exclusions
ORS 468.155 (3)
OAR 340-016-0070(3)

Criteria

Ineligible costs are any distinct portion of a pollution control facility that makes an **insignificant contribution** to the principal or sole purpose of the facility; or that provide benefits of economic value; or where the costs are not directly related to the operation of the industry or enterprise seeking the tax credit but were installed because of the facility. Specifically listed:

...

(a) Office buildings and furnishings;

(b) Parking lots and road improvements;

...

(d) Landscaping;

...

(i) Septic tanks or other facilities for human waste including property installed, constructed or used for moving sewage to the collecting facilities of a public or quasi-public sewerage system;

...

Applied to this Application

The Department removed the costs associated with the distinct portions of the claimed facility that do not contribute to pollution control and items specifically excluded such as the relocation of the scaling shack, the railroad crossing rebuild, fencing, construction and landscaping of the southwest berm, and septic service from the claimed cost below. (Also discussed under *Purpose: Required* section above.)

Replacement
ORS 468.155 (3)(e)

Criteria

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:

1) due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or

2) before the end of its useful life.

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.

Maximum Credit
ORS 468.173(1)

Criteria

The maximum tax credit is 50% of the certified facility cost if the applicant began construction or installation of the facility before January 1, 2001, and completed before January 1, 2004.

Applied to this Application
The maximum tax credit is **50%** because the applicant began construction on 5/1/2000, completed construction on 4/1/2002, and submitted the application on 10/16/2002.

Facility Cost

Subtractions

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**.

$ 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. The cost represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion	Claimed
	Claimed	$1,881,487
Purpose & Exclusions	*Fencing & Access Gate*	(22,081)
	Southwest berm const. & landscaping	(39,672)
	Sewer lines/septic service	(3,789)
	Rebuild of railroad crossing	($29,830)
	Relocation of Log-Yard Shack	($4,885)
	Labor - ineligible items	(12,923)
	Certified	**$1,768,307**

Facility Cost Allocable to Pollution Control

% Certification
ORS 468.170(1)

Criteria
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%** of the facility cost is allocable to pollution control as discussed in the *Percentage* subsections below.

Percentage
ORS 468.190(1)

Criteria
The following factors establish the portion of costs properly allocable to material recovery or recycling for facilities that cost more than $50,000.

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 the 8-year useful life of the claimed facility. The claimed facility does not produce a salable or useable commodity; therefore, there is no revenue associated with the claimed facility. There is a slight cost savings associated with reduced yard maintenance costs. The expenditures exceed the revenue, therefore the resulting facility ROI is less than the National ROI for 2002, 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
DEQ staff assigned to the source is Dennis Jurries in Northwest Region. Mr. Jurries stated that the applicant meets its permit conditions. The following DEQ permits have been issued to the site: 1200-Z general NPDES storm water discharge permit, issued 7/26/2002; NPDES General Permit, No. 100497, Issued 12/31/1997; Title V Air Operating Permit, No. 29-0007, Issued 7/23/2002.

Reviewer: Maggie Vandehey

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

Director's Recommendation

Approve Application No. **6778 @ Reduced Amount**

Applicant: **Viesko Redi-Mix, Inc.**

Certification of:

Facility Cost		$24,889
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$8,711**

Certificate Period: **10 Years**

Applicant Identification

Viesko Redi-Mix, Inc.
P.O. Box 20610
Kiezer, OR 97307

Organized as: S Corporation
Taxpayer ID: 93-0568505

Facility Identification

Viesko Redi-Mix, Inc.
Viesko Quality Concrete Division
1425 NE Alpha Drive
McMinnville, OR 97128

The certificate will identify the facility as:

Wastewater treatment system that includes a pH neutralization system and three 10,000-gallon tanks.

Technical Information

Viesko Redi-Mix, Inc. operates a concrete batch plant. When the applicant loads mixers, and washes its trucks and equipment, hydrated cement deposits onto the ground. The process produces wash water at a rate of 900 gallons per day that has a pH of 12.

The applicant installed a wastewater treatment system to neutralize the wastewater to a pH of approximately 7.0 and to clean the water for reuse. The system consists of a 1,000-gallon collection tank, a submersible pump to transfer the wastewater into the two 10,000-gallon storage tanks that feed a 10,000-gallon neutralization tank. The system also includes is a pH control system to meter sulfuric acid from it 500-gallon holding tank to the neutralization tank.

Taxpayer Allowed Credit

ORS 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: Viesko Redi-Mix, Inc. **owns** the business that uses the Oregon property requiring the pollution control.

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 final application, however, is not valid if the applicant submits the application before they complete construction or before they place the facility into operation.

Applied to this Application

The applicant **timely filed** the application within the one-year filing requirement. They completed construction on 7/8/2003 and submitted the application on 6/17/2004. The applicant submitted the application after they completed construction and after they placed the facility into service on 7/8/2003.

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
Prior to installing the claimed facility, the applicant routed its wastewater run-off to a slurry pond that overflowed to adjacent property at the rate of approximately 100 gallons per hour during business hours. The system eliminates highly alkaline (pH 12) wastewater by neutralizing it to a pH of approximately 7.0. There has been no run-off from the slurry pond since the installation of the claimed facility.

Method
ORS 468.155 (1)(b)(A)

Criteria
The prevention, control, or reduction must be accomplished by disposal or elimination of industrial wastewater and the use of a treatment works for industrial waste as defined in ORS 468B.005.

"Industrial waste" means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

"Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

Applied to this Application
The neutralization process eliminates alkaline wastewater. Alkaline wastewater **meets the definition** of industrial wastewater and the neutralization process meet the definition of a treatment works in ORS 468B.005.

Exclusions
ORS 468.155 (3)
OAR 340-016-070(3)

Criteria
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. The regulations specifically exclude items for maintenance, operation, or repair of a facility, including spare parts.

Applied to this Application
The applicant claims 360-gallons of sulfuric acid to **use in the operation** of the claimed facility. The Department deducted the cost of the sulfuric acid from the claimed facility cost under the *Facility Cost* section below.

Replacement
ORS 468.155 (3)(e)

Criteria
The replacement or reconstruction of all or part of a facility that 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:

1) due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or

2) before the end of its useful life.

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.

Maximum Credit
ORS 468.173(3)(f)

Criteria
The maximum tax credit available to the applicant is 35% if the application was filed between January 1, 2002 and December 31, 2008, inclusively; and the certified facility cost is less than $200,000.

Applied to this Application
The maximum tax credit is **35%** because the applicant filed the application on 7/17/2004 and the certified facility cost is $24,889.

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** additional **subtractions**.

$ 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. The cost represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion	Claimed
	Claimed	$26,149
Exclusions	360 gallons of sulfuric acid	-$ 1,260
	Certified	**$24,889**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3) Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application

The certified facility cost is **$24,889** and the applicant uses the facility **100%** 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 does not have an NPDES Storm Water permit. The DEQ issued Air Contaminant Discharge Permit Number 37-0393 on 5/24/01.

Reviewer: Maggie Vandehey, DEQ

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

Director's Recommendation

Approve Application No.**6842**

Applicant: **Murrayhill Pediatric Dentistry, PC**

Certification of:

Facility Cost		$1,950
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$ 683**

Certificate Period: **1 year**

Applicant Identification

14795 SW Murray-Schools Drive
Suite #116
Beaverton, OR 97007

Organized as: S Corp
Taxpayer ID: 93-1321010

Facility Identification

Same as the applicant's address.

The certificate will identify the facility as:

One REBEC Model #RME-2000 Amalgam Separator, Serial #J1001512

Technical Information

In its practice, Murrayhill Pediatric Dentistry, PC, generates amalgam waste particles that can be suctioned into the vacuum line and discharged into the public sewer system. Amalgam contains mercury and an alloy of silver, tin and copper. The applicant installed an amalgam separator in the water and vacuum lines to remove amalgam waste particles from wastewater.

Taxpayer Allowed Credit

ORS 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: Murrayhill Pediatric Dentistry, PC owns the business that uses the Oregon property requiring the pollution control.

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 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 11/21/2003 and submitted the application on 10/22/2004. The applicant also submitted the application after they completed construction and after they placed the facility into service on 11/21/2003.

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 reduces a substantial quantity of hazardous waste pollution. Amalgam contains mercury and an alloy of silver, tin and copper. If not removed, the mercury contained in the dental wastewater can escape to rivers and streams and can be absorbed by fish. The primary environmental route of human exposure to mercury is from eating fish.

Method
ORS 468.155 (1)(b)(A)

Criteria
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
Mercury **meets the definition** of industrial wastewater and amalgam separators meet the definition of treatment works in ORS 468B.005.

Exclusions
ORS 468.155 (3)
OAR 340-016-070(3)

Criteria
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
ORS 468.155 (3)(e)

Criteria
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:

1) due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or

2) before the end of its useful life.

Applied to this Application
The claimed facility is **not a replacement** facility. The State of Oregon has not issued any Pollution Control Facilities Tax Credit Certificates to the applicant at this location.

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 10/22/2004, and the certified facility cost would be $1,950.

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**.

$ 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. The cost represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion	Claimed
	Claimed	$1,950
	No deductions	
	Certified	**$1,950**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3) Criteria

If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application
The certified facility cost is **$1,950** and the applicant uses the facility **100%** 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
DEQ has not issued any permits to the site.

Reviewer: Maggie Vandehey

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

Director's *Recommendation*

Approve Application No.**6890**

Applicant: **Lorin Rice, D.M.D., P.C.**

Certification of:

Facility Cost		$1,890
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$ 662**

Certificate Period: **1 year**

Applicant Identification

2824 NE Wasco Street, #210
Portland, OR 97232

Organized as: S Corp
Taxpayer ID: 93-1234939

Facility Identification

Same as the applicant's address.

The certificate will identify the facility as:

One REBEC Model 1000 Amalgam Separator, Serial #J1001047

Technical Information

Lorin Rice, D.M.D., P.C., generates amalgam waste particles in its dental practice. The amalgam waste was suctioned into the vacuum line and discharged into the public sewer system. Amalgam contains mercury and an alloy of silver, tin and copper. The applicant installed an amalgam separator to remove amalgam waste particles from wastewater.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Lorin Rice, D.M.D., P.C. **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 purchasing the facility and placing it into service. If the applicant purchased the facility on or after January 1, 2002, the applicant must submit the application within one year after the installation date.

Applied to this Application
The applicant **timely filed** the application. The applicant purchased the claimed facility on 11/2/2004 and filed the application on 12/3/2004. The applicant also submitted the application after purchasing the facility and after placing it into service on 11/2/2004.

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 being discharged to the sanitary sewer. Amalgam contains mercury and an alloy of silver, tin and copper. If it is not removed, 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.

Applied to this Application
Mercury **meets the definition** of industrial wastewater and amalgam separators meet the definition of treatment works in ORS 468B.005.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. These items are ineligible for certification.

Applied to this Application
There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. However, there are two exceptions. The applicant replaced the facility:

1. because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. before the end of its useful life.

Applied to this Application
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 12/3/2004, and the certified facility cost is **$1,890**.

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**.

$ 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. The cost represents the taxpayer's **own** cash investment.

Referenced Section	Description of Ineligible Portion		Claimed
		Claimed	$1,890
	No deductions		0
		Certified	**$1,890**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3)

Criteria
If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application
The certified facility cost is **$1,890** and the applicant uses the facility **100%** 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

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

Director's *Recommendation*

Approve Application No.**6918 @ Reduced Cost**

Applicant: **Downtown Dental Associates**

Certification of:

Facility Cost		$ 656
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$ 230**

Certificate Period: **1 year**

Applicant Identification

1221 SW Yamhill Street, #310
Portland, OR 97205

Organized as: Partnership
Taxpayer ID: 93-1151537

Facility Identification

Same as the applicant's address.

The certificate will identify the facility as:

One - RAMVAC Hg5 Amalgam Separator

Technical Information

In its practice, Downtown Dental Associates generates amalgam waste particles that can be suctioned into the vacuum line and discharged into the public sewer system. Amalgam contains mercury and an alloy of silver, tin and copper. The applicant installed an amalgam separator in the water and vacuum lines to remove amalgam waste particles from wastewater.

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.

Applied to this Application
DEQ will report the following information to the Department of Revenue: Downtown Dental Associates **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 11/5/2004 and filed the application on 12/29/2004. The applicant also submitted the application after completing construction and after placing the facility into service on 11/5/2004.

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 being discharged to the sanitary sewer. Amalgam contains mercury and an alloy of silver, tin and copper. If it is not removed, 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.

The applicant claims an HS Bison Combo 3 Vacuum System that is necessary to operate its practice. It would be used with or without the amalgam separator; therefore, it does not have an exclusive pollution control purpose. The Department deducted the costs associated with the vacuum system from the *Facility Cost* section below.

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 the amalgam separator meets the definition of treatment works in ORS 468B.005.

Exclusions
ORS 468.155(3)
OAR 340-016-0070(3)

Criteria
The regulations exclude over 40 items from the definition of a Pollution Control Facility. These items are ineligible for certification.

Applied to this Application
There are **no exclusions**.

Replacement
ORS 468.155(3)(e)

Criteria
The replacement or reconstruction of all or part of a previously certified pollution control facility is not eligible for the tax credit. However, there are two exceptions. The applicant replaced the facility:

1. because DEQ or EPA imposed a different requirement than the requirement to construct the original facility; or
2. before the end of its useful life.

Applied to this Application
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 12/29/2004, and the certified facility cost is **$656.**

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** other than the ineligible cost of the HS Bison Combo 3 Vacuum System discribed in the *Purpose: Voluntary* section above.

$ 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. The cost represents the taxpayer's **own** cash investment.

Referenced Section	Description of Ineligible Portion	Claimed
	Claimed	$8,320
	Bison Combo Vacuum System	-$7,664
	Certified	**$656**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3)

Criteria
If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of hazardous waste bears to the entire time the facility is used for any purpose.

Applied to this Application
The certified facility cost is **$ 656** and the applicant uses the separator **100%** 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

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

Director's Recommendation

Approve Application No.**6929**

Applicant: **Kevin James Kwiecien, DMD (50%); Carl Vorhies, DMD (50%)**

Certification of:

Facility Cost		$1,465
Percentage Allocable	X	100%
Maximum Percentage	X	35%
Tax Credit		**$ 513**

Certificate Period: **1 year**

Applicant Identification

11786 SW Barnes Road
Portland, OR 97225

Organized as: Sole Proprietors
Taxpayer ID:

Facility Identification

Same as the applicant's address.

The certificate will identify the facility as:

One - Model CE24 Amalgam Collector, serial #40492

Technical Information

Kevin James Kwiecien, DMD (50%); Carl Vorhies, DMD (50%), are dentists that generate amalgam waste particles in their practice. The amalgam waste containing mercury and an alloy of silver, tin and copper can be suctioned into the vacuum line and discharged into the public sewer system. The applicant installed an amalgam separator in the water and vacuum lines to remove amalgam waste particles from wastewater.

Taxpayer Allowed Credit

ORS 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: Kevin James Kwiecien, DMD (50%); Carl Vorhies, DMD (50%) **own** the business that uses the Oregon property requiring the pollution control.

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 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 applicants **timely filed** the application within the one-year filing requirement. They completed construction on 1/14/2005 and submitted the application on 2/22/2005. The applicant submitted the application after they completed construction and placed the facility into service on 1/14/2005.

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 being discharged to the sanitary sewer. Amalgam contains mercury and an alloy of silver, tin and copper. If it is not removed, 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)(A)

Criteria
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
Mercury **meets the definition** of industrial wastewater and amalgam separators meet the definition of treatment works in ORS 468B.005.

Exclusions
ORS 468.155 (3)
OAR 340-016-070(3)

Criteria
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
ORS 468.155 (3)(e)

Criteria
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:

1) due to a requirement imposed by DEQ or EPA that is different than the requirement to construct the original facility; or

2) before the end of its useful life.

Applied to this Application
The claimed facility is **not a replacement** facility. The State of Oregon has not issued any Pollution Control Facilities Tax Credit Certificates to the applicant at this location.

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 2/22/2005, and the certified facility cost would be $1,465.

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**.

$ 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. The cost represents the taxpayer's own cash investment.

Referenced Section	Description of Ineligible Portion		Claimed
		Claimed	$1,465
	No deductions		
		Certified	**$1,465**

Facility Cost Allocable to Pollution Control

ORS 468.190 (3)

Criteria
If the cost of the facility (or facilities certified under one certificate) does not exceed $50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

Applied to this Application
The certified facility cost is **$1,465** and the applicant uses the facility **100%** 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

Certificate Administration

The taxpayers presented in this attachment notified the Department of the change in the status of their Pollution Control Facilities Tax Credit Certificates. Based on these notifications, the Department recommends that the Commission take the following actions.

Action	Certificate #	
Revoke	10636 in conjunction with the reissue of certificate # 4914	In its year-end audit of the tax credit program, the Department found that it erroneously issued a tax credit certificate to Whitetail Tree Farm for a wood chipper that replaced a previously certified wood chipper. ORS 468.155(3)(e) prohibits replacement facilities with two exceptions. The pertinent exception is that the law allows the taxpayer the remaining credit for a previously certified facility if they replace that facility before the end of its useful life, in this case five years. The Department recommends the revocation of certificate number 10636 (the replacement wood chipper) and the reissue of the original certificate 4914 (the replaced wood chipper) as described below. On March 30, 2005, the Department and Mr. Harold Ball, Manager of White Tail Farms, agreed to this action.
Reissue (old certificate format)	3916	From: Mt. Hood Metals, Inc. 9645 N Columbia Blvd. Portland, OR 97283 To: Bors Rivergate, LLC (a single-member LLC) George Bors, Sole Member 9645 N Columbia Blvd. Portland, OR 97283
	4096, 4219	From: Lamb-Weston, Inc. PO Box 379 Columbia Ave & Olsen Road Boardman, OR 97818 To: ConAgra Foods Packaged Foods Company One ConAgra Drive, CC-237 Omaha, NE 68102-5001

Reissue continued	3629, 3630, 3900, 4422, 4423	Stein Oil Company, Inc. Filing Status From: C Corporation To: S Corporation Address From: 19805 McLoughlin Gladstone, Oregon 97027 To: 13001 Clackamas River Drive, #200 Oregon City, Oregon 97045
	4914 in conjunction with the revocation of certificate # 10636	Facility Description From: Kohler Morbark chipper, Model 2060, Serial # 2723316957, 6" capacity 25hp To: One - Morbark wood chipper, model 2060-D, Serial # 4585Z091
Transfer (New certificate format)	10143	From: Terence M. Strom 21855 S Upper Highland Road Beavercreek, OR 97004 To: Blossom Hill Farms, Inc. 11570 NE Intervale Road Carlton, OR 97111
	10616	Name Change From: Gene McCormick & Eric Werner To: Werner-McCormick LLC Filing Status From: Partnership To: Limited liability company EIN From: 55-0824028 To: 56-2452798

Statutory Provision for Revoking Certification

ORS 468.185 (1) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the Environmental Quality Commission may order the revocation of the certification issued under ORS 468.170 of any pollution control or solid waste, hazardous wastes or used oil facility, if it finds that:

(a) The certification was obtained by fraud or misrepresentation; or

(b) The holder of the certificate has failed substantially to operate the facility for the purpose of, and to the extent necessary for, preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or used oil as specified in such certificate.

(2) As soon as the order of revocation under this section has become final, the commission shall notify the Department of Revenue and the county assessor of the county in which the facility is located of such order.

(3) If the certification of a pollution control or solid waste, hazardous wastes or used oil facility is ordered revoked pursuant to subsection (1)(a) of this section, all prior tax relief provided to the holder of such certificate by virtue of such certificate shall be forfeited and the Department of Revenue or the proper county officers shall proceed to collect those taxes not paid by the certificate holder as a result of the tax relief provided to the holder under any provision of ORS 307.405 and 315.304.

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Tax Expenditure Liability Report

Attachment D

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 date the Commission approved certification.

Attachment D
Tax Expenditure Liability Report
03-05 Biennium

App #	Tax Credit	Placed in Operation	UL	Remaining UL	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
6315	$884,154	2000	8	3			294,718	294,718	294,718	0	0	0	0	0	0	0
6490	$14,700	2003	7	5			2,940	2,940	2,940	2,940	2,940	0	0	0	0	0
6778	$8,711	2003	30	10			871	871	871	871	871	871	871	871	871	872
6840	$65,731	2004	7	6			10,955	10,955	10,955	10,955	10,955	10,956	0	0	0	0
6842	$682	2003	1	1			-682	0	0	0	0	0	0	0	0	0
6864	$34,125	2003	10	8			4,266	4,266	4,266	4,266	4,266	4,266	4,266	4,263	0	0
6873	$1,048	2004	5	4			262	262	262	262	0	0	0	0	0	0
6875	$18,550	2004	7	6			3,092	3,092	3,092	3,092	3,092	3,090	0	0	0	0
6880	$3,458	2003	5	3			1,153	1,153	1,152	0	0	0	0	0	0	0
6889	$5,807	2003	7	5			1,161	1,161	1,161	1,161	1,163	0	0	0	0	0
6890	$662	2004	1	1			662	0	0	0	0	0	0	0	0	0
6892	$3,148	2003	7	5			630	630	630	630	628	0	0	0	0	0
6903	$107,086	2004	20	10			10,709	10,709	10,709	10,709	10,709	10,709	10,709	10,709	10,709	10,705
6909	$1,841	2004	10	9			205	205	205	205	205	205	205	205	201	0
6912	$838	2004	5	4			210	210	210	208	0	0	0	0	0	0
6913	$32,282	2004	5	4			8,070	8,070	8,070	8,072	0	0	0	0	0	0
6914	$22,575	2004	5	4			5,644	5,644	5,644	5,643	0	0	0	0	0	0
6918	$230	2004	1	1			230	0	0	0	0	0	0	0	0	0
6922	$1,048	2004	3	2			524	524	0	0	0	0	0	0	0	0
6923	$34,276	2004	7	6			5,713	5,713	5,713	5,713	5,713	5,711	0	0	0	0
6924	$24,231	2004	7	6			4,038	4,038	4,038	4,038	4,038	4,041	0	0	0	0
6929	$513	2005	1	1			513	0	0	0	0	0	0	0	0	0
6930	$866	2004	7	6			144	144	144	144	144	146	0	0	0	0
6931	$2,623	2005	7	7			375	375	375	375	375	375	373	0	0	0
6932	$3,440	2004	7	6			573	573	573	573	573	575	0	0	0	0
6936	$33,585	2004	6	5			6,717	6,717	6,717	6,717	6,717	0	0	0	0	0
6939	$8,452	2004	5	3			2,817	2,817	2,817							
6943	$8,561	2004	5	4			2,140	2,140	2,140	2,141	0	0	0	0	0	0

Attachment D
Tax Expenditure Liability Report
03-05 Biennium

App #	Tax Credit	Placed in Operation	UL	Remaining UL	2,003	2,004	2,005	2,006	2,007	2,008	2,009	2,010	2,011	2,012	2,013	2014
6944	$4,747	2004	5	4			1,187	1,187	1,187	1,186	0	0	0	0	0	0
6948	$1,048	2004	5	4			262	262	262	262	0	0	0	0	0	0
6949	$1,048	2004	5	4			262	262	262	262	0	0	0	0	0	0
6950	$51,031	2004	10	9			5,670	5,670	5,670	5,670	5,670	5,670	5,670	5,670	5,671	0
6958	$525	2004	7	6			88	88	88	88	88	85	0	0	0	0
6959	$9,206	2004	7	6			1,534	1,534	1,534	1,534	1,534	1,536	0	0	0	0
6960	$1,006	2004	7	6			168	168	168	168	168	166	0	0	0	0
6961	$3,488	2004	7	6			581	581	581	581	581	583	0	0	0	0
6980	$1,048	2005	1	1			1,048	0	0	0	0	0	0	0	0	0
June '05	1,396,370						381,455	379,685	379,161	80,474	62,439	50,995	24,105	23,730	19,465	13,591
Dec'04	1,764,928					283,738	283,574	283,571	160,639	144,973	144,974	130,383	121,841	121,844	20,271	
Sept '04	2,467,375					379,236	379,231	379,227	379,226	247,602	243,703	129,361	124,493	124,494	80,800	
May '04	2,318,208					310,167	310,167	310,167	310,167	271,873	271,873	254,719	208,503	70,570	0	
Dec '03	4,815,472				598,243	598,243	598,243	589,384	583,236	556,927	522,324	522,077	224,379	22,420	0	
Oct '03	8,982,220				1,822,303	1,559,805	1,355,567	1,332,976	947,174	759,224	720,219	358,126	96,070	30,757	0	
WC BTD	445,240				78,554	179,664	94,823	55,040	18,370	11,136	5,425	977	974	136	141	
Total	22,189,813				2,499,100	3,310,853	3,403,060	3,330,050	2,777,973	2,072,208	1,970,957	1,446,638	800,365	393,952	120,677	13,591

WC BTD = Wood Chippers Biennium-to-Date (7/1/2003 - 4/05/05)

Attachment E

Certified Wood Chipper Report
11/22/04 – 4/05/05

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 December 10, 2004. The Department certified **95** wood chippers from the date of the last report to the date of this report for certificates issued from November 22, 2004 through April 5, 2005.

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 E
Certified Wood Chippers
11/22/04 - 4/05/05

Action Date	App #	Applicant	Claimed	Certified	Difference	% Allocable	Maximum Percent	GF Liability
22-Nov-04	6855	April Wallace	$ 1,950	$ 1,950	$ -	100%	35%	$ 683
22-Nov-04	6844	Richard Sabath	$ 8,500	$ 8,500	$ -	100%	35%	$ 2,975
22-Nov-04	6862	Janet Anderson	$ 1,550	$ 1,550	$ -	100%	35%	$ 543
22-Nov-04	6861	David Sherman	$ 3,200	$ 3,200	$ -	100%	35%	$ 1,120
22-Nov-04	6860	Merritt Douglas Orem	$ 699	$ 699	$ -	100%	35%	$ 245
22-Nov-04	6859	Brian Schick	$ 1,181	$ 1,181	$ -	100%	35%	$ 413
22-Nov-04	6858	Kent Smith	$ 5,500	$ 5,500	$ -	100%	35%	$ 1,925
22-Nov-04	6857	George Simons	$ 625	$ 625	$ -	100%	35%	$ 219
22-Nov-04	6853	James Ramseyer	$ 3,500	$ 3,500	$ -	100%	35%	$ 1,225
22-Nov-04	6851	Mark Gordon	$ 1,099	$ 1,099	$ -	100%	35%	$ 385
22-Nov-04	6843	James Clark	$ 5,900	$ 5,900	$ -	100%	35%	$ 2,065
22-Nov-04	6831	Eric B. Anderson	$ 1,650	$ 1,650	$ -	100%	35%	$ 578
22-Nov-04	6828	James Lace	$ 5,495	$ 5,495	$ -	100%	35%	$ 1,923
22-Nov-04	6850	Scott Redd	$ 1,550	$ 1,550	$ -	100%	35%	$ 543
22-Nov-04	6826	Everett Eldon Helm	$ 1,600	$ 1,600	$ -	100%	35%	$ 560
22-Nov-04	6825	Gregory Scot Dykeman	$ 6,500	$ 6,500	$ -	100%	35%	$ 2,275
22-Nov-04	6827	Wayne Theiss	$ 1,550	$ 1,550	$ -	100%	35%	$ 543
22-Nov-04	6845	Ken Schumm	$ 9,020	$ 9,020	$ -	100%	35%	$ 3,157
22-Nov-04	6846	Paul Petterson	$ 618	$ 618	$ -	100%	35%	$ 216
22-Nov-04	6847	John Hoffmann	$ 499	$ 499	$ -	100%	35%	$ 175
22-Nov-04	6848	Arthur Kauffman, Jr.	$ 1,440	$ 1,440	$ -	100%	35%	$ 504
22-Nov-04	6849	Glenn Gregg	$ 1,600	$ 1,600	$ -	100%	35%	$ 560
30-Nov-04	6870	Gary Borntrager	$ 14,000	$ 14,000	$ -	100%	35%	$ 4,900
30-Nov-04	6871	James Grigsby	$ 2,900	$ 2,900	$ -	100%	35%	$ 1,015
30-Nov-04	6869	Tom Ponder	$ 1,601	$ 1,601	$ -	100%	35%	$ 560
30-Nov-04	6874	Buddy Laudahl	$ 2,599	$ 2,599	$ -	100%	35%	$ 910
30-Nov-04	6881	Allen Dobney	$ 1,499	$ 1,499	$ -	100%	35%	$ 525
30-Nov-04	6885	Robert Kahl	$ 2,500	$ 2,500	$ -	100%	35%	$ 875
30-Nov-04	6886	Jerry Prescott	$ 3,000	$ 3,000	$ -	100%	35%	$ 1,050
30-Nov-04	6872	Stanley Penn	$ 1,178	$ 1,178	$ -	100%	35%	$ 412
30-Nov-04	6868	Brian Hancock	$ 2,900	$ 2,900	$ -	100%	35%	$ 1,015

Attachment E
Certified Wood Chippers
11/22/04 - 4/05/05

30-Nov-04	6867	Ralph Faulk	$ 7,199	$ 7,199	$ -	100%	35%	$ 2,520
30-Nov-04	6854	Larry Lassen	$ 31,000	$ 31,000	$ -	100%	35%	$ 10,850
30-Nov-04	6863	J. Blake Thomas, Inc.	$ 26,433	$ 26,433	$ -	100%	35%	$ 9,252
30-Nov-04	6888	Brian Fish	$ 3,200	$ 3,200	$ -	100%	35%	$ 1,120
30-Nov-04	6876	Arbor Pro, Inc.	$ 32,393	$ 32,393	$ -	100%	35%	$ 11,338
30-Nov-04	6882	Kathleen Romeo	$ 3,900	$ 3,900	$ -	100%	35%	$ 1,365
30-Nov-04	6877	David Collier	$ 959	$ 959	$ -	100%	35%	$ 336
30-Nov-04	6852	Thomas Jones	$ 1,439	$ 1,439	$ -	100%	35%	$ 504
30-Nov-04	6879	Scott Chambers	$ 4,886	$ 4,886	$ -	100%	35%	$ 1,710
30-Nov-04	6866	Michael Bartlett	$ 23,540	$ 23,540	$ -	100%	35%	$ 8,239
22-Dec-04	6898	David Elam	$ 2,990	$ 2,990	$ -	100%	35%	$ 1,047
22-Dec-04	6878	Peter Botke	$ 19,215	$ 19,215	$ -	100%	35%	$ 6,725
22-Dec-04	6902	Ruth Marble	$ 930	$ 930	$ -	100%	35%	$ 326
22-Dec-04	6901	John Thornton	$ 2,599	$ 2,599	$ -	100%	35%	$ 910
22-Dec-04	6856	Thurman Miller	$ 8,575	$ 8,575	$ -	100%	35%	$ 3,001
22-Dec-04	6899	David Gardner	$ 650	$ 650	$ -	100%	35%	$ 228
22-Dec-04	6905	Edward Kulawiak	$ 1,400	$ 1,400	$ -	100%	35%	$ 490
22-Dec-04	6897	Chimento Group, Inc.	$ 1,439	$ 1,439	$ -	100%	35%	$ 504
22-Dec-04	6896	Kenneth Bates	$ 5,600	$ 5,600	$ -	100%	35%	$ 1,960
22-Dec-04	6895	Jeffrey Hicks	$ 3,100	$ 3,100	$ -	100%	35%	$ 1,085
22-Dec-04	6883	Richard Sine	$ 6,549	$ 6,549	$ -	100%	35%	$ 2,292
22-Dec-04	6884	Clarence Wangle	$ 21,590	$ 21,590	$ -	100%	35%	$ 7,557
22-Dec-04	6893	Scott MacGregor	$ 3,699	$ 3,699	$ -	100%	35%	$ 1,295
22-Dec-04	6891	Craig Rawie	$ 4,700	$ 4,700	$ -	100%	35%	$ 1,645
22-Dec-04	6887	Belton Family, LLP	$ 6,499	$ 6,499	$ -	100%	35%	$ 2,275
22-Dec-04	6900	James Wieske	$ 618	$ 618	$ -	100%	35%	$ 216
30-Dec-04	6894	Jack Cornell	$ 2,500	$ 2,500	$ -	100%	35%	$ 875
30-Dec-04	6833	Milford M. Mills	$ 2,817	$ 2,817	$ -	95%	35%	$ 937
30-Dec-04	6906	James Jenne	$ 1,599	$ 1,599	$ -	100%	35%	$ 560
30-Dec-04	6907	Kay Kinyon	$ 2,300	$ 2,300	$ -	100%	35%	$ 805

Attachment E
Certified Wood Chippers
11/22/04 - 4/05/05

30-Dec-04	6908	Roger Starr	$ 1,530	$ 1,530	$ -	100%	35%	$ 536
26-Jan-05	6915	Edward Adelman	$ 2,200	$ 2,200	$ -	100%	35%	$ 770
26-Jan-05	6920	Gardens	$ 8,160	$ 8,160	$ -	100%	35%	$ 2,856
26-Jan-05	6919	DELJR, LLC	$ 9,750	$ 9,750	$ -	100%	35%	$ 3,413
26-Jan-05	6917	Brian Biehl	$ 1,600	$ 1,600	$ -	100%	35%	$ 560
26-Jan-05	6916	Jim Thompson	$ 10,000	$ 10,000	$ -	100%	35%	$ 3,500
26-Jan-05	6911	Laughing Rabbit, Inc.	$ 16,024	$ 16,024	$ -	100%	35%	$ 5,608
26-Jan-05	6910	Arthur Dummer	$ 6,999	$ 6,999	$ -	100%	35%	$ 2,450
26-Jan-05	6904	Carolyn Reynolds	$ 1,440	$ 1,440	$ -	100%	35%	$ 504
01-Mar-05	6925	James Alderman	$ 3,295	$ 3,295	$ -	100%	35%	$ 1,153
01-Mar-05	6940	Charles K. Putman	$ 599	$ 599	$ -	100%	35%	$ 210
01-Mar-05	6937	Daniel A. Blattman	$ 1,150	$ 1,150	$ -	100%	35%	$ 403
01-Mar-05	6928	Ronald R. Stuart	$ 1,599	$ 1,599	$ -	100%	35%	$ 560
01-Mar-05	6927	Nathan Lee Kropf	$ 1,550	$ 1,550	$ -	100%	35%	$ 543
01-Mar-05	6926	Kurt L. Williams	$ 2,499	$ 2,499	$ -	100%	35%	$ 875
01-Mar-05	6935	Ralph C. Hatleberg	$ 1,124	$ 1,124	$ -	100%	35%	$ 393
05-Apr-05	6955	Terrill Kevin Lane	$ 1,595	$ 1,595	$ -	100%	35%	$ 558
05-Apr-05	6973	Ronald L. Rush	$ 2,495	$ 2,495	$ -	100%	35%	$ 873
05-Apr-05	6972	Michael A. Coyle	$ 1,550	$ 1,550	$ -	100%	35%	$ 543
05-Apr-05	6969	Steven J. Sherlag	$ 990	$ 990	$ -	100%	35%	$ 347
05-Apr-05	6968	Leo V. Bolosky	$ 990	$ 990	$ -	100%	35%	$ 347
05-Apr-05	6963	Stephen W. Medaris	$ 650	$ 650	$ -	100%	35%	$ 228
05-Apr-05	6962	Lawrence S. Zacher	$ 1,599	$ 1,599	$ -	100%	35%	$ 560
05-Apr-05	6975	Brett Jon Schulte	$ 1,550	$ 1,550	$ -	100%	35%	$ 543
05-Apr-05	6946	Lazy K9 Ranch	$ 1,778	$ 1,778	$ -	100%	35%	$ 622
05-Apr-05	6945	Alvin W. Vos, Tena Vos	$ 558	$ 558	$ -	100%	35%	$ 195
05-Apr-05	6957	Edward D. McDowell	$ 7,200	$ 7,200	$ -	100%	35%	$ 2,520
05-Apr-05	6954	Richard W. Long	$ 5,800	$ 5,800	$ -	100%	35%	$ 2,030
05-Apr-05	6941	Ronald E. Edelman	$ 1,929	$ 1,929	$ -	100%	35%	$ 675

Attachment E
Certified Wood Chippers
11/22/04 - 4/05/05

05-Apr-05	6942	Patrick Reed	$ 990	$ 990	$ -	100%	35%	$	347
05-Apr-05	6953	Forest Bohall	$ 3,200	$ 3,200	$ -	100%	35%	$	1,120
05-Apr-05	6952	Tom McDonald	$ 1,595	$ 1,595	$ -	100%	35%	$	558
05-Apr-05	6951	Jay L. Gunderson	$ 5,899	$ 5,899	$ -	100%	35%	$	2,065
05-Apr-05	6947	K. William O'Connor	$ 5,000	$ 5,000	$ -	100%	35%	$	1,750

95 certificates issued

Sum	$446,608	$446,608		$156,264
Average	$4,701	$4,701		$1,645
Minimum	$499	$499		$175
Maximum	$32,393	$32,393		$11,338

State of Oregon
Department of Environmental Quality Memorandum

Date: June 8, 2005

To: Environmental Quality Commission

From: Stephanie Hallock, Director S Hallock

Subject: Agenda Item X, Action Item: Refunding of Selected DEQ Pollution Control Bonds
Thursday, June 23, 2005 EQC Meeting

Proposed Action

Environmental Quality Commission (EQC, Commission) adoption of a Resolution (Attachment A) authorizing the Department of Environmental Quality (DEQ) and the State Treasurer to issue and sell State of Oregon General Obligation Pollution Control Bonds (Bonds), to be used to "refund" a number of existing Bonds (see Attachment B) to take advantage of lower interest rates and reduce future debt service obligations. If the Resolution is approved, DEQ and the State Treasurer could proceed to sell the Bonds as early as July 2005.

Reason for EQC Action

Under ORS 286.033, state agency issuance of bonds requires a resolution of the agency's governing body. The Commission's resolution will give DEQ the authority to authorize both the issuance of Bonds and the use of Bond proceeds under ORS 468.195 to 468.260.

Background

DEQ has utilized bonding for several decades in order to finance solid waste disposal facilities, municipal sewage treatment facilities, water pollution control facilities, and cleanup of contaminated "orphan sites." DEQ works with financial advisors, bond counsel, and the State Treasurer in issuing and selling Bonds. For a more detailed explanation of the uses and history of Pollution Control Bonds, see Attachment C.

The current low interest rate environment is conducive to "refinancing" existing Bonds that have higher interest rates. For Bonds, the technical term is "refunding," which refers to replacing old debt with new debt at lower interest rates, without materially increasing the term of repayment. The net result is that the repayment schedule remains the same, but with a lower average interest cost.

DEQ's financial advisors and bond counsel have assessed the agency's Bond portfolio and have identified three specific Bond issues (see Attachment B) as potential candidates for refunding.

Most Bonds sold by DEQ have a "call" feature, allowing the state to retire the Bond early, without penalty, after some period of time, but before the maturity date. Bonds that are currently within their call period (usually after ten years

of issuance for DEQ bonds) when refunded are termed "current" refunding. Bonds that haven't yet reached their call date fall under the category of "advance" refunding, which have specific additional provisions, mostly surrounding the requirement to continue paying current bond holders the original interest rate until the call date of the old bond.

State Treasury requires that an "advance" refunding must achieve at least 3% aggregate savings (under OAR 170-062-0000). A "current" refunding has no such minimum savings requirement. DEQ proposes to proceed with a "current" refunding only if the interest savings with future debt service are more than $50,000 for that Series.

As of May 27, 2005, all three Bond Series under consideration met the above targets with an aggregate savings estimated at 4.67% and $640,000. These savings reduce the General Fund requirement for debt service of these Bonds.

The timing of the savings will depend upon how DEQ structures the revised debt service schedule. The final amount of savings will vary daily with market interest rates. Between now and the sale date, Bonds may move into or out of contention for refunding.

Key Issue

Approval of this Bond sale will allow DEQ to realize debt service savings on existing Bonds. Lower debt service payments will reduce DEQ's use of General Funds for payment of debt service. It is uncertain if the General Fund savings will simply revert back to the State, become available to fund other DEQ work, or forestall potential future General Fund reductions.

EQC Action Alternatives

If the EQC does not adopt the resolution, refunding of the existing Bonds cannot proceed, and DEQ will continue making Bond debt service payments under the existing interest rates and schedules. The opportunity to realize debt service savings may be lost or deferred to some future date when interest rates are again favorable for refunding.

Department Recommendation

DEQ recommends that the Commission adopt the attached resolution authorizing DEQ and the State Treasurer to refund some or all of the Bonds listed in Attachment B, provided that each Series refunded individually meets the savings targets set under OAR 170-062-0000 and as set out in this agenda item, and provided the refunding occurs in the 2005-2007 biennium.

Attachments

A. Resolution Authorizing and Requesting Issuance of Bonds

B. Candidate Pollution Control Bonds for possible Refunding

C. Pollution Control Fund and State Pollution Control Bonds

Approved: JR Roys 6/8/05

Section: Budget

Division: Office of the Director

Prepared By: Jim Roys and Islay Robertson

Phone: (503) 229-6817

RESOLUTION AUTHORIZING
AND REQUESTING ISSUANCE OF BONDS

Section 1. Findings. The Environmental Quality Commission of the State of Oregon finds:

A. The Department of Environmental Quality (the "Department") may be empowered, by resolution of the Environmental Quality Commission, to authorize and request the issuance of general obligation pollution control bonds for the purpose of refunding some or all of the existing bonds set out in Attachment B;

B. It is now desirable to authorize and request the issuance of general obligation pollution control bonds for this purpose.

C. Oregon Revised Statutes, Section 286.031, provides that all bonds of the State of Oregon shall be issued by the State Treasurer.

Section 2. Resolutions. The Environmental Quality Commission of the State of Oregon hereby resolves:

A. The State Treasurer of the State of Oregon is hereby authorized and requested to issue State of Oregon general obligation pollution control bonds ("Pollution Control Bonds") in amounts that the State Treasurer determines, after consultation with the Director of the Department or the Director's designee, will be sufficient to provide funding for the purposes described in Section 1.A of this resolution, and to pay costs associated with issuing the Pollution Control Bonds. The Pollution Control Bonds may be issued in one or more series at any time during the 2005-07 biennium, mature, bear interest, be subject to redemption, and otherwise be issued and sold upon the terms established by the State Treasurer after consultation with the Director of the Department or the Director's designee.

B. The Department shall comply with all provisions of the Internal Revenue Code of 1986, as amended (the "Code") that are required for interest on tax-exempt Pollution Control Bonds to be excludable from gross income under the Code, and shall pay any rebates or penalties that may be due to the United States under Section 148 of the Code in connection with the Pollution Control Bonds. The Director of the Department or the Director's designee may, on behalf of the Department, enter into covenants for the benefit of the owners of Pollution Control Bonds to maintain the tax-exempt status of the Pollution Control Bonds.

Section 3. Other Action. The Director of the Department or the Director's designee may, on behalf of the Department, execute any agreements or certificates, and take any other action the Director or the Director's designee determines is desirable to issue and sell the Pollution Control Bonds and to provide funding for the purposes described in this resolution.

Attachment B: Candidate Pollution Control Bonds for possible Refunding.

Bond Purpose	Bond Series	Refunding Type	Original Amount Issued ($)	Outstanding Principal as at 06/30/05 ($)
Orphan Site Cleanup program	1995A	Current	8,000,000	5,325,000
	1998A	Advance	5,000,000	3,925,000
	2000B	Advance	8,000,000	6,995,000

Prepared on 6/1/05

Attachment C:
Pollution Control Fund and State Pollution Control Bonds

The **Pollution Control Fund** is authorized in statute (ORS 468.215) to separately account for the receipt and expenditure of **State Pollution Control Bonds**.

State Pollution Control Bonds are authorized under Article XI-H of the Oregon Constitution, which empowers the state "to lend credit for financing pollution control facilities or related activities." Indebtedness can be incurred to provide funds "for the purpose of planning, acquisition, construction, alteration or improvement of facilities for or activities related to, the collection, treatment, dilution and disposal of all forms of waste in or upon the air, water and lands of this state." It allows funds to be advanced "by contract, grant, loan, or otherwise" to state agencies and local units of government. It also permits the state to purchase financial instruments issued by units of local government, to enable them to take advantage of the state's credit rating in financing pollution control facilities. Article XI-H was adopted in 1970 and amended in 1990.

Authorized Uses of the Pollution Control Fund: The Department of Environmental Quality is responsible for the administration of the Pollution Control Fund. ORS 468.220 authorizes its use for several purposes, including:

- Financing municipal sewage treatment facilities or sewerage systems (as defined in ORS 468B.005), and related planning
- Financing local government solid waste disposal facilities and related planning
- Funding the Orphan Site Account for the cleanup of contaminated sites where the responsible party is either unknown, unwilling, or unable to pay for necessary cleanup
- Funding the Assessment Deferral Loan Program Revolving Fund, which funds local government financial assistance programs associated with water pollution control projects, typically to homeowners who can't afford increased assessments
- Providing matching funds for federal grants made available to capitalize the Water Pollution Control Revolving Fund, commonly called the Clean Water State Revolving Loan Fund or SRF.

Historical and Current Uses of the Pollution Control Fund: The Fund was used in the 1970s and 1980s to finance solid waste disposal facilities and municipal sewage treatment facilities. Those debts have been retired. In the early 1990s, State Pollution Control Bonds were issued to provide funds to purchase debt issued by the Cities of Portland and Gresham to finance water pollution control facilities, and to establish a Sewer Assessment Deferral Loan Program. As of 2004 all these Bonds had been fully paid out.

Bonds have been issued since the early 1990s primarily to provide funding for the Clean Water State Revolving Loan Fund, and the Orphan Site Account. The attached "Pollution Control Bonds History and Status" chart shows the amounts issued and outstanding for each of these programs.

Repayment of Bonds Issued. The Oregon Constitution (Article XI-H) allows for repayment of Pollution Control Bonds through an ad valorem tax to be levied on all taxable property in the State. The tax has never been levied, and bond debt has been serviced with diverse funding: repayments of loans from the Water Pollution Control Fund, Assessment Deferral Loan Revolving Fund, and the Clean Water State Revolving Fund; General Fund and Lottery appropriations; fees levied specifically to repay Orphan Site debt; payments of interest and principal from municipalities whose bonds were purchased by the state; and user fees on borrowers. Funds used for debt service, except General Fund and Lottery, are deposited to and expended from the **Pollution Control Sinking Fund,** as directed by ORS 468.230.

Accounting for Bonds and Debt Service: Proceeds from the sale of Pollution Control Bonds are deposited to the Pollution Control Fund. Each bond issue is tracked separately. Similarly, funds received for repayment of bond issues (except General Fund and Lottery) are deposited to the Pollution Control Sinking Fund, and tracked by bond issue. Maintaining separate funds for bond proceeds and debt payments (sinking fund) is standard government accounting practice. Some additional accounting practices are mandated by statute for the Orphan Site Account, at least in part to ensure that no cost recoveries from responsible parties are used for debt service. This additional control was established to ensure that bond administration meets IRS tests for tax free bonds.

Attachment C: Pollution Control Fund and State Pollution Control Bonds

Category	Purpose	Amount Issued	Outstanding* as of 6/30/05
Original "Pollution Control Bonds"	Grants and loans for solid waste disposal & municipal sewage treatment facilities	187,500,000	0
Special Assessment Improvement Bonds	To purchase debt issued by the Cities of Portland and Gresham to finance water pollution control facilities	95,640,000	0
Sewer Assessment Deferral Loan Program	Local government financial assistance programs associated with water pollution control projects	5,500,000	0
Orphan Site Cleanup	Cleanup of contaminated sites where the responsible party is either unknown, or unwilling or unable, to pay for necessary cleanup	45,235,000	27,495,000
Clean Water State Revolving Loan Program (CWSRF)	Matching funds for federal grants made available to capitalize the CWSRF	38,980,000	16,355,000
Total, excluding Original "Pollution Control Bonds"		**185,355,000**	**43,850,000**

* Includes principal repayments and excludes scheduled interest amounts

State of Oregon
Department of Environmental Quality Memorandum

Date: June 21, 2005

To: Environmental Quality Commission

From: Stephanie Hallock, Director S. Hallock

Subject: Director's Dialogue

Update on the Portland Harbor Superfund Site

Last December, I reported to you on progress at the Portland Harbor Superfund site. Significant work has happened at the site in the last six months, and you may have seen recent articles in the *Oregonian* noting issues and describing upcoming "Early Actions" taking place at some sites.

"Early actions" are individual cleanup projects within the Portland Harbor Superfund site that happen on a faster schedule, before the final Record of Decision for the entire site is issued by EPA. Here are some key recent developments at some of these Early Action sites in Portland Harbor:

1. NW Natural's GASCO facility – Last year, EPA and NW Natural signed an agreement to remove a large tar and oil deposit in the Willamette River next to the 35-acre GASCO site. NW Natural is now proposing to either remove or cap the tar deposit this summer, and EPA is seeking public comments on the alternatives through mid-June. Recent articles in the *Oregonian* have accused NW Natural of delaying the investigation and cleanup of contamination both in the water and on their adjacent lands, and DEQ is working with company officials and EPA to integrate and accelerate this work.
2. Port of Portland's Terminal 4 – Over the past year, the Port has been investigating sediment contamination at their Marine Terminal 4 (T4) on the east bank of the Willamette River just north of the St. Johns Bridge. The Port's early action proposes a combination of dredging, capping and monitored natural recovery for the site, including one option to fill in, creating a "confined disposal facility." This disposal facility would be sited at the unused Slip 1 at T4 and would be used to permanently house contaminated sediments. The slip would essentially become a landfill separated from the river by a berm. EPA is seeking public comments on this plan through early July.

City of Portland CSO/UIC Update

On June 1, the Department's Northwest Region issued Oregon's first area-wide Underground Injection Control (UIC) Water Pollution Control Facilities (WPCF) permit to the City of

Portland. This permit is also the first permit in the nation to use EPA's regulation that allows permitting Class V UICs for stormwater discharge into the subsurface on an area-wide basis. The federal Safe Drinking Water Act UIC regulations classify UICs into five categories. Class V is the category for underground injection wells that include stormwater, geothermal wells, and aquifer storage and recovery (ASR) wells and large on-site wastewater systems. EPA has been actively involved with the permit development, and will be involved with implementation. Portland has over 9,900 UICs, of which over 8,500 are active. Over half of the UICs were constructed since 1994 as part of the City's cornerstone project to reduce CSO overflows to the Willamette River and Columbia Slough under the EQC's Amended Final and Stipulated Order (AFSO). The overarching goal of the UIC WPCF permit is to protect the highest beneficial use of groundwater while allowing underground injection of permitted fluids. By protecting the naturally high quality of groundwater, the public's health, safety and welfare, and the environment are protected during subsurface injection activities. The permit conditions are designed to protect groundwater through managing and monitoring stormwater quality before it is discharged into the subsurface. The permit allows the City of Portland to continue to discharge stormwater to UICs which provide beneficial recharge to the underlying aquifer as part of the City's efforts to enhance watershed health.

EPA has identified several compliance and enforcement issues around the city's CSO and UIC programs. This permit satisfies most of EPA's concerns related to their enforcement issues on Portland's UICs. The Department also continues to meet monthly with both the city and EPA to review Portland's CSO program long term control plan and its approach for addressing the nine minimum controls required under the national CSO policy described in Portland's NPDEWS permit. These efforts are intended to address EPA's compliance concerns with the CSO program.

North Ridge Estates (Klamath Falls) Asbestos Case

Following a July 2001 complaint, a DEQ inspection revealed the presence of scattered, exposed asbestos-containing material at North Ridge Estates; a residential subdivision located about three miles north of Klamath Falls on Old Fort Road. This subdivision is the site of a former World War II U.S. Department of Defense Marine Barracks and the old Oregon Institute of Technology campus.

Asbestos-containing materials, including roofing, siding and pipe insulation, were used throughout the barracks and other buildings. Buildings were demolished during the 1960s, 1970s and 1980s. In the early 1990s, the site was developed into a residential subdivision.

On April 26, 2005, EPA signed an Action Memorandum to request and document approval for temporary relocation of North Ridge Estates residents. Relocation is voluntary for residents, but EPA believes it is appropriate in order to immediately reduce the risk of exposure from the uncontrolled release of asbestos at the site. The temporary relocation would occur between June 10 and September 10, 2005, when children in the subdivision would be at home from school and the climate is at its driest and windiest. This is also the period during which most assessment and removal activity is expected to occur. Twenty seven families are eligible to request

temporary relocation, although only 14 o15 are likely to move. Additional information about the relocation is available at:
http://yosemite.epa.gov/r10/cleanup.nsf/f5415302afe9dbd088256ff10055fc57/fd8ca9e81640f9f188256ff10054a6f4!OpenDocument.

Kennedy School of Government Project Competition

The Clean Air Partners (CAPs) is a pilot program to help low-income people whose vehicles can't pass DEQ's vehicle emissions test and who can't afford to make essential repairs to their vehicle emissions control system. CAPs is a private/public partnership between DEQ, the United Way of the Columbia-Willamette and Ron Tonkin Family of Dealerships. DEQ vehicle inspectors collect contributions from the driving public in the Portland Metropolitan Area to pay for the program.

Last year, DEQ submitted an application to the Innovations Program at Harvard's Kennedy School of Government which recognizes creative solutions to social problems. While CAPS was not selected last year, we have just received a letter encouraging us to apply again in 2005. We plan to do so.

Division 12 Enforcement Rules, Phase II

On June 13, Annette Liebe and I met with EPA Region 10 staff to provide an overview of the effort we are undertaking to revise the Division 12 rules so there are "no surprises" for EPA. EPA is part of the advisory committee for the rules as well. We are on track to put Phase II of the rules on public notice in September, with a target of February 2006 for bringing them to the EQC.

Transitions at LRAPA

The Lane Regional Air Pollution Authority (LRAPA) has recently experienced organizational challenges. In January, the LRAPA Director, Brian Jennison, was asked to resign. In May, while the LRAPA Board was in the midst of searching for a replacement, a controversy developed over the size and balance of the Board. Due to population growth, Eugene was entitled to an additional representative on the Board, which caused Springfield and Lane County to consider pulling their support from LRAPA. If not resolved, this dispute could lead to the dissolution of the agency and transfer of its responsibilities to DEQ. The LRAPA Board and interim director, Jim Johnson, are working to seek a compromise. Separately, a long-time DEQ manager, Merlyn Hough, has joined LRAPA as their Operations Manager.

Freightliner

DEQ is working with the Attorney General's office and Oregon Department of Transportation (ODOT) as well as the Governor's office and the Department of Energy (DOE) to negotiate a vehicle operation agreement with Freightliner. The agreement would allow Freightliner to test trucks equipped with new diesel emission reduction technology without incurring the weight-

mile and fuel taxes that trucks normally incur while driving on Oregon highways. The new diesel emission technology will be required on 2007 model year trucks. It is Freightliner's experience that customers are hesitant to purchase new technology trucks for several years until the technology has been proven in use on the highway. Freightliner believes that this extensive on-road testing will work the bugs out and convince customers to rethink purchase delays. The success of Freightliner is good for Oregon's economy, and since the new technology will result in the cleanest diesel vehicles in the world, it will be good for Oregon's environment too.

Freightliner and state partners are currently discussing a number of conditions in return for the exemption from the road tax:

1) purchase of portable emission testing equipment for DEQ,
2) display of a mutually agreed upon public service message on the trucks,
3) providing information on energy consumption from the road test and
4) operating the trucks on roads that correspond to ODOT's ongoing pavement wear and bridge strain program.

City of Milwaukie Riverfront Park Restoration Project and Oregon Solutions

The mission of Oregon Solutions is to develop sustainable solutions to community-based problems that support economic, environmental and community objectives and that are built through the collaborative efforts of business, government and non-profit organizations. Governor Kulongoski serves as Chair of Oregon Solutions. DEQ provides management staff to develop Oregon Solutions projects, including this one with the City of Milwaukie.

The Riverfront Park Restoration project is very important to the implementation of the City of Milwaukie Downtown Plan. The Oregon Solutions collaborative process will help to identify community resources for restoration activities and for long-term park maintenance while helping to resolve the competing desires for green space and boat access/parking.

The project will help restore two important Willamette River tributaries: Kellogg Creek and Johnson Creek. DEQ is working with local governments to decommission the Kellogg Creek Wastewater Treatment Plant. Staff is also working to improve the water quality throughout the length of Johnson Creek. The Oregon Solutions project team will also address restoration along part of a third tributary, Spring Creek, and the provision of green space for walking, watching the river, and special events. More information about the project can be found at: http://www.orsolutions.org/willamette/milwaukieriverfront.htm

Environmental Council of the States (ECOS)

The cuts in EPA's budget will likely all be taken out of the State Revolving Loan Fund and grants to states and tribes. This continues a trend for a second budget cycle. ECOS is fighting back in a way states have not done before. States have hired a lobbyist and even if we do not get cuts restored in this budget, we will be carrying forth a state proposal for EPA's budget and lobbying hard in the future. As an ECOS officer, I will play a lead role in these activities.

In May, I spoke on behalf of ECOS to EPA leadership at a planning meeting in DC and met with staff from the Office of Management and Budget and the President's Council on Environmental Quality as well. The attached graphics show the budget trends vis-à-vis EPA regulatory requirements that states are expected to implement.

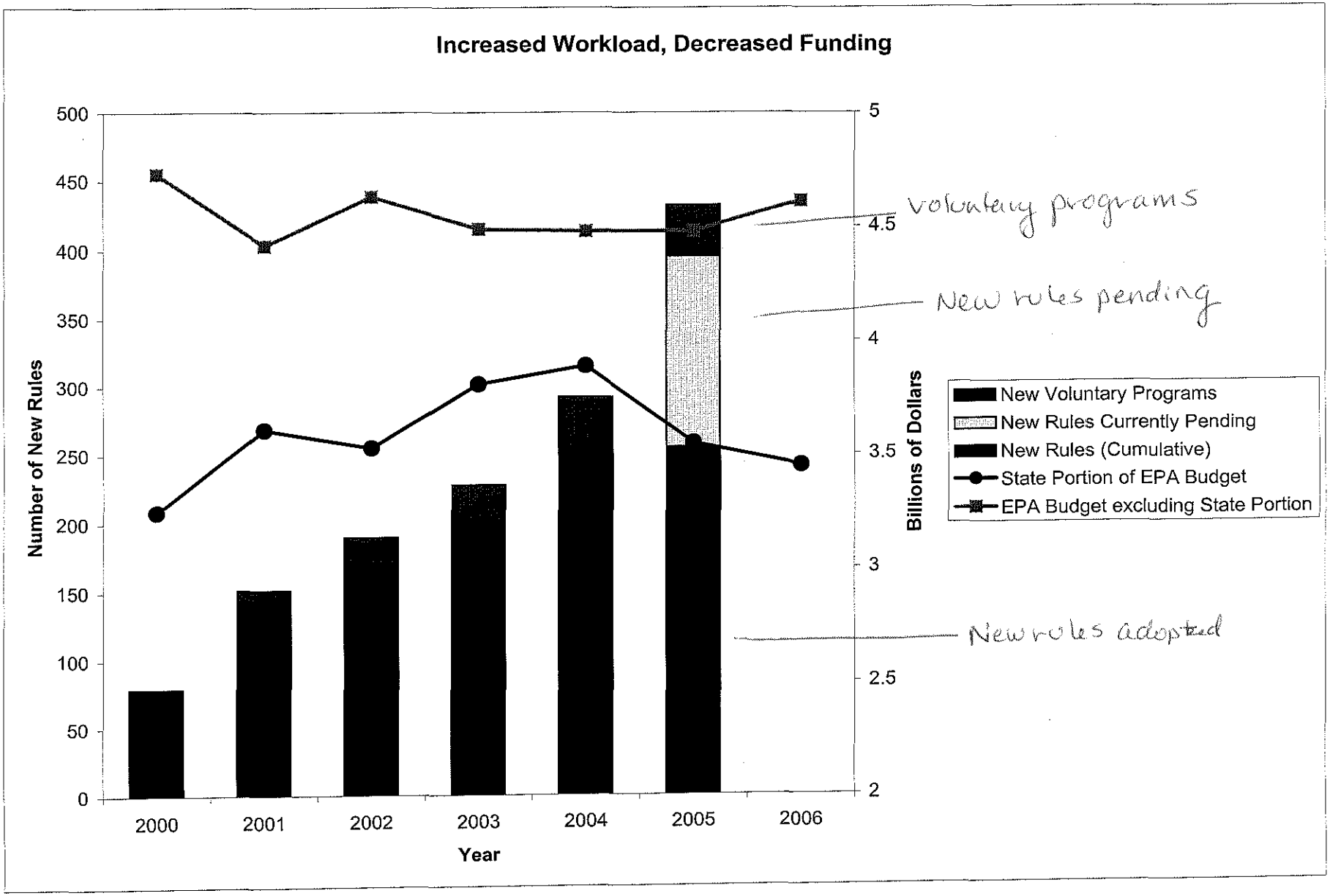
I will be attending the ECOS annual meeting September 7-9 in Maine where I expect to be elected president.

Personnel Changes

Holly Schroeder, Administrator of the Water Quality Division, has left DEQ to live in Southern California. Lauri Aunan, DEQ's government relations coordinator for the past seven years, is the new Water Quality Administrator. We are working on a recruitment for Lauri's position.

Cathy Skaar, the new Assistant to the Commission, started work this month and will play an active role in assisting at your next meeting in August. New dates for the August meeting are August 11 and 12.

Legislative Update – see attachment.


Increased Workload, Decreased Funding
Number of New Rules
Billions of Dollars
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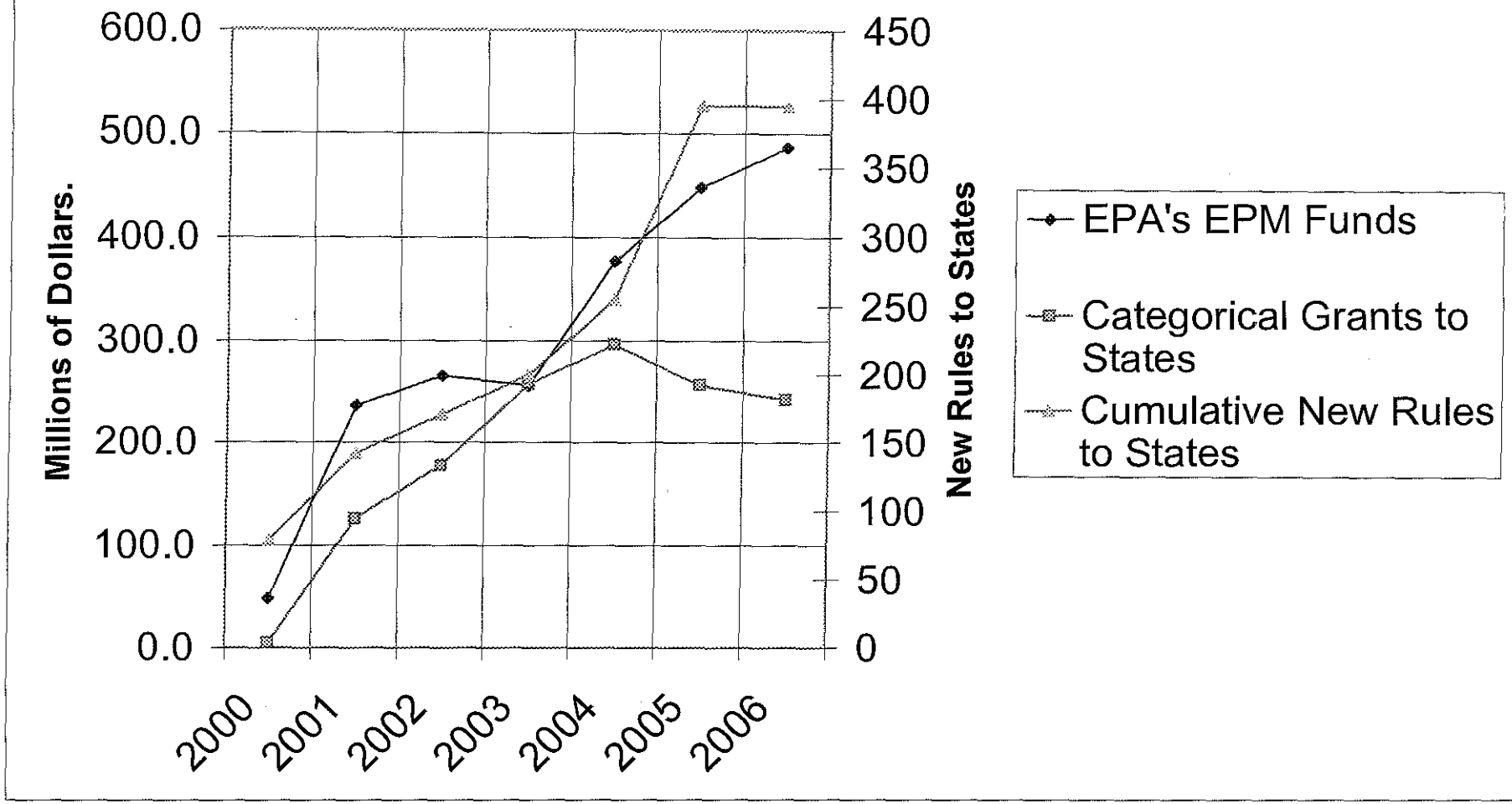
New Voluntary Programs
New Rules Currently Pending
New Rules (Cumulative)
State Portion of EPA Budget
EPA Budget excluding State Portion
Voluntary programs
New rules pending
New rules adopted

Cumulative Increases to EPA and States, 2001-2006



Dir's Dial
Portland UIC

HICKMAN Jane

From: WEICK Rodney J
Sent: Wednesday, June 15, 2005 5:22 PM
To: HICKMAN Jane
Cc: WEICK Rodney J; MULLANE Neil; CULLINGTON Mark; PEDERSEN Dick; AUNAN Lauri
Subject: FW: Item for June Director's Dialogue
Importance: High

Jane,
I've added some language to the "blurb" that should answer Stephanie's questions regarding UICs. Neil is out on vacation until Monday. He is the most appropriate person to discuss the EPA CSO enforcement action status. If you need a response before Neil returns, Richard Santer is the best person to respond.

The City must handle stormwater under both the federal Clean Water Act (CSO system and the NPDES MS4 permit) and the Safe Drinking Water Act (SDWA) for the UIC permit. This is the first area-wide UIC permit in the nation for stormwater discharge into UICs. It is also the first stormwater permit that requires numeric concentration limit compliance; this is a SDWA requirement. Also adaptive management is not allowed under the SDWA. EPA is satisfied with the permit overall. There is discomfort on EPA's part because we do not require groundwater monitoring as a permit condition. The permit is prescriptive, detailed and protects groundwater without the groundwater monitoring by establishing strict water quality limits on stormwater being discharged into a UIC. EPA will be issuing its Consent Decree for the UIC enforcement action sometime between August and December this year. They are likely going to say comply with the permit. They may require groundwater monitoring. We [Neil, myself, Mark Cullington, Dick Pedersen and Holly Schroeder (before she left)] do not support EPA's position on groundwater monitoring as a permit or consent decree requirement. It is our collective opinion that:

- It is impractical to establish a permit-required groundwater monitoring condition for an area the size of Portland. The cost for monitoring wells would be prohibitive with little or no environmental benefit;
- Portland's UICs represent only about 1/3 of the UICs that discharge stormwater in the City. The other 2/3rds are privately owned UICs, which the City has no regulatory authority over; and
- The concentration limits established as a permit compliance condition are the federal drinking water MCLs, except for two pollutants (lead and arsenic), which data supports using a compliance limit higher than the MCL and remain protective. All the discharge limits are protective of groundwater quality.

Regards
Rodney

-----Original Message-----
From: HICKMAN Jane
Sent: Wednesday, June 15, 2005 4:13 PM
To: MULLANE Neil
Cc: WEICK Rodney J; HICKMAN Jane
Subject: Item for June Director's Dialogue
Importance: High

Hello, Stephanie review the draft director's dialogue for the EQC meeting next week and has some suggestions. She asked that we change the title (which I've done in the attached). She also asked what is a Class V? Is it related to size, and if so, what size? She wants you to add something about the status of Portland CSO enforcement in general. Need also to "mention how this relates to EPA enforcement action." With those comments in mind, could you please make some additions to your section of the attachment and return to me ASAP? Thanks very much! Jane

articles in the *Oregonian* noting issues and describing upcoming "Early Actions" taking place at some sites.

"Early actions" are individual cleanup projects within the Portland Harbor Superfund site that happen on a faster schedule, before the final Record of Decision for the entire site is issued by EPA. Here are some key recent developments at some of these Early Action sites in Portland Harbor:

1. NW Natural's GASCO facility – Last year, EPA and NW Natural signed an agreement to remove a large tar and oil deposit in the Willamette River next to the 35-acre GASCO site. NW Natural is now proposing to either remove or cap the tar deposit this summer, and EPA is seeking public comments on the alternatives through mid-June. Recent articles in the *Oregonian* have accused NW Natural of delaying the investigation and cleanup of contamination both in the water and on their adjacent lands, and DEQ is working with company officials and EPA to integrate and accelerate this work.
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City of Portland CSO/UIC Update

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EQC Director's Report – Legislative Update
June 21, 2005

Following the demise of the joint Ways & Means process, we attended work sessions on our budget in both the House and the Senate. Subsequently, **DEQ's budget** passed out of the House and the Senate as separate bills, HB 5135 and SB 5536. The House bill does not include funding for the Willamette River clean water plan, and the Senate bill does. The House bill also includes an amendment that would prohibit DEQ from spending any funds on California tailpipe standards (more on this below), and the Senate bill does not. These are the only material differences between the two budget bills. Both bills take cuts totaling $400,000 for hazardous waste policy and technical assistance work and air toxics monitoring. The House budget bill will now go to the Senate, and the Senate budget bill will go to the House. The Governor's Office is taking the lead on negotiations for funding for the Willamette plan. We expect that the budget bills will end up in a conference committee.

DEQ's fee ratification bills have also passed out of both the House and the Senate as separate bills, with no differences between them. These are fees adopted by the EQC in 2004 and include changes to the septic system fee schedule, 401 water quality certification fees, and municipal storm sewer fees. HB 5141 passed out of the House last week and is now on the Senate side. SB 5542 passed the Senate on Monday and will move to the House.

DEQ Bills That Have Been Signed by the Governor

Senate Bill 42 changes the Clean Water State Revolving Fund law to add about two to five years to the loan repayment term. The bill passed the Senate and House and Governor Kulongoski signed the bill June 7, 2005

Senate Bill 43 (Toxic Use Reduction) The Governor signed SB 43 during a ceremony for the bill on June 9. The bill, introduced by the Governor on behalf of DEQ, updates and streamlines the state's toxic use reduction and hazardous waste reduction law, first passed in 1989. The bill passed unanimously in both the state House and Senate. David Livingood, DEQ's toxic use reduction coordinator, has developed a detailed implementation effort to assist businesses and DEQ's technical assistance staff. We are confident SB 43 will lead to better toxic use reduction planning by businesses and the submittal of more meaningful and useful information to DEQ.

DEQ Bills Still Moving Through Committee

Senate Bill 44 extends the sunset of the existing fee that funds federally required work to prevent leaks and contamination from underground storage tanks. The bill has passed the Senate and awaits consideration by the House Budget Committee. This bill is supported by the association that represents tank feepayers.

Senate Bill 45 improves the stability and accountability of the water quality permit program by increasing fees, making process improvements, and requiring annual performance reports to the legislature, local government, businesses and the public. This bill is supported by industry, local government, and environmental groups, who were represented on the Blue Ribbon Committee that developed this bill and our

wastewater permit budget proposal. The bill passed the Senate by a 26-2 margin. It is now on the House side and has been referred to the House State and Federal Affairs Committee for consideration of policy issues.

Bills of Interest to DEQ Still Moving Through Committee

Mixing Zones: Several bills have been offered during the session related to water quality mixing zones and toxics. All would result in a significant fiscal impact to DEQ.

Senate Bill 532 –This bill was introduced at the request of Senator Bates. The bill is the result of several amendments offered over time by the Sierra Club and others. DEQ would be required to monitor up to 25 mixing zones/year, develop a plan for toxics reduction for mixing zones, and DEQ would be responsible for placement and upkeep of buoys/signs marking mixing zones. A hearing was held last week in the Senate Budget Sub-committee on Natural Resources. Several stakeholders testified in support and opposition to the bill and DEQ provided background information during the hearing. DEQ cannot support this bill because its implementation requires funding that is not included in the Governor's Recommended Budget. Fiscal impact: $2.5 million General Fund, $452,000 from fees.

Senate Bill 555 - Senate President Peter Courtney sponsored this bill and it is a priority issue for the Oregon Conservation Network, a coalition of environmental groups. This bill directs DEQ to phase out mixing zones that are currently authorized by EPA regulations and regulated by DEQ rules. This bill had one hearing in the Senate Environment and Land Use Committee in February. DEQ cannot support this bill because its implementation requires funding that is not included in the Governor's Recommended Budget. Fiscal impact: $385,000 General Fund.

House Bill 2664 – Requires facilities with mixing zones to mark zones with buoys or sign postings along the shore. The bill had one public hearing in the House Water Committee in March.

Senate Bill 652 directs DEQ to create a program to test for toxic substances in fish throughout the state. The bill has had one public hearing (4-4-05) in the Senate Environment and Land Use Committee. DEQ testified in support of increased monitoring for toxics, but cannot support the bill because its implementation would require funding not included in the Governor's Recommended Budget. Environmental groups including OSPIRG testified in support of this bill. Fiscal impact: $2.6 million General Fund

House Bill 2130 – This places suction dredge fees into statute. Fees are consistent with what is in the suction dredge general permit renewal package awaiting final approval from the Commission. This bill comes at the request of Representatives Anderson and Butler responding to suction dredge miners seeking fee certainty.

SB 740 (Electronic Waste Recycling) - SB 740 would establish a statewide system to collect and recycle computers, monitors and televisions. The bill would utilize a fee of $6 to $10 on each new monitor or television sold to pay for the collection and recycling.

DEQ would use an RFP process to select a contractor to operate the program. The bill has cleared one committee and is now being considered by the Senate Budget Committee.

House Bill 2948 would make EQC orders in contested case hearings appealable to circuit court in addition to the Court of Appeals. DEQ and the Department of Justice believe that this bill would make appeals in contested cases more costly for both the Department and Respondents. The Department has testified against this bill. The bill was referred from the House Environment committee to the House Budget Committee

HB 3481 is a biofuel bill that would add biofuel production to the pollution control facilities tax credit. The bill would extend the sunset of the program to 2016 and increase the maximum percentage of the facility cost that may be used to offset tax liability from 35% to 50%. HB 3481 also provides a new biofuel or emissions research and development tax credit. DEQ would be responsible for certifying the qualifying equipment as listed in the bill. This bill is expected to pass in the House, but face significant changes in the Senate. DEQ wants to change Section 40 language that would require any rules adopted by the EQC to permit and encourage the sale or lease of vehicles that use biodiesel.

Cal LEV (California Low Emission Vehicle standards):
As you know, there has been a lot of interest in the California Motor Vehicle Emissions Standards in the Oregon Legislature this session. Governor Kulongoski plans to appoint a task force to recommend the best way to implement the California Motor Vehicle Emissions Standards in Oregon. Meanwhile, Cal LEV is the subject of several bills and has become a very controversial topic in the Legislature this session.

SB 344, sponsored by Senator Ringo, directs the Environmental Quality Commission to adopt regulations implementing California motor vehicle emissions standards beginning with the 2009 model year. The bill had a hearing and work session in the Senate Environment and Land Use Committee and was referred to the Senate Rules Committee.

HR 3, sponsored by Representatives Anderson, Butler, Garrard, Jenson and Nelson, declares that state agencies should not impose requirements relating to the control of greenhouse gas emissions except as required by federal or state law. The resolution, which expresses an opinion or sentiment but does not become law, moved through the House Environment Committee and passed the full House.

The House version of DEQ's budget, HB 5135, includes an amendment that prohibits DEQ and the EQC from expending any money to adopt or enforce rules that impose California emission standards. Legislative Counsel sent a memo citing Oregon Supreme Court opinions and an Attorney General opinion restricting matters of policy which are discretionary and subject to debate, like this amendment, from inclusion in budget bills. At the same time, Paul Cosgrove, an attorney with Lindsay, Hart, Neil & Leigler, LLP and representative for the Alliance of Automobile Manufacturers, sent a letter to the Committee supporting the constitutionality of the amendment. The Budget Committee, and later the full House, passed the budget bill including the amendment. The Senate passed its version of the budget that does not include this prohibition, but not without discussion of Cal LEV.

The Washington Legislature recently passed a bill adopting California standards beginning with the 2009 model year. Implementation of the law, however, is contingent upon Oregon also adopting the standards.

Also relating to vehicle inspection, in the House Audits Committee:
A private citizen, Dr. Gary Adams, issued a report questioning the validity of DEQ's vehicle inspection equipment calibrations and alleging that Oregonians spent several million dollars for needless emissions system repairs. DEQ issued a report responding to all of Dr. Adams' allegations and pointing out the errors of his analysis. Nonetheless, the House Audits Committee, after two public hearings, issued a report recommending the following:

> DEQ contract with an unbiased third party, not previously associated with DEQ, to review the Adams report and the DEQ response for accuracy and validity. Further, the committee recommends the department report back to the audits committee if this task is accomplished before the end of the 73rd Legislative Session or to the Joint Legislative Audits Committee if session has ended.

In response, DEQ is preparing a Request for Proposals (RFP) to contract for the review and expeditiously report to the appropriate committee.

Finally, the following Water Quality **BUDGET NOTE** is proposed in both the Senate and House budget bills:

"DEQ, DOGAMI, DSG, DFW, DLCS, and OWR will work with the Office of Regulatory Streamlining on one or more projects to streamline the delivery of water-related permitting programs and projects including water-related permitting associated with removal/fill projects and on permitting associated with aggregate mining activities. The agencies will report back on their plans and progress to the Joint Legislative Audit Committee no later than April 30, 2006 and Dec. 31, 2006. To the greatest extent practical, the Office of Regulatory Streamlining will involve the co-chairs of the Joint Legislative Audit Committee, or their designees, in any work group activities needed to implement this budget note."

State of Oregon
Department of Environmental Quality Memorandum

Date: June 6, 2005

To: Environmental Quality Commission

From: Stephanie Hallock, Director S. Hallock

Subject: Agenda Item G: Contested Case No. AQ/AB-WR-02-046 regarding Jack D. Price, June 24, 2005 EQC Meeting

Appeal to EQC

On May 11, 2004, Jack D. Price (Petitioner) appealed the Amended Proposed and Final Order in this matter which upheld in full the Department's assessment of three civil penalties totaling $28,042. Mr. Price was assessed a penalty of $8,042 for working on an asbestos abatement project without being licensed to do so; $9,600 for openly accumulating asbestos-containing waste material (ACWM); and $9,600 for failing to wet asbestos-containing material (ACM) while it was being removed.

Background

On April 17, 2003, the Department issued Petitioner a Notice of Civil Penalty Assessment ("Notice," Attachment W). The Notice alleged that Petitioner committed five violations of state laws and regulations relating to management of ACM and assessed Petitioner civil penalties totaling $30,042 for the three violations noted above. Petitioner was also cited, but was not penalized for, failing to adequately wet ACWM to ensure that the ACWM remained wet until disposed of, and for failing to provide notification of his intent to conduct an asbestos abatement project.

On May 12, 2003, Petitioner appealed the Notice and requested a hearing. A contested case hearing was held on February 25, 2004, after Petitioner requested a delay so he could obtain counsel. At the hearing, the Department agreed to reduce the penalties from $30,042 to $28,042. The administrative law judge (ALJ) issued her Proposed and Final Order on August 11, 2004 and her Amended Proposed and Final Order ("Proposed Order," Attachment R) on August 25, 2004. The Proposed Order was identical to the original Order except that it included notice of Petitioner's appeal rights. Petitioner filed a petition for Environmental Quality Commission (the Commission) review of the Proposed Order on September 23, 2004.

The relevant facts are set forth in the Proposed Order but can be summarized as follows:

The case involves a project conducted by Petitioner at a property commonly described as the old McMinnville Hospital, located at 603 Baker Street in

McMinnville. An asbestos survey conducted in 1996 showed possible problem areas included salmon floor tiles on the third floor and green floor tiles on the second and third floors. The green tiles were 9 inches x 9 inches. (FOF 1)

On December 26, 2001, Petitioner entered into a contract with the property owner to demolish the old McMinnville Hospital. The scope of the work included completing an environmental survey with a DEQ approved contractor; remediating and abating all materials and disposing of them properly (requiring a DEQ approved contractor); and compliance with all governing agencies. The contract was for a lump sum, and had to be completed by February 28, 2002. A bonus was available if the work was completed by February 15, 2002. (FOF 2)

Petitioner was aware of the asbestos problems with some third floor tiles prior to entering into the contract. He bid the work without having any information about the cost of asbestos abatement for the job. (FOF 3, 4)

On or about January 16 and/or 17, 2002, Mr. Price's project supervisor instructed Petitioner's crew to remove floor tiles, including the nine-inch tiles on the third floor. They were instructed by the supervisor to put the tiles in plastic bags and to take them to dumpsters. There was a hose available, but the supervisor did not instruct the workers to wet the tile during the removal process. During the tile removal process, many of the tiles broke into very small pieces, more than four pieces per tile. (FOF 5-7)

On January 16, 2002, an asbestos abatement contractor toured the site with Mr. Price and saw workers removing green nine-inch square tiles on the third floor. The contractor saw no water, and the tiles looked dry. He suspected the tile contained asbestos. Mr. Price told the workers to stop the removal. Tiles were in a pile, and there were many small broken pieces of tile around. (FOF 8)

On January 17, 2002, a second asbestos abatement contractor, IRS Environmental, submitted a proposal for the asbestos clean-up. The bid was for removal of all remaining asbestos materials for $32,570, and an additional $.52 per square foot for additional mastic under tile previously abated. (FOF 9)

On January 18, 2002, Dottie Boyd, a natural resource specialist with DEQ, visited the site. Ms. Boyd asked the supervisor if there had been any tile removal from

the old section of the hospital. He answered in the negative. Later that day, Ms. Boyd learned from Mr. Price that he had hired IRS Environmental to conduct asbestos abatement. (FOF 10)

Ms. Boyd spoke with Mr. Price on January 22, 2002 and asked what work had been done on the site. He did not mention the tile removal. He did mention his desire to have the project completed by February 15, 2002. They agreed to meet at the site the next day. (FOF 11)

On January 23, 2002, Ms. Boyd met Mr. Price at the site. IRS Environmental was on site doing some prep work, including installing two barrier walls on the third floor where some of the nine-inch tiles had been removed. Mr. Price told Ms. Boyd that the tile had come up when carpet was removed and that he had not realized there was tile under the carpet. He stated he had the workers stop the tile removal when he saw them. Ms. Boyd observed shattered pieces of tile in rooms and in the corridor within the barricaded area. The materials were dry. Ms. Boyd offered to give Mr. Price an emergency waiver to start clean-up immediately, but he declined, because starting immediately would substantially increase the cost. (FOF 12)

Ms. Boyd took a sample of the green hallway tile and of the pink tile in one of the rooms. Both types of tile had been removed by the workers, and there were scattered pieces of the tile throughout the area. Both the pink and green tiles were tested at the DEQ laboratory, using the adopted protocols of the agency. The test results showed the pink flooring had three percent chrysotile asbestos in the tile; and the green flooring, with mastic on either side, had five percent chrysotile asbestos. DEQ's lab has been evaluated by the EPA and has been found to be in compliance with federal standards. (FOF 13)

Mr. Price also had some samples tested by a lab, the results of which he submitted to DEQ. The lab technician received the samples on January 15, 2002. The technician found a green tile with black backing had a layer of three percent chrysotile asbestos in the tile. Polarized light and phase contract microscopy were used in testing the samples. (FOF 14)

Asbestos fibers were also found on the clothing of one of Petitioner's crew. (FOF 16)

DEQ decided to impose penalties on three violations because of the "severity of the violations and the intentional behavior of Mr. Price." DEQ determined the economic benefit to Petitioner by using the BEN model provided by EPA, and information from IRS Environmental about the cost of removing the tiles properly and the cost of cleaning up the tiles already removed. (FOF 17)

The ALJ concluded that:

1. Petitioner violated ORS 468A.710(1) and OAR 340-248-0120(1) by working on an asbestos abatement project without a license.
2. Petitioner openly accumulated ACWM in violation of OAR 340-248-0250(2).
3. Petitioner violated OAR 340-248-0270(2) by failing to adequately wet ACM when it was being removed.
4. Petitioner violated OAR 340-248-0280(2) by failing to adequately wet ACWM to ensure that they remained wet until disposed of.
5. Petitioner violated OAR 340-248-0260(1) by failing to provide notification to the Department of its intent to conduct a friable asbestos abatement project.
6. Petitioner is assessed civil penalties of $8,842, $9,600 and $9,600 respectively for violations (1) through (3). (Proposed Order at 5 and 6.)

Issues On Appeal:

The issue on appeal is whether DEQ used the proper testing protocol when it tested the suspect floor tiles and, consequently, whether DEQ has met its burden of proof in establishing that the suspect tiles were ACM.

Applicable Standard:

ACM is "material containing more than one-percent asbestos by weight." ORS 468A.700(5); OAR 340-248-0010(8). DEQ's current rules provide that:

> "The content of asbestos in any asbestos-containing material must be determined using the method specified in 40 CFR Part 763 Subpart E, Appendix E, Section 1, Polarized Light Microscopy ***or another method approved by the Department***." OAR 340-248-0205(4) (emphasis added).

At the time of the violations, DEQ did not have an administrative rule that specified the applicable test method. The Department relied then, as it does now under the current rules, on a stand-alone document that described the Department-approved testing protocols to be used when sampling for asbestos.

Petitioner's Exception

Petitioner asserts that DEQ did not use the proper testing protocol when it tested the suspect floor tiles and requests that the Commission find that the Department did not meet its burden of proving the presence of asbestos in that tile. (Memo for Commission Review, Attachment G.) Petitioner argues that the samples of the suspect tiles should have been "point counted" but that Department used a "less stringent PLM method."

Petitioner argues as follows:

"...the burden of proof is on DEQ to prove each and every element of the violation. The first element to be proven is whether or not the suspect martial (sic) is over 1% asbestos by weight. The method used in this case was a much more crude and non-scientific method and is based on the technician's judgment. Point counting is considered more accurate and is based on calculations as opposed to a human eye-balling the amount of asbestos. In addition to the somewhat inaccurate testing method, this is a strict liability statute and in the interest of justice it would be only fair that DEQ at a minimum use a more scientific method of testing." (Petitioner's Exceptions at 1 and 2.)

DEQ's Position:

The Department maintains that it properly tested the suspect tiles and that it has met its burden of proof in this case. The Department requests that the Commission uphold the Proposed Order. (Department Reply Brief, Attachment D.) There is substantial evidence in the record that the tiles contained asbestos. The DEQ lab technician responsible for testing the tiles used three techniques described in DEQ's written and approved protocol: (1) polarized light microscopy (PLM); (2) matrix reduction; and (3) visual estimation. Based on the results of those tests, she determined that "point counting" was unnecessary. This decision was within her discretion to make. No more was required under either the current rule or at the time of the violations. The PLM method

Petitioner now challenges is the same methodology used by the lab hired by Petitioner himself. (DEQ Answering Brief at 2.)

Use of the methodology in 40 CFR Part 763, Subpart E is not mandatory; nor is it dictated by the Clean Air Act (CAA). Nevertheless, Petitioner has not presented any evidence to the effect that DEQ's approved test methods are less stringent than those in the SIP or CAA. (DEQ Answering Brief at 2.)

Respondent did not present any rebuttal evidence and has not disputed that the tiles were "asbestos-containing material." Respondent's assertions regarding the accuracy of the method used by DEQ are not supported by any evidence or expert testimony. Respondent has not presented any evidence that the test methods used in this case produced inaccurate results. (DEQ Answering Brief at 3.)

Further, as the ALJ notes in the Proposed Order, Petitioner's current argument is inconsistent with his own testimony at hearing:

"[Petitioner] testified that he believed there was asbestos in the hospital's floor tiles prior to entering into the contract. He knew an asbestos survey had been done on the property in the past. He contacted asbestos removal contractors prior to the violations. He submitted his own analysis to DEQ, which showed green tile with black backing had a layer of three percent chrysotile asbestos in the tile. He hired asbestos removal contractors to remove the asbestos tiles and the debris."

"Despite all of these admissions and actions against interest, he argues that DEQ's testing protocols were insufficient to show there was asbestos in the tile floors." (Proposed Order at 7-8.)

In sum, the ALJ's decision should be affirmed. If the EQC disagrees for any reason, however, the EQC should remand the case rather than reversing the Proposed Order. If the case is remanded, DEQ could submit additional evidence by way of an EPA affidavit that the point counting method is not mandatory under the federal rules, as well as additional evidence on the accuracy and reliability of the test methods DEQ used (and continues to use). Nevertheless, remand should be unnecessary in light of the evidence already in the record.

EQC Authority

The Commission has the authority to hear this appeal under OAR 340-011-0575.

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.[5]
(4) 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.[6]

The rules implementing these statutes also have more specific provisions addressing how Commissioners must declare and address any *ex parte* communications and potential or actual conflicts of interest.[7]

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[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(5)
[6] OAR 340-011-0575(6)
[7] OAR 137-003-0655(7), referring to ORS Chapter 244; OAR 137-003-0660

Alternatives The Commission may:

1. As requested by Petitioner, reverse the ALJ's decision, based on the reasoning offered by Petitioner. Making this determination would require the Commission to make a finding that Petitioner's Exception is supported by evidence in the record.
2. As requested by the Department, uphold the ALJ's Proposed Order that Petitioner worked on an asbestos abatement project without being licensed to do so; openly accumulated ACWM; and failed to wet ACM during its removal and is liable for $28,042 in civil penalties. Making this determination would require the Commission to make a finding that the Department's Response to Petitioner's Exceptions is supported by the record and does not constitute new evidence.
3. Uphold the ALJ's decision, but adopt different reasoning.
4. Determine that the case cannot be decided without considering new evidence, and therefore remand the case to the ALJ for a further proceeding to consider new evidence.

Attachments

A. Letter from Jane Hickman to Jack D. Price, dated June 1, 2005
B. Letter from Day Marshall to Cynthia McNeff, dated April 7, 2005
C. Letter from Jane Hickman to Cynthia McNeff, dated February 7, 2005
D. DEQ Answering Brief in Response to Respondent's Memo for Commission Review (undated and unsigned, with "Draft" watermark deleted)
E. DEQ Answering Brief in Response to Respondent's Memo for Commission Review, dated January 31, 2005
F. Letter from Cynthia McNeff to Director Stephanie Hallock, dated January 7, 2004.
G. Petitioner's Memo for Commission Review, dated January 7, 2005
H. Letter from Mikell O'Mealy to Cynthia McNeff dated December 16, 2004
I. Letter from Cynthia McNeff to Director Hallock dated December 14, 2004
J. Letter from Mikell O'Mealy to Cynthia McNeff, dated November 16, 2004
K. Letter from Cynthia McNeff to Director Hallock, dated November 6, 2004

L. Letter from Mikell O'Mealy to Cynthia McNeff, dated October 14, 2004
M. Letter from Cynthia McNeff to Director Stephanie Hallock, dated October 4, 2004
N. Letter from Mikell O'Mealy to Cynthia McNeff, dated October 1, 2004
O. Oregon Administrative Rules 340-011-0132
P. Letter from Cynthia McNeff to Director Stephanie Hallock, dated September 23, 2004
Q. Petition for Commission Review, dated September 23, 2004
R. Amended Proposed and Final Order, dated August 25, 2004
S. Rebuttal to Respondent's Hearing Memorandum, dated April 26, 2004
T. Respondent's Hearing Memorandum, dated April 5, 2004
U. DEQ's Hearing Memorandum, dated March 18, 2004
V. Letter from Jack D. Price to DEQ, dated May 12, 2003
W. Notice of Assessment of Civil Penalty issued to Jack D. Price by DEQ, dated April 17, 2003
X. Exhibits from Contested Case Hearing of February 25, 2004:
    A1. Enforcement referral to DEQ Enforcement Section (6 pages)
    A2. Memorandum dated February 19, 2002 to Jack Price/Hans Hendgen Enforcement File prepared by Dottie Boyd (12 pages)
    A3. Asbestos Survey Summary by GHP, conducted on October 23 through October 25, 1996 (4 pages)
    A4. Diagram of the southeast corner of the third floor of Old McMinnville Hospital, 9x9 VAT Removal Area (1 page)
    A5. Map of third floor of Old McMinnville Hospital, including southeast corner (1 page)
    A6. Asbestos sample transmittal form, from Dottie Boyd to the DEQ Laboratory (1 page)
    A7. Microscopic Test Results completed January 29, 2002 (1 page)
    A8. Bulk Asbestos Analysis Report dated January 16, 2002 from Chemoptix
    A9. Demolition Contract – Lump Sum, between Jackson Enterprises and Hans A. Hendgen and Shauna L. Hendgen, executed on December 26, 2001 (3 pages)
    A10. Five ASN-1 Forms filed over the period January 18, 2002 through February 8, 2002
    A11. Photo Documentation Comment Sheet by Dottie Boyd, dated January 23, 2002 (3 pages)
    A12. Photographs 1-3 showing samples of materials suspected to contain asbestos in situ

A13. Photographs 1-3 showing old and new sections of hospital
A14. Photographs 7-9 showing shattered vinyl asbestos tile (VAT)
A15. Photographs 10-12 showing shattered VAT
A16. Photographs 13-15 showing rooms 3, 4 and 7
A17. Photographs 16-18 showing hallways
A18. Photographs 19-21 showing room 5, hallway and room 3
A19. Photographs 22-24 showing room 3, shattered and crushed VAT
A20. Photographs 25-27 showing shattered VAT
A21. Photographs 28-30 showing shattered VAT, outside views of hospital
A22. Notice of Noncompliance dated February 26, 2002 from Dottie Boyd to Jackson Enterprises (3 pages)
A23. E-mail dated December 11, 2002 from Jane Hickman to Les Carlough requesting EB determination (1 page)
A24. Memorandum dated December 11, 2002 to File from Les Carlough regarding BEN calculation for Jack Price (6 pages)
A25. EPA Investigative Activity Report prepared by Daniel C. Sekerak on March 19, 2002 regarding interview with Jack Price
A26. EPA Investigative Activity Report prepared by Daniel C. Sekarek on March 19, 2002 regarding interview with Jesus Lomeli
A27. Stipulation between DEQ and Respondent dated February 25, 2004with amended exhibits for civil penalty determinations
A28. Proposal from IRS Environmental to remove ACM dated January 172002
A29. Asbestos Advisory Fact Sheet from DEQ
R100. E-mails between Jane Hickman and Kerri Nelson dated January 312003 and February 3, 2003
R101. Proposal from Ken Leahy Construction, Inc. to demolish old McMinnville Hospital for Jack Price, dated January 14, 2002
R101. Proposal from Ken Leahy Construction, Inc. to demolish old McMinnville Hospital for Jack Price, dated January 14, 2002
R102. Diagram showing types of flooring at McMinnville Hospital
R103. Memorandum from Alan Roodhouse to Hans Hendgen, dated January 7, 2002
R105.*Stipulation and Disputed Claim Settlement Agreement between SAIF Corporation and Jesus Antonio Lomeli, dated December 2, 2002
R106. Stipulation and Disputed Claim Settlement Agreement between

SAIF Corporation and Jose L. Lomeli Flores, dated December 10, 2002

R107. Memo to Hans Hendgen from Jack Price dated January 9, 2002

R108. DEQ Laboratory Testing Protocol for asbestos in bulk materials dated November 7, 1994

*Exhibit R-104 was not accepted into evidence and is therefore not attached as part of the record

Report Prepared by: Day Marshall
Assistant to the Commission
Phone: (503) 229-5990

Oregon
Theodore R. Kulongoski, Governor

Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204-1390
503-229-5696
TTY 503-229-6993

June 1, 2005

CERTIFIED MAIL No. 7004 2510 0006 0441 6673

Jack D. Price
14314 S.W. Allen Boulevard, #505
Beaverton, Oregon. 97005

Re: EQC Appeal in the Matter of Jack D. Price, No. AQ/AB-WR-02-046

Dear Mr. Price:

On May 12, 2005, I received a letter from Cynthia McNeff stating that she is no longer representing you in your appeal to the Environmental Quality Commission in the above-referenced matter.

The Environmental Quality Commission will be hearing oral argument in this matter at its regularly scheduled meeting in Portland on Friday, June 24th, 2005, at approximately 8:30 a.m. The location of the meeting is DEQ headquarters, 811 S.W. 6th Avenue, Portland (the same building where the contested case hearing was held). The DEQ meeting is on the third floor in the large conference room just across from the elevators.

If you have any questions, you can call me in Portland at (503) 229-5555 or toll-free at 1-800-452-4011, extension 5555.

Sincerely,

Jane K Hickman

Jane K. Hickman
Environmental Law Specialist

cc: Lynne Perry, Oregon Department of Justice
Dottie Boyd, Western Region, Salem Office, DEQ

EQC file

Attachment B

Oregon
Theodore R. Kulongoski, Governor

Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204-1390
503-229-5696
TTY 503-229-6993

April 7, 2005

Cynthia K. McNeff
Attorney at Law
4720 N.E. 21st Street
Portland, Oregon 97211

Re: Jack D. Price, Hearing Officer Panel Case No. 110485
Agency No. AQ/AB-WR-02-046

Dear Ms. McNeff:

We propose to schedule oral argument in the above-referenced case before the Environmental Quality Commission at the Commission's regularly scheduled June 23-24 meeting in Portland. We have tentatively scheduled this item for approximately 1:00 p.m. on Thursday, June 23rd. Please let me know by April 19 if you have any conflicts that would prevent you from making this date/time.

At this 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.

Once the meeting agenda is finalized in May, I will send you a copy of the agenda along with a copy of the Commission record for this case.

If you have any questions, please call me at (503) 229-5300.

Sincerely,

Day Marshall
Administrative Assistant

Cc: Jane Hickman, Environmental Law Specialist
Lynne Perry, Assistant Attorney-General

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 EMAIL and U.S. MAIL

February 7, 2005

Cynthia K. McNeff
Attorney at Law
4720 N.E. 21st Street
Portland, Oregon 97211

Re: Jack D. Price, Hearing Officer Panel Case No. 110485
Agency No. AQ/AB-WR-02-046

Dear Cynthia:

Attached is a copy of the Department's Answering Brief in Response to Respondent's Memo for Commission Review, with the "Draft" watermark deleted. The original we filed on January 31, 2005, still has the "Draft" watermark on it, and we wanted to provide a clean copy for your file. There are no changes in the brief. Mr. Price's reply brief, if any, is due on February 22nd (since the 20th is on a Sunday and the 21st is a holiday).

Sincerely,

Jane K. Hickman
Environmental Law Specialist

Enclosures

Cc: Mikell O'Mealy, EQC Manager (w/enclosure)
Lynne Perry, Assistant Attorney-General

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: JACK D. PRICE, formerly doing business as JACKSON ENTERPRISES, Respondent.	DEQ ANSWERING BRIEF IN RESPONSE TO RESPONDENT'S MEMO FOR COMMISSION REVIEW YAMHILL COUNTY

INTRODUCTION

The sole issue now before the Commission is whether DEQ has established that the floor tiles removed by Respondent constituted "asbestos-containing material (or ACM)" – specifically, whether DEQ used the correct test method when analyzing those floor tiles. Respondent argues in his post-hearing memorandum that DEQ failed to meet its burden of proof because it failed to employ a testing protocol known as "point counting." The hearing officer describes Respondent's argument as "disingenuous," and DEQ agrees.[1]

DISCUSSION

"Asbestos-containing material" is "material containing more than one-percent asbestos by weight." ORS 468A.700(5); OAR 340-248-0010(8). DEQ's current rules provide that:

> "The content of asbestos in any asbestos-containing material must be determined using the method specified in 40 CFR Part 763 Subpart E, Appendix E, Section 1, Polarized Light Microscopy ***or another method approved by the Department.***" OAR 340-248-0205(4)(emphasis added).

---

[1] In the Hearing Officer's words:

> "Appellant argues that DEQ has not shown that there was asbestos. The argument is disingenuous. Appellant testified that he believed there was asbestos in the hospital's floor tiles prior to entering into the contract. He knew an asbestos survey had been done on the property in the past. He contacted asbestos removal contractors prior to the violations. He submitted his own analysis to DEQ, which showed green tile with black backing had a layer of three percent chrysotile asbestos in the tile. He hired asbestos removal contractors to remove the asbestos tiles and the debris.
>
> "Despite all of these admissions and actions against interest, he argues that DEQ's testing protocols were insufficient to show there was asbestos in the tile floors." (Proposed and Final Order at 8.)

DEPARTMENT OF JUSTICE
1515 SW 5th Avenue
Portland, OR 97201
PHONE: 229-5725

DEQ's current rules did not, however, take effect until a few weeks after the cited violations. At the time of the violations, DEQ did not have an administrative rule that specified the applicable test method. The Department relied then, *as it does now under the current rules,* on a stand-alone document that describes the Department-approved testing protocols to be used when sampling for asbestos. (Exhibit R-108)

The DEQ lab technician responsible for testing the tiles used three techniques described in DEQ's written and approved protocol: (1) polarized light microscopy (PLM); (2) matrix reduction; and (3) visual estimation. Based on the results of those tests, she determined that "point counting" was unnecessary.[2] This decision was within her discretion to make. No more was required under either the current rule or at the time of the violations.[3]

Respondent erroneously asserts that point counting is required under federal law and, thus, DEQ is required to utilize this method when analyzing the tile samples. This is incorrect. First, use of the methodology in 40 CFR Part 763, Subpart E is not mandatory. Second, use of that methodology is not dictated by the Clean Air Act (CAA). Although not entirely clear, Respondent appears to rely on CAA § 116 (42 USC 7416) for the proposition that DEQ must adopt the testing protocol recommended in the federal regulations. CAA § 116 merely provides that states may not adopt or enforce any *emission standard or limitation* that is less stringent than that in the applicable State Implementation Plan (SIP) or certain sections of the CAA. It is debatable whether a test method could even be considered an "emission standard or limitation." Nevertheless, Respondent has not presented any evidence to the effect that DEQ's approved test methods are less stringent than those in the SIP or CAA.[4]

---

[2] It's probably worth noting that the PLM method Respondent now challenges is the same methodology used by the lab hired by Respondent himself.

[3] The hearing officer properly determined that (1) DEQ was not under an obligation to test samples under a rule that did not exist at the time of the test, (2) DEQ used an appropriate and approved protocol, and (3) even the current rules do not require point counting. (Proposed and Final Order at 8.)

[4] Respondent also cites to ORS 183.332. ORS 183.332 is not a prohibition. It is a policy statement to the effect that state agencies will "attempt to adopt rules that correspond with federal laws and rules [unless certain circumstances exist]." It is more often than not cited for the opposite proposition (i.e., that state policy discourages promulgation of rules that impose a standard that is more stringent than that required by an analogous federal law or rule).

DEPARTMENT OF JUSTICE
1515 SW 5th Avenue
Portland, OR 97201
PHONE: 229-5725

Respondent also argues that DEQ has failed to meet its burden of proof and has not presented substantial evidence that the tiles contained asbestos. There is, however, ample evidence in the record. Both DEQ's and Respondent's lab analyses show that the tiles were "asbestos-containing material." This is clear from the Hearing Officer's findings of fact:

> "(13) * * * Both the pink and green tiles were tested at the DEQ laboratory, using the adopted protocols of the agency (Ex. R-108). DEQ's lab has been evaluated by the EPA and has been found to be in compliance with federal standards. (Test of Escheverria.) The test results showed the pink flooring had three percent chrysotile asbestos in the tile; and the green flooring, with mastic on either side had five-percent chrysotile asbestos. (Ex. A-2.)"
>
> "(14) Mr. Price also had some samples tested by a lab. There were no chain-of-custody documents with these samples. That technician received the samples on January 15, 2002, and found a green tile with black backing had a layer of three percent chrysotile asbestos in the tile. Polarized Light and phase contract microscopy were used in testing the samples. (Ex. A-8.) Mr. Price submitted the test results to DEQ. (Test. of Price.)"

(Findings of Fact 13 and 14, Proposed and Final Order at 4-5.)

Based on this evidence, the Hearing Officer properly determined that DEQ had met its burden of demonstrating the substance was ACM. (Proposed and Final Order at 8.) The burden then shifted to Respondent to present any rebuttal evidence. Respondent failed to do so. In fact, Respondent does not even dispute that the tiles were "asbestos-containing material."

Respondent has not proffered any lab analyses of the tiles, whether by the point counting method or otherwise, to rebut the evidence in the record. Respondent makes only unsupported assertions that the method used by DEQ was "more crude" and "non-scientific" than point counting, and that point counting is "considered more accurate." (Respondent's Memo for Commission Review at 1-2.) Respondent's assertions are not supported by any expert testimony to the effect that DEQ's test methods are less accurate than point counting. Further, and more importantly, Respondent's assertions are not supported by *any* evidence that the test methods used in this case produced inaccurate results.

///

DEPARTMENT OF JUSTICE
1515 SW 5th Avenue
Portland, OR 97201
PHONE: 229-5725

Simply put, DEQ has made its case. The hearing officer's decision should be affirmed. If the Commission disagrees for any reason, the case should be remanded, not dismissed. Respondent first raised the test method issue during post-hearing briefing. This late breaking defense deprived DEQ of an opportunity to present rebuttal evidence regarding the propriety of its testing protocols during the hearing. If the Commission remands the case, DEQ could submit additional evidence by way of an EPA affidavit that the point counting method is not mandatory under the federal rules, as well as additional evidence on the accuracy and reliability of the test methods DEQ used (and continues to use). Nevertheless, remand should be unnecessary in light of the evidence already in the record.

CONCLUSION

The Hearing Officer correctly concluded that DEQ was under no obligation to perform point counting when it evaluated the suspect tiles and that DEQ had met its burden of showing that the suspect tiles were "asbestos-containing material." The Hearing Officer's Proposed and Final Order should be affirmed.

Dated this ___ day of January, 2005.

Lynne Perry, OSB #90456
Assistant Attorney General

DEPARTMENT OF JUSTICE
1515 SW 5th Avenue
Portland, OR 97201
PHONE: 229-5725

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: JACK D. PRICE, formerly doing business as JACKSON ENTERPRISES, Respondent.	DEQ ANSWERING BRIEF IN RESPONSE TO RESPONDENT'S MEMO FOR COMMISSION REVIEW YAMHILL COUNTY

INTRODUCTION

The sole issue now before the Commission is whether DEQ has established that the floor tiles removed by Respondent constituted "asbestos-containing material (or ACM)"—specifically, whether DEQ used the correct test method when analyzing those floor tiles. Respondent argues in his post-hearing memorandum that DEQ failed to meet its burden of proof because it failed to employ a testing protocol known as "point counting." The hearing officer describes Respondent's argument as "disingenuous," and DEQ agrees.[1]

DISCUSSION

"Asbestos-containing material" is "material containing more than one-percent asbestos by weight." ORS 468A.700(5); OAR 340-248-0010(8). DEQ's current rules provide that:

> "The content of asbestos in any asbestos-containing material must be determined using the method specified in 40 CFR Part 763 Subpart E, Appendix E, Section 1, Polarized Light Microscopy ***or another method approved by the Department***." OAR 340-248-0205(4)(emphasis added).

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[1] In the Hearing Officer's words:

> "Appellant argues that DEQ has not shown that there was asbestos. The argument is disingenuous. Appellant testified that he believed there was asbestos in the hospital's floor tiles prior to entering into the contract. He knew an asbestos survey had been done on the property in the past. He contacted asbestos removal contractors prior to the violations. He submitted his own analysis to DEQ, which showed green tile with black backing had a layer of three percent chrysotile asbestos in the tile. He hired asbestos removal contractors to remove the asbestos tiles and the debris.
>
> "Despite all of these admissions and actions against interest, he argues that DEQ's testing protocols were insufficient to show there was asbestos in the tile floors." (Proposed and Final Order at 8.)

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Portland, OR 97201
PHONE: 229-5725

DEQ's current rules did not, however, take effect until a few weeks after the cited violations. At the time of the violations, DEQ did not have an administrative rule that specified the applicable test method. The Department relied then, *as it does now under the current rules,* on a stand-alone document that describes the Department-approved testing protocols to be used when sampling for asbestos. (Exhibit R-108)

The DEQ lab technician responsible for testing the tiles used three techniques described in DEQ's written and approved protocol: (1) polarized light microscopy (PLM); (2) matrix reduction; and (3) visual estimation. Based on the results of those tests, she determined that "point counting" was unnecessary.[2] This decision was within her discretion to make. No more was required under either the current rule or at the time of the violations.[3]

Respondent erroneously asserts that point counting is required under federal law and, thus, DEQ is required to utilize this method when analyzing the tile samples. This is incorrect. First, use of the methodology in 40 CFR Part 763, Subpart E is not mandatory. Second, use of that methodology is not dictated by the Clean Air Act (CAA). Although not entirely clear, Respondent appears to rely on CAA § 116 (42 USC 7416) for the proposition that DEQ must adopt the testing protocol recommended in the federal regulations. CAA § 116 merely provides that states may not adopt or enforce any *emission standard or limitation* that is less stringent than that in the applicable State Implementation Plan (SIP) or certain sections of the CAA. It is debatable whether a test method could even be considered an "emission standard or limitation." Nevertheless, Respondent has not presented any evidence to the effect that DEQ's approved test methods are less stringent than those in the SIP or CAA.[4]

---

[2] It's probably worth noting that the PLM method Respondent now challenges is the same methodology used by the lab hired by Respondent himself.

[3] The hearing officer properly determined that (1) DEQ was not under an obligation to test samples under a rule that did not exist at the time of the test, (2) DEQ used an appropriate and approved protocol, and (3) even the current rules do not require point counting. (Proposed and Final Order at 8.)

[4] Respondent also cites to ORS 183.332. ORS 183.332 is not a prohibition. It is a policy statement to the effect that state agencies will "attempt to adopt rules that correspond with federal laws and rules [unless certain circumstances exist]." It is more often than not cited for the opposite proposition (i.e., that state policy discourages promulgation of rules that impose a standard that is more stringent than that required by an analogous federal law or rule).

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1515 SW 5th Avenue
Portland, OR 97201
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Respondent also argues that DEQ has failed to meet its burden of proof and has not presented substantial evidence that the tiles contained asbestos. There is, however, ample evidence in the record. Both DEQ's and Respondent's lab analyses show that the tiles were "asbestos-containing material." This is clear from the Hearing Officer's findings of fact:

> "(13) * * * Both the pink and green tiles were tested at the DEQ laboratory, using the adopted protocols of the agency (Ex. R-108). DEQ's lab has been evaluated by the EPA and has been found to be in compliance with federal standards. (Test of Escheverria.) The test results showed the pink flooring had three percent chrysotile asbestos in the tile; and the green flooring, with mastic on either side had five-percent chrysotile asbestos. (Ex. A-2.)"
>
> "(14) Mr. Price also had some samples tested by a lab. There were no chain-of-custody documents with these samples. That technician received the samples on January 15, 2002, and found a green tile with black backing had a layer of three percent chrysotile asbestos in the tile. Polarized Light and phase contract microscopy were used in testing the samples. (Ex. A-8.) Mr. Price submitted the test results to DEQ. (Test. of Price.)"

(Findings of Fact 13 and 14, Proposed and Final Order at 4-5.)

Based on this evidence, the Hearing Officer properly determined that DEQ had met its burden of demonstrating the substance was ACM. (Proposed and Final Order at 8.) The burden then shifted to Respondent to present any rebuttal evidence. Respondent failed to do so. In fact, Respondent does not even dispute that the tiles were "asbestos-containing material."

Respondent has not proffered any lab analyses of the tiles, whether by the point counting method or otherwise, to rebut the evidence in the record. Respondent makes only unsupported assertions that the method used by DEQ was "more crude" and "non-scientific" than point counting, and that point counting is "considered more accurate." (Respondent's Memo for Commission Review at 1-2.) Respondent's assertions are not supported by any expert testimony to the effect that DEQ's test methods are less accurate than point counting. Further, and more importantly, Respondent's assertions are not supported by *any* evidence that the test methods used in this case produced inaccurate results.

///

DEPARTMENT OF JUSTICE
1515 SW 5th Avenue
Portland, OR 97201
PHONE: 229-5725

Simply put, DEQ has made its case. The hearing officer's decision should be affirmed. If the Commission disagrees for any reason, the case should be remanded, not dismissed. Respondent first raised the test method issue during post-hearing briefing. This late breaking defense deprived DEQ of an opportunity to present rebuttal evidence regarding the propriety of its testing protocols during the hearing. If the Commission remands the case, DEQ could submit additional evidence by way of an EPA affidavit that the point counting method is not mandatory under the federal rules, as well as additional evidence on the accuracy and reliability of the test methods DEQ used (and continues to use). Nevertheless, remand should be unnecessary in light of the evidence already in the record.

CONCLUSION

The Hearing Officer correctly concluded that DEQ was under no obligation to perform point counting when it evaluated the suspect tiles and that DEQ had met its burden of showing that the suspect tiles were "asbestos-containing material." The Hearing Officer's Proposed and Final Order should be affirmed.

Dated this 31st day of January, 2005.

Lynne Perry, OSB #90456
Assistant Attorney General

DEPARTMENT OF JUSTICE
1515 SW 5th Avenue
Portland, OR 97201
PHONE: 229-5725

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2005, I served the original of DEQ'S ANSWERING BRIEF IN RESPONSE TO RESPONDENT'S MEMO FOR COMMISSION REVIEW by hand-delivery on:

Mikell O'Mealy
Department of Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204

And a true and correct copy by first-class mail on:

Cynthia McNeff
4720 NE 21st Ave
Portland, OR 97211

Lynne Perry, #90456
Assistant Attorney General
Of Attorneys for DEQ

Department of Justice
1515 SW Fifth Ave, Suite 410
Portland, OR 97201
(503) 229-5725

Attachment F

Law Offices of Cynthia K. McNeff

4720 NE 21st Street
Portland, OR 97211
Tel (503) 282-2889
Fax (503) 493-7306
E-mail cynthia@mcneff-law.com

7 January 2005

Environmental Quality Commission
c/o Stephanie Hallock, Director, DEQ
811 SW Six Ave
Portland, OR 97204

RE: In the Matter of Jack D. Price
For the Oregon Department of Environmental Quality
Office of Administrative Hearings Case No. 110485
Agency Case No. AQ/AB-WR-02-046
Contested Hearing Date: 25 February 2004

Dear Ms. Hallock,

Please find the attached Memo. Call me is you have any questions and thank you for your time.

Sincerely,

Cynthia K. McNeff
cc: DEQ-Jane Hickman by email
Jack Price

BEFORE THE ENVIRONMENATAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF:	)	Memo for Commission Review
JACK D. PRICE, formerly dba.	)	
JACKSON ENTERPRISES,	)	NO. AQ/AB—WR-02-046
	)	
Respondent.	)	YAMHILL COUNTY

Respondents only issue in this request is whether or not the testing method used to identify the asbestos in the floor tile was appropriate. The Administrative Law Judge's only comment on this issue was that that the lab had been evaluated by EPA and found to be in compliance. We do not dispute that the lab is in compliance, we dispute that the proper testing protocol was not used. Specifically, the sample should have been point counted, but was not and a less stringent PLM method was used.

First, there was no set standard in Oregon Statutes or the Administrative Rules for analyzing asbestos at the time of the violation. It was only days after that Oregon adopted the requirements that the testing method to identify Asbestos Containing Material is Point Counting in accordance with EPA Method 40 CFR Part 763 Subpart E. Appendix E, Section 1, Polarized Light Microscopy. This addition to the Administrative Rules codifies ORS 183.332 which requires the state to have equivalent rules to federal laws. NESHAPS requires point counting for bulk analysis of asbestos. It is of additional note that TITLE 42, CHAPTER 85, SUBCHAPTER I, Part A of the United State Code requires that States adopt at a minimum the Federal Clean Air Standards, which once again encompasses NESHAPS.

Also, the burden of proof is on DEQ to prove each and every element of the violation. The first element to be proven is whether or not the suspect martial is over 1% asbestos by weight. The method used in this case was a much more crude and non-scientific method and is based on the technician's judgment. Point counting is

Cynthia K. McNeff
Attorney at Law
4720 NE 21st Street
Portland, OR 97211
503.282.2889
Fax 503.493.7306

considered more accurate and is based on calculations as opposed to a human eye-balling the amount of asbestos. In addition to the somewhat inaccurate testing method, this is a strict liability statute and in the interest of justice it would be only fair that DEQ at a minimum use a more scientific method of testing. Given these issues, DEQ did not meet their burden of proving the statutory presence of Asbestos, nor is it in the interest of justice that Respondent be found in violation.

Cynthia K. McNeff
OSB#98164
Attorney for Respondent

Date

Cynthia K. McNeff
Attorney at Law
4720 NE 21st Street
Portland, OR 97211
503.282.2889
Fax 503.493.7306

Oregon
Theodore R. Kulongoski, Governor

Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204-1390
503-229-5696
TTY 503-229-6993

December 16, 2004

Via Certified Mail

Cynthia K. McNeff
Attorney at Law
4720 NE 21st Street
Portland, OR 97211

RE: Agency Case No. AQ/AB-WR-02-046

Dear Ms. McNeff:

On December 15, 2004, the Environmental Quality Commission received your third request for an extension of time to file exceptions and briefs in the above-referenced case, because you have been unable to reach your client since before Thanksgiving. Per our phone conversation today, it sounds like you are making progress in contacting him. The Commission has granted your request for an extension in filing time until January 7, 2005. To file exceptions and briefs, please mail these documents to Mikell O'Mealy, on behalf of the Environmental Quality Commission, at 811 SW 6th Avenue, Portland, Oregon, 97204, with copies to Jane Hickman, Oregon Department of Environmental Quality, 811 SW 6th Ave., Portland, Oregon 97204.

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

Sincerely,

Mikell O'Mealy
Assistant to the Commission

cc: Jane Hickman, Oregon Department of Environmental Quality

Attachment I

Law Offices of Cynthia K. McNeff

4720 NE 21st Street
Portland, OR 97211
Tel (503) 282-2889
Fax (503) 493-7306
E-mail cynthia@mcneff-law.com

14 December 2004

Environmental Quality Commission
c/o Stephanie Hallock, Director, DEQ
811 SW Six Ave
Portland, OR 97204

RE: In the Matter of Jack D. Price
For the Oregon Department of Environmental Quality
Office of Administrative Hearings Case No. 110485
Agency Case No. AQ/AB-WR-02-046
Contested Hearing Date: 25 February 2004

Dear Ms. Hallock,

I have been unable to reach my client since before Thanksgiving. There are a couple of things that I would to go over with him. I have some concerns about filing the Appeal without consulting my client and request that the due date extended to 7th of January 2005. Thank you for your time and consideration in this matter.

Sincerely,

Cynthia K. McNeff
cc: DEQ-Jane Hickman by email
Jack Price

Oregon
Theodore R. Kulongoski, Governor

Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204-1390
503-229-5696
TTY 503-229-6993

November 16, 2004

Via Certified Mail

Cynthia K. McNeff
Attorney at Law
4720 NE 21st Street
Portland, OR 97211

RE: Agency Case No. AQ/AB-WR-02-046

Dear Ms. McNeff:

The Environmental Quality Commission received your second request for an extension of time to file exceptions and briefs in the above-referenced case, due to case load, personal obligations and additional constraints. The Commission has granted your request for an extension in filing time until December 17, 2004. To file exceptions and briefs, please mail these documents to Mikell O'Mealy, on behalf of the Environmental Quality Commission, at 811 SW 6th Avenue, Portland, Oregon, 97204, with copies to Jane Hickman, Oregon Department of Environmental Quality, 811 SW 6th Ave., Portland, Oregon 97204.

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

Sincerely,

Mikell O'Mealy
Assistant to the Commission

cc: Jane Hickman, Oregon Department of Environmental Quality

Attachment K

Law Offices of Cynthia K. McNeff

4720 NE 21st Street
Portland, OR 97211
Tel (503) 282-2889
Fax (503) 493-7306
E-mail cynthia@mcneff-law.com

6 November 2004

Environmental Quality Commission
c/o Stephanie Hallock, Director, DEQ
811 SW Six Ave
Portland, OR 97204

RE: In the Matter of Jack D. Price
For the Oregon Department of Environmental Quality
Office of Administrative Hearings Case No. 110485
Agency Case No. AQ/AB-WR-02-046
Contested Hearing Date: 25 February 2004

Dear Ms. Hallock,

I respectfully request for an extension of time to file the requirements for review until the 17th of December 2004 due to case load, personal obligations and additional time constraints. Thank you for your time and consideration in this matter.

Sincerely,

Cynthia K. McNeff
cc: DEQ-Jane Hickman by email
Jack Price