

OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS **10/17/2007**



State of Oregon
**Department of
Environmental
Quality**

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EQC/EMT Agenda and Meeting Summary

October 18, 2007

Porta Terra – Portland

Time 6:00 pm to 9:00 pm

Attendees: EQC (Hampton, Blosser, Dodson, Uherbelau), DEQ (Hallock, Pedersen, Nelson, Hickman, Pettit, Hammond, Aunan, Oliphant) EPA (Miller)

Topics:

- State/EPA Relationship
- Update on BLM Forest harvest plans
- Process for hiring new Director
- Other business

Summary:

Commissioners and EMT heard reflections from Elin Miller about State/EPA relationship and challenges in the future.

Director Hallock briefed Commission on proposed BLM Western Forest plan, controversies and implications. Director Hallock discussed urban/rural divide and forest harvest implications for water quality.

Group discussed challenges facing new Director and kinds of candidates we hope to attract. Elin Miller expressed EPA's support and desire to help in the process, if needed.

State of Oregon
Department of Environmental Quality

Memorandum

To: Environmental Quality Commissioners Date: 10/9/2007

From: Helen Lottridge *Helen*

Subject: CAFO

Commissioners, this report will not be discussed at the October EQC meeting. It is in response to your request during the June meeting for the DEQ to provide more information on the CAFO program operations. The agenda item in June was to extend the memorandum of understanding with the Department of Agriculture.

If you have questions about the report, feel free to contact me or Scott Manzano. His telephone number is 503-229-5185.



State of Oregon
Department of Environmental Quality

Memorandum

Date: October 5, 2007
To: Environmental Quality Commission
From: Lauri Aunan, Water Quality Division Administrator
Subject: Follow-up on Confined Animal Feeding Operation Items

Lauri Aunan

This Memorandum is provided in response to your request at the June 21, 2007 Environmental Quality Commission (EQC) meeting for additional information regarding the confined animal feeding operation (CAFO) program in Oregon. I am pleased to provide you with the following three items:

1. Follow-up to comments provided at the June 21, 2007 EQC meeting by Ms. Regina Chichizola regarding CAFO compliance in the Klamath River,
2. Overview of the DEQ/Oregon Department of Agriculture (ODA) complaint response process, and
3. 2006 Oregon Department of Agriculture CAFO Annual Report

The CAFO permit program protects surface water and ground water from contamination by animal waste. CAFOs in Oregon include any operation that confines an animal (other than aquatic) for more than 4 months, as well as all operations subject to EPA regulation based on the numbers and types (horses, chickens cows, etc.) of confined animals. Oregon has a broader CAFO program than required by EPA. There are 585 CAFO operations in Oregon that are currently registered under a National Pollutant Discharge Elimination System (NPDES) permit. Animals that are not "confined" are not regulated under the NDPEs permitting program, but do fall under requirements of Agricultural Water Quality Management plans, Senate Bill 1010.

As a result of legislation passed in 2001, HB 2156, the Oregon Department of Agriculture was directed to seek delegation to operate the federal CAFO program. ODA has operated the State and Federal program through a Memorandum of Understanding with the EQC since 1985 (Director Hallock signed the MOU on behalf of the EQC).

Follow up regarding Klamath River CAFOs

At the June 21, 2007 EQC meeting in Portland, Ms. Regina Chichizola of Klamath Riverkeeper raised concerns regarding certain animal feeding operations around the Klamath River.

In May 2007, Ms. Chichizola accompanied DEQ staff to look at irrigation systems in the Lost River portion of the Klamath Basin. Ms. Chichizola wanted to obtain general information about the river system and learn how pollutant loads were determined by DEQ. At that time, Ms. Chichizola commented about the presence of cows along the banks of the irrigation canals and

was directed to ODA for additional information about how they are regulated. According to ODA, Ms. Chichizola contacted ODA staff to ask a number of questions regarding CAFO operations in Klamath County; ODA staff did not recall any specific complaint regarding non-compliant or unpermitted CAFOs.

Following Ms. Chichizola's comments to the Commission, Katy Coba, ODA Director, Lisa Hanson, ODA Deputy Director, and Wym Matthews, ODA CAFO Program Manager, spoke with Ms. Chichizola. During the conversation, ODA learned she was concerned with potential unpermitted facilities in Oregon and with cows having direct access to portions of the Klamath River in Oregon and California. ODA told Ms. Chichizola that they would send her information on the Oregon CAFO program.

The day after the EQC meeting, ODA sent Ms. Chichizola a copy of the 2006 CAFO Program Annual Report, and the Oregon CAFO General Permit. Mr. Matthews called Ms. Chichizola in July to check whether she had received the materials, and to further discuss concerns she may have with ODA-regulated operations in the Klamath Basin. Mr. Matthews invited her to review the ODA files for these operations, and she said she planned to review the files at a future date.

ODA/DEQ Complaint Response Process

Both DEQ and ODA receive complaints about livestock that may or may not be associated with a CAFO. According to ODA, they receive between 50-100 livestock complaints per year. Regardless of the complaint type, DEQ and ODA follow written complaint procedures that have been in place, and modified as needed, since 1983. As noted below, DEQ and ODA are discussing ways to supplement the current complaint process so that DEQ receives complete information about how ODA has responded and the final outcome of referred complaints. In addition, DEQ is also reviewing our internal referral procedure to ensure that each complaint is documented consistently in all regional offices.

If DEQ receives the complaint, DEQ refers the caller to ODA. Most complaints are referred to the ODA Salem office. Complaints received in more rural areas, such as eastern Oregon, may be referred to ODA's offices in Bend or Pendleton. ODA assigns complaint follow-up to the regional ODA Livestock Water Quality Specialist responsible for the part of the state in which the facility is located.

ODA staff takes the following actions:

- Completes a complaint form, assigns a case number, and forwards the original form to the ODA Salem office;
- Evaluates the complaint, reviews available ODA records, and determines applicable regulatory requirements (CAFO, Agricultural Water Quality Management Program - also known as the SB1010 program - , or others.);
- Initiates further discussion with the complainant, if needed; and
- Schedules an inspection at the complaint location, if needed.

If an inspection is needed, after it is completed, ODA:

- Advises the facility operator of the findings;
- Develops a compliance schedule, if needed;
- Sends a letter to the complainant with inspection results;
- Files (creates record) of compliance actions, as appropriate; and
- Enters the complaint information into ODA's database (this may occur at various points in the post inspection process).

As an additional coordination measure, DEQ and ODA will be supplementing this process to ensure that DEQ receives complete information of ODA actions and the final outcome of referred complaints. Options that are being discussed include periodic reporting by ODA to DEQ of inspection and post-inspection activity and periodic meetings to review complaint response activity. These additional measures will ensure good communication and coordination in responding to complaints.

2006 CAFO Annual Report (Attached)

ODA meets yearly with EPA and DEQ to discuss general program issues and specific information provided in the CAFO Annual Report. Overall, this report provides an accounting of the permitting and compliance assurance activity for ODA's permitted CAFO and non-permitted Agricultural Water Quality Management programs. Detail is provided on the following:

- **Permitted Operations:** Page seven of the report describes the types (dairy, chickens, etc.) numbers, and locations of the 590 CAFO operations that are registered under the Oregon NPDES CAFO General Permit. Three additional CAFO operations that have been issued an NPDES individual permit are also identified on page seven.
- **Inspections:** ODA inspects each permitted CAFO every 10 months and may conduct follow up inspections to the same operation as conditions warrant. Pages four and five of the report summarize inspection results for both the CAFO and the Agricultural Water Quality Management programs, including an accounting of follow-up inspections, educational assistance, compliance actions, and civil penalty assessments. Civil penalty amounts are provided on page nine. Inspections of operations that fall under the Agricultural Water Quality Management program are typically conducted in response to complaints.
- **Tables and graphs** are provided on pages 11 through 16 to illustrate the historical number of permitted CAFO operations in Oregon, and also provide detailed inspection, complaint response, and other follow-up activity information in each regional area for 2006.
- **Animal Waste Management Plan (AWMP) submittals:** The report also includes compliance tracking for AWMP due dates on page six. As of September 2007, 86 percent of all AWMPs have been submitted to ODA, and all AWMPs are expected to be submitted by February 28, 2009. The report includes the number of operations that have been granted AWMP submittal consistent with recent EPA rule amendments. It should be noted that EPA has further extended the AWMP submittal requirement until February 28, 2009. The report does not reflect this fact because it was produced prior to EPA's

publication of the last extension date. Therefore, the report may mislead the reader to assume that a number of AWMPs are past due, when they are not. In fact, ODA is well ahead of AWMP submittal deadlines.

In addition to our annual review and discussion with EPA and ODA regarding the information provided in the 2006 Annual Report, DEQ also meets with ODA periodically to discuss and coordinate program implementation and compliance, sometimes participates in inspections, and participates in ODA's CAFO advisory committee meetings.

DEQ and ODA have started the process of renewing the existing CAFO general permit, which expires July 31, 2008. DEQ and ODA will be working closely with all interested stakeholders during the renewal process to ensure that the permit provides an effective tool to protect public waters in Oregon. DEQ and ODA plan to provide the EQC with more information about our proposed approach to renew this permit, and will be providing additional information about ODA's Water Quality Management Program at the EQC meeting scheduled for December 14, 2007.

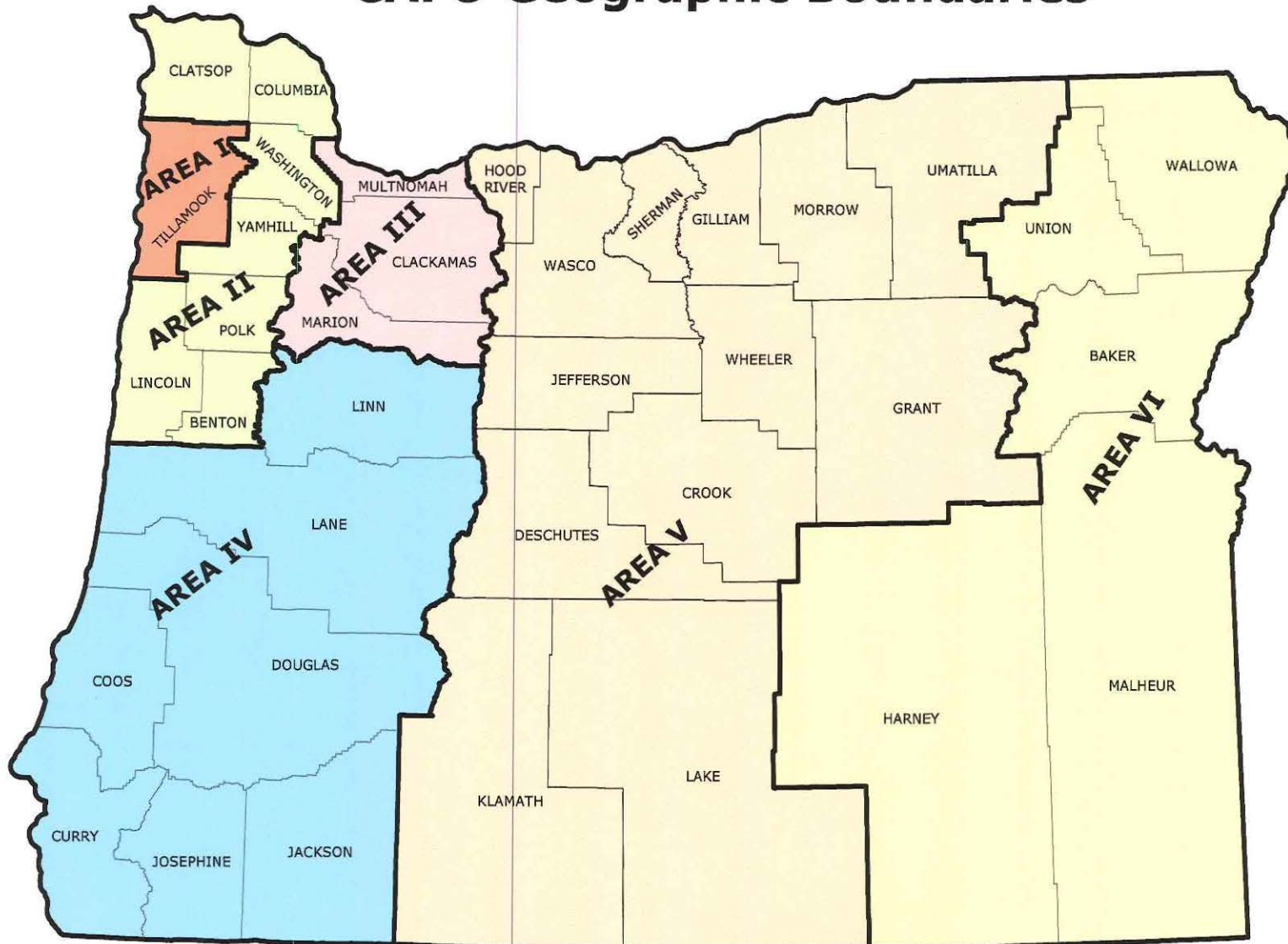
Enclosure: Oregon Department of Agriculture CAFO 2006 Annual Report

cc: Lisa Hanson, ODA
Wym Matthews, ODA
Ray Jaendl, ODA
Joel Salter, EPA
Annette Liebe, DEQ

CAFO Geographic Boundaries

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Quality Specialists**

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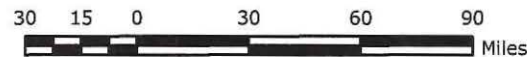
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Natural Resources Division
March 25, 2006 BoundaryMap.mxd

Oregon Department of Agriculture
 Natural Resources Division
 Confined Animal Feeding Operation (CAFO) Program
2006 Annual Report

**Livestock Water
 Quality Specialists**

CAFO Geographic Boundaries

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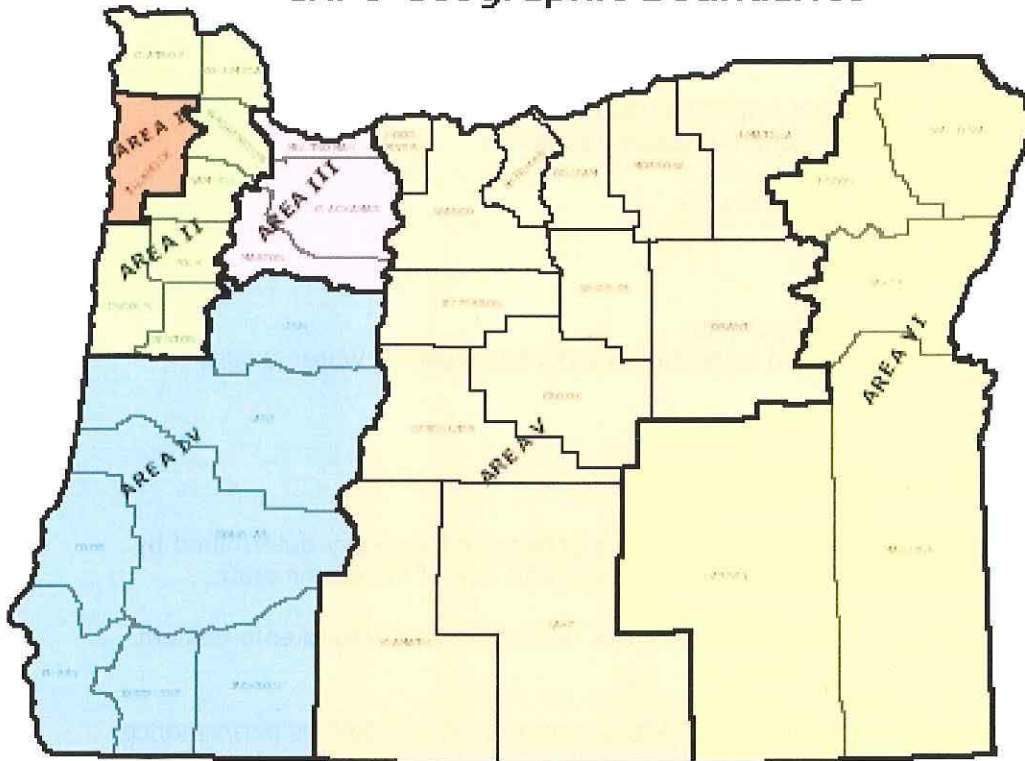
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Area I Charlene Troost	Area II Kathryn Higgs	Area III Micah Wells	Area IV Chris Anderson	Area V Eric Moeggenberg	Area VI Ron Jones
Tillamook	Benton	Clackamas	Coos	Crook	Baker
	Clatsop	Marion	Curry	Deschutes	Harney
	Columbia	Multnomah	Douglas	Gilliam	Malheur
	Lincoln		Jackson	Grant	Union
	Polk		Josephine	Hood River	Wallowa
	Washington		Lane	Jefferson	
	Yamhill		Linn	Klamath	
				Lake	
				Morrow	
				Sherman	
				Umatilla	
				Wasco	
				Wheeler	

Introduction

The mission of the Natural Resources Division (NRD) is to conserve, protect, and develop natural resources on public and private lands so agriculture will be productive and economically viable in Oregon. This 2006 Confined Animal Feeding Operation (CAFO) annual report embodies our mission while meeting a division benchmark and our EPA MOU requirement of conducting annual inspections of all permitted CAFOs. The required inspections include an evaluation of waste collection, treatment, handling, and manure application areas. The following tables and graphs illustrate our inspection types and their results.

Here are program highlights for 2006.

- Permitted CAFO inspection types and inspection results
- Non-Permitted AFO inspection types and inspection results
- Assessment of civil penalties
- Status of Animal Waste Management Plans for
 - Large Federal CAFOs,
 - Medium Federal CAFOs, and
 - State CAFOs
- By the numbers, the history of CAFO permits
- Charts illustrating inspection types and inspection results by Livestock Water Quality Specialist (LWQS)

I. Definitions

Category: Inspection Types, Permitted CAFOs

Routine (R): An announced regular routine inspection on a scheduled frequency determined by overall program resources and workload, number of facilities, and size of inspection staff.

Follow-up (FU): Inspections for compliance determinations related to prior-issued enforcement orders.

Educational Review (ER): Requested by permitted CAFO operators, LWQSS discuss performance standards and best management practices for enabling producers to attain permit compliance. An ER is not a formal inspection and generally will not result in enforcement action. This category was used to review *Application to Register (ATR)* to the CAFO permit as required by the new federal CAFO guidelines.

Planning Assistance (PA): LWQS staff provided both planning and technical assistance designed to increase client awareness of pollution prevention practices and innovative technologies to enhance their environmental performance.

Complaint (C): Complaint investigations for water quality concerns on all permitted animal agriculture facilities.

II. Definitions

Category: Inspection Results, Permitted CAFOs

During the closing conference of each inspection, the LWQS records the inspection results. An inspection report form is completed and records compliance or noncompliance with their permit or state water quality laws or rules. Inspection results may be delivered after ODA receives results of sampling, confirms data, and confers with management on issues.

Facility in Compliance (FIC): The permittee operated in compliance with their permit, state water quality law or rule.

Water Quality Advisory (WQA): The permittee was in compliance during the inspection event, potential problems were noted, and voluntary efforts were encouraged to prevent pollution problems.

Educational Review (ER) Requested by permitted CAFO operators, LWQS discusses performance standards and best management practices enabling producers to attain permit compliance. An ER is not a formal inspection and generally will not result in enforcement action. This category was used to review the *Application to Register (ATR)* to the CAFO permit as required by the new federal CAFO guidelines.

Planning Assistance (PA): LWQS staff provided both planning and technical assistance to prepare and submit required AWMP(s).

On Schedule (O/S): The owner/operator is completing the step-by-step required actions of their compliance schedule.

Violation (NON or NON/POC, see Section III, Types of Enforcement)

III. Definitions

Category: Permitted CAFOs, Types of Enforcement

Required formal agency action for repeated documented violations of permit conditions, water quality laws or rules. Listed below are the types of documents the NRD uses to record and track violations.

Notice of Noncompliance (NON): A department order informing the owner or operator of a violation, including reference to particular statute and administrative rule. Allows up to 30 calendar days (1 month) to correct the violation.

Notice of Noncompliance (NON)/Plan of Correction (POC): A negotiated department order issued when corrective actions will take more than 30 days to implement. An NON/POC contains milestones that describe required actions that must be taken by the owner or operator, on a specific timeline, to correct the violations.

Civil Penalty Assessment (CPA): A department order assessed against an owner or operator of a CAFO for failure to comply with a provision of Oregon Revised Statutes (ORS) of Chapter 468 or 468B or any rule adopted under a permit relating to the control and prevention of water pollution from a CAFO.

Consent Order (CO): A companion department order to a CPA outlining owner/operator Required Actions (RAs) and timeline for implementation. A CO often specifies future enforcement action if RAs are not completed, or if repeat violations occur.

IV. Inspection Types

In CY 2006, our eighth year of performance-based inspections (PBI), the Livestock Water Quality Specialists (LWQSs) completed 805 inspections of permitted CAFOs.

Inspections focused on permit compliance and determined if each CAFO operated in compliance with applicable federal and state water quality laws. Figures 1 through 3 illustrate the percentage, number, and type of inspection, result, and violation, respectively.

Figure 1. Contacts YTD Permitted CAFO Totals

Percent	Number	Inspection Types
83.0%	667	Routine Inspections
10.0%	81	Follow-up Inspections
1.1%	9	Planning Assistance
4.7%	38	Complaint Investigations
1.0%	8	Educational Reviews
0.2%	2	Civil Penalty Assessments
100%	805	Total

Figure 2. Results YTD Permitted CAFO Totals

Percent	Number	Result Types
77%	617	Facilities in Compliance
6.8%	55	Water Quality Advisories
4.7%	38	On-schedule
1.9%	16	Planning Assistance
1.1%	9	Educational Reviews
91.5%	735	Sub-total

Figure 3. Violations YTD Permitted CAFO Totals

3.9%	32	Notices of Noncompliance
4.2%	34	Notices of Noncompliance/Plan of Correction
0.24%	2	Assessment of Civil Penalties
0.24%	2	Consent Orders
8.5%	70	Sub-total
100%	805	Total – Figures 2 and 3

V. Animal Feeding Operations (AFO)

Non-permitted Inspection Types

The 2002 Census of Agriculture listed 21,199 farms in Oregon with animals. NRD's Agricultural Water Quality Management (AgWQM) Program is responsible for developing and implementing agricultural pollution prevention and control programs to protect the quality of Oregon's waters. The AgWQM Program has evolved in response to water quality programs and requirements under various state and federal laws, such as the federal Clean Water Act and Senate Bill 1010, passed in 1993 by the Oregon legislature.

The AgWQM Program is a complaint-driven program that requires written and endorsed complaints before inspections may be completed. The overall object of the program is to seek voluntary compliance. For CY 2006, 56 non-permitted AFOs* were inspected.

*Animal feeding operation (AFO) as defined in 40 CFR 122.23 (b) (1) means a lot where the following conditions are met:

- Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and
- Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over the lot or facility.

Oregon defines CAFOs in OAR 603-074-0010 (3). Some CAFOs (AFOs) do not require registration to the Oregon CAFO General Permit.

Figures 4 through 6 show the number of contacts by inspection type, result, and violation, respectively, involving AFOs throughout the state.

Figure 4. Contacts YTD Non-Permitted AFOs

Percent	Number	Inspection Types
3.6%	2	Initial Contacts with Livestock Operators.
62.5%	35	Complaint Investigations
14.3%	8	Follow-up Inspections
12.5%	7	Educational Reviews
7.1%	4	Planning Assistance
100%	56	Total

Figure 5. Results YTD Non-Permitted AFOs

Percent	Number	Result Types
33.9%	19	Facilities in Compliance
19.5%	11	Educational Review
28.6%	16	Water Quality Advisories
8.9%	5	Planning Assistance
91.0%	51	Sub-total

Figure 6. Violations YTD Non-Permitted AFOs

3.6%	2	Notices of Noncompliance/Plans of Correction
5.4%	3	Notices of Noncompliance
9.0%	5	Sub-total
100%	56	Total - Figures 5 and 6

VI. Animal Waste Management Plans (AWMPs)

All Confined Animal Feeding Operations covered under the NPDES Oregon CAFO General Permit No.1 or NPDES Individual Permit must submit an AWMP for ODA to review and approve.

An October 2002 DEQ/ODA MOU requires ODA to review for approval or rejection all standards and specifications for AWMPs. Each prepared AWMP must be in concert with Oregon Administrative Rule (OAR) 340-051 and must address the USDA-NRCS Nutrient Management practice 590 for Oregon.

- ODA developed its own method of accepting certification from Oregon licensed professional engineers as to the sufficiency and quality of the plans and specifications.
- ODA may request that DEQ review plans and specifications for construction, modification, or expansion of CAFOs to determine whether the proposed construction conforms to groundwater protection requirements.

On October 15, 2003, ODA and the US Environmental Protection Agency (EPA) developed an MOA that defined the roles of EPA and ODA in regulating CAFOs in Oregon. It recognizes ODA as the primary agency for CAFO compliance and enforcement activities in Oregon conducted in accordance with ORS 468B.200 to 468B.230, as well as ODA's lead role in ensuring waste systems and practices at CAFOs are in accordance with the provisions outlined in ODA's CAFO regulations (OAR 603-074-005 through 0080).

Figures 7 through 9 illustrate each CAFO designation and the date by which an AWMP must be submitted. All permitted CAFOs must be operating in accordance with an approved AWMP by December 31, 2006. The Oregon CAFO Permit, adopted by rule-making, lists AWMP due dates for AWMP submission and implementation. EPA amended the rule, which resulted in an extension of the due date for AWMP implementation to July 31, 2007. ODA has granted AWMP submission and implementation extensions on a case-by-case basis based on the due date of July 31, 2007.

Figure 7. Large Federal CAFO: AWMP Due Date 10/1/2004

Geographic Area	Number of Large Federal CAFOs	AWMPs Approved	AWMP Received/ Review in Progress	AWMP Requested Extensions Expired or Missed 10/1/2004 Date
Area I	4	4	0	0
Area II	14	13	1	0
Area III	21	16	5	0
Area IV	11	9	2	0
Area V	37	34	3	0
Area VI	26	21	3	2
Total	113	97	14	2

Figure 8. Medium Federal CAFO: AWMP Due Date 10/1/2005

Geographic Area	Number of Medium Federal CAFOs	AWMPs Approved	AWMP Received/ Review in Progress	Expired Extensions Permittee Missed AWMP Due Date of 10/1/2005
Area I	72	60	9	3
Area II	31	26	4	1
Area III	34	15	11	8
Area IV	35	16	18	1
Area V	15	3	9	3
Area VI	44	30	6	8
Total	231	150	57	24

Figure 9. State CAFOs: AWMP Due Date 7/1/2006

Geographic Area	Number of State CAFOs	AWMPs Approved	AWMP Received/ Review in Progress	AWMP Approved Extension Requests	AWMPs Yet to be Submitted /Missed Permittee /Missed AWMP Due Date of 7/1/2006
Area I	72	44	18	0	10
Area II	48	25	19	0	4
Area III	34	5	10	0	19
Area IV	55	10	25	0	20
Area V	9	0	2	0	7
Area VI	28	5	4	0	19
Total	246	89	78	0	79

VII. NPDES Individual Permits

The October 2002 DEQ/ODA MOA authorizes ODA to issue individual permits to CAFOs meeting the following criteria:

- A new CAFO
- CAFO not in compliance with the Oregon CAFO General Permit
- Evidence treatment lagoons exceed the leakage rate of 1/8 inch per day
- CAFO located in a groundwater monitoring or management area
- CAFO employs unconventional, experimental, or unproven treatment methods

Active Individual Permits	3
Livestock Type	Dairy/Heifer
Counties	Morrow/Umatilla

VIII. Active CAFO Permits by Classification and by Geographic Area.
Permitted CAFO Distribution by 2002 North American Industrial Classification System (NAICS) Cross-referenced with the 1987 Standard Industrial Classification (SIC)

Figure 10.

2002 NAICS (New)	1987 SIC (Old)	Area I	Area II	Area III	Area IV	Area V	Area VI	Total
112112 Beef Cattle Feedlots, Fattening	0211 Beef Cattle Feedlots (Fattening)	0	2	2	7	30	55	96
112110 Beef Cattle Ranching or Farming	0212 Beef Cattle, Cow/Calf	2	3	1	4	2	5	17
112210 Hog and Pig Farming	0213 Hogs	0	6	7	7	1	1	22
112410 Sheep Farming	0214 Sheep and Goats	1	2	1	4	4	0	12
112990 All Other Animal Production	0219 General Livestock 0279 Animal Specialties, Dog Farms 0291 General Farm	0	1	1	4	0	0	6
112120 Dairy Farms, Milking	0241 Dairy Farms, Heifer Replacement Farms	150	58	51	59	26	34	378
112320 Broilers and Other Meat Type Chicken Production	0251 Poultry, Egg Broiler, Fryer	0	11	10	10	0	0	31
112310 Chicken Egg Production	0252 Poultry, Chicken Eggs	0	0	9	3	0	0	12
112930 Fur-Bearing Animal and Rabbit Production	0271 Fur-bearing Animals (Mink & Rabbit)	0	1	7	3	0	0	11
112920 Horses and Other Equine Production	0272 Horses and Other Equine	0	0	2	3	0	0	5
Total		153	84	91	104	63	95	590

IX. Oregon CAFO General Permits Terminated

Figure 11 illustrates the number of longstanding permittees who sold or leased a CAFO, or who themselves ceased operating a CAFO in 2006.

YTD Cancelled Permits, by Geographic Area and NAICS/SIC

Figure 11.

2002 NAICS (New)	1987 SIC (Old)	Area I	Area II	Area III	Area IV	Area V	Area VI	Total
112110 Beef Cattle Ranching or Farming	0212 Beef Cattle, Cow/Calf	0	1	0	1	1	0	3
112112 Beef Cattle Feedlots, Fattening	0211 Beef Cattle Feedlots (Fattening)	0	1	0	1	1	2	5
112210 Hog and Pig Farming	0213 Hogs	0	1	0	0	0	0	1
112410 Sheep Farming	0214 Sheep and Goats	0	0	0	1	1	0	2
112120 Dairy Farms, Milking	0241 Dairy Farms, Heifer Replacement Farms	13	6	1	5	4	3	32
112990 All Other Animal Production	0219 General Livestock 0279 Animal Specialties, Dog Farms 0291 General Farm	0	0	0	1	0	0	1
112320 Broilers and Other Meat Type Chicken Production	0251 Poultry, Egg Broiler, Fryer	0	0	1	3	0	0	4
112920 Horses and Other Equine Production	0272 Horses and Other Equine	0	1	0	0	1	0	2
Total		13	10	2	12	8	5	50

YTD Permitted CAFOs by Geographic Area and by Calendar Year (CY) Quarter

Figure 12.

Geographic Area	1Q 2006	2Q 2006	3Q 2006	4Q 2006
I	161	159	152	153
II	92	89	83	84
III	89	90	90	91
IV	112	108	105	105
V	67	62	61	63
VI	95	92	95	94
Total	616	600	586	590

X. Civil Penalty Assessment

A Civil Penalty Assessment (CPA) is a department order assessed against an owner or operator of a CAFO for failure to comply with a provision of Oregon Revised Statutes (ORS) of Chapter 468 or 468B or any rule adopted under a permit relating to the control and prevention of water pollution from a CAFO. Figures 13 through 15 illustrate the type of violation, amount of assessed civil penalties, and final collected penalties for 2006, 2005, and 2004, respectively.

2006 Assessment of Civil Penalties

Figure 13.

County	Description	ORS and NPDES Permit Condition	Violation Number	Amount of Civil Penalty Assessment	Amount of Settlement
Malheur	Placing wastes where they are likely to enter waters of the state	ORS 468B.025 S2.A & S4.D. (1a)	Violation (V) #1	\$560.00	
Malheur	Placing wastes where they are likely to enter waters of the state	ORS 468B.025 S2.A. & S2.E (2)	V #2	\$1,360.00	
Malheur	Placing wastes where they are likely to enter waters of the state	ORS 468B.025 S2.A.	V#3	\$1,680.00	
Malheur	Operating waste control facility w/o approval	Violating a Department Order and S2A.	V #4	\$5,280.00 \$8,880.00	\$5,300.00 (Sum of V #1-V #4)
Clatsop	Nonpayment of fees	G 7	V #1	\$500.00	\$0
Total				\$9,380.00*	\$5,300.00

*\$3,580.00 held in abeyance pursuant to Consent Order.

2005 Assessment of Civil Penalties

Figure 14.

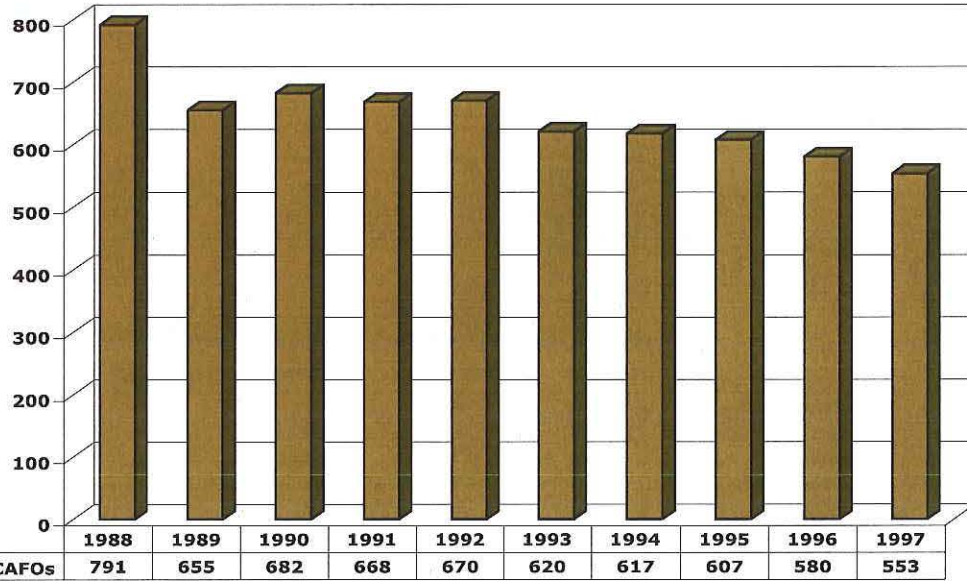
Type of Violation	Description	Amount of Civil Penalty Assessment	Settlement Amount
ORS 468B.025	Prohibited Conditions	\$14,280.00	\$7,770.00
ORS 468B.230	Permit Violations		

2004 Assessment of Civil Penalties

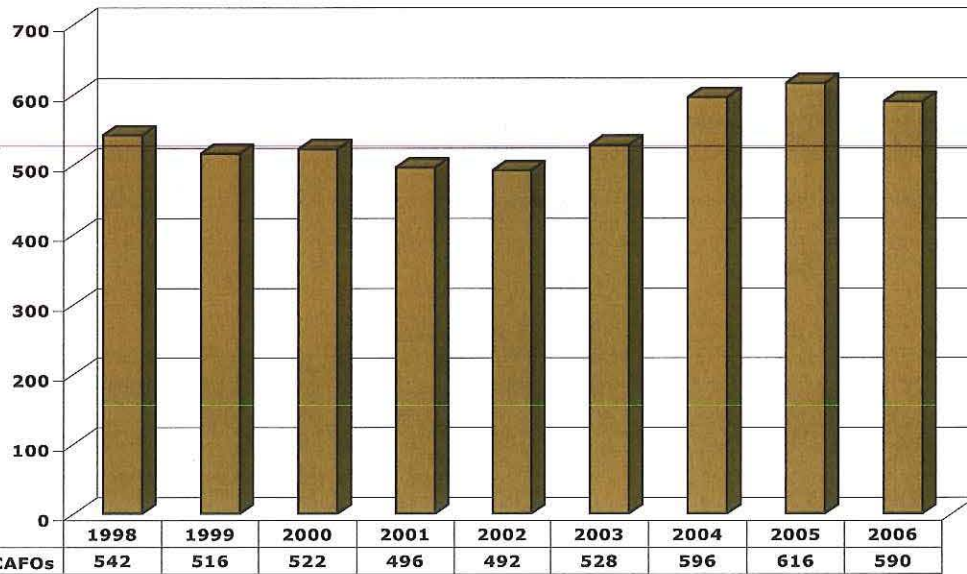
Figure 15.

Type of Violation	Description	Amount of Civil Penalty Assessment	Settlement Amount
ORS 468B.025	Prohibited Conditions	\$2,820.00	\$1,680.00
ORS 468B.230	Permit Violations		

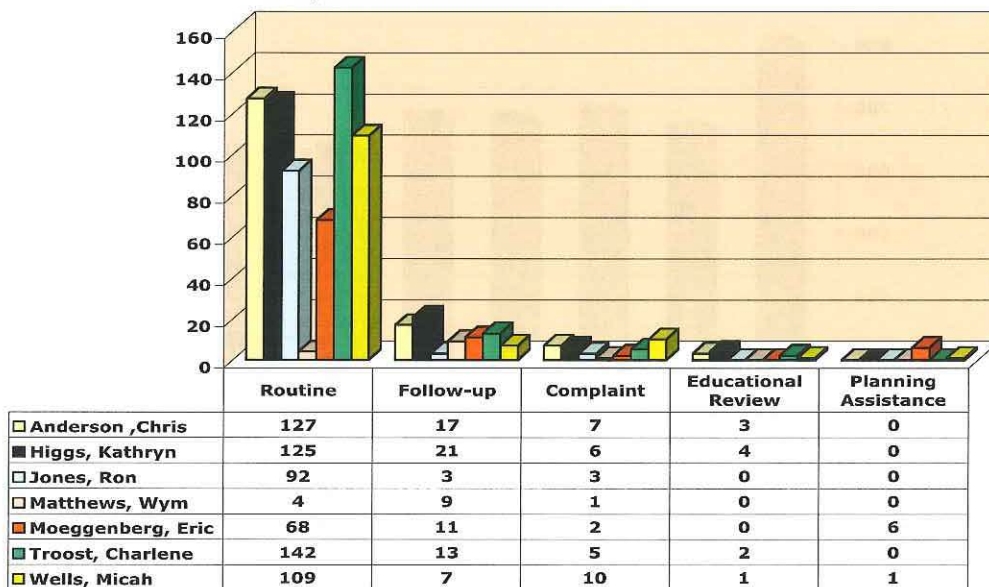
**Number of Permitted CAFOs
1988 to 1997
Figure 16**



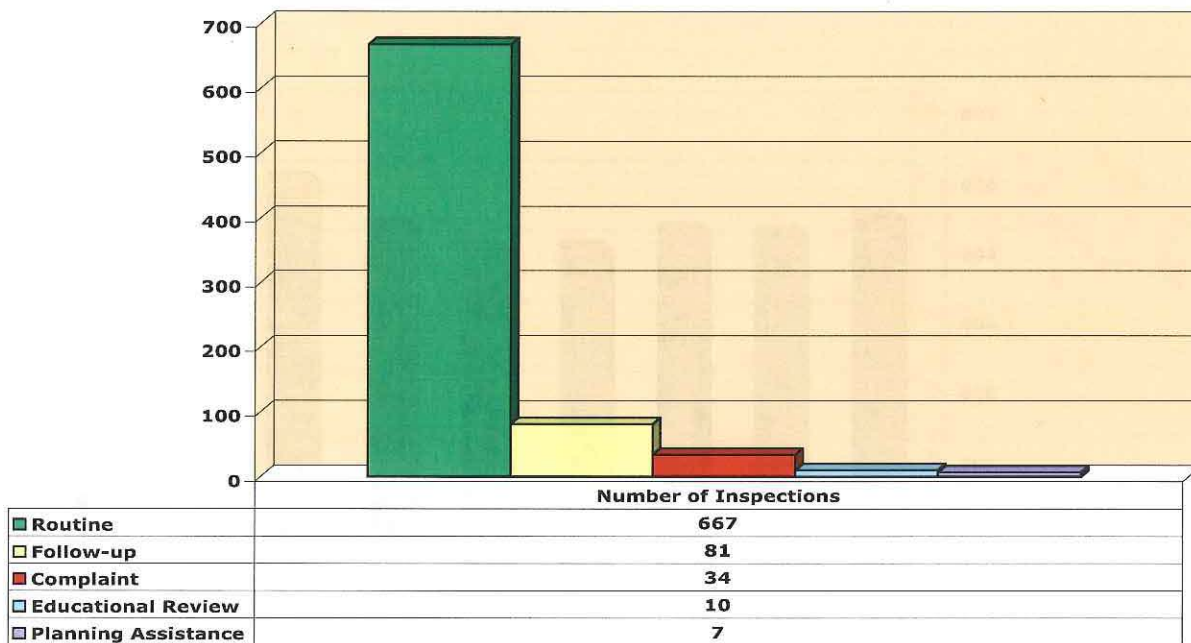
**Number of Permitted CAFOs
1998 TO 2006
Figure 17**



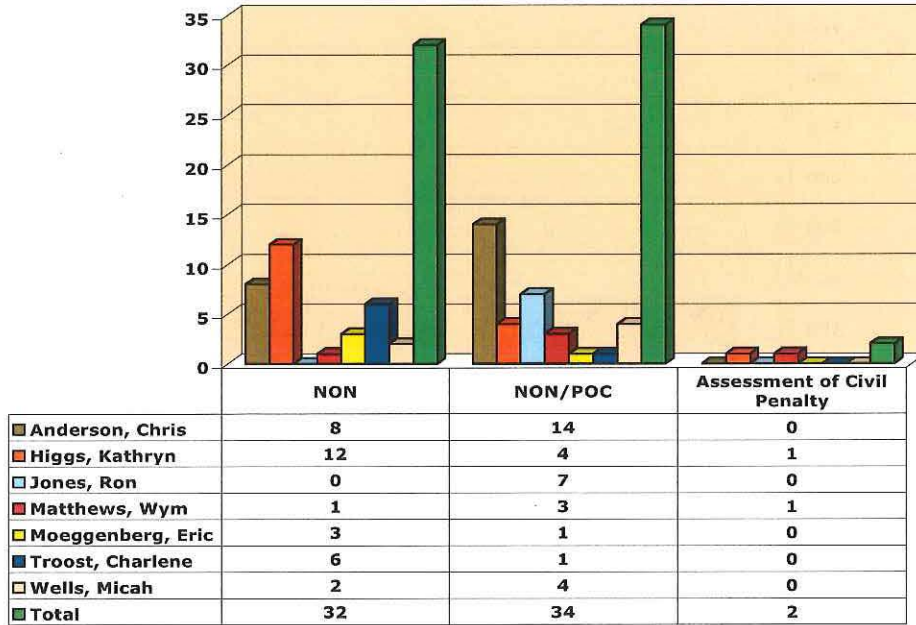
Permitted CAFOs
Category: Type of Inspections
by
Livestock Water Quality Specialists
1/1/2006 to 12/31/2006
Figure 18



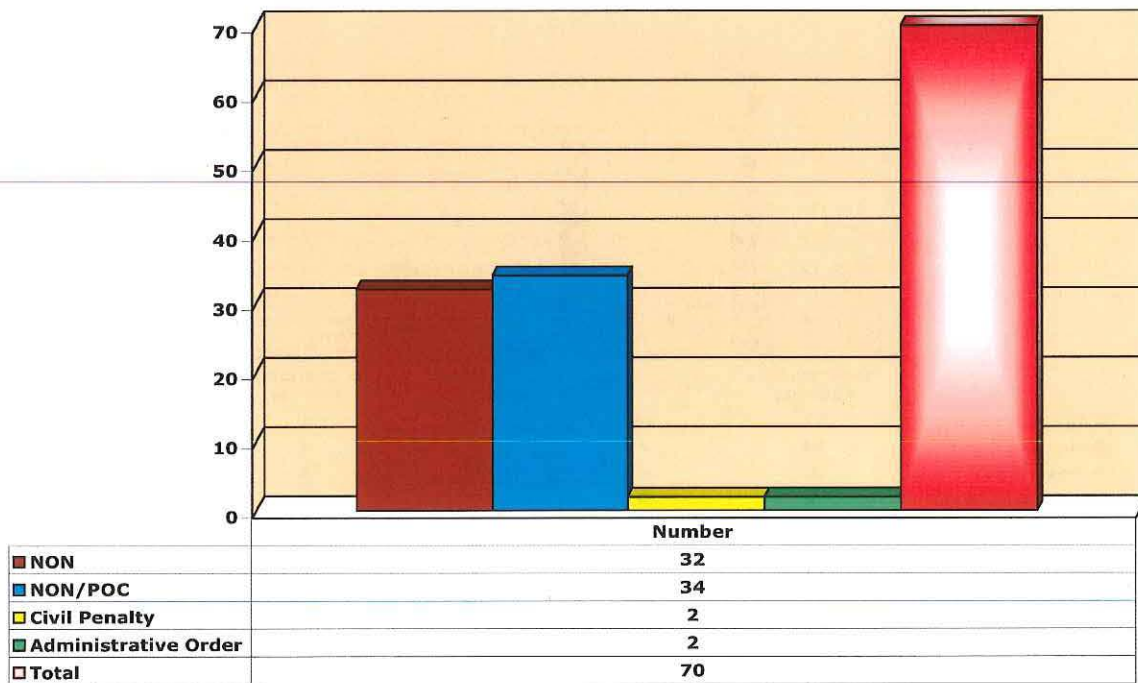
Summary
Permitted CAFOs
Category: Type of Inspections
1/1/2006 to 12/31/2006
Figure 19



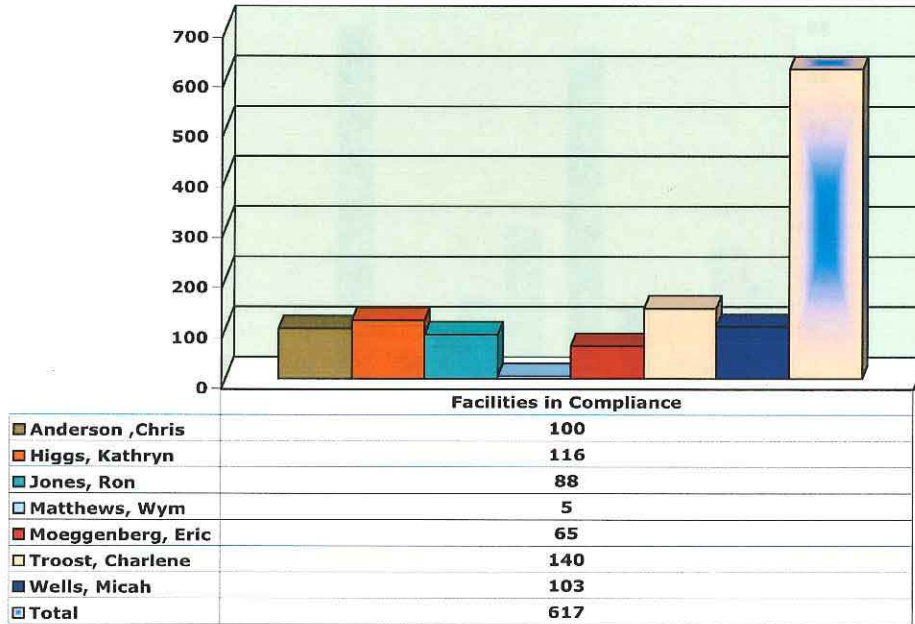
Permitted CAFOs
Category: Enforcement Actions
by
Livestock Water Quality Specialists
1/1/2006 to 12/31/2006
Figure 20



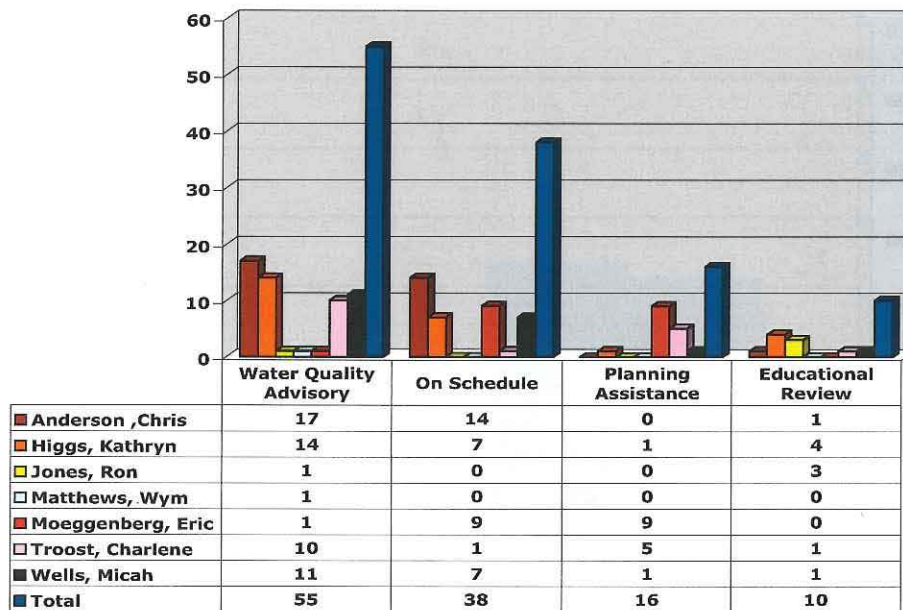
Summary
Permitted CAFOs
Category: Enforcement Actions
1/1/2006 to 12/31/2006
Figure 21



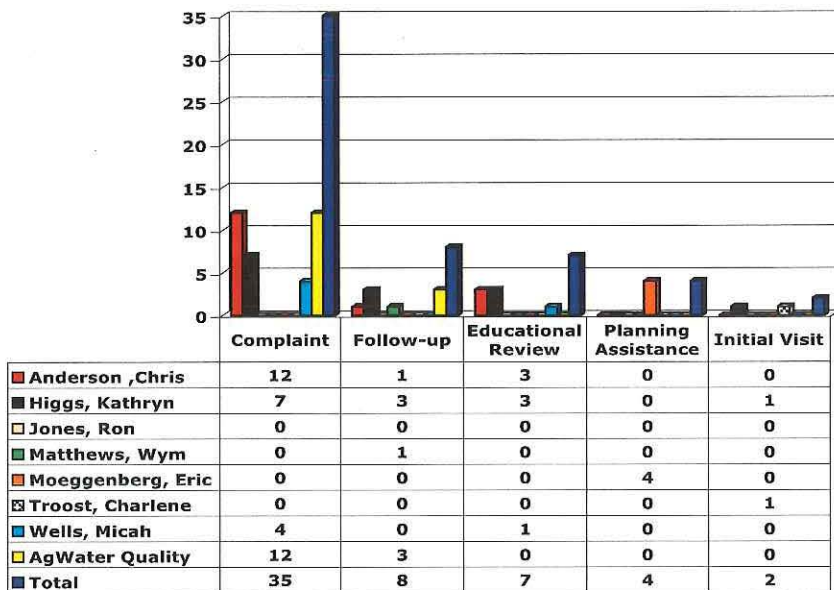
Permitted CAFOs
Category: Facilities in Compliance
by
Livestock Water Quality Specialists
1/1/2006 to 12/31/2006
Figure 22



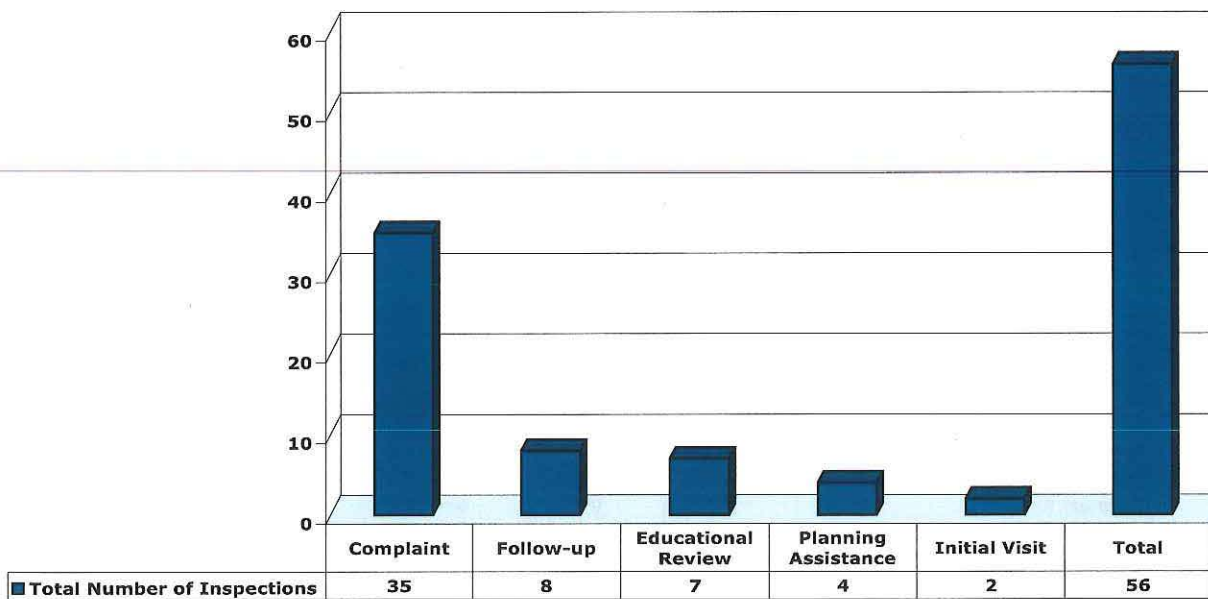
Permitted CAFOs
Category: Inspection Results, Other Actions
by
Livestock Water Quality Specialists
1/1/2006 to 12/31/2006
Figure 23



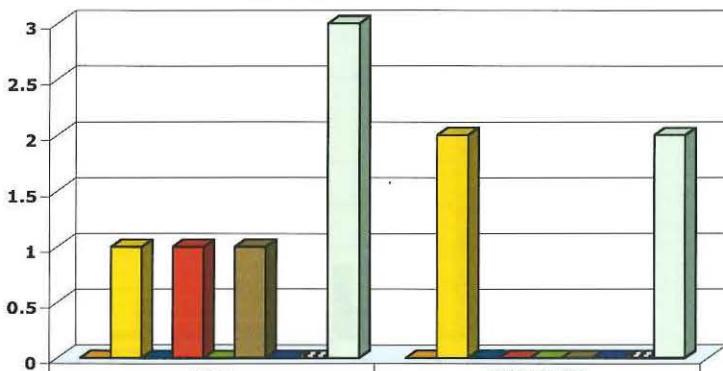
Non-Permitted Animal Feeding Operations
Category: Type of Inspections
by
Livestock Water Quality Specialists
1/1/2006 to 12/31/2006
Figure 24



Summary
Non-Permitted Animal Feeding Operations
Category: Type of Inspections
1/1/2006 to 12/31/2006
Figure 25

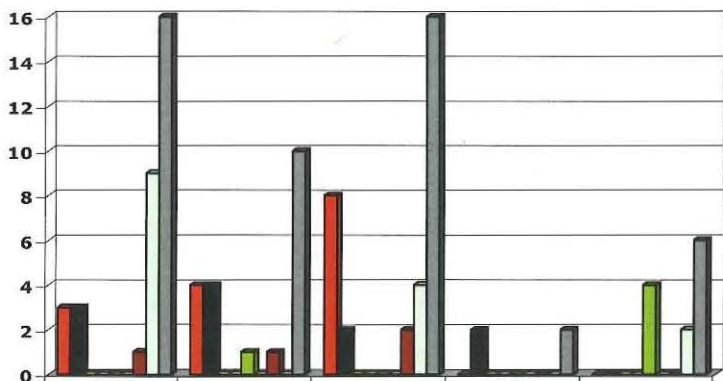


Non-Permitted Animal Feeding Operations
Category: Enforcement Actions
 by
Livestock Water Quality Specialists
 1/1/2006 to 12/31/2006
 Figure 26



	NON	NON/POC
Anderson, Chris	0	0
Higgs, Kathryn	1	2
Jones, Ron	0	0
Matthews, Wym	1	0
Moeggenberg, Eric	0	0
Troost, Charlene	1	0
Wells, Micah	0	0
AgWater Quality	0	0
Total	3	2

Non-Permitted Animal Feeding Operations
Category: Inspection Results, Non-Enforcement Actions
 by
Livestock Water Quality Specialists
 1/1/2006 to 12/31/2006
 Figure 27



	FIC	EDR	WQA	O/S	P/A
Anderson, Chris	3	4	8	0	0
Higgs, Kathryn	3	4	2	2	0
Jones, Ron	0	0	0	0	0
Matthews, Wym	0	0	0	0	0
Moeggenberg, Eric	0	1	0	0	4
Troost, Charlene	0	0	0	0	0
Wells, Micah	1	1	2	0	0
AgWater Quality	9	0	4	0	2
Total	16	10	16	2	6

07-1295

GENERAL COUNCIL
and
BOARD OF TRUSTEES



CONFEDERATED TRIBES
of the
Umatilla Indian Reservation

P.O. BOX 638
PENDLETON, OREGON 97801
Area Code 541 Phone: 276-3165 Fax: 276-3095

August 21, 2007

Governor Ted Kulongoski
State Capitol Building
Salem, OR 97310

Subject: Safety concerns related to the UMCDF and the Hermiston ODEQ office

Dear Governor Kulongoski:

The Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) would like to raise to your attention three concerns we have about the safety of operations at the Umatilla Chemical Weapons Disposal Facility (UMCDF) in Hermiston, Oregon. We would like you and your office to take the time to review our analysis and ensure that the safety of VX nerve agent processing in the UMCDF facility meets our mutual satisfaction.

Our first concern relates to a failure of the Oregon Department of Environmental Quality (ODEQ) to comply with the hazardous waste permit ODEQ issued to the facility. Secondly, ODEQ is allowing the U.S. Army Umatilla Chemical Depot, the Permittee, to make potentially dangerous modifications to the permit. Third, recent significant staff turnover at the ODEQ raises concern that necessary expertise has been drained out of the local ODEQ office prompting further safety issues from lack of proper analysis of permit modifications and plant operations. Again, in the spirit and letter of ORS 190.110 governing our relations with the State of Oregon, we request that your office look into these matters and take action to require permit compliance and to ensure that no VX nerve agent is processed in the facility until compliance is achieved. This is a time critical matter since the Army plans to start VX processing this fall. As such, we are requesting your office take immediate action. Further, we expect a briefing on your path forward on this issue at our next Government-to-Government meeting in Portland on September 5, 2007.

Letter to Governor Kulongoski
August 20, 2007
Page 2 of 5

Concern 1: Failure to complete a human health and ecological risk assessment prior to chemical agent processing: The UMCDF Permit Module II, Condition II.N requires a Post-Trial Burn Risk Assessment Protocol, which has not yet been performed.¹ The ODEQ developed the original 1997 UMCDF RCRA² permit based on a pre-trial burn risk assessment, however, that analysis did not include site-specific emissions data since this information was not available at the time. ODEQ intended to conduct a post-trial burn risk assessment as soon as site-specific data was available, and to update the risk assessment after each chemical agent was tested in the facility. The permit, the most relevant provisions of which are attached herein, specifically incorporates this requirement of a post-burn risk assessment. The new risk assessments were intended to evaluate whether or not the operating requirements and emissions limits in the permit were protective of human health and the environment.

An appropriate work plan has already been developed for this purpose. In 1997 ODEQ convened a technical working group to develop the work plan for the post-trial burn risk assessments. This working group included experts from the ODEQ, the CTUIR, the United States Department of the Army, the United States Environmental Protection Agency, The Washington State Department of Agriculture, Washington State Department of Health, the United States Fish and Wildlife Services, and the Army's Center for Health Promotion and Preventative Medicine, and produced a final work plan in August of 2004 which included analyses specific to a Native American population.

Three years have elapsed since the work plan was produced and, although the U.S. Army has continued to burn chemical agent at the UMCDF, the ODEQ has failed to generate a single risk result. This concerns the CTUIR greatly since we have numerous natural, cultural, and economic resources located on and near the Umatilla Depot and we cannot be confident they are being adequately protected. In fact, our Department of Science and Engineering staff have independently developed their own post-trial burn human health risk assessment which indicates that our resources may be at risk. We are asking you to direct the ODEQ to complete a human health and ecological risk assessment based on the facility's permit and 2004 work plan before the facility begins VX operations.

Concern 2: Requests to modify the RCRA permit in a manner that puts the public and the environment at risk: There has been a recent increase in the number of requests by the Permittee to modify the RCRA permit. In our opinion, many of these new proposed changes substantially increase the likelihood of an undetected release of hazardous materials to the environment. In addition, several of these requests were designated by the ODEQ as Class 1 modifications and so were not subjected to public review. In our opinion the content of these modifications and RCRA law necessitated these changes be classified as Class 2 modifications to undergo public review. I have listed three of these permit modification requests (PMR) with a brief description of their objective to demonstrate why the CTUIR is concerned.

¹ Among other requirements regarding the post-burn risk assessment is the "The Permittee cannot commence trial burn and performance test operations until the Department [of Environmental Quality] has completed the Post-Trial Burn Risk Assessment Protocol and the Department has notified the Permittee."

² RCRA is an acronym for the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., governing hazardous waste management and disposal. ODEQ regulations expressly incorporate RCRA regulations, 40 CFR Parts 260 to 266, 268, 270, 273, hence the permit is referred to as the "RCRA permit".

- Use of Sodium Hydroxide for VX Decontamination [UMCDF-06-050-MISC(1R), UMCDF-07-028-MISC(1N)]: In these modifications the Permittee has requested the use of sodium hydroxide (NaOH) as a decontamination solution for VX. The reason for the request was to avoid equipment corrosion caused by the permitted decontamination solution (sodium hypochlorite). However, U.S. Army reports have clearly shown that NaOH reacts with VX to form large quantities of a compound (EA2192) which is almost as toxic as VX³. Once formed the EA2192 is stable, and additional pathways to exposure need to be properly evaluated including, but not limited to EA2192 being propagated into brine salts and released to the environment as a dust. Also, it is our understanding of 40 CFR 270.42 Appendix I that these PMRs should have been Class 2 modifications and not Class 1. By allowing these modifications to be submitted as Class 1 PMRs, the ODEQ circumvented the public review process.
- Metal Parts Furnace Discharge Air Lock Low-Temperature Monitoring [UMCDF-07-014-MPF(2)]: The Permittee proposed to eliminate the requirement for conducting low-temperature chemical agent monitoring in the metal parts furnace (MPF) discharge air lock during the treatment of secondary waste. Instead, the Permittee requests using high-temperature monitoring in the MPF and low temperature monitoring in the cool-down area. Our analysis of this proposal clearly showed the proposed monitoring approach was not capable of detecting chemical agent and would enable the use of forced ventilation to sweep any chemical agent present on the munitions to the outside atmosphere.
- MDB HVC Single-Point Monitoring [UMCDF-07-018-HVC(1R)]: To simplify monitor maintenance the site requested to change from sampling the inner-bed of the building filters with a distributed 16-point array to sampling the inner-bed space at a single point. The Permittee provided data to indicate the two sampling methods give the same results. However, our reanalysis of the data clearly indicated the opposite result; the two methods were not equivalent and gave very different measurements with very different levels of confidence. Also, as with PMR UMCDF-06-050-MISC(1R) and UMCDF-07-028-MISC(1N), it is our understanding of 40 CFR 270.42 Appendix I that this PMR should have been a Class 2 modification and not a Class 1. By allowing this modification to be submitted and reviewed as a Class 1 PMR the ODEQ circumvented the public review process.

We are asking you to provide us with an evaluation of why the Permittee has been allowed by the ODEQ to use the Class 1 modification process to request such important changes to the RCRA permit.

Concern 3: Staff turnover in the Hermiston ODEQ office: The Hermiston ODEQ office regulates operations at the UMCDF and at the Umatilla Depot, and serves as the CTUIR and the public's first line of defense against environmental mishaps. Until a year ago the Hermiston ODEQ office experienced very limited staff turnover. However, in the past year five of the six Hermiston staff, including the program manager, have left the ODEQ. A staff report noting this turnover was part of the Environmental

³ Hovanec J.W. et al. 1993. Evaluation of Standard and Alternative Methods for the Decontamination of VX and HD in Chemical Agent Disposal Facilities, Edgewood Research, Development & Engineering Center, ERDEC-TR-054.

Letter to Governor Kulongoski
August 20, 2007
Page 4 of 5

Quality Commission's June 21, 2007 meeting agenda, however draft meeting minutes include no discussion of the impact this turnover may have on the facility. This sudden loss of staff is of concern to the CTUIR since these individuals represent the ODEQ's institutional memory about this highly complex project.

We do not want the organization to forget the long-standing commitments that have been made to the CTUIR and the surrounding communities. These commitments by ODEQ include:

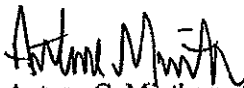
- No agent contaminated waste shipped off-site.
- On-site processing of filter carbon.
- Full operation of the Brine Reduction Area to minimize off-site shipment of brines.
- Continued operation of the furnace carbon filters.
- Public and environmental safety as a first priority.

The UMCDF is a complex, unique facility and requires adequate resources to maintain a dedicated, on-site ODEQ office. We are concerned that the current Hermiston office is not in the position to maintain the technical expertise needed for this work through the closure of the plant. For these reasons, we ask you to ensure the Hermiston ODEQ office remains fully funded and staffed with individuals who have the appropriate technical background and experience.

We believe that the State of Oregon and the CTUIR share the same concern, that is, that these dangerous substances are safely and permanently destroyed at the Depot. However, the circumstances we have described above are very troubling. We hope you will take action to see this situation of noncompliance is immediately rectified and we are willing to provide technical expertise in that effort.

Thank you in advance for your assistance in these matters. I look forward to working with you and your staff to resolve these important issues.

Sincerely,



Antone C. Minthorn, Chairman
Board of Trustees

ACM:sgb

Letter to Governor Kulongoski
August 20, 2007
Page 5 of 5

Cc: Rod Skeen, Manager, CTUIR-DOSE/EMP
Stuart Harris, Director, CTUIR-DOSE
Rich Duval, Chemical Demilitarization Manager, ODEQ
Joni Hammond, Eastern Region Manager, ODEQ
Lynn Hampton, Chairman, ODEQ-EQC
Don Barclay, Site Manager for Umatilla Chemical Demilitarization
Dale Ormond, Acting Director, U.S. Army Chemical Materials Agency
Chris Brown, Oregon CSEPP Program Manager
David Nelson, Oregon State Senator
Greg Walden, United States Representative
Gordon Smith, United States Senator
Ron Wyden, United States Senator

Enclosure(1)

The Co-Permittee shall include a statement signed by the Chief Executive Officer or Treasurer of Washington Group International, Inc. attesting that the compendium represents liability coverage equal to, or in excess of, the amounts submitted to demonstrate compliance on July 11, 1997.

II.N. POST-TRIAL BURN RISK ASSESSMENT REQUIREMENTS

II.N.1. The Permittee shall provide, as requested, adequate resources (technical and financial) to the Department for preparation of the Post-Trial Burn Risk Assessment Workplan. The Permittee shall, at a minimum, provide the following items:

- i. Executive Summaries of trial burn reports conducted after issuance of the Permit for all other Chemical Stockpile Disposal Program facilities within 60 days of issuance to the applicable state or federal regulatory agency. If requested by the Department, the Permittee will furnish copies of the complete trial burn reports within sixty (60) days of a request.
- ii. Annually, the Permittee will develop an inventory of all Chemical Demilitarization Program Toxicity reports issued by the Army or its contractors pertaining to GB, VX, and HD. A copy of the inventory index will be provided to the Department by June 30 of each year beginning in 1999.

If the Permittee becomes aware of Toxicity reports issued by other governmental agencies the Permittee will amend the inventory as needed. The Permittee will also provide copies of any Toxicity reports requested by the Department or its contractor within 60 days of the request.

- iii. Provide an evaluation of the historical data collected from the on-site meteorological station within 60 days of a request by the Department or its contractor.

II.N.2. The Permittee shall provide, as requested, adequate resources (technical and financial) to the Department for preparation of a PostRA protocol. The PostRA will address, at a minimum, but not be limited to, the following essential elements:

- i. A protocol to address at a minimum, but not be limited to, the constituents of potential concern (COPCs) evaluated in the Pre-Trial Burn Risk Assessment, newly identified compounds, and mass of unidentified emissions for the four human health scenarios and for the ecological assessment;
- ii. A protocol that assesses the potential incremental risk after each trial burn and the performance test;
- iii. A list of COPCs with updated toxicity and chemical values, to include those COPCs originally evaluated in the Pre-Trial Burn Risk Assessment, newly identified compounds, and mass of unidentified emissions;
- iv. A determination of the air dispersion model(s) to be used and the algorithms (equations, for example) to assess receptor exposure; and,
- v. Trial burn/performance test stack and exit gas parameters.

II.N.3. The Permittee cannot commence trial burn and performance test operations until the Department has completed the Post-Trial Burn Risk Assessment Protocol and the Department has notified the Permittee.

II.O. CARBON FILTER OPERATION

This section II.O. applies only to the Munitions Demilitarization Building (MDB) and Laboratory carbon filter systems.

II.O.1. The Munition Demilitarization Building (MDB) and Laboratory filter systems shall be operational during chemical agent operations at UMCDF.

II.O.2. The Munition Demilitarization Building (MDB) filter system shall be monitored as follows:

- i. Chemical agent monitoring will be performed in accordance with Table 2-2.



State of Oregon
Department of
Environmental
Quality

**Umatilla Chemical Demilitarization Program
Status Update
Environmental Quality Commission
October 18, 2007
(Agenda Item _)**

Agent Processing at the Umatilla Chemical Agent Disposal Facility (UMCDF)

The facility is in the last stages of the change-over to VX. The first VX rocket is expected to be processed by November 2, 2007.

The UMCDF has destroyed over 155,500 munitions and bulk containers filled with over 2 million pounds of GB nerve agent. This represents approximately:

- 100% of the GB munitions (155,539 munitions and bulk items)
- 100% of the GB agent
- 70.5% of all Umatilla munitions and bulk containers
- 27.3% of the original Umatilla stockpile (by agent weight)

Other UMCDF Chemical Demilitarization Program News

GASP I Judgment: There remain two EQC determinations as to whether the UMCDF utilizes the best available technology (BAT) and has no major adverse impact on public health and the environment as it pertains to:

- Destruction of mustard ton containers containing significantly higher mercury levels than identified in the original Application,
- The role of the Pollution Abatement System Carbon Filter System (PFS).

These are scheduled to be available for public comment by March, 2008, and before the EQC by June, 2008.

CTUIR Concerns

On August 21, 2007, the Confederated Tribes of the Umatilla Indian Reservation sent a letter to Governor Kulongoski regarding concerns with the Department's over-site of the UMCDF. This letter and the September 7, 2007 response from the Governor's office are attached.

UMCD Permit Modification Request (PMR) Activity:

SUBMITTALS & APPROVALS			
PMR#	Title	Received	Approved
UMCD-07-004-WAP(1R)	Clarification of Agent-Free Criteria	09/18/07	10/02/07

UMCDF PMR Activity:

SUBMITTALS				
PMR#	Title	Submitted		
UMCDF-07-032-HVC(2TA)	MDB HVC Carbon Filter Change-out	08/07/07		
UMCDF-07-029-MPF(1N)	Metal Parts Furnace ACAMS Upset Condition Clarification	08/06/07		
UMCDF-07-030-WAST(1R)	Update Waste Characterization for VX Spray Tanks	08/16/07		
UMCDF-07-034-MISC(1N)	Redline Annual Update BRA/Tanks	09/20/07		
APPROVALS/ACCEPTANCES				
PMR#	Title	Approved		
UMCDF-06-049-MON(2)	Multiagent Monitoring for GB/VX Operations	08/02/07		
UMCDF-07-020-MISC(1N)	Misc. As-Built changes	08/14/07		
UMCDF-07-017-WAST(1R)	VX/HD Scrap Metal Recycling	08/15/07		
UMCDF-07-001-WAP(2)	Waste Analysis Plan Changes	09/10/07		
UMCDF-07-030-WAST(1R)	Update Waste Characterization for VX Spray Tanks	09/13/07		
UMCDF-07-034-MISC(1N)	Redline Annual Update BRA/Tanks	10/03/07		
DENIALS				
PMR#	Title	Denied		
UMCDF-07-008-LIC(1N)	LICI Alarm and Interlock Matrix	08/15/07		
UMCDF-07-029-MPF(1N)	Metal Parts Furnace ACAMS Upset Condition Clarification	08/29/07		
IN PROCESS: The following PMRs are under Department review (includes PMR 07-032, which was also submitted during this period).				
PMR#	Title	Received	Public Comment Period Close	Target Decision Date
UMCDF-05-034-WAST(3)	Deletion of the DUN and Addition of the CMS	10/25/05	12/24/05*	TBD
UMCDF-06-010-CMP(3)	Comprehensive Monitoring Program (CMP) Sampling and Analysis Plan (SAP) Changes	05/16/06	07/15/06*	TBD
UMCDF-07-005-MISC(2)	Condition II.M-Liability Insurance Requirement Changes	01/30/07	04/02/07	10/01/08
UMCDF-07-006-DFS(3TA)	Minimum Temperature Limit Change on the DFS	01/16/07	03/19/07	11/15/07
UMCDF-07-014-MPF(2)	MPF DAL Low-Temperature Monitoring Changes	02/20/07	04/23/07	11/30/07
UMCDF-07-024-CONT(2)	Annual Review and Revision of the Contingency Plan	05/17/07	07/14/07	10/15/07
UMCDF-07-032-HVC(2TA)	MDB HVC Carbon Filter Change-out	08/07/07	10/06/07	11/05/07
UMCDF-07-033-MPF(2)	VX Agent Trial Burn Plans	07/31/07	09/29/07	10/29/07
*Indicates close of initial (permittee) public comment period.				

Significant Events at Other Demilitarization Facilities

Anniston Chemical Agent Disposal Facility (ANCDF), Alabama

The ANCDF continues to process VX 155 mm artillery projectiles. As of October 1, 2007, the ANCDF has processed 36,727 VX projectiles (out of the original 139,581) and 22,362 gallons of VX.

Newport Chemical Agent Disposal Facility (NECDF), Indiana

As of October 2, 2007, the NECDF has neutralized 1,669,318 (approximately 197,793 gallons) of VX. This represents approximately 65% of the original Newport stockpile. The U.S. has received credit for destroying 1,138,424 pounds of the Newport stockpile under the CWC treaty.

On Friday, August 3, 2007, Chief Judge Larry McKinney, of the U.S. District Court for Southern Indiana, denied a motion by plaintiffs, including the Sierra Club and the Chemical Weapons Working Group, for a preliminary injunction to halt the shipment of VX hydrolysate from Newport Chemical Depot to Veolia Environmental Services, Port Arthur, Texas. This ruling comes after two-and-a-half days of testimony from various witnesses for and against the plan. On August 7, 2007, the Army restarted shipping the hydrolysate to Texas. Hydrolysate shipments had voluntarily stopped on June 18 pending the court ruling.

Pine Bluff Chemical Agent Disposal Facility (PBCDF), Arkansas

The PBCDF destroyed the last of its 90,409 GB rockets on May 19, 2007, representing 13% of its original chemical agent stockpile. The facility continues its GB-to-VX changeover activities, which included the processing of Simulated Equipment Test Hardware (SETH) or "mock" rockets the week of September 25, 2007. Start of PBCDF VX operations is expected to begin in late 2007.

Tooele Chemical Agent Disposal Facility (TOCDF), Utah

As of September 16, 2007, TOCDF has processed 2,017 ton containers containing HD mustard (blister) agent, 29% of the HD ton containers stored at the Deseret Chemical Depot. Processing continues to be limited to only those ton containers that show a concentration of 1 ppm or less of mercury contamination. Work continues on designing a carbon filtration system that will provide sufficient flue gas mercury removal to allow the processing of mustard that has been determined to have mercury concentrations in excess of 1 ppm.

Pueblo Chemical Agent Destruction Pilot Plant (PCAPP), Colorado

Blue Grass Chemical Agent Destruction Pilot Plant (BGCAPP), Kentucky

The design for the Pueblo Chemical Agent Destruction Pilot Plant was declared "final" on May 10, 2007, by the Bechtel Pueblo Team and the U.S. Department of Defense Program Manager for Assembled Chemical Weapons Alternatives. Road and fencing work has been completed at Pueblo, the access control point is shortly to open, and work continues on site grading and the early phases of construction. Site preparation and utility installation also continues at the Blue Grass stockpile site. Chemical agent operations are slated to begin 2015.

THEODORE R. KULONGOSKI
GOVERNOR



07-1367

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED

September 7, 2007

SEP 10 2007

HERMISTON OFFICE

Antone C. Minthorn, Chairman
Board of Trustees
Confederated Tribes of the Umatilla Indian Reservation
P.O. Box 638
Pendleton, OR 97801

Dear Chairman Minthorn:

Thank you for your August 21, 2007 letter to the Governor expressing Tribal concerns on the status of the UMCDF project. The Governor referred your letter to me for response. The continued safe operation of the UMCDF is a paramount concern to all of us.

As to your first concern, the Department of Environmental Quality (DEQ) has acknowledged that the completion of the human health and ecological risk assessment has not been timely. DEQ is utilizing all available resources to complete the assessment, in accordance with the existing work plan, as expeditiously as possible. I understand that some valuable Tribal resources may be available to help with the assessment, which is most welcome.

The US Army has also contracted for a human health risk assessment for all activities at the Umatilla Chemical Depot, including the UMCDF. This risk assessment is expected to be released in September. This assessment will be reviewed by DEQ's toxicologist, Bruce Hope, who has extensive experience with the Portland Harbor Superfund project as well as his continuing work at UMCDF.

Since the destruction of the remaining chemical stockpile is of such importance to the residents of Umatilla and Morrow counties, the Governor is reluctant at this time to prolong the storage risks associated with VX rockets. We are hopeful that the ongoing risk assessment activities will provide sufficient information to alleviate your concerns. Prior to the beginning of the VX operations, DEQ will utilize all available information to determine that the demilitarization process is protective of human health and the environment.

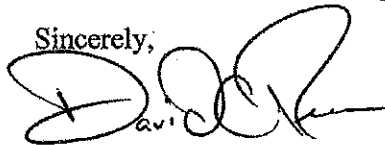
Antone C. Minthorn, Chairman
September 7, 2007
Page 2

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David C. Reese
General Counsel

DCR/mh

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THEODORE R. KULONGOSKI
GOVERNOR



07-1367

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED

September 7, 2007

SEP 10 2007

HERMISTON OFFICE

Antone C. Minthorn, Chairman
Board of Trustees
Confederated Tribes of the Umatilla Indian Reservation
P.O. Box 638
Pendleton, OR 97801

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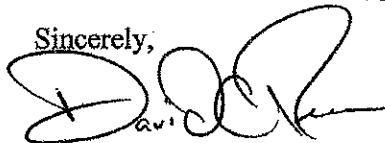
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State of Oregon
Department of
Environmental
Quality

**Umatilla Chemical Demilitarization Program
Status Update
Environmental Quality Commission
October 18, 2007
(Agenda Item _)**

Agent Processing at the Umatilla Chemical Agent Disposal Facility (UMCDF)

The facility is in the last stages of the change-over to VX. The first VX rocket is expected to be processed by November 2, 2007.

The UMCDF has destroyed over 155,500 munitions and bulk containers filled with over 2 million pounds of GB nerve agent. This represents approximately:

- 100% of the GB munitions (155,539 munitions and bulk items)
- 100% of the GB agent
- 70.5% of all Umatilla munitions and bulk containers
- 27.3% of the original Umatilla stockpile (by agent weight)

Other UMCDF Chemical Demilitarization Program News

GASP I Judgment: There remain two EQC determinations as to whether the UMCDF utilizes the best available technology (BAT) and has no major adverse impact on public health and the environment as it pertains to:

- Destruction of mustard ton containers containing significantly higher mercury levels than identified in the original Application,
- The role of the Pollution Abatement System Carbon Filter System (PFS).

These are scheduled to be available for public comment by March, 2008, and before the EQC by June, 2008.

CTUIR Concerns

On August 21, 2007, the Confederated Tribes of the Umatilla Indian Reservation sent a letter to Governor Kulongoski regarding concerns with the Department's over-site of the UMCDF. This letter and the September 7, 2007 response from the Governor's office are attached.

UMCD Permit Modification Request (PMR) Activity:

SUBMITTALS & APPROVALS			
PMR#	Title	Received	Approved
UMCD-07-004-WAP(1R)	Clarification of Agent-Free Criteria	09/18/07	10/02/07

UMCDF PMR Activity:

SUBMITTALS				
PMR#	Title	Submitted		
UMCDF-07-032-HVC(2TA)	MDB HVC Carbon Filter Change-out	08/07/07		
UMCDF-07-029-MPF(1N)	Metal Parts Furnace ACAMS Upset Condition Clarification	08/06/07		
UMCDF-07-030-WAST(1R)	Update Waste Characterization for VX Spray Tanks	08/16/07		
UMCDF-07-034-MISC(1N)	Redline Annual Update BRA/Tanks	09/20/07		
APPROVALS/ACCEPTANCES				
PMR#	Title	Approved		
UMCDF-06-049-MON(2)	Multiagent Monitoring for GB/VX Operations	08/02/07		
UMCDF-07-020-MISC(1N)	Misc. As-Built changes	08/14/07		
UMCDF-07-017-WAST(1R)	VX/HD Scrap Metal Recycling	08/15/07		
UMCDF-07-001-WAP(2)	Waste Analysis Plan Changes	09/10/07		
UMCDF-07-030-WAST(1R)	Update Waste Characterization for VX Spray Tanks	09/13/07		
UMCDF-07-034-MISC(1N)	Redline Annual Update BRA/Tanks	10/03/07		
DENIALS				
PMR#	Title	Denied		
UMCDF-07-008-LIC(1N)	LIC1 Alarm and Interlock Matrix	08/15/07		
UMCDF-07-029-MPF(1N)	Metal Parts Furnace ACAMS Upset Condition Clarification	08/29/07		
IN PROCESS: The following PMRs are under Department review (includes PMR 07-032, which was also submitted during this period).				
PMR#	Title	Received	Public Comment Period Close	Target Decision Date
UMCDF-05-034-WAST(3)	Deletion of the DUN and Addition of the CMS	10/25/05	12/24/05*	TBD
UMCDF-06-010-CMP(3)	Comprehensive Monitoring Program (CMP) Sampling and Analysis Plan (SAP) Changes	05/16/06	07/15/06*	TBD
UMCDF-07-005-MISC(2)	Condition H.M-Liability Insurance Requirement Changes	01/30/07	04/02/07	10/01/08
UMCDF-07-006-DFS(3TA)	Minimum Temperature Limit Change on the DFS	01/16/07	03/19/07	11/15/07
UMCDF-07-014-MPF(2)	MPF DAL Low-Temperature Monitoring Changes	02/20/07	04/23/07	11/30/07
UMCDF-07-024-CONT(2)	Annual Review and Revision of the Contingency Plan	05/17/07	07/14/07	10/15/07
UMCDF-07-032-HVC(2TA)	MDB HVC Carbon Filter Change-out	08/07/07	10/06/07	11/05/07
UMCDF-07-033-MPF(2)	VX Agent Trial Burn Plans	07/31/07	09/29/07	10/29/07
*Indicates close of initial (permittee) public comment period.				

Significant Events at Other Demilitarization Facilities

Anniston Chemical Agent Disposal Facility (ANCDF), Alabama

The ANCDF continues to process VX 155 mm artillery projectiles. As of October 1, 2007, the ANCDF has processed 36,727 VX projectiles (out of the original 139,581) and 22,362 gallons of VX.

Newport Chemical Agent Disposal Facility (NECDF), Indiana

As of October 2, 2007, the NECDF has neutralized 1,669,318 (approximately 197,793 gallons) of VX. This represents approximately 65% of the original Newport stockpile. The U.S. has received credit for destroying 1,138,424 pounds of the Newport stockpile under the CWC treaty.

On Friday, August 3, 2007, Chief Judge Larry McKinney, of the U.S. District Court for Southern Indiana, denied a motion by plaintiffs, including the Sierra Club and the Chemical Weapons Working Group, for a preliminary injunction to halt the shipment of VX hydrolysate from Newport Chemical Depot to Veolia Environmental Services, Port Arthur, Texas. This ruling comes after two-and-a-half days of testimony from various witnesses for and against the plan. On August 7, 2007, the Army restarted shipping the hydrolysate to Texas. Hydrolysate shipments had voluntarily stopped on June 18 pending the court ruling.

Pine Bluff Chemical Agent Disposal Facility (PBCDF), Arkansas

The PBCDF destroyed the last of its 90,409 GB rockets on May 19, 2007, representing 13% of its original chemical agent stockpile. The facility continues its GB-to-VX changeover activities, which included the processing of Simulated Equipment Test Hardware (SETH) or "mock" rockets the week of September 25, 2007. Start of PBCDF VX operations is expected to begin in late 2007.

Tooele Chemical Agent Disposal Facility (TOCDF), Utah

As of September 16, 2007, TOCDF has processed 2,017 ton containers containing HD mustard (blister) agent, 29% of the HD ton containers stored at the Deseret Chemical Depot. Processing continues to be limited to only those ton containers that show a concentration of 1 ppm or less of mercury contamination. Work continues on designing a carbon filtration system that will provide sufficient flue gas mercury removal to allow the processing of mustard that has been determined to have mercury concentrations in excess of 1 ppm.

Pueblo Chemical Agent Destruction Pilot Plant (PCAPP), Colorado

Blue Grass Chemical Agent Destruction Pilot Plant (BGCAPP), Kentucky

The design for the Pueblo Chemical Agent Destruction Pilot Plant was declared "final" on May 10, 2007, by the Bechtel Pueblo Team and the U.S. Department of Defense Program Manager for Assembled Chemical Weapons Alternatives. Road and fencing work has been completed at Pueblo, the access control point is shortly to open, and work continues on site grading and the early phases of construction. Site preparation and utility installation also continues at the Blue Grass stockpile site. Chemical agent operations are slated to begin 2015.

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September 7, 2007

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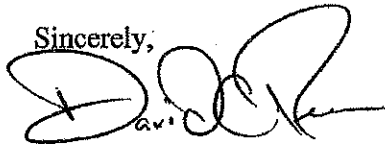
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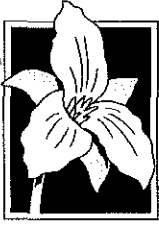


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NORTHWEST ENVIRONMENTAL ADVOCATES



October 15, 2007

Lynn Hampton, Chair
Bill Blosser, Member
Donalda Dodson, Member
Judy Uherbelau, Member
Ken Williamson, Member
Oregon Environmental Quality Commission
c/o Department of Environmental Quality
811 S.W. Sixth Ave.
Portland, OR 97204

**Re: Oregon Fish and Shellfish Consumption Rate Project
October 17 Special Commission Meeting**

Dear Chair Hampton and Commissioners Blosser, Dodson, Uherbelau, and Williamson:

Due to scheduling difficulties, I will be unable to attend the Commission's October 17th meeting. In lieu of making a one and a half minute presentation at that meeting, I am providing you my thoughts as an active participant in the Oregon Fish and Shellfish Consumption Rate Project. I say "active" because I have provided input into the process prior to its first meeting, written an extensive memorandum and a letter on the process, copies of which were provided to you, and participated in all three of the full-day workshops held so far. I have also spoken to agency managers and staff involved in the project as well as other participants, primarily from the municipal and industrial sectors.

As a consequence of my participation, I am convinced that, at least to date, this project has largely been a waste of time. While it is possible that the Human Health Focus Group has made some progress, nobody outside of that group could know since, as discussed below, the substance of their meetings is not yet publicly available. In any case, the point of this letter is to raise the many concerns Northwest Environmental Advocates has about the project as it moves forward from this special Commission meeting. Nothing that I've read in preparation for the meeting leads me to believe that the process will be markedly improved from what has taken place in the last seven months since it was officially launched.

Policy or Science?

Before I explain my concerns about the many policy issues that are being decided by inattention or default, I would like to explain a fundamental problem in the way the ultimate fish

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consumption rate will be chosen. In a recent letter¹ to Northwest Environmental Advocates (NWEA) from DEQ, EPA, and the CTUIR, the entities state that their goal is to “develop a scientifically defensible recommendation or set of recommendations for EQC consideration.” I believe this is correct. But, the point is exactly that there is a range of scientifically-defensible options. Therefore, policy, not science, will be the basis of the Commission’s ultimate choice between otherwise scientifically defensible options. If the Department makes policy choices now without the Commission’s input, the range of fish consumption rates it puts in front of the EQC, as well as the analytical underpinnings of those rates, will perforce be limited. For example, when the Department concludes that the *Boldt*² decision rates are not relevant, it has made a major policy decision without Commission input. It is making this decision based on policy, not because the *Boldt* rates are scientifically unsound.

Who is Making the Policy Decisions: the Commission or the Staff?

In previous materials I provided to agency and tribal staff and to the Commission, I set out many policy decisions that need to be addressed. Many, if not most, of these have been included in the bulleted lists set out in Attachment C to the Commission Agenda.³ As discussed below, the DEQ responses set out in Attachment C are perfunctory and generally meaningless. What DEQ does not answer in these materials is: Who is going to answer these policy questions and when? If the Commission does not answer them prior to the point that the Department makes decisions that preclude further evaluation of options or choices, it is the Department who is making the decisions. Put another way, the Commission’s failure to discuss, debate, and to instruct the staff on which options to consider is a delegation of its policy-making role to staff. For example, if the Commission does not state that treaty rights for fish consumption are legally, scientifically, and morally relevant at this early juncture in the process, the Department will conclude that they are not relevant. The treaty rights will then not form the basis of any work – whether it be to evaluate health or fiscal impacts – that will be done by the staff, its consultants, and discussed in meaningful detail in future workshops. This issue – along with the majority of other major

¹ Letter from Stephanie Hallock, DEQ, Eric Quaempts, CTUIR, and Michael Gearheard, EPA, to Nina Bell, NWEA, undated but sent on October 11, 2007.

² *U. S. v. Washington*, 384 F.Supp 312, 380 (W.D. Wash. 1974) (“[A]t the time of the treaty, the Indians who were parties to the Yakima Treaty . . . annually consumed [salmon] in the neighborhood of 500 pounds per capita.”). See discussion in NWEA Memorandum dated May 15, 2007, “Policy Questions Underlying Commission Decision on Fish Consumption Levels.”

³ Agenda Item H, Informational Item: Fish Consumption Update, October 17, 2007, Attachment C.

policy issues – will be relegated to that dustbin of inaction that the staff calls “information provided by the staff to the EQC to help inform their [sic] final decision.”

The purpose of the meeting on the 17th is to update the Commission and to “[g]et direction from the EQC on what information the EQC will need and be looking for as the project progresses.”⁴ Again, this description omits any role that the Commission will play in making on-going determinations on policy issues that, unanswered, will be implicitly delegated to the Department to ignore. The Department will decide the boundaries of the discussion, eliminating the Commission’s role.

The Department’s October 17th memo to the Commission ends with the curious statement: “The team’s scientific and technical choices, reflected in their [sic] recommendations for changing the FCR, will inform the EQC’s higher-level policy decision: that of an appropriate fish consumption rate for Oregon.”⁵ The use of this phrase “higher-level policy decision” implies what is obvious from the materials and the plan for this project, namely that the Commission will make the ultimate decision on a fish consumption rate only by default deciding the policies that underlie the chosen rate. The Department will actually make many of the policy decisions, deciding, for example, whether to honor tribal treaty rights.

This is further illustrated by the six “key factors” presented by the Department, which themselves demonstrate that policy decisions have already been made by staff. For example, Key Factor No. 1 concerns data. It states that options under consideration will be “[b]ased on the available survey data.”⁶ In other words, the Department and/or Planning Team have already made a policy decision to exclude: (1) any non-data sources as the basis for rate options, including treaties; (2) qualitative data – the so-called “stories” tribal members have been encouraged to share at workshops; (3) any further data and information that the Planning Team could obtain from Oregon’s Tribes should it choose to do so; and (4) any historic data or information on historic levels of fish consumption. With the Department and/or Planning Team already having made this decision in the absence of Commission direction, it is easy to understand why other Oregon Tribes might decline to participate in this process.

⁴ Agenda Item H, Informational Item: Fish Consumption Update, at 1.

⁵ Id. at 4.

⁶ Id. at 3.

Another policy decision is reflected in the Key Factor No. 6 which asks how a new rate can be “equitably implemented”⁷ First, this statement ignores that: (1) the Clean Water Act does not allow for equitable implementation; (2) one person’s equity is generally obtained at the expense of another person (e.g., achieving equity between upstream and downstream polluters will likely cause inequities between other categories, such as old and new sources or big and small sources); and (3) this discussion of equity is limited to between polluters rather than between the polluters and the polluted (fish consumers). But putting those issues aside, why has the Department and/or Planning Team already concluded that equitable implementation, as elusive a concept as it is, is a policy goal? Why is this not a decision for the Commission to make on behalf of all Oregonians? Why is this issue not open for public discussion in the workshop process?

Materials Provided to the Commission

The DEQ staff has prepared a lengthy document for the Commission’s meeting. Unfortunately most of the information is either misleading or unresponsive and, in almost every case, the answers include DEQ’s stock reply that the information will be provided to the Commission in its rulemaking package for it to consider. Being included in a package is not synonymous with having been seriously evaluated.

Key Factors

The discussion of how the Planning Team has changed the wording of the so-called key factors does not alter the fact that these factors assume policy decisions that have not already been made by the Commission, as discussed above. In addition, Key Factor No. 6 has been reworded to avoid the “concern that the EQC would be ‘trading off’ protection of people’s health against cost of implementing more stringent water quality standards.” To avoid this appearance, it has been reworded “to focus on how a rate would be implemented to protect public health.” This Orwellian reworking does not alter the fact that DEQ originally said it was conducting a fiscal impacts analysis because one or more Commission members had requested it. When I inquired as to why the Department was going to evaluate only the costs to industry and not the costs to fish consumers, the answer was that the Commission was only interested in the former. That the statute requires some fiscal impact analysis is a *post hoc* rationalization of the analysis the Department has already decided to do. In other words, changing the wording on Key Factor No. 6 does not alter the views of some Commissioners that the implementation costs to dischargers can and should be weighed against the benefits of changing the fish consumption rate.

This *post hoc* rationalization does not make sense for two additional reasons. First, I cannot recall a single rulemaking process in which DEQ considered the fiscal implications, land use

⁷ Id.

evaluations, and other requirements of Oregon rulemaking during the policy-making process. These have always been taken care of by the Department at the end, as opposed to having been integrated into the rulemaking process. Here, DEQ wants to have it both ways: reword the key factors discussion to remove the implication that cost-versus-health tradeoffs are in the making but keep the attention on the costs to permitted sources claiming that it's required by the rules. Second, the rationalization is flawed because there is no current rulemaking proposal for which DEQ could analyze the fiscal impacts.

Response No. 1 – Types and Sources of Data: Available Data

DEQ's response to questions concerning what level of information is considered "sufficient" data to warrant being used in this process and how tribal and other consumer information will be gathered and used, is to note EPA's hierarchy of data and to state that tribal members were "encouraged ... [to] share personal stories" that will not be reviewed by the Human Health Focus Group but will be provided to the Commission for its consideration.

This is not a response to the questions that have been posed. It does not answer why tribal and other consumers are being asked on a completely random basis to discuss their fish consumption, why DEQ is doing nothing to gather any information whatsoever directly from Oregon Tribes or other high fish-consuming groups, and how these personal stories could possibly be "considered" by the Commission when it makes its final decision.⁸ To the extent that, for example, the experiences of other non-Columbia River Tribes could mirror the fish consumption patterns seen in the CRITFC study, thereby providing a basis for extending those findings across the entire state, the Department is not considering it. There is simply no explanation of why anybody would bother attending an all-day meeting for which they must travel long distances so that their personal information will be included in the rulemaking package. There is no explanation of the legal and policy reasons why treaty rights have no bearing on the fish consumption rate and why this issue is not being addressed directly by the Commission.

Response No. 3 – Inclusion of Cultural Values

As with Response No. 1, DEQ simply avoids answering the question posed – concerning the weight of cultural values in fish consumption – in favor of a stock answer that it's a recognized issue and that the information will be included in the policy options paper provided to the

⁸ The October 11, 2007 letter to NWEA from the three entities rather shockingly observes that "[w]e also believe that our Workshops have informed us substantially about the fish consumption rates of other tribes and tribal members, and of sport fishers, and commercial fishers along the coast of Oregon." (Emphasis added.) It's hard to understand how agency staff could make so much out of so little information.

Commission. Putting something in an options paper is not the same as including it in the analysis. The Department should end the charade of pretending that some issues matter – such as treaty rights, qualitative data, personal accounts, cultural values, etc. – and just be honest that these issues will not be included in its analysis and therefore will not be a part of the options. It is misleading to state otherwise. The Department witnessed a serious drop in participation by Oregon’s tribal representatives between the second and third meetings; has it stopped to consider why Tribes with limited resources would bother sending their staff and other representatives to workshops that value their participation so little?

Response No. 4 – WQS Implementation Issues

DEQ’s response to how a fish consumption rate that applies to different regions would work is to cite to a previous triennial review and its discussion of “[p]ossible inequities between permitted sources.” The Department needs to constantly remind the Commission and workshop participants that the Clean Water Act inherently creates inequities between permitted sources. No pollution source with an NPDES permit containing water quality-based effluent limits is immune. If there are more pollution sources into a river or a basin, or simply less water to dilute the effluent, a discharger’s effluent will be restricted more than it would be otherwise. That is the entire basis of the water quality standards-based aspect of pollution control.

Response No. 6 – High Fish Consuming Populations

A cluster of questions are consolidated concerning sensitive populations (e.g., pregnant women); how to consider the disparate impacts on populations (e.g., non-Columbia River Tribes) when the federal government has not provided them with millions of dollars with which to evaluate fish consumption levels; why it is acceptable to provide a lower level of human health protection to subpopulations, particularly subpopulations that suffer from other major health and economic deprivations; the role of the Civil Rights Act; which percentiles of subpopulations to protect; and maintaining the same conservatism for Oregon’s subpopulations that is provided to the majority of Oregonians. To these concerns, the Department has only two substantive comments: (1) that the investment in the process by the CTUIR “gives us confidence that tribal priorities and interests will be voiced and considered;” and (2) that “we believe tribal fish consumption rates are well represented” because the CRIFTC study is the best regional data to inform the Commission.

These are both non-answers. First, that CTUIR is involved does not answer the questions about federal civil rights laws and regulations or the major policy issues noted above. The questions posed are not whether CTUIR is involved and its interests will be “voiced and considered.” The questions that were posed are policy questions that must be answered by the Commission. If they are not answered directly, they are being answered indirectly, by default. The default answer to

are you considering EPA's regulations on disparate impact discrimination under the Civil Rights Act? is "no" because the failure to consider it is the answer of not considering it. The Department's analysis and the Commission's evaluation of an issue is where the policy decisions will be made, whether overtly or covertly – a far different matter than whether positions are "voiced" and supposedly "considered." If there is no explicit consideration of a policy question, the answer is that the matter is rejected.

Moreover, the CTUIR's interests are well-represented by the CRITFC study and their place on the Planning Team. The same is simply not true for Oregon's other Tribes. Specifically, if the Department were to recommend and the Commission were to adopt, an approach that was based on providing only the Columbia River tribes a higher level of protection based on the CRITFC study, how would either the study's existence or the Tribe's involvement help the other Oregon Tribes? It wouldn't. And the Department has already specifically rejected the idea that it would substantively engage in obtaining any kind of information from other Oregon Tribes – aside from inviting them to speak into an open microphone – that would allow its Human Health committee, the Planning Committee, the Department, or ultimately the Commission to decide that the CRITFC data were in any way representative of the fish consumption patterns of other Oregon Tribes or other fish consumers. How do we know the Department has rejected this idea? Because, it has chosen to not take action.

Response No. 7 – Migratory Fish

DEQ fails to take the opportunity in this discussion of the role of migratory fish to note that the recipient of any form of pollution – whether fish, human, bird, or mammal – does not care where the contamination comes from. In protecting humans from fish-borne contaminants under the Clean Water Act, the question is "What are people consuming?" not "What are industries dumping?" A numeric or narrative criterion in a water quality standard is established to protect the beneficial use, in this case fish consumption, regardless of the source of the pollutant.

Response No. 8 & 9 – Role of Economics & Benefits Analysis

As you may recall, NWEA has raised numerous concerns about the Department's intent to conduct a one-sided economic analysis. The Department's response in these materials is both curt and disingenuous. As stated above, the Department initially argued that its partial economic analysis was based on the Commission's narrowly-expressed interest. Now it has switched to arguing that DEQ is doing the analysis because it is a required part of any rulemaking. Yet no rulemaking in which NWEA has ever been involved directly or explicitly considered any economic analysis, least of all one involving the setting of water quality standards under the Clean Water Act.

In fact, the Department cannot at this time – well in advance of the rulemaking proposals – be able to evaluate fiscal impacts as required by Oregon statute. The reason is simple: the content of the rulemaking has not yet been decided. Clearly the cost implications are tied to whatever the content of the rule is, particularly the fish consumption rate, its geographic application, and any “implementation” considerations included in the rule (e.g., to apply the fish consumption rate to a limited number of pollutants, to consider the impacts of multiple pollutants, to treat legacy pollutants differently, to allow trading, etc.). None of this work to define a large range of possible implementation caveats to a higher fish consumption rate has been done, let alone narrowed to a rulemaking proposal. So, how can this process now be described as supporting the statutory requirement?

Finally, DEQ misstates the statutory requirement. ORS 183.335(b)(E) states:

A statement of **fiscal impact identifying** state agencies, units of local government and **the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on** state agencies, units of local government and **the public**. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected.

Id. (emphasis added). Evaluating the “fiscal impact” and “economic effect” of a regulation on the public, as required by the statute, is not limited to the cost to industry of compliance. It includes the cost to the public. In this case, as discussed in NWEA’s previous memorandum and letter, those costs are primarily in decreased health (and the expense of health care) and premature death of populations exposed to more than the average amount of toxic chemicals through fish consumption. The cost to members of Oregon Tribes of not being protected is as sure a cost to the public as the cost of increased pollution controls is a cost to industry.

Response No. 10 – Implementation & Regulatory Flexibility

In response to a series of questions concerning actual implementation of a revised fish consumption rate, DEQ says that it will be the subject of a future workshop and be addressed by the Fiscal Impacts Advisory Committee. It is unclear, as discussed elsewhere in this letter, how the fiscal impacts can be determined in advance of knowing how the rule will be implemented. In addition, it is unclear how the fiscal impacts experts could possibly be the same people as those who can help discuss implementation issues. Finally, half a day of a workshop format is hardly sufficient input from environmental and industrial/municipal experts on implementation to have input into this discussion. DEQ has witnessed groups working on implementation issues

in numerous well-functioning advisory committees taking months, if not years, to work out these kinds of issues due to their complexity, as well as other issues implicated in discussions of implementation such as equity concerns. It is a mystery why the Department thinks that allocating this amount of time will result in any meaningful dialogue.

Response No. 11 – Mechanisms for Toxics Reduction

Toxics reduction strategies is a broad subject for an entire state. Why does DEQ think that a single workshop in which participants will have an “opportunity to discuss and inform each other about efforts to reduce toxics in fish tissue” will be either meaningful or complete?

Response No. 13 – Risk from Current vs. Legacy Pollutants

How Oregon decides to treat the risks from legacy pollutants in its fish consumption rate is a major policy issue. Instead of presenting some serious options, or explaining where in its process the Commission will address this issue, DEQ’s response merely states that DEQ is working on reducing legacy pollutants. It also states that raising the fish consumption rate will not solve the problem of legacy pollutants already present in Oregon’s waterways. It is unclear if the Department is hinting that it will exclude legacy pollutants from the risk analysis associated with higher fish consumption levels, or if it will include them. While there are arguments from the industry perspective that they should be excluded, from that of the endpoint of water quality standards – the protection of beneficial uses – the source of the risk is irrelevant. DEQ’s superficial response to this issue does not advance the discussion.

Response No. 14 – Single Versus Multiple Pollutants

As with all of the responses, DEQ’s response to questions concerning the treatment of multiple toxic pollutants is unhelpful and fails to advance the thought process on this issue. Specifically, the Department fails to provide any information to the Commission on the policy options that are implicated by these questions so that the Commission can make decisions in advance of the final rulemaking proposal. As the Department has stated elsewhere, it plans on eliminating policy options in order to focus on a few. By doing so, it will make the policy choices that are the Commission’s to make.

Response No. 15 – Balancing Risks & Benefits

In response to a question concerning the balancing of benefits to consuming fish with the dangers of consuming pollutants in fish, the Department actually footnotes several journal articles on this issue. Why this level of attention when DEQ does not respond substantively to any other issue in this 20-page document?

Response No. 16 – Shellfish

DEQ's response to the question of whether shellfish should be included is to state that the project has been renamed to demonstrate that it does include shellfish, due to its relevance to Oregon's coastal population. There is, however, no explanation of how the Department intends to address the lack of quantitative data on coastal population fish or shellfish consumption.

Response No. 18 – CRITFC Study

DEQ's answer to whether the project will include or exclude the highest "subsistence" level fishers within the CRITFC study population is to note that the Human Health Focus Group is providing a technical review of the study. This does not ensure that this policy issue will be addressed but only that it will be mentioned in the final report to the Commission. Not addressing a policy question is the same as making a policy decision (i.e., the "sin of omission.").

Response No. 24 – Non-Permitted Sources

DEQ's response to the age-old question of how to address non-point sources is to state its "belief" that "more can and should be done" to address them, without discussing why the Department repeatedly neglects all opportunities to recommend, urge, and demand that Oregon's other agencies take necessary actions to control nonpoint sources. To state that this issue will be covered in the workshop on Toxic Reduction Efforts frankly insults everybody, from environmental participants to high fish consumers to point sources. Nothing short of regulation will begin to address the massive problem caused by non-point sources, to clean up Oregon's rivers, and to create some nascent equity between permitted and unpermitted sources.

Response No. 25 – Other Studies

DEQ's response stating that it conducts its triennial reviews every three years is factually incorrect and misleading.

Response No. 29 – Tribal Treaty Rights

As in its Response Nos. 1, 3, and 6, DEQ persists in responding to the issue of tribal treaty rights by stating that the CTUIR's participation gives it "confidence" that the tribal interests will be "front and center." As explained above, this is not an answer to a set of serious legal and policy questions.

What Workshop Participants Want

Many participants in the workshops have been disappointed in their lack of substance and substantive discussion. In response, the Department has concluded that workshop participants have asked for “DEQ, EPA and CTUIR [to] present specific FCR options for comment during the public workshops.”⁹ This could not be further from the truth. The majority of people who have consistently participated in the three workshops held to date are very much used to discussing policy and implementation issues in the absence of specific DEQ proposals. What they are used to is having those discussions. Instead, the workshops have not been the type of discussions that DEQ has typically sponsored through its advisory committees but rather have been low-level presentations with questions and an open microphone. Workshop participants have not requested that DEQ avoid having open policy discussions and skip right to the proposals. Instead, they are tired of day-long workshops that provide no new information and no opportunity for intense debate and discussion, workshops that are, in short, a waste of time.

Having concluded that the public only wants to respond to options, the Department now states that “[r]eaction from the public on these various options will be important to the Planning Team in deciding which options to develop further and which to put aside.”¹⁰ Why is the Planning Team deciding which options to develop further and which to put aside rather than the Commission? The choices on options are likely indicative of major policy decisions that are within the Commission’s, not the staff’s, purview. Moreover, who is the “public” attending the workshops and why is their “reaction” at those workshops apparently the deciding factor or at least a significant factor as to which options will be pursued? Are the current participants going to be encouraged to pack the workshops with people who will vote on the options they most desire? Is this how Oregon makes public policy?

Role of Workshop Participants

As demonstrated in the discussion immediately above, the Department’s response to the introduction of policy questions is to note in nearly every instance that any information that is gathered will be “included in the staff reports to the EQC so that the EQC can consider this information in its decision making.”¹¹ We do not doubt the ability of the staff to catalogue nearly every thought that is presented by someone participating in the workshop process. The question is: what meaningful intellectual response will there be to those thoughts? So far, the answer is

⁹ Id. at 2.

¹⁰ Id. at 3.

¹¹ Id. at 11.

“none.” There is no reason to believe that the future workshops will be any more meaningful discussions than they have been to date, that the Department will engage with the policy questions posed, or that those issues will be incorporated into the options and their assessment. In all likelihood, the Department will continue to fend off policy questions it doesn’t want to discuss with the kind of non-answers it has provided in its most recent materials, making the workshops an even greater mockery of their stated purpose. To date, the workshops have been window-dressing on a failed process and there is no indication that the future will be different. That’s a frankly unpleasant statement but, unfortunately, it is substantiated. Here’s why:

- Workshops have covered material in a highly superficial manner. For example, the discussion of risk, to an audience well-versed in matters of risk assessment, involved numerous pictures of people wearing hard-hats; participants being asked to line up by height in order to demonstrate the idea of variability; and illustrations on how one plugs numbers into algebraic equations. The entire third workshop was aimed at a general public audience, few if any of whom were in the room. Many people left early because of the lack of content.
- Workshops are workshops. That means that they involve presentations, questions, possibly some kind of response from agency personnel. There is no real discussion, no attempt to resolve differences, no consensus, no creative meeting of minds. It’s just free-floating discussion, after which the ideas are committed to paper so that the Commission can “consider” them.
- The wide-open workshop format is not overcome by having an email list called the “Core Team.” The decision to avoid an advisory committee with a set and limited group of people, representing their constituencies, and making a long-term commitment to resolving issues – in favor of a wide-open workshop format – was not a good one. Setting up an email list of a smaller, apparently more committed, group of people does not change the dynamic of this process decision.
- A single workshop has been assigned to cover both “fiscal” and “implementation” issues. Having participated in numerous full-day advisory committee meetings in which implementation issues were discussed and debated, and creative solutions sought, it is difficult to understand how a half-day workshop will result in any meaningful exchange of ideas. In addition, as explained elsewhere in this letter, it is difficult to understand how the fiscal impacts of a rulemaking proposal including “implementation” issues can be done prior to the proposal being drafted.
- Why does this already highly complicated process include an entire workshop on “Toxics Reduction Strategies”? We agree that toxics reduction strategies are important for

Oregon but it is unclear why this issue is inserted into determining the appropriate fish consumption rate for the state. An early draft of Attachment B describes this workshop as “an opportunity to discuss and inform each other about other efforts to reduce toxics in fish tissue.” To the extent that this is a general discussion about education and outreach programs to retrieve hazardous materials, encourage the use of less toxic alternatives in households, gardens, lawns, and fields, etc. this is totally irrelevant to the decision about changing Oregon’s fish consumption rate or the regulatory actions that will, should, or could result from any changes. NWEA does not object to Oregon’s adopting extensive toxics reduction strategies but they will not be hammered out in one day of sharing ideas.

- Repeated allusions to transparency in decision-making do not result in open and participatory decision-making. Given that the workshops are just workshops, rather than forums for more focused discussion and debate, any work to better define and resolve the issues, develop creative solutions, etc. will take place outside the workshops. Specifically, this will take place in the Human Health Focus Group and the Fiscal Impact Advisory Committee. As discussed below, obtaining information from the former is nearly impossible, suggesting that most of this discussion will be hidden from view at least during the time it is going on. In addition, a separate and parallel process totally hidden from public view has begun between representatives of industry and municipal interests and the CTUIR.¹²

The Fiscal Impact Advisory Committee

According to the Department’s reports, the soon-to-be-formed Fiscal Impact Advisory Committee is not only charged with helping the agencies to understand the economic issues but is also in charge of discussing the “implementation challenges.”¹³ It is not clear why those people who are considered experts on economic issues are also those who should be discussing implementation of regulatory or non-regulatory pollution controls. By limiting the arena in which the most substantive discussion on implementation will likely take place to those who have economic expertise, the planners exclude people who are highly knowledgeable about implementation. While it certainly would help if the Department defined what it means by

¹² See Confederated Tribes of the Umatilla Indian Reservation Journal, October 2007, <http://www.umatilla.nsn.us/cuj.html> (October 2007 at pages 6 and 38). CTUIR “hopes talks [with municipal and industrial interests] can lead to a faster process that some say has been bogged down by a series of DEQ-organizaed workshops that are expected to last well into 2008.”

¹³ Id. at 3.

“implementation,”¹⁴ it would generally be thought to include: the development of water quality-based permits, use of mixing zones, impacts on existing and future TMDLs, consideration of non-point sources, implications for Superfund and other hazardous waste sites, the relationship of the new fish consumption rates and Oregon’s narrative criterion on toxics, treatment of legacy pollutants, pollution trading, implications for antidegradation, etc. Not only is this a long list but it represents issues well beyond the expertise of economists.

Human Health Focus Group

Workshop participants are being kept in the dark as to the content of the Human Health Focus Group’s discussions and conclusions. Many participants went to the last workshop with the expectation that the Focus Group would report on its conclusions to date. Instead, we were inundated with photographs of people wearing hard hats, presentations by people well-informed about doing risk assessment on toxic clean-up sites but not the Clean Water Act, and explanations of how to plug numbers into algebraic equations. Meanwhile, DEQ has not made public the minutes for the four meetings that the Focus Group has held since May of this year in order to ascertain what progress they have made or their conclusions.

Conclusion

In conclusion, NWEA’s fundamental concern is that the Commission is not engaged in making the major policy issues that underlie any future rulemaking proposals on fish consumption rates. But the Department (with the help of the Planning Team) is making those decisions, incorrectly constraining the boundaries of the discussion. Nor is DEQ engaging in the kind of arduous advisory group process that ensures all major interests are part of crafting the proposal(s) to the Commission. Instead, the agencies’ choice of a superficial workshop approach has left participants so frustrated with the level of dialogue that the CTUIR and the municipal and industrial dischargers recently began a parallel non-public process. The dangers such an approach poses to an ostensibly transparent workshop process should be evident.

Finally, in the end, an array of scientifically-valid fish consumption rates will be before the Commission but the discussion of what policies should drive the choice of one of them to be Oregon’s rate will not have taken place, a discussion that should be underway now. The result will be a Commission decision based on “gut responses,” “cut-the-baby-in-half” approaches, costs to industrial and municipal dischargers, or personal responses (or lack thereof) to the anecdotal information provided by the Department that it says will provide the Commission with

¹⁴ The only indication of what DEQ means by “implementation” are its references to additional costs of implementing new criteria. The staff has never explained why new criteria would lead to any additional staff costs for the Department.

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October 15, 2007
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“context and perspective.”¹⁵ Failure to consider policy issues as policy issues is to abdicate their consideration.

Sincerely,

Nina Bell
Executive Director

cc: Stephanie Hallock
Rick George
Mike Gearheard
Donna Silverberg
Lauri Aunun

¹⁵ May 11 letter to NWEA from EPA, DEQ, CTUIR, at 2.

Chemical Weapons Destruction Program Glossary of Acronyms and Terms of Art

ABCDF – Aberdeen Chemical Agent Disposal Facility, located at the Aberdeen Proving Grounds in Maryland

ACAMS – Automatic Continuous Air Monitoring System – the chemical agent monitoring instruments used by the Army to provide low-level, near real time analysis of chemical agent levels in the air

ANCDF – Anniston Chemical Agent Disposal Facility, located at Anniston Army Depot in Alabama

ATB – agent trial burn – test burns on incinerators to demonstrate compliance with emission limits and other permit conditions

AWFCO instrument– Automatic Waste Feed Cutoff – an instrument that monitors key operating parameters of a high temperature incinerator and automatically shuts off waste feed to the incinerator if prescribed operating limits are exceeded

BGCA – Blue Grass Chemical Activity, located at the Blue Grass Army Depot in Kentucky

BGCAPP – Blue Grass Chemical Agent Destruction Pilot Plant, new designation for BGCA.

BRA – Brine Reduction Area – the hazardous waste treatment unit that uses steam evaporators and drum dryers to convert the salt solution (brine) generated from pollution abatement systems on the incinerators into a dry salt that is shipped off-site to a hazardous waste landfill for disposal

CAC – Chemical Demilitarization Citizens Advisory Commission – the nine member group appointed by the Governor to receive information and briefings and provide input and express concerns to the U.S. Army regarding the Army's ongoing program for disposal of chemical agents and munitions – each state with a chemical weapons storage facility has its own CAC – in Oregon the DEQ's Chemical Demilitarization Program Administrator and the Oregon CSEPP Manager serve on the CAC as non-voting members

CAMDS – Chemical Agent Munitions Disposal System – the former research and development facility for chemical weapons processing, located at the Deseret Chemical Depot in Utah

CDC – Centers for Disease Control and Prevention – a federal agency that provides oversight and technical assistance to the U.S. Army related to chemical agent monitoring,

laboratory operations, and safety issues at chemical agent disposal facilities (Website: <http://www.cdc.gov/nceh/demil/>)

CMA – U.S. Army's Chemical Materials Agency, the agency responsible for chemical weapons destruction (website: <http://www.cma.army.mil/>)

CMP – comprehensive monitoring program – a program designed to conduct sampling of various environmental media (air, water, soil and biota) required by the EQC in 1997 to confirm the projections of the Pre-Trial Burn Health and Ecological Risk Assessment.

CMS – carbon micronization system – a new treatment system that is proposed to be used in conjunction with the deactivation furnace system to process spent carbon generated at UMCDF during facility operations – the CMS would pulverize the spent carbon and then inject the powder into the deactivation furnace system for thermal treatment to destroy residual chemical agent adsorbed onto the carbon

CSEPP – Chemical Stockpile Emergency Preparedness Program – the national program that provides resources for local officials (including emergency first responders) to provide protection to people living and working in proximity to chemical weapons storage facilities and to respond to emergencies in the event of an off-post release of chemical warfare agents (Website: <http://csepp.net/>)

CWWG – Chemical Weapons Working Group, an international organization opposed to incineration as a technology for chemical weapons destruction and a proponent of alternative technologies, such as chemical neutralization (Website: <http://www.cwwg.org/>)

DAAMS – Depot Area Air Monitoring System – the system that is utilized for perimeter air monitoring at chemical weapons depots and to confirm or refute ACAMS readings at chemical agent disposal facilities – samples are collected in tubes of sorbent materials and taken to a laboratory for analysis by gas chromatography

DAL – discharge airlock – a chamber at the end of MPF used to monitor treated waste residues prior to release.

DCD – Deseret Chemical Depot – the chemical weapons depot located in Utah

DFS – deactivation furnace system – a high temperature incinerator (rotary kiln with afterburner) used to destroy rockets and conventional explosives (e.g., fuses and bursters) from chemical weapons

DPE – demilitarization protective ensemble – the fully-encapsulated personal protective suits with supplied air that are worn by workers in areas with high levels of agent contamination

DUN – dunnage incinerator – high temperature incinerator included in the original UMCDF design and intended to treat secondary process wastes generated from munitions destruction activities – this incinerator was never constructed at UMCDF

ECR – Explosive Containment Room – UMCDF has two ECRs used to process explosively configured munitions. ECRs are designed with reinforced walls, fire suppression systems, pressure sensors, and automatic fire dampers to detect and contain explosions and/or fire that might occur during munitions processing

EONC – Enhanced Onsite Container – Specialized vessel used for the transport of munitions and bulk items from UNCD to UMCDF and for the interim storage of those items in the UMCDF Container Handling Building until they are unpacked for processing

G.A.S.P. – a Hermiston-based anti-incineration environmental group that has filed multiple lawsuits in opposition to the use of incineration technology for the destruction of chemical weapons at the Umatilla Chemical Depot – G.A.S.P. is a member of the Chemical Weapons Working Group

GB – the nerve agent sarin

HD – the blister agent mustard

HVAC – heating, ventilation, and air conditioning

HW – hazardous waste

I-Block – the area of storage igloos where ton containers of mustard agent are stored at UMCD

IOD – integrated operations demonstration – part of the Operational Readiness Review process when UMCDF demonstrates the full functionality of equipment and operators prior to the start of a new agent or munition campaign.

JACADS – Johnston Atoll Chemical Agent Disposal System, the prototype chemical agent disposal facility located on the Johnston Atoll in the Pacific Ocean (now closed and dismantled)

J-Block – the area of storage igloos where secondary wastes generated from chemical weapons destruction are stored at UMCD

K-Block – the area of storage igloos where chemical weapons are stored at UMCD

LIC1 & LIC2 – liquid incinerators #1 & #2 – high temperature incinerators (liquid injection with afterburner) used to destroy liquid chemical agents

MDB – munitions demilitarization building – the building that houses all of the incinerators and chemical agent processing systems. The MDB has a cascaded air filtration system that keeps the building under a constant negative pressure to prevent the escape of agent vapor. All air from inside the MDB travels through a series of carbon filters to ensure it is clean before it is released to the atmosphere.

MPF – metal parts furnace – high temperature incinerator (roller hearth with afterburner) used to destroy secondary wastes and for final decontamination of metal parts and drained munitions bodies

NECDF – Newport Chemical Agent Disposal Facility, located at the Newport Chemical Depot in Indiana

NRC – National Research Council

ORR – operational readiness review – a formal documented review process by internal and external agencies to assess the overall readiness of UMCDF to begin a new agent or munitions processing campaign.

PBCDF – Pine Bluff Chemical Agent Disposal Facility, located at the Pine Bluff Arsenal in Arkansas

PCAPP – Pueblo Chemical Agent Destruction Pilot Plant, new designation for PUCDF.

PFS – the carbon filter system installed on the pollution abatement systems of the incinerators used for chemical agent destruction

PICs – products of incomplete combustion – by-product emissions generated from processing waste materials in an incinerator

PMR – permit modification request

PMN – permit modification notice

PUCDF – Pueblo Chemical Agent Disposal Facility, located at the Pueblo Chemical Depot in Colorado

SAP – sampling and analysis plan

SETH – simulated equipment test hardware – “dummy” munitions used by UMCDF to test processing systems and train operators before the processing of a new munitions type. SETH munitions are often filled with ethylene glycol to simulate the liquid chemical agent so that all components of the system, including the agent draining process, can be tested.

TAR – Temporary Authorization Request

TOCDF – the Tooele Chemical Agent Disposal Facility, located at the Deseret Chemical Depot in Utah

UMCD – Umatilla Chemical Depot

UMCDF – Umatilla Chemical Agent Disposal Facility

WAP – waste analysis plan – a plan required for every RCRA permit which describes the methodology that will be used to characterize wastes generated and/or managed at the facility.

WDC – Washington Demilitarization Company, LLC – the Systems Contractor for the U.S. Army at UMCDF.

VX – a nerve agent

LOTTRIDGE Helen

From: ALDRICH Greg
Sent: Monday, October 15, 2007 10:23 AM
To: ALDRICH Greg; STEVENS-SCHWENGER Joanie; LOTTRIDGE Helen; HALLOCK Stephanie
Cc: PEDERSEN Dick
Subject: RE: EQC Strategic Planning Session - Public Comments
Importance: High

I've added two more comments below:

-----Original Message-----

From: ALDRICH Greg
Sent: Thursday, October 11, 2007 2:58 PM
To: STEVENS-SCHWENGER Joanie; LOTTRIDGE Helen
Cc: PEDERSEN Dick
Subject: EQC Strategic Planning Session - Public Comments

I have called many of the folks that received my e-mail about the EQC meeting and the opportunity for public comment. In most cases, I left messages. So far, I have insights on only two groups:

- The four representatives from OEC, OR Toxics Alliance, OR Center for Environmental Health and Physicians for Social Responsibility will make a unified statement (they hope they may be able to get a little more time than just 5 minutes total for the four of them).
 - Jim Hill from Medford will be there to represent ACWA, along with Janet Gillaspie. Janet indicated Jim will focus on:
 - Water reuse
 - Toxics reductions, including better internal DEQ coordination on this topic
 - DEQ needs to be a leader and get out in front of the issues
 - Emphasis on better collaboration and cooperation.
 - Lisa Adatto from OBA will likely come and speak. OBA is still interested in the revised tax credits bill known as Environmental Enhancement Tax Credits. Also, may mention the desire that DEQ become more involved in greenhouse gas issues and other cutting edge topics such as greenhouse gas
-
- Jeremiah Baumann, of Environment Oregon (former OSPIRG) will likely speak. He was not clear on what he would say. He tends to be very supportive of DEQ.

Greg

Gregory K. Aldrich
 Government Relations Manager
 503-229-6345
aldrich.greg@deq.state.or.us

10/15/2007

State of Oregon

Department of Environmental Quality

Memorandum

To: Environmental Quality Commission

Date: October 17, 2007

From: Stephanie Hallock, Director

Subject: Director's Dialogue

TopOff

You may have heard about the "TopOff" emergency preparedness exercise that is taking place in Portland, Phoenix and Guam this week. The federal Office of Homeland Security is sponsoring the exercise in which state, city and county staff respond to the detonation of a dirty bomb.

Oregon DEQ is participating in TOPOFF this week. TOPOFF is a congressionally-mandated exercise to test a state's ability to prevent, respond to, and recover from "incidents of national significance" and how well local, state and federal officials work together in a unified command structure to deal with a major natural disaster or terrorist event. This particular TOPOFF involves the assumed explosion yesterday of radiological dispersion devices--aka "dirty bomb"--in three locations: Guam, Phoenix and Portland. We probably wouldn't be meeting today in this location if this was a real event!

Major players in the exercise include local emergency responders from the City of Portland and other jurisdictions, Multnomah County Public Health, State Public Health, State Office of Emergency Management, U.S. Department of Homeland Security, U.S. Department of Energy, EPA, and many others. The private sector--hospitals for example--are also heavily involved in the exercise.

Although DEQ does not have regulatory responsibility for radiological events, and therefore is playing a smaller role compared to the major players, we are participating in the Unified Command Structure, State Emergency Operations Center, and Public Affairs components of the exercise. As part of exercising our internal emergency preparedness capability, staff is keeping management informed and involved as the exercise proceeds.

Chem Waste

The Chem Waste permit, which you issued in August 2006 has been a subject of recent media coverage, so I thought you would be interested in a short update.

The conditions in the permit renewal that you approved are the same as those in the original permit and include the following:

- Analysis of potential water movement from the Selah rock formation to the Columbia River basalt group.
- Proposed area designations for ground water monitoring
- Groundwater monitoring program design.

007

- Demonstration report: development of site wide alternate concentration limits (ACL) in groundwater.
- Beneficial water use determination for the facility.
- Updated hydrogeologic conceptual site model report.
- Representative sampling methods evaluation.
- Phase 3 well integrity evaluation.

This permit will be in effect until August 2016.

Response to Larry Tuttle's Petition

At our last EQC meeting, Larry Tuttle and the Center for Environmental Equity presented a petition requesting DEQ to reconsider an August 2002 denial of the Center for Environmental Equity's request to require permits for acid mine drainage and heavy metal discharges into the Rogue River at the abandoned Alameda Mine. The petition also requested reconsideration of the decision not to issue a notice of non-compliance to the federal Bureau of Land Management for failure to apply and secure permits for the site.

Our staff is in the process of researching this issue and has written to Mr. Tuttle that we will respond as soon as our research is complete.

Field Burning

Since the field burning discussion at the August EQC meeting, DEQ has developed an initial funding estimate to study the health effects and the acceptable alternatives to field burning. DEQ's budget request for the combined studies would be \$300,000; \$200,000 for the health study and \$100,000 for the alternatives study. The Oregon Department of Agriculture has \$90,000 available through the alternatives to field burning research fiscal assistance program, to direct to the alternatives assessment. The first opportunity to secure funding would be the February 2008 special session. The process for special session funding requests has not been finalized but we have notified the Governor's Office of the planned request. If funding is approved during the 2008 session, it may be possible to complete the studies in time for the Commission to make findings before the 2008 field burning season.

Lakeside Landfill

At the August meeting, I provided you with an update about Lakeside Landfill, which had been in the subject of a Willamette Week article and several Oregonian articles and editorial. At that time Lakeside was in the process of submitting a permit renewal with the Department.

Since then, DEQ has received an application from Lakeside for a renewal and closure permit. We determined that the application was incomplete and requested more information from the owner. While we have received some information, it is not all that we asked for. The balance was due October 15th. Once we make a completeness determination, we will begin our public process. The permit expires in January of 2008, so hope to issue a new permit before then.

In particular, DEQ is requiring:

- Improved operational procedures to better monitor the types of waste entering the landfill.
- An evaluation of the closed portions of the landfill to determine if the cover is effectively minimizing leachate generation and to determine if additional methane gas monitoring and controls are necessary to protect public safety.
- An updated closure plan to ensure that future portions of the landfill are closed in a way that prevents future environmental problems.

DEQ is requiring Lakeside to monitor from four wells installed in September at Lakeside Reclamation Landfill to evaluate how much water is entering waste, identify if gas is being generated, and evaluate the performance of the tree cover that has been used over the closed portions of the landfill.

Data regarding gas concentration and pressure will be used to determine quantities of gas being generated. Initial data suggests that pressure in the landfill is low, so gas is most likely not moving offsite. Initial concentrations are high enough that some system of gas control may be needed. DEQ is requiring that monitoring be done every two weeks for the first two months, then monthly for six months and then quarterly for six months. DEQ intends to use this data to identify if more specific gas monitoring is needed around the perimeters of the landfill and to determine what types of gas collection and control will be needed.

Neighbors were very concerned with the gas levels identified in the first round of sampling. Because of neighbor concerns, DEQ went to neighboring properties last week to sample for methane and found no methane in soil or in basements or other confined spaces of the adjacent neighbors to the landfill.

The preliminary results should not be used to make any assumptions about gas leaving the landfill or the potential for explosions on or near the landfill. These results are typical values for landfill gas. These levels are not harmful to the landfill workers because they are not in a confined space and methane is not explosive in the open atmosphere.

Future action may include additional gas monitoring, including installation of gas monitors at the edges of the landfill and capture and control of gas.

If at any time DEQ considers conditions at the landfill to be an imminent safety threat, we will take immediate action, and notify all interested parties.

Regarding the remedial investigation that is ongoing at the landfill, DEQ still expects that to be completed by the end of the year. If a clean up action is required, DEQ may modify the solid waste permit or require clean up through an order under the clean up program authorities.

We are continuing to work with Lakeside, Washington County, Metro, Congressman Wu's office, and the neighbors, who will be here to address you later this morning during

the public comment period, to ensure that the landfill is in compliance with solid waste requirements while operational, and that there will be no adverse environmental impacts after the landfill closes.

Bonneville Columbia Cleanup

Currently, the US Army Corps of Engineers is working on a one-month cleanup of the PCB-tainted sediment. I've attached an Oregonian article that describes the cleanup effort.

Columbia River Total Dissolved Gas Waiver Adaptive Management Update

As you recall, your June 2007 Order approved the U.S Army Corps of Engineers' request for a waiver to the state's total dissolved gas water quality standard on the Lower Columbia River and directed the department to assemble an adaptive management team to evaluate the location of forebay and tailrace monitors, the use of forebay monitors, and approve changes to the method for calculating total dissolved gas.

To move forward with this task, we met with the Oregon Department of Fish and Wildlife (ODFW) and agreed that the Adaptive Management Team (AMT) will act as a consultative group to provide technical information to the states of Oregon and Washington. DEQ and State of Washington Ecology representative will make joint decisions affecting TMDL compliance, monitoring locations, and implementation.

AMT members will include representatives of :

- State of Oregon (ODEQ co-chair)
- State of Washington (Ecology co-chair)
- NOAA Fisheries
- U.S. Army Corps of Engineers
- Save our Wild Salmon
- Colville Tribe
- Columbia River Inter-Tribal Fish Commission
- Public Utility District
- EPA
- North West River Partners
- U.S. Fish and Wildlife Service

The first meeting of the AMT is scheduled October 25 in Portland. AMT meetings will be open to the public and a meeting summary will be posted to a public website after each AMT meeting. The website will be hosted by Washington Department of Ecology. The target date is April 2008 to finalize decisions, after a 30-day public comment period beginning in February 2008.

Bottle Bill Task Force

As we discussed with the Commission previously, the 2007 legislature passed Senate Bill 707, which adds water bottles to Oregon's bottle bill, beginning January 1, 2009. The bill also created the Bottle Bill Task Force to make recommendations to the 2009 legislature on all aspects of the state's beverage container law. Specifically, the task force will

address establishing and paying for redemption centers, expanding the list of beverages covered by the law, increasing the refund value, limiting redemption of containers purchased out-of-state, and collecting and utilizing the unredeemed deposits. The task force consists of two legislators and seven members appointed by the Governor, and plans to meet regularly during the next 15 months. A news release about the task force is attached for your information.

Formosa Abandoned Mine Project Update

In September the EPA listed the Formosa Mine, near Roseburg, Oregon on the Superfund list. The Formosa mine site is a former copper, zinc and thorium mine. After mining operations ceased in the early 1990s, highly acidic storm-water from the mine became an ongoing source of contamination to the south fork of Middle Creek. Dissolved copper, zinc and other heavy metals are severely degrading aquatic habitat for fish and other stream life, including coastal steelhead trout and Oregon coastal Coho salmon. The former mine is located about ten miles south of Riddle, Oregon in rural Douglas County, Oregon.

DEQ declared the mine an orphan site in March 2000 had been working to cleanup the site since then. DEQ installed a pipeline system to divert acid mine drainage away from the headwaters of Middle Creek; delineated the nature and extent of contamination associated with the site; and prepared a feasibility study to identify and evaluate cleanup options. DEQ attempted to secure funding to implement a cleanup, but was unsuccessful. Recognizing that there are not sufficient state resources to clean up the mine - estimates range from \$10 to \$20 million - the Governor's Office and DEQ recommended that EPA list the site on the Superfund list so federal funds can be directed to this mine.

Presently, EPA is evaluating short-term actions to reduce contamination reaching the creeks. DEQ is continuing to work with EPA in the role of support agency to provide technical assistance and to ensure the EPA cleanup complies with state standards. EPA estimates that the clean up may take up to six years, and is researching two Japanese firms as potential responsible parties. An advantage of the Superfund listing is that EPA has the ability to reach outside US territory to go after responsible parties. DEQ has already spent \$1.7 million on the site and estimates that our investigation and feasibility study will reduce the cost and time it takes EPA to select and implement a cleanup.

Columbia River Gorge Air Project – Science Day Event

In 2000, the Columbia River Gorge Commission asked the Oregon and Washington air quality agencies to study air quality in the Gorge and develop a strategy that will help protect and enhance the scenic, cultural, natural, and recreational resources of the Gorge. The agencies have been working since 2001 to study air quality in the Gorge and build a better scientific understanding of the local and regional emission sources that influence visibility impairment on the Scenic Area.

On September 25, DEQ and the Southwest Clean Air Agency (SWCAA) held a workshop to discuss the findings of a five-year technical study of visibility in the Columbia River Gorge Scenic Area. Approximately 50 people attended the event, including representatives of Friends of the Gorge, PGE, ConAgra, Yakama Nation, dairy

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industry, TransAlta, US Forest Service, and the media (Oregonian, The Columbian).

The main conclusions are

- Modeling information indicates that Gorge haze has remained steady and will likely show some improvement despite increasing growth pressures.
- For sources that can be controlled, the biggest area for improvement would be in the winter in the eastern part of the Gorge. However, there is no single dominant source that is responsible for haze and it will require a collection of actions over time to make progress toward haze reduction.
- The current scientific information is sound and provides enough information to initiate policy development.

That strategy will be developed over the next few months and will be presented to the Columbia River Gorge Commission for concurrence this spring (likely February or March 2008). From these conclusions DEQ and SWCAA will develop a strategy to reduce Gorge haze and gear up to host a public "Policy Day" event early in 2008 to discuss the draft strategy with stakeholders and the public before reporting to the Gorge Commission. The Gorge Strategy Document will chronicle the available science, list the existing state and federal emission reduction strategies to improve air quality regionally and highlight new initiatives to result in increased emission reduction.

The EQC will have a major decision making role in two key components of the strategy that will be presented to the Gorge Commission. In mid to late 2008, the EQC will consider rulemakings for "Best Available Retrofit Technology" (BART) and the next update of the Regional Haze (visibility) Plan. The BART rulemaking will involve the selection of appropriate emission control technology for PGE Boardman's coal-fired power plant to reduce visibility impairing pollution. We predict that this rulemaking will generate high public and stakeholder interest. The Commission will receive a full briefing on the BART and Regional Haze rules in 2008. Beyond these rulemakings, the Commission may want to review the policy approach being taken for improving air quality in the Gorge and discuss as needed with the Columbia River Gorge Commission.

For your information, all papers presented at the science day event are available on the DEQ web site by going to Air Quality, then Columbia Gorge, then Science Day.

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Greenhouse Gas Reporting Rule Advisory Committee

As you recall, this July Governor Kulongoski sent asked you to adopt a greenhouse gas reporting rule as soon as possible. I'm happy to report that DEQ, with assistance from the Department of Energy and the Public Utilities Commission, is moving ahead with this task. Today is the first meeting of the Greenhouse Gas Reporting Rule Advisory Committee. The Committee will make recommendations on who should report, how they report, methods for data collection, calculation and verification and other issues. Mark Reeve is Chair along with 16 committee members representing industry and the environment. Over the next two months, the group will participate in four all day meetings. We plan to bring the rule to the Commission in June 2008.

Ashgrove Cement Kiln

The Ash Grove Cement Kiln in Durkee, Oregon, is the only cement kiln in the state. It was constructed in 1977 and produces approximately 1,000,000 tons per year of cement. The plant uses locally-mined limestone in the cement making process. The limestone contains naturally occurring mercury which is released during the heating process in the kiln. This has resulted in Ash Grove being the largest emitter of mercury in Oregon at approximately 2,700 lbs. per year. There are currently no federal or state regulations that address mercury emissions from existing cement kilns, only new cement kilns are subject to federal mercury emission control regulations.

Ash Grove has voluntarily conducted extensive mercury emission source testing, with observation and review of the testing by DEQ. They have also spent over \$1 million to conduct a 6-week pilot study during April and May of 2007 at the facility to test the effectiveness of activated carbon injection and slipstream baghouse controls. No testing of this type and magnitude has been attempted by any other cement company in the country. They just released the results of this study and have presented it to the Department's "Ash Grove Mercury Reduction Advisory Committee."

The Advisory Committee is being chaired by former EQC Commissioner Mark Reeve and consists of 11 members representing persons from Baker County, Confederated Tribes of the Umatilla Indian Reservation, academia, Oregon Health Division, Northwest Environmental Defense Center, Columbia Riverkeepers, Ash Grove, and DEQ (ex-officio). Their task is to evaluate and comment on mercury control equipment, a reduction goal for mercury from exhaust gas, a timeline for installation of mercury controls, and requirements for testing, monitoring and reporting.

The committee met once on September 20th and is scheduled to meet for a tour of Ash Grove and a second (and last) meeting October 15th in Baker City. The product of the advisory committee will be a report to DEQ that summarizes comments, key discussions and recommendations by the committee. DEQ staff will draft the report in collaboration and review by the Chair.

DEQ will then draft a Mutual Agreement and Order with the Ash Grove Company, place the draft MAO on public notice, hold a public informational meeting and hearing in

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Baker City and Portland in mid-November. The schedule is to finalize and sign the MAO in mid-January.

Owens Corning

Owens Corning has submitted an application to DEQ for an air contaminant discharge program permit for a foam board facility in Gresham. The company has revised the manufacturing process to use hydrofluorocarbons and not hydrochlorofluorocarbons. The former are still greenhouse gas emissions, but not ozone depleters like the latter. Since DEQ doesn't regulate greenhouse gas emissions, we will only be evaluating the application on the basis of the pollutants we do regulate. The company has also submitted a life cycle analysis to support their claim, that over time, the energy efficiency aspects of their product will offset the emissions used in the manufacturing process. We are planning an extensive public involvement process to gather input.

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Chem Waste Q and A

Q: What areas could potentially be affected by contamination from the Chem Waste facility?

A. The area below the CW site it is described as the Columbia River Basalt Group (also referred to as "Formation"). Within the Columbia River Basalt Group or Formation is the following:

The Selah Aquifer is part of the Columbia River Basalt Group and is an extremely poor producing aquifer in the sand, clay and siltstone that sits above the Priest Rapid Basalt. The Selah aquifer is the first ground water encountered at the site and is approximately 120 - 200 feet below ground surface at the site. Ground water movement within the Selah aquifer is very slow- about 1 foot per year.

The Priest Rapids Aquifer is the next aquifer encountered and it is approximately 275 feet below the site and sits in the Priest Rapid Basalt Member of the Columbia River Basalt Group.

The Frenchman Springs Aquifer is below the Priest Rapid Aquifer and the Frenchman Springs Aquifer is approximately 300 to 400 feet below the site. The Frenchman Springs Aquifer sits in the Frenchman Springs Basalt Member of the Columbia River Basalt Group. The Frenchman Springs is the recognized aquifer for drinking and irrigation in the area.

Ground water contamination at the CW site is minimal and impacts only limited portions of the Selah Aquifer.

Q: Has there been any groundwater contamination from the Chem Waste facility?

A: The most likely source of GW contamination is from monitoring wells that have lost some of their integrity over the years (PVC joint casings separating, possible cracking) allowing contamination to enter a monitoring well. The site team has completed an extensive well integrity survey and will be proposing to remove and replace the most suspect wells within the monitoring program.

The contamination levels in the GW are such that they do not trigger mitigation measures at this time, however monitoring wells that are suspect will need to be removed and replaced where required. This action could be viewed as a mitigation measure, but it is required as a condition of maintaining a compliant monitoring program.

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Field Burning Q and A

How can the EQC stop field burning?

One of two ways:

Health effects findings – Statute authorizes the Commission to ban field burning in the Willamette Valley for a temporary period if it makes findings of fact that field burning contributes to extreme danger to public health or safety in the Willamette Valley and determines that the extreme danger constitutes an emergency.

Alternatives to field burning finding – Statute authorizes the Commission to reduce or eliminate the issuance of burn permits after holding public hearings if it makes findings of fact that “other reasonable and economically feasible, environmentally acceptable alternatives to the practice of annual open field burning have been developed.” The statute requires the findings to be made between January 1 and June 1 for that year’s burning season.

HEALTH EFFECTS

What information would the Commission need to make a Health effects finding?

- Information on the health effects of infrequent short-term exposure to high concentrations of fine particulate.
- Specific information about the health effects from field burning smoke exposures and how effects vary with the concentration, frequency and duration of exposure and the population exposed (e.g. asthmatics, elderly, and children).
- Assessment of the actual (Oregon) exposures from field burning to sensitive populations and how these exposures compare to exposures from other sources.
- If the information points to field burning as an extreme danger, does it constitute an emergency?

How would DEQ gather the information?

- Review of existing science in the literature (contractor).
- With help from the Health Division, access data gaps.
- Determine if or what additional research is necessary.

Budget for the research?

- \$200,000 – General Fund request for the 2008 special session.

ALTERNATIVES TO FIELD BURNING

How many acres can be burned each year according to statute?

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A maximum of 40,000 acres/year general purpose plus 25,000 acres/year for steep terrain and identified species.

What information would the Commission need to make the alternatives to field burning finding?

- Information on alternatives that are available.
- Information about the costs and environmental impacts of each alternative.

How would DEQ gather the information?

- DEQ would hire a contractor and with help from ODA and possibly the OSU Extension Service, take an in-depth look at who is doing what, where and why.
- Assessment of acres where alternatives are currently in use and the conditions under which they are used (e.g. soil type, terrain, sensitive receptors, species).
- Assessment of the growing conditions on acres where alternatives are not in use. Assessment would probably be field by field to look for opportunities to shift existing burned acres to alternatives.

Budget for research?

- \$100,000 -- General Fund request for the 2008 special session.
- \$90,000 - Oregon Department of Agriculture has this money available through the alternatives to field burning research fiscal assistance program. (This is a change. ODA originally planned to do a health effects study with this money but changed to an alternatives to burning study because the funding/study line up better.)

Funding timing/results timing?

- Funding in the 2008 special session -- earliest determination of "alternatives to burning" finding would be the 2009 burning season. The EQC must act between January and June 1, 2009 for the 2009 season.
- Funding in the 2009 session -- earliest determination of "alternatives to burning" finding would be the 2010 burning season. The EQC must act between January and June 1, 2010 for the 2010 season.

Bonneville cleanup targets PCBs

Columbia | Divers are removing tainted sediment inch by inch in the latest effort

THE ASSOCIATED PRESS

NORTH BONNEVILLE, Wash. — In 1969, Bonneville Dam workers disposed of three old electrical capacitors by simply shoving them into the Columbia River.

Now, almost four decades later, the U.S. Army Corps of Engineers is conducting a complex, costly and time-consuming cleanup of a potentially cancer-causing compound. The latest aspect of the cleanup began earlier this month, with divers armed with a 4-inch-diameter suction pipe removing PCB-tainted sediment inch by inch.

Huang & Associates Inc. of Elk Grove, Calif., landed the \$1.9 million contract. The corps expects it will take another month to finish removing sediment from hot spots of polychlorinated biphenyls

spanning a little less than an acre of river bottom.

The shoreline is adjacent to a landfill operated between 1942 and 1982.

Corps officials maintain the landfill was mainly used for household garbage generated by corps employees who lived at the dam, but they said some higher-level waste from operating the dam apparently went into the landfill. In 1999, workers surveying the shoreline for groundwater seepage spotted three electrical capacitors poking out of the river.

Each capacitor contained between 10 and 12 gallons of oil heavily laden with PCBs, said Mark Dasso, cleanup manager for the corps.

The corps pulled the junk out of the river shortly afterward, and now they're carefully scooping PCB-tainted mud out of the river bottom.

The muddy water is piped into a treatment system that removes PCBs through various types of filters. Ultimately, the filtered water is returned to the river.

The corps will conduct a long-term risk assessment at Bradford Island, looking for potential ways that the pollutant could affect fish and people who eat the fish.

Health authorities have already discovered crayfish in the mud with enough PCBs in their tissue to be disposed of as hazardous waste.

Rather than wait to develop a longer cleanup strategy, Col. Thomas O'Donovan, the corps' Portland district commander, pressed to get the hot spots out of the river as soon as possible.

"The idea is to get the worst of it out of the river while we do more study," Dasso said.

During a visit to Vancouver earlier this year, O'Donovan expressed his sense of personal responsibility for reversing the damage that his agency caused. The corps has so far spent \$7 million on the cleanup, and Dasso expects it will cost \$15 million by the time it's finished.

Theodore R. Kulongoski
Governor



NEWS RELEASE

October 11, 2007

Contact:

Patty Wentz, 503-378-6169

Kristina Edmunson, 503-378-5040

Rem Nivens, 503-378-6469

Governor Kulongoski Forms Bottle Bill Task Force

(Salem) —Governor Ted Kulongoski today announced the members of the Bottle Bill Task Force created by Senate Bill 707 in the 2007 legislative session. The bill expanded the refundable deposit on containers to include water and flavored water bottles. At the same time, the bill set up a task force to propose legislative concepts to improve the bottle bill system and increase recycling even further.

“Our work to reduce litter from Oregon’s roadsides and waterways is not done,” said Governor Kulongoski. “This task force brings excellent experience to the issue and I look forward to the ideas they will present.”

Governor Kulongoski appointed the following members to the committee:

Chair, John Kopetski (Pendleton)-Financial Advisor, Smith Barney, former chair of Government Standards and Practices Commission.

Steve Emery (Bend) – President and CEO, Earth2O, serves on Economic and Community Development Commission.

Steve Apotheke (Portland) - Senior Recycling Analyst at Metro.

Jerry Powell (Portland) – Publisher and Editor of Resource Recycling, a national recycling magazine.

Kelly Griffith (Lake Oswego) -Division President, Safeway.

Eric Forrest (Eugene)- Co-President, Willamette Beverage, an independent Pepsi distributor.

Suzanne Johannsen (Bend) – Financial Advisor at Ameriprise Financial, former Board Chair of recyclers association, former Bend City Councilor.

In addition to the Governor’s appointees, the legislature has appointed Senate President Peter Courtney and Representative Ben Cannon to the task force.

“Expanding Oregon’s Bottle Bill is the essence of what it means to be an Oregonian,” said Senate President Peter Courtney. “This task force will lead the way to further improvements in a law that is part of Oregon’s DNA and central to maintaining our clean and healthy way of life.”

“It’s an honor to be appointed to the Bottle Bill Task Force,” said Rep. Cannon. “The Bottle Bill has worked well for over 30 years and the update passed during the last session was an important step forward. This task force offers more opportunity to make the Bottle Bill even better.”

The task force is expected to submit a report to the Governor by November 1, 2008.

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Greenhouse Gas Reporting Advisory Committee

On October 1, 2007, DEQ appointed an advisory committee to discuss issues and make recommendations on the details of an Oregon reporting system for greenhouse gas emissions.

Members

Chair: Mark Reeve, Reeve Kearns, and former chair of the Environmental Quality Commission.

Susan Anderson, City of Portland Office of Sustainable Development
Pam Barrow, Northwest Food Processors Association
Jeremiah Baumann, Environment Oregon
Steve Bicker, Northwest Natural
Kyle Davis, PacifiCorp
Angus Duncan, Bonneville Environmental Foundation
Jim Edelson, Oregon Interfaith Global Warming Campaign
Jason Eisdorfer, Citizens' Utility Board of Oregon
Lee Fortier, Dry Creek Landfill
Charles Gatchell, Nike
Suzanne Lacampagne, Associated Oregon Industries
Marv Lewallen, Weyerhaeuser
Scott Stewart, Intel
Tom O'Connor, Oregon Municipal Electric Utilities
Tom Wood, Stoel Rives
Tom Zelenka, Schnitzer Steel/Cascade Steel Rolling Mills

Meeting schedule

October 17, 2007

9:00 am - 4:00 pm

Location: DEQ Headquarters, Conference Room EQC A
811 SW 6th, 10th floor, Portland

November 1, 2007

9:00 am - 4:00 pm

Location: DEQ Headquarters, Conference Room EQC A
811 SW 6th, 10th floor, Portland

November 26, 2007

9:00 am - 4:00 pm

Location: DEQ Northwest Region, Conference Room A/B
2020 SW 4th Avenue, 4th floor, Portland

December 17, 2007

9:00 am - 4:00 pm

Location: DEQ Headquarters, Conference Room EQC A
811 SW 6th, 10th floor, Portland

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Notice of Information Meeting – Nov. 1, 2007
Notice of Public Hearing – Dec. 13, 2007
Public Comment Period begins Nov. 12, ends Dec. 21, 2007



State of Oregon
Department of
Environmental
Quality

Proposed Air Quality Permit for Owens Corning Foam Plant

The purpose of this notice is to inform you about the opportunity for public input associated with a new facility. On Sept. 24, DEQ received an Air Contaminant Discharge Permit (ACDP) application from Owens Corning to manufacture rigid polystyrene foam insulation boards in Gresham. There will be multiple opportunities for the public to provide input prior to drafting the permit and prior to its issuance. The schedule is as follows:

Oct. 2	Public notice issued
Nov. 1	Information meeting
Nov. 9	Draft permit and review report will be available; Public comment period begins
Dec. 13	Public hearing
Dec. 21	Public comment period ends at 5 p.m.

See below for meeting and hearing details.

DEQ's role:

The Oregon Department of Environmental Quality (DEQ) is responsible for protecting and enhancing Oregon's water and air quality, for cleaning up spills and releases of hazardous materials, and for managing the proper disposal of hazardous and solid wastes. One way DEQ does this is by requiring permits for certain activities. DEQ issues permits to regulate the type and amount of air emissions at a regulated facility.

Information meeting and hearing details:

The Nov. 1 information meeting and the Dec. 13 hearing will be held at the same location, both will begin at 6:30 p.m. Location:

Centennial High School
Community Room
3505 S.E. 182nd Ave.
Gresham, Oregon

At the information meeting about the permit application, there will be an opportunity to ask

questions and provide comments. DEQ will note the comments and consider them while drafting the permit.

At the public hearing for the draft permit, DEQ will hold an information session followed by a formal hearing to receive oral comments.

Draft permit and information availability:

The draft permit and review report will be available to the public no later than noon on Friday, Nov. 9. See the information below for access to these documents.

View on-line information including application materials concerning this proposed facility by clicking the following link(s):

Application

or type in the following address:
<add link to AQ permits page>

You can review hard copies of the draft permit and related documents at the Gresham Public Library located at 385 NW Miller Avenue, Gresham, and the nearest DEQ offices in Portland and Gresham. For an appointment, call Susan Curry at (503) 229-5554 in Portland or Susan Patterson at (503) 667-8414 x55022 in Gresham.

Written Comments due:

Written comments are due by 5 p.m., Friday, Dec. 21, 2007.

Where can I send my comments?

Catherine Blaine, Permits Coordinator
503-229-5582 or 1-800-452-4011
DEQ Northwest Region Office
2020 SW Fourth Avenue, Suite 400
Portland, OR 97201-4987
Fax: 503-229-6945
E-mail: blaine.catherine@deq.state.or.us

Where can I get technical information?

George Davis, Environmental Engineer
503-229-5534 or 1-800-452-4011
DEQ-Northwest Region

Northwest Region Air Quality

2020 S.W. Fourth Ave.
Suite 400
Portland, OR 97201-4987
Phone: (503) 229-5263
(800) 452-4011

Fax: (503) 229-6945

Contact: George Davis

E-mail:

davis.george@deq.state.or.us

www.oregon.gov/DEQ

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2020 SW Fourth Avenue, Suite 400
Portland, OR 97201-4987
Fax: 503-229-6945
E-mail: davis.george@deq.state.or.us

Who is the applicant?

Owens Corning Insulation Systems, LLC

Where is the facility located?

18456 N.E. Wilkes Road
Gresham, Oregon 97230

Who might have an interest?

People who work, live, and recreate in the area.

What does Owens Corning do that affects air quality?

Owens Corning proposes to manufacture rigid polystyrene foam insulation boards, known as XPS (extruded polystyrene) foam. The foam boards are made by mixing molten polystyrene plastic with a liquid "blowing agent", and then extruding the mixture (forcing it through an opening of a specific size). During extrusion, the blowing agent changes from liquid to gas, which forms the cells (bubbles) in the foam.

The blowing agent that Owens Corning proposes to use is a blend of HFCs (hydrofluorocarbons, compounds made up of carbon, hydrogen and fluorine). The HFCs that Owens Corning proposes to use are HFC-134a, HFC-143a, HFC-152a, HFC-245fa and HFC-365mfc. They are not volatile organic compounds (VOCs) or ozone depleting substances (ODSs) or hazardous air pollutants (HAPs). They are greenhouse gases (GHGs), but neither Oregon DEQ nor the US Environmental Protection Agency currently regulates for these compounds. Because these HFCs are not regulated air pollutants, the permit will not have any limits or conditions that pertain to them.

After the foam hardens, it is cut into boards. Foam boards that do not meet quality standards and other foam scraps are ground up and recycled. Cutting and grinding create foam dust. Most of the foam dust is captured and recycled into the process. The dust that is not captured and recycled is largely controlled by a baghouse filter, but a small amount is emitted.

Owens-Corning also proposes to recycle polystyrene foam made by other manufacturers. Some of this foam is made using blowing agents that are classified as VOCs, so the foam recycling process may release VOCs into the air.

Owens Corning will release Particulate Matter (PM), Carbon Monoxide (CO), Nitrogen Oxide (NOx), Sulfur Dioxide (SO₂), Volatile Organic

Compounds (VOC), and Hazardous Air Pollutants to the air. A permit is required because of the amount of dust (particulate matter, PM) and VOC that will be released to the air.

What legal requirements apply?

Oregon Administrative Rule 340-216-0020, Table 1, requires facilities that have emissions of 10 or more tons per year of any single criteria air pollutant before control to obtain a permit.

Oregon Revised Statutes (ORS) 468A.040 and Oregon Administrative Rules (OAR) Chapter 340 Division 216 and 218 give DEQ the authority to issue permits. OAR Chapter 340 Divisions 200 through 268 contains all pertinent rules that govern the air quality program.

How does DEQ determine what requirements go in the permit?

Various federal and state regulations apply to a facility depending on the type of industry, the type and amount of pollutants emitted, and the location of the facility. All applicable regulations must be contained in the permit, including the appropriate recordkeeping, monitoring, and reporting requirements to ensure compliance with these rules.

Meeting air quality standards

Air quality in the Greater Portland Metropolitan Area meets the National Ambient Air Quality Standards (NAAQS) established by the US Environmental Protection Agency (EPA) to protect public health. An initial review of Owens-Corning's application by DEQ indicates the air emissions from the XPS foam plant will not result in a violation of those standards. DEQ is responsible for establishing permit emissions limits that do not violate air quality standards.

What pollutants are considered in determining permitted limits?

EPA and DEQ use six key pollutants as indicators of air quality. These are known as "criteria pollutants" and are compounds that, if inhaled, may lead to health effects that generally aggravate cardiovascular and respiratory disease. If the amount of criteria pollutants emitted is greater than a regulated minimum, then emission limits are established.

Hazardous air pollutants (HAPs) are compounds that, if inhaled, may pose a threat of adverse human health or environmental effects, including, for example, acute or chronic toxicity, cancer, birth defects, or reproductive dysfunction. The mere presence of these pollutants in the air does not necessarily mean that a health risk exists. EPA has established a

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list of 187 compounds that are classified and regulated as HAPs. If the amount of HAPs released is greater than a regulated minimum level, then additional requirements may also apply.

For more information about criteria pollutants, go to:

www.deq.state.or.us/air/forms/2005ar/2005ar.pdf

For more information about hazardous air pollutants, go to:

www.epa.gov/ttn/atw/hlthef/hapindex.html

Compliance history:

DEQ has issued notices of noncompliance with air quality permits to two Owens Corning facilities in NW Portland and one for constructing a new facility without a permit.

Owens Corning Trumbull has a Standard ACDP (#26-1815) and was last inspected in 2005. DEQ issued Notices of Noncompliance to this facility in 1999, 2000, and 2005 for failing to comply with various monitoring and reporting requirements. DEQ did not assess any civil penalties. This facility is currently in compliance.

Owens Corning Linnton has a Title V permit (#26-3067) and was last inspected in 2007. DEQ issued Notices of Noncompliance to this facility in 1998 for failing to report emissions and 2000 for failing to submit a timely renewal application. In 2000, DEQ assessed a civil penalty for that violation and the company paid the fine. This facility is currently in compliance.

DEQ issued a Notice of Noncompliance in 2005 for constructing a new facility in Gresham without a permit (permit application #26-0138). DEQ did not assess a civil penalty. Owens Corning withdrew this permit application in 2006.

What other sources of air pollutants are in the vicinity of the facility?

Various sources emit similar air pollutants. EPA and DEQ split up the sources into 3 categories: point, area, and mobile sources. Point sources are primarily large industrial facilities. Area sources are smaller than point sources and

include backyard burning, woodstoves, consumer products, gasoline stations, etc. Mobile sources include cars, trucks, airplanes, ships, railroads, and construction equipment.

There are no other known manufacturers of XPS foam in the area.

What other information about this company is related to this permit?

In 2005, Owens Corning proposed to manufacture a similar product using hydrochlorofluorocarbons (HCFCs) at this same location in Gresham and withdrew their permit application in 2006. The current application does not request the use of this chemical.

Permit expiration

Based on its emissions estimates, Owens Corning is applying for a Simple Air Contaminant Discharge Permit (ACDP). Oregon law requires facilities with a Simple ACDP to renew that permit every five years.

What happens after the hearing?

After the formal comment period closes on December 21, 2007, DEQ will consider and provide responses to all comments received. DEQ may modify provisions in the proposed permit, but the permit writers can only modify conditions of the permit in accordance with the rules and statutes under the authority of DEQ. Participation in the rulemaking or the legislative process is the only way to change the rules or statutes. Ultimately, if a facility meets all legal requirements, DEQ will issue the facility's air quality permit.

Accessibility information

DEQ is committed to accommodating people with disabilities at our hearings. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications & Outreach (503) 229-5696 or toll free in Oregon at (800) 452-4011; fax to 503-229-6762; or e-mail to deqinfo@deq.state.or.us.

People with hearing impairments may call DEQ's TTY number, 503-229-5471.

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DEQ DCI

Fact Sheet: Proposed Air Quality Permit for Owens Corning Foam Plant



State of Oregon
Department of
Environmental
Quality

In September, 2007, the Department of Environmental Quality (DEQ) received an Air Contaminant Discharge Permit (ACDP) application from Owens Corning to manufacture rigid extruded polystyrene (XPS) insulating foam boards at a new plant in Gresham. Owens Corning has similar manufacturing facilities in Ohio and Illinois.

Owens Corning previously submitted two permit applications for the proposed XPS foam plant. Both were subsequently withdrawn. The first application was submitted in August, 2004, and withdrawn in May, 2005. The second application was submitted in May, 2005, and withdrawn in late 2005 or early 2006.

XPS foam board is manufactured by extruding a mixture of molten polystyrene and a liquid "blowing agent." During the extrusion process the liquid blowing agent vaporizes, forming the bubbles (cells) in the foam.

The extrusion process forms a continuous foam board, which is then cut and trimmed to size. Finished boards that do not pass quality control are ground up and the polystyrene is reused. Cutting, trimming and grinding breaks open the cells in the foam, releasing the blowing agent.

These operations are the main source of blowing agent emissions during the manufacturing process. Based on information from the first two permit applications, DEQ believes that approximately 15 to 25 percent of the blowing agent is emitted during manufacturing operations.

In the first two permit applications Owens Corning proposed to use HCFC-142b as the blowing agent. In the current permit application, Owens Corning proposes to use a blend of five HFCs: HFC-134a, HFC-143a, HFC-152a, HFC-245fa and HFC-365mfc (HCFC-142b will not be used). Information about these compounds is summarized in the following table.

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	Proposed in the 2004 and 2005 permit applications (both withdrawn)	Proposed in the current permit application
Compounds Name(s)	HCFC-142b	HFC-134a, HFC-143a, HFC-152a, HFC-245fa and HFC-365mfc
Type of Compound(s)	HCFC (hydrochlorofluorocarbon), an organic compound comprised of carbon, hydrogen, fluorine and chlorine	HFC (hydrofluorocarbon), an organic compound comprised of carbon, hydrogen, and fluorine
Toxicity	Low, not considered a threat to workers under normal exposure	Low, not considered a threat to workers under normal exposure
Ozone Depleting Substance(s) ?	Yes, Class II	No
Regulated Air Pollutant(s) ?	Yes	No
Greenhouse Gas(es) ?	Yes	Yes
Global Warming Potential(s) – 100 year time horizon	HCFC-142b: 2400	HFC-134a: 1,300 HFC-143a: 4,300 HFC-152a: 120 HFC-245fa: 950 HFC-365mfc: 890
Global Warming Potential(s) – 20 year time horizon	HCFC-142b: 4200	HFC-134a: 3,400 HFC-143a: 5,000 HFC-152a: 460 HFC-245fa: not found HFC-365mfc: not found

The major difference between the first two permit applications and the current permit application is that HCFC-142b is a regulated air pollutant (because it is a Class II Ozone Depleting Substance), while HFC-134a, HFC-143a, HFC-152a, HFC-245fa and HFC-365mfc are not regulated air pollutants.

In the first two permit applications, detailed information was required about HCFC-142b emissions because it is a regulated air pollutant. In the current application, other than identifying the HFCs that will be used, no information is required because the proposed HFCs are not regulated air pollutants. However, Owens Corning submitted a Life Cycle Analysis (LCA) with the permit application; the LCA states that the maximum expected use of HFCs is 1139 tons per year.

Because the proposed HFCs are not regulated air pollutants, DEQ has no regulations that apply to them, and DEQ cannot set limits on HFC emissions.

023

Major areas of concern with the first two permit applications were:

1. Increased incidence of skin cancer because HCFC-142b damages the ozone layer.
2. Increased global warming because HCFC-142b is a powerful greenhouse gas.
3. Emissions of styrene (a Hazardous Air Pollutant (HAP)) from use of polystyrene were not accounted for in the first permit application.

HFCs are not Ozone Depleting Substances, so they will not damage the ozone layer and will not increase the incidence of skin cancer.

Styrene (and other HAP) emissions have been quantified in the current permit application and total approximately 1 ton per year.

The major area of concern with the current permit application is expected to be global warming.

Carbon dioxide is the most important greenhouse gas (GHG), and is the standard to which other greenhouse gases are compared. By definition, carbon dioxide has a Global Warming Potential (GWP) of one (1). A GHG with a GWP of 10 has a global warming effect that is 10 times greater than the effect of carbon dioxide (i.e. 1 ton of a substance with a GWP of 10 is equivalent to 10 tons of carbon dioxide, expressed as 10 tons CO₂ equivalent).

Owens Corning has not divulged the exact blend of HFCs that they propose to use, so DEQ cannot closely estimate the GHG emissions from the proposed XPS foam plant. However, it is possible to estimate the possible range of GHG emissions from information given elsewhere in this fact sheet.

The maximum annual emissions of HFC = 1139 tons per year.

The assumed rate of emissions during the manufacturing process is 25 percent.

The lowest GWP of the proposed HFCs is 460 (HFC-152a, 20 year timeline).

The highest GWP of the proposed HFCs is 5,000 (HFC-143a, 20 year timeline).

Using this information, it is possible to estimate the possible range of GHG emissions from the proposed Owens Corning XPS foam plant.

$1139 \text{ ton/yr} \times 0.25 \text{ ton emitted/ton used} \times 460 \text{ GWP} = 131,000 \text{ ton/yr CO}_2 \text{ equivalent}$

$1139 \text{ ton/yr} \times 0.25 \text{ ton emitted/ton used} \times 5,000 \text{ GWP} = 1,424,000 \text{ ton/yr CO}_2 \text{ equivalent}$

The possible range of GHG emissions from the manufacturing process is 131,000 to 1,424,000 tons per year CO₂ equivalent. It should be noted that the blowing agent continues to slowly seep out of the foam during its usable lifetime, and the remainder of the blowing agent is released when the foam's useful life is over (assuming it is crushed for disposal or reuse).

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Comparison of proposed Owens Corning emissions with county, state, US and worldwide GHG emissions.

	tons per year CO ₂ equivalent
Owens Corning proposed XPS plant	131,000 to 1,424,000
Multnomah County	9,000,000
State of Oregon	60,000,000
United States	7,750,000,000
Worldwide	28,000,000,000

US GHG Emissions, year 2000, in CO₂ equivalent per year

	tons
Total	7,750,000,000
CO ₂	6,424,000,000
Methane	740,000,000
N ₂ O	447,000,000
HFCs, PFCs, SF ₆	138,000,000

History of changes to the XPS foam blowing agents

		ODP *	GWP-20	GWP-100
1940s – 1960s methyl chloride	First XPS foams developed using methyl chloride	0.2	25	not found
1960s -1990s CFC-12	methyl chloride replaced by CFC-12	1.0	7900	8500
1990s – 2010 HCFC-142b	CFC-12 replaced by HCFC-142b	0.06	4200	2400
2010 – future HFCs	HCFC-142b will be replaced by HFCs (most likely)	0	up to 5000	up to 4300

* ODP stands for ozone depleting potential. Note that the blowing agent changes from CFC-12 to HCFC-142b to HFCs have been driven by regulations that require the phase-out of ozone depleting substances.

Contact Information

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025

EQC Strategic Planning Discussion 10/18/07
Remarks by DEQ Director, Stephanie Hallock

Today's agenda is dedicated to a conversation about where DEQ has been, where we are now, and where we want to go.

- With our strategic directions in mind, we would like to address the question: what are Oregon's environmental priorities and what role should DEQ play?
- We have invited our partners and stakeholders including Elin Miller, administrator of EPA Region 10, Mark Reeve, former chair of the Commission, members of the environmental community, the business community, municipal government, and the Tribes, to provide comment, insight, and perspectives on this question.
- Mike Carrier, the Governor's Natural Resource Policy Advisor, is here this morning to share his perspectives.
- In addition to these viewpoints and reflections, we are going to take a few hours this afternoon to explore DEQ's core work and responsibilities.
- This will be an time for you and our audience to become better acquainted with the work DEQ staff must do every day, what our science lab and monitoring activities are telling us about the environment, the interplay of our daily work and our role in the community, our work with local communities in a number of efforts, and an update on our legislative mandates.
- We are looking for your guidance and help in weaving these perspectives, viewpoints, responsibilities, mandates and hopes into the fabric of our strategic directions. The overall goal is to define DEQ's purpose and role while considering our core regulatory work and needed initiatives.
- We have set aside the last hour of the day for a discussion of our impressions, and a recap of what we heard throughout the day. This evening we have scheduled an informal dinner for you with the Executive Team.
- Tomorrow we'll conclude with an open discussion about our future direction.
- I'd like to thank you for investing your time in a three day meeting. This discussion is critical, as we will soon begin to put together our legislative and budget priorities for the 2009 session and we, of course, want those to reflect the future strategic priorities of the agency,

- I'd also like to thank Helen Lottridge and Joanie Stevens-Schwenger for their help in putting together this agenda. I'd also like to send good wishes to Patti Seastrom who was to help facilitate our discussions, but is home recuperating from an automobile accident.

Stephanie's reflections

Next month, somewhere around Election Day, I will complete seven years as Director of DEQ. This past August marked my 19 year anniversary with the agency. I'd like to take a few minutes to reflect on "where we have been" and what lies ahead.

When I became Director, the agency did not have a clear set of strategic priorities. Over the years we have shaped and refined those priorities into the current four you adopted in 2006: promoting sustainable practices; improving Oregon's air and water; protecting people and the environment from toxics; involving Oregonians in solving environmental problems.

It has been a challenge to deliver on these priorities and to fulfill other mandates because of budget cuts, but in 2007 the Governor and the legislature restored funding which will help the agency rebuild what has been lost. We even got some new mandates, such as the bottle bill and electronic waste, and new resources for some programs, like stormwater and UIC.

You will hear more about funding and resource realities and legislative expectations this afternoon but it is important to note that DEQ's budget and programs were downsized over years and it will take years to rebuild – both program capacity and staff morale.

Because we managed our resources wisely, DEQ did not have to lay off staff during the recession and budget reductions, but the heart and spirit of the agency were damaged and it will take time to heal and rebuild.

It will also take time to rebuild and enhance infrastructure needs such as easily accessible data, ability to do business on the web, recruitment and training of staff, and the need for more environmental monitoring, as well as the ability to communicate information to the public about the condition of the environment.

I am proud to say that even during the tough times, we had some notable accomplishments in achieving our strategic directions. Here are just a few examples:

- **We've improved Oregon's air and water while promoting the sustainable practices articulated in the strategic directions:**

- We worked with Senator Wyden's office and Congressman Blumenauer's office to successfully lobby the EPA to reduce benzene levels in Pacific NW gasoline.
 - The EQC adopted the OR Low Emission Vehicle (LEV) program to reduce greenhouse gas emissions from cars and trucks. When phased in, OR LEV will reduce greenhouse gas emissions from new vehicles by 30% and will also reduce air toxics and smog forming chemicals.
 - The West Coast Clean Diesel Initiative has upgraded engines on tugboats, garbage trucks, school buses, buses, and construction equipment. Idling emissions from truck stops and locomotive yards have been reduced. State and federal grant funding is available to reduce emissions and tax credits are available to encourage retrofits of high polluting engines or the purchase of new, cleaner engines.
 - Because of permit program streamlining, the air quality program has been able to avoid permit backlogs, even during the budget cuts.
 - The Water program has continued to complete TMDLs on schedule with the consent decree and have them approved by EPA, including the complex and controversial full-basin TMDL for the Willamette.
 - The Water program has also kept up with permit issuance, fulfilling commitments made to the regulated community through the Blue Ribbon Committee process.
 - Within DEQ, we used the remodeling of our headquarters to implement a number of suggestions from our internal sustainability team: elevator upgrades will reduce energy consumption, as will lighting upgrades – we have completed lighting efficiency upgrades in about half of our leased office space statewide.
-
- During the remodel we installed more on and off light switches in conference rooms and offices and improved the system of automatic lighting shutoff during non-business hours. The restrooms now have low flow toilets on all floors. Carpet is recycled and environmentally friendly, and recycled paint was used for accent walls.
 - In addition, the reconstructed State Office Building in Eugene that DEQ is moving into will have photovoltaic panels that will provide an estimated

15% of the energy for the building. A new state law requires 1.5% of construction costs to be dedicated to solar projects on state buildings.

▪ **We are reducing toxics in the environment**

- The Commission adopted rules to reduce mercury emissions by 90 percent - the largest reduction possible for western coal - from the PGE Boardman coal-fired power plant and any new coal-fired plants that locate in Oregon.
- A task force has been set up under Mark Reeve and a plan developed for reducing mercury emissions from Ash Grove Cement.
- Pesticide Stewardship Partnerships were implemented in five watersheds. These partnerships use a voluntary, collaborative approach to identify problems and improve water quality associated with pesticide use in the Hood River, Walla Walla, Pudding/Molalla, Clackamas, and Yamhill watersheds.
- The Chemical Weapons stockpile at Umatilla continues to be safely destroyed – risk to Oregonians has been reduced by 91%.
- The EQC adopted health benchmarks for the most significant air toxics in Oregon. Benchmarks provide the framework for DEQ to implement one of the first and most unique programs in the country to address air toxics.
- We've cleaned up seventy-four contaminated properties statewide, including the site of Amy's Kitchen, the largest privately owned maker of organic frozen food in the United States, who invested \$17 million in a new facility and created over 320 new jobs in the Ashland area.
- We continue to work with property owners to eliminate sources of contamination in the Portland Harbor area of the Willamette River. With funding obtained by the Governor from EPA, construction was completed on the McCormick and Baxter Superfund site to control pollution to the river and free the property for productive reuse.
- With the Governor's assistance, attention is being paid to the problem of pollution from abandoned mines, resulting in the recent listing of the Formosa mine by EPA as a Superfund site.

- As you will hear this afternoon, the Water program continues to make a significant investment in the dialogue about fish consumption and an appropriate water quality standard for toxics.
 - We worked with EPA, Idaho and Washington to have protection of the Columbia River from toxics included as a priority in EPA's national strategic plan, and \$400,000 in federal funds for monitoring has been directed to that effort.
- **Involving Oregonians in Solving Environmental Problems**
- We have made over \$100 million dollars in low interest loans from the state revolving fund to help 40 public agencies and communities construct or upgrade facilities to manage wastewater.
 - Our drinking water source protection program provided assistance to 42 communities and public water providers and an assessment for all 2471 public water systems in the state.
 - We have provided DEQ-run household hazardous waste collection days in communities throughout the state, and we helped secure EPA grant funds to help local communities establish permanent household hazardous waste collection facilities.
 - We have also helped communities secure Brownfield cleanup grants.
 - We continue to invest in SOLV's "Down By the Riverside" cleanup activities
 - We partnered with Eugene and Metro in the "Healthy Lawns, Healthy Families" campaign
 - We are active participants in the Governor's Economic Revitalization Team which partners with Oregon Solutions and others on projects throughout the state such as development of wave energy and biofuels facilities.
 - We initiated many customer service efficiencies at Vehicle Inspection Stations including: accepting debit and credit cards; repairing vehicles owned by low income drivers using donations from Oregonians; experimenting with 24/7 self-service test lanes, and sending test information from a vehicle's on-board computer to DEQ over the Internet.

One of our proudest accomplishments has been to secure funding for a new lab in tight budget times. In partnership with the Department of Human Services (DHS) Public Health Laboratory, we are opening a new \$34 million state-of-the-art laboratory to be shared by DEQ and DHS. By the way, the lab has been built to Leadership in Energy and Environmental Design (LEED) standards. Move-in date is December 3.

As I look forward I see a number of challenges and opportunities for Oregon and DEQ:

- Natural Resources continues to be under-funded in the state's budget – less than 2 percent. DEQ's continued reliance on fees and cost recovery from the regulated community is a fact, not an option, unless another long-term stable funding mechanism is found.
- Oregon needs to take an integrated, comprehensive, cohesive approach to protecting water quality and ensuring an adequate supply of clean groundwater and surface water for drinking, recreation, industry and growing crops. Until we do, policy will be made permit-by-permit, issue-by-issue, 401 certification by 401 certification.
- Setting water quality standards has become an impossible task and a limitless resource drain. Unless the system for setting standards in this country is changed, all standards will ultimately be determined by the courts. Region 7 is experimenting with a Kaizen process that may or may not prove to be a successful model for setting standards differently.
- Development of alternative energy sources and alternative fuels are a priority for the Governor, and DEQ is being called on to invest significant resources in supporting the public dialogue, regulatory research and permitting for activities like LNG and wave energy. Some other DEQ work may have to be deferred to support these priorities.
- We are increasingly challenged by the complex toxic pollutants in our environment. More work needs to be done to determine where those pollutants are coming from, and what can be done to minimize their entry into the environment and to protect people from exposure. DEQ will be working with municipalities to implement SB 737 to assess toxic discharges from 52 large treatment plants. DEQ also received almost \$2 million from the legislature for water toxics monitoring of the Willamette.

- We need more monitoring and environmental data. DEQ's air and water monitoring equipment and networks are inadequate to provide comprehensive, current and robust data upon which to base policy and regulatory responses, especially to the problem of toxics in air and water, and Oregon needs to make a significant investment in this activity.
- To make significant future gains in maintaining a clean and healthy environment, we must tackle the political and practical consequences of addressing pollution in Oregon, toxic or otherwise, that comes from multiple small sources and/or sources that are minimally regulated and may respond better to incentives than regulation. Addressing non-point sources, which produce most of the pollution in Oregon, means re-thinking and re-focusing our regulatory and incentive-based strategies.
- As the Commission knows, we are in the process of addressing field burning, but the air pollution problem from particulate goes beyond field burning. EPA has tightened the particulate standard, and several communities in Oregon will be hard-pressed to meet it.
- We need to continue our work on climate change. The Governor's leadership on climate change resulted in passage of an impressive array of legislation in support of renewable, clean and efficient energy. As discussed earlier, our air quality program is active in a number of regional initiatives.
- We need to reduce waste and further encourage recycling. The expansion of the bottle bill and passing of the e-waste bill are good beginnings.
- Finally, we need to retain Oregon's legacy as an environmental leader. People want to live and work in Oregon because of our reputation for taking care of our naturally beautiful environment.

A strong environmental future for Oregon will be ensured by courageous leadership from the Commission, the Governor, the legislature, and all of the state's natural resource agencies, including DEQ. I am confident that a strong, engaged EQC, a terrific Executive Team, and the diverse, enthused workforce we are building at DEQ can and will meet these challenges under the new Director.

**Oregon Environmental Quality Commission Meeting
October 17, 18 and 19, 2007**

Oregon Convention Center
Room A-106
777 NE Martin Luther King Jr. Blvd.
Portland, Oregon

Wednesday, October 17—Regular meeting begins at 8:30

A. Preliminary Commission Business: Adoption of Minutes of the August 16, 2007 Meeting

The Commission will review, amend if necessary, and approve draft minutes of the August 16, 2007, Commission meeting.

Informational Item: Director's Dialogue

Stephanie Hallock will discuss current events and issues involving the Department.

B. Rule Adoption: Clarification of Proposed Orders in Contested Enforcement Cases

The Environmental Quality Commission (EQC) asked the Department of Environmental Quality (DEQ) to improve the clarity and completeness of contested case appeals coming before the EQC. Additionally, DEQ regulations governing the appeals process (Division 11) need updating, clarification, and correction of an error in order to make the contested case process more effective. The Department will recommend rule changes to accomplish these goals.

Jane Hickman and Sarah Greenley, Department of Environmental Quality

C. Rule Adoption: Oregon Air Contaminant Discharge Permit Fee Increase

The Air Contaminant Discharge Permit (ACDP) program contributes to the prevention of air pollution and helps reduce the number of unhealthy air days and the risks from air toxics. For example, the ACDP program limits the amount of pollution through permit requirements and prevents pollution through technical assistance. Oregon's (ACDP) program is part of Oregon's federally approved State Implementation Plan (SIP) to achieve national air quality standards. The proposed increase to ACDP fees is needed to effectively protect Oregon's air quality.

Andy Ginsburg and Andrea Curtis, Department of Environmental Quality

D. Adoption of Air Quality Permit Program Streamlining and Updates

Controlling the amount of pollution from industrial facilities through the Air Permitting program is an important part of the Department of Environmental Quality's strategy to maintain clean air. Air permits ensure that existing industrial facilities comply with state and federal pollution emission standards and require new facilities to have pollution controls to protect air quality. The program helps reduce the number of unhealthy air days and reduces risk from air toxics through timely and up-to-date permits, inspections and by assisting facilities in complying with the law. This rulemaking will clarify, simplify and correct Air

Permitting rules while maintaining equivalent environmental protection and stringency. The changes further streamline and better align the rules with requirements under the Federal Clean Air Act.

Andy Ginsburg and Sarah Armitage, Department of Environmental Quality

E. Rule Adoption: Asbestos Abatement Notification Filing Fee Increase

Asbestos is a hazardous air pollutant, a known carcinogen. There is no known safe level of exposure. DEQ regulates the abatement and disposal of asbestos-containing materials from any public or private building involving demolition, renovation, repair, construction and maintenance activities. The DEQ's asbestos program protects public health and the environment by reducing the amount of asbestos in the air.

The 2007 Oregon Legislature approved an increase in the Asbestos Abatement Notification Filing Fees. The fee increase will allow DEQ to maintain existing staff levels in the program and add one position to provide additional technical assistance and public education about the dangers posed by improper asbestos removal. These rules implement the legislatively adopted budget.

Andy Ginsburg and Ed Druback, Department of Environmental Quality

F. Commissioners' Reports

G. Public Forum

The Commission will provide members of the public an opportunity to speak to the Commission on environmental issues that are not part of the agenda, or for which there is otherwise no public testimony at 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.

H. Informational Item: Oregon Fish and Shellfish Consumption Rate Project Update

The purpose of this agenda topic is to:

1. Update the Environmental Quality Commission on the progress of the Oregon Fish and Shellfish Consumption Rate Project. The Department of Environmental Quality last updated the EQC on February 22, 2007
2. Update the EQC about the preliminary findings of the Human Health Focus Group
3. Get direction from the EQC on what information the EQC will need and be looking for as the project progresses
4. Provide an opportunity for members of the project's Core Group and members of the public to offer comments to the EQC

Lauri Aunan and Jordan Palmeri, Department of Environmental Quality

Thursday, October 18—Regular meeting begins at 9:30

The Commission will hold an Executive Session from 8:30 am to 9:30 am to consult with counsel concerning legal rights and duties regarding current or potential litigation against the DEQ. Only representatives of the media may attend and media representatives may not report on any deliberations during the session.¹

I. Discussion and Dialogue: DEQ Strategic Plan Check-In and Look to the Future

DEQ is completing year 2 of a 5-year strategic plan. The purpose of the EQC strategic planning discussion is to assess and evaluate our progress on the 5-year strategic plan, deepen the EQC/DEQ working relationship, enhance the commission and DEQ's ability to work collaboratively on environmental issues, and examine current DEQ assignments and science to inform future strategic directions. The discussion will focus on the over-arching question: "What are Oregon's environmental priorities and what role should DEQ play?"

Sub-agenda for Agenda Item I:

1. Open: Stephanie Hallock
2. Reflections and vision: Chairwoman Lynn Hampton, Director Stephanie Hallock, Mike Carrier, Natural Resources Policy Director for Governor Ted Kulongoski, Vice-Chairman Bill Blosser, Commissioner Ken Williamson, Commissioner Donald Dodson and Commissioner Judy Uherbelau.
3. Public comment (at approximately 10:45 a.m.)
4. Four perspectives on the current state of DEQ: regulatory responsibilities; the natural resource; community; legislature.
5. Impressions of the day

The Commissioners will join the DEQ Director and Executive Management Team at 6:00 for dinner at the Porto Terra Restaurant.

Friday, October 18—Regular meeting begins at 9:30

I. Continuation of the strategic planning discussion.

Sub-agenda for Agenda Item I, continued:

6. Discussion and conclusions
7. Recap

Adjourn

¹ This executive session will be held pursuant to ORS 192.660(1)(f), 192.660(1)(h) and ORS 192.660(1)(i).

Future Environmental Quality Commission meeting dates include:

December 13 – 14, 2007 in Portland
February 21 & 22, 2008
April 24 & 25, 2008
June 19 & 20, 2008
August 21 & 22, 2008
October 23 & 24, 2008
December 11 & 12, 2008

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 Janice Schreiber, Department of Environmental Quality, Director's Office, 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. Schreiber as soon as possible, but at least 48 hours in advance of the meeting.

Public Forum: The Commission will provide time in the meeting during the late morning of Wednesday, October 17, for members of the public to speak to the Commission. 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 the 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.

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.

Lynn Hampton, Chair

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

Ken Williamson, Commissioner

Ken Williamson is head of the School of Chemical, Biological and Environmental Engineering at Oregon State University. 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 reappointed in May, 2007. He lives in Corvallis. He represents the EQC on the Oregon Watershed Enhancement Board (OWEB).

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 recently closed her law practice 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.

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Stephanie Hallock, Director
Department of Environmental Quality
811 SW Sixth Avenue, Portland, OR 97204-1390
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E-mail: deq.info@deq.state.or.us

Helen Lottridge, Assistant to the Commission
Telephone: (503) 229-6725

DRAFT
EQC Meeting Agenda

Wednesday, October 17, Thursday, October 18 and Friday, October 19, 2007
Oregon Convention Center, 777 NE MLK Jr. Blvd., Portland

Wednesday, October 17--Regular Meeting

Time	Item	Topic	Notes	Comment
8:30 5 min	A	Preliminary Commission Business: Adoption of Minutes of the August 16-17, 2007 Meeting		
8:35 15 min		Director's Dialogue		Late addition to the agenda; combine Director's Dialogue with approval of minutes
8:50 25 min	B	Clarifying Proposed Orders in Contested Cases	Jane Hickman and Sarah Greenley presenting. This is the rule that EQC asked DEQ to write so that Commissioners could have more clear and complete information before having to make decisions on contested cases.	Steve Tegger, the presiding Administrative Law Judge commented against this idea during your meeting in Astoria. DEQ did not know he was going to be there. We have had subsequent conversations with ALJ, and do not expect them to appear at this meeting. Mr. Tegger is no longer an ALJ, and the new presiding ALJ does not oppose the idea.
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9:45 30 min	D	Air Quality Permit Process Improvement Project	Margaret Oliphant and Sarah Armitage	Phase II of Air Quality's ongoing continuous improvement efforts.
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10:30 30 min	E	Asbestos Permanent Rule	Margaret Oliphant and Ed Druback presenting.	Increases fees, per legislative action
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11:15 45 min	G	Regular Public Forum		
12:00 60 min		Lunch		

Time	Item	Topic	Notes	Comment
1:00 4 hours, including break	H	Fish Consumption Public Comment and Commission Discussion	Lauri Aunan and Jordan Palmeri are coordinating with Lynn Hampton	Panel discussion and public comment.
5:00		End of First Day		

Thursday, October 18—Strategic Planning

Purpose and Goal of Strategic Planning Check-in Discussion:

DEQ is completing year 2 of a 5-year strategic plan. The purpose of this month's strategic planning discussion is to assess and evaluate our progress the 5-year strategic plan, deepen the EQC/DEQ working relationship, enhance the commission and DEQ's ability to work collaboratively on environmental issues, and examine current DEQ assignments and science to inform future strategic directions.

Outcome:

The EQC and DEQ are confident that we know the direction in which the agency is going, and that our priorities and challenges are aligned. The Department knows what categories of budget and legislative proposals will be needed for the 2009 legislative session.

Please keep in mind the question: What are Oregon's environmental priorities and what role should DEQ play?

Patti Seastrom and Helen will record discussion points on flip charts. Patti will provide "loose facilitation" as needed.

Thursday, October 18, 2007—Strategic Planning

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9:45 45 min.	I	Reflections and Vision Stephanie Hallock, DEQ director Lynn Hampton; EQC chair	Stephanie's reflections on where we've been, where we are now and where we ought to go. Note that funding and work place of the future need more attention.	Helen and Joanie will call all Commissioners to let them know what to prepare for. Joanie or Dick will give Mike Carrier the same info. We'll give them a couple of questions to think about and ask them to be general.

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10:30 15 min		Break		
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4:00 15 min	I	Summary Facilitators: Patti Seastrom and Helen Lottridge	Recap of the day, and look ahead at tomorrow's discussion	Someone who is not attending the dinner will type up notes from the day's discussion for distribution Friday morning.
4:15		End of Day 2		
6:00		Dinner EQC and Executive Management Team		For staff, dinner is on "your own." Nina is not able to attend

Friday, October 19—Strategic Planning

Time	Item	Topics and speakers	Notes on presentations	Comment
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More?.....

**Oregon Environmental Quality Commission Meeting
October 17, 18 and 19, 2007**

Oregon Convention Center
Room A-106
777 NE Martin Luther King Jr. Blvd.
Portland, Oregon

Wednesday, October 17—Regular meeting begins at 8:30

A. Preliminary Commission Business: Adoption of Minutes of the August 16, 2007 Meeting

The Commission will review, amend if necessary, and approve draft minutes of the August 16, 2007, Commission meeting.

Informational Item: Director's Dialogue

Stephanie Hallock will discuss current events and issues involving the Department.

B. Rule Adoption: Clarification of Proposed Orders in Contested Enforcement Cases

The Environmental Quality Commission (EQC) asked the Department of Environmental Quality (DEQ) to improve the clarity and completeness of contested case appeals coming before the EQC. Additionally, DEQ regulations governing the appeals process (Division 11) need updating, clarification, and correction of an error in order to make the contested case process more effective. The Department will recommend rule changes to accomplish these goals.

Jane Hickman and Sarah Greenley, Department of Environmental Quality

C. Rule Adoption: Oregon Air Contaminant Discharge Permit Fee Increase

The Air Contaminant Discharge Permit (ACDP) program contributes to the prevention of air pollution and helps reduce the number of unhealthy air days and the risks from air toxics. For example, the ACDP program limits the amount of pollution through permit requirements and prevents pollution through technical assistance. Oregon's (ACDP) program is part of Oregon's federally approved State Implementation Plan (SIP) to achieve national air quality standards. The proposed increase to ACDP fees is needed to effectively protect Oregon's air quality.

Andy Ginsburg and Andrea Curtis, Department of Environmental Quality

D. Adoption of Air Quality Permit Program Streamlining and Updates

Controlling the amount of pollution from industrial facilities through the Air Permitting program is an important part of the Department of Environmental Quality's strategy to maintain clean air. Air permits ensure that existing industrial facilities comply with state and federal pollution emission standards and require new facilities to have pollution controls to protect air quality. The program helps reduce the number of unhealthy air days and reduces risk from air toxics through timely and up-to-date permits, inspections and by assisting facilities in complying with the law. This rulemaking will clarify, simplify and correct Air

Permitting rules while maintaining equivalent environmental protection and stringency. The changes further streamline and better align the rules with requirements under the Federal Clean Air Act.

Andy Ginsburg and Sarah Armitage, Department of Environmental Quality

E. Rule Adoption: Asbestos Abatement Notification Filing Fee Increase

Asbestos is a hazardous air pollutant, a known carcinogen. There is no known safe level of exposure. DEQ regulates the abatement and disposal of asbestos-containing materials from any public or private building involving demolition, renovation, repair, construction and maintenance activities. The DEQ's asbestos program protects public health and the environment by reducing the amount of asbestos in the air.

The 2007 Oregon Legislature approved an increase in the Asbestos Abatement Notification Filing Fees. The fee increase will allow DEQ to maintain existing staff levels in the program and add one position to provide additional technical assistance and public education about the dangers posed by improper asbestos removal. These rules implement the legislatively adopted budget.

Andy Ginsburg and Ed Druback, Department of Environmental Quality

F. Commissioners' Reports

G. Public Forum

The Commission will provide members of the public an opportunity to speak to the Commission on environmental issues that are not part of the agenda, or for which there is otherwise no public testimony at 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.

H. Informational Item: Oregon Fish and Shellfish Consumption Rate Project Update

The purpose of this agenda topic is to:

1. Update the Environmental Quality Commission on the progress of the Oregon Fish and Shellfish Consumption Rate Project. The Department of Environmental Quality last updated the EQC on February 22, 2007
2. Update the EQC about the preliminary findings of the Human Health Focus Group
3. Get direction from the EQC on what information the EQC will need and be looking for as the project progresses
4. Provide an opportunity for members of the project's Core Group and members of the public to offer comments to the EQC

Lauri Aunan and Jordan Palmeri, Department of Environmental Quality

Thursday, October 18—Regular meeting begins at 9:30

The Commission will hold an Executive Session from 8:30 am to 9:30 am to consult with counsel concerning legal rights and duties regarding current or potential litigation against the DEQ. Only representatives of the media may attend and media representatives may not report on any deliberations during the session.¹

I. Discussion and Dialogue: DEQ Strategic Plan Check-In and Look to the Future

DEQ is completing year 2 of a 5-year strategic plan. The purpose of the EQC strategic planning discussion is to assess and evaluate our progress on the 5-year strategic plan, deepen the EQC/DEQ working relationship, enhance the commission and DEQ's ability to work collaboratively on environmental issues, and examine current DEQ assignments and science to inform future strategic directions. The discussion will focus on the over-arching question: "What are Oregon's environmental priorities and what role should DEQ play?"

Sub-agenda for Agenda Item I:

1. Open: Stephanie Hallock
2. Reflections and vision: Chairwoman Lynn Hampton, Director Stephanie Hallock, Mike Carrier, Natural Resources Policy Director for Governor Ted Kulongoski, Vice-Chairman Bill Blosser, Commissioner Ken Williamson, Commissioner Donalda Dodson and Commissioner Judy Uherbelau.
3. Public comment (at approximately 10:45 a.m.)
4. Four perspectives on the current state of DEQ: regulatory responsibilities; the natural resource; community; legislature.
5. Impressions of the day

The Commissioners will join the DEQ Director and Executive Management Team at 6:00 for dinner at the Porto Terra Restaurant.

Friday, October 18—Regular meeting begins at 9:30

I. Continuation of the strategic planning discussion.

Sub-agenda for Agenda Item I, continued:

6. Discussion and conclusions
7. Recap

Adjourn

¹ This executive session will be held pursuant to ORS 192.660(1)(f), 192.660(1)(h) and ORS 192.660(1)(i).

Future Environmental Quality Commission meeting dates include:

December 13 – 14, 2007 in Portland
February 21 & 22, 2008
April 24 & 25, 2008
June 19 & 20, 2008
August 21 & 22, 2008
October 23 & 24, 2008
December 11 & 12, 2008

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 Janice Schreiber, Department of Environmental Quality, Director's Office, 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. Schreiber as soon as possible, but at least 48 hours in advance of the meeting.

Public Forum: The Commission will provide time in the meeting during the late morning of Wednesday, October 17, for members of the public to speak to the Commission. 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 the 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.

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.

Lynn Hampton, Chair

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

Ken Williamson, Commissioner

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Department of Environmental Quality

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Helen Lottridge, Assistant to the Commission

Telephone: (503) 229-6725

State of Oregon
Department of Environmental Quality

Memorandum

To: Environmental Quality Commissioners Date: 10/9/2007

From: Helen *Helen*

Subject: Agenda Item A for the October EQC Meeting

Commissioners, here are the draft minutes for the August 16, 2007 EQC meeting. You will review them in Agenda Item A on Wednesday, October 17.

EQC- (10) hole punch ^{no staples}
EMT- inter-office & Route 2 (13) - staples
STEPHANIE
DICK
MARK REEVE (REEVE + KEARNS)
MIKE CARRIER ~~MARK REEVE~~
Give copies to Helen + I'll send from.

HELEN
RECORDS
NO PUBLIC COPIES YET



State of Oregon

Department of Environmental Quality

Memorandum

To: Environmental Quality Commission

Date: October 17, 2007

From: Stephanie Hallock, Director

Subject: Director's Dialogue

TopOff

You may have heard about the "TopOff" emergency preparedness exercise that is taking place in Portland, Phoenix and Guam this week. The federal Office of Homeland Security is sponsoring the exercise in which state, city and county staff respond to the detonation of a dirty bomb.

Oregon DEQ is participating in TOPOFF this week. TOPOFF is a congressionally-mandated exercise to test a state's ability to prevent, respond to, and recover from "incidents of national significance" and how well local, state and federal officials work together in a unified command structure to deal with a major natural disaster or terrorist event. This particular TOPOFF involves the assumed explosion yesterday of radiological dispersion devices--aka "dirty bomb"--in three locations: Guam, Phoenix and Portland. We probably wouldn't be meeting today in this location if this was a real event!

Major players in the exercise include local emergency responders from the City of Portland and other jurisdictions, Multnomah County Public Health, State Public Health, State Office of Emergency Management, U.S. Department of Homeland Security, U.S. Department of Energy, EPA, and many others. The private sector--hospitals for example--are also heavily involved in the exercise.

Although DEQ does not have regulatory responsibility for radiological events, and therefore is playing a smaller role compared to the major players, we are participating in the Unified Command Structure, State Emergency Operations Center, and Public Affairs components of the exercise. As part of exercising our internal emergency preparedness capability, staff is keeping management informed and involved as the exercise proceeds.

Chem Waste

The Chem Waste permit, which you issued in August 2006 has been a subject of recent media coverage, so I thought you would be interested in a short update.

The conditions in the permit renewal that you approved are the same as those in the original permit and include the following:

- Analysis of potential water movement from the Selah rock formation to the Columbia River basalt group.
- Proposed area designations for ground water monitoring
- Groundwater monitoring program design.

001

- Demonstration report: development of site wide alternate concentration limits (ACL) in groundwater.
- Beneficial water use determination for the facility.
- Updated hydrogeologic conceptual site model report.
- Representative sampling methods evaluation.
- Phase 3 well integrity evaluation.

This permit will be in effect until August 2016.

Response to Larry Tuttle's Petition

At our last EQC meeting, Larry Tuttle and the Center for Environmental Equity presented a petition requesting DEQ to reconsider an August 2002 denial of the Center for Environmental Equity's request to require permits for acid mine drainage and heavy metal discharges into the Rogue River at the abandoned Alameda Mine. The petition also requested reconsideration of the decision not to issue a notice of non-compliance to the federal Bureau of Land Management for failure to apply and secure permits for the site.

Our staff is in the process of researching this issue and has written to Mr. Tuttle that we will respond as soon as our research is complete.

Field Burning

Since the field burning discussion at the August EQC meeting, DEQ has developed an initial funding estimate to study the health effects and the acceptable alternatives to field burning. DEQ's budget request for the combined studies would be \$300,000; \$200,000 for the health study and \$100,000 for the alternatives study. The Oregon Department of Agriculture has \$90,000 available through the alternatives to field burning research fiscal assistance program, to direct to the alternatives assessment. The first opportunity to secure funding would be the February 2008 special session. The process for special session funding requests has not been finalized but we have notified the Governor's Office of the planned request. If funding is approved during the 2008 session, it may be possible to complete the studies in time for the Commission to make findings before the 2008 field burning season.

Lakeside Landfill

At the August meeting, I provided you with an update about Lakeside Landfill, which had been in the subject of a Willamette Week article and several Oregonian articles and editorial. At that time Lakeside was in the process of submitting a permit renewal with the Department.

Since then, DEQ has received an application from Lakeside for a renewal and closure permit. We determined that the application was incomplete and requested more information from the owner. While we have received some information, it is not all that we asked for. The balance was due October 15th. Once we make a completeness determination, we will begin our public process. The permit expires in January of 2008, so hope to issue a new permit before then.

In particular, DEQ is requiring:

- Improved operational procedures to better monitor the types of waste entering the landfill.
- An evaluation of the closed portions of the landfill to determine if the cover is effectively minimizing leachate generation and to determine if additional methane gas monitoring and controls are necessary to protect public safety.
- An updated closure plan to ensure that future portions of the landfill are closed in a way that prevents future environmental problems.

DEQ is requiring Lakeside to monitor from four wells installed in September at Lakeside Reclamation Landfill to evaluate how much water is entering waste, identify if gas is being generated, and evaluate the performance of the tree cover that has been used over the closed portions of the landfill.

Data regarding gas concentration and pressure will be used to determine quantities of gas being generated. Initial data suggests that pressure in the landfill is low, so gas is most likely not moving offsite. Initial concentrations are high enough that some system of gas control may be needed. DEQ is requiring that monitoring be done every two weeks for the first two months, then monthly for six months and then quarterly for six months. DEQ intends to use this data to identify if more specific gas monitoring is needed around the perimeters of the landfill and to determine what types of gas collection and control will be needed.

Neighbors were very concerned with the gas levels identified in the first round of sampling. Because of neighbor concerns, DEQ went to neighboring properties last week to sample for methane and found no methane in soil or in basements or other confined spaces of the adjacent neighbors to the landfill.

The preliminary results should not be used to make any assumptions about gas leaving the landfill or the potential for explosions on or near the landfill. These results are typical values for landfill gas. These levels are not harmful to the landfill workers because they are not in a confined space and methane is not explosive in the open atmosphere.

Future action may include additional gas monitoring, including installation of gas monitors at the edges of the landfill and capture and control of gas.

If at any time DEQ considers conditions at the landfill to be an imminent safety threat, we will take immediate action, and notify all interested parties.

Regarding the remedial investigation that is ongoing at the landfill, DEQ still expects that to be completed by the end of the year. If a clean up action is required, DEQ may modify the solid waste permit or require clean up through an order under the clean up program authorities.

We are continuing to work with Lakeside, Washington County, Metro, Congressman Wu's office, and the neighbors, who will be here to address you later this morning during

the public comment period, to ensure that the landfill is in compliance with solid waste requirements while operational, and that there will be no adverse environmental impacts after the landfill closes.

Bonneville Columbia Cleanup

Currently, the US Army Corps of Engineers is working on a one-month cleanup of the PCB-tainted sediment. I've attached an Oregonian article that describes the cleanup effort.

Columbia River Total Dissolved Gas Waiver Adaptive Management Update

As you recall, your June 2007 Order approved the U.S Army Corps of Engineers' request for a waiver to the state's total dissolved gas water quality standard on the Lower Columbia River and directed the department to assemble an adaptive management team to evaluate the location of forebay and tailrace monitors, the use of forebay monitors, and approve changes to the method for calculating total dissolved gas.

To move forward with this task, we met with the Oregon Department of Fish and Wildlife (ODFW) and agreed that the Adaptive Management Team (AMT) will act as a consultative group to provide technical information to the states of Oregon and Washington. DEQ and State of Washington Ecology representative will make joint decisions affecting TMDL compliance, monitoring locations, and implementation.

AMT members will include representatives of :

- State of Oregon (ODEQ co-chair)
- State of Washington (Ecology co-chair)
- NOAA Fisheries
- U.S. Army Corps of Engineers
- Save our Wild Salmon
- Colville Tribe
- Columbia River Inter-Tribal Fish Commission
- Public Utility District
- EPA
- North West River Partners
- U.S. Fish and Wildlife Service

The first meeting of the AMT is scheduled October 25 in Portland. AMT meetings will be open to the public and a meeting summary will be posted to a public website after each AMT meeting. The website will be hosted by Washington Department of Ecology. The target date is April 2008 to finalize decisions, after a 30-day public comment period beginning in February 2008.

Bottle Bill Task Force

As we discussed with the Commission previously, the 2007 legislature passed Senate Bill 707, which adds water bottles to Oregon's bottle bill, beginning January 1, 2009. The bill also created the Bottle Bill Task Force to make recommendations to the 2009 legislature on all aspects of the state's beverage container law. Specifically, the task force will

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address establishing and paying for redemption centers, expanding the list of beverages covered by the law, increasing the refund value, limiting redemption of containers purchased out-of-state, and collecting and utilizing the unredeemed deposits. The task force consists of two legislators and seven members appointed by the Governor, and plans to meet regularly during the next 15 months. A news release about the task force is attached for your information.

Formosa Abandoned Mine Project Update

In September the EPA listed the Formosa Mine, near Roseburg, Oregon on the Superfund list. The Formosa mine site is a former copper, zinc and thorium mine. After mining operations ceased in the early 1990s, highly acidic storm-water from the mine became an ongoing source of contamination to the south fork of Middle Creek. Dissolved copper, zinc and other heavy metals are severely degrading aquatic habitat for fish and other stream life, including coastal steelhead trout and Oregon coastal Coho salmon. The former mine is located about ten miles south of Riddle, Oregon in rural Douglas County, Oregon.

DEQ declared the mine an orphan site in March 2000 had been working to cleanup the site since then. DEQ installed a pipeline system to divert acid mine drainage away from the headwaters of Middle Creek; delineated the nature and extent of contamination associated with the site; and prepared a feasibility study to identify and evaluate cleanup options. DEQ attempted to secure funding to implement a cleanup, but was unsuccessful. Recognizing that there are not sufficient state resources to clean up the mine - estimates range from \$10 to \$20 million - the Governor's Office and DEQ recommended that EPA list the site on the Superfund list so federal funds can be directed to this mine.

Presently, EPA is evaluating short-term actions to reduce contamination reaching the creeks. DEQ is continuing to work with EPA in the role of support agency to provide technical assistance and to ensure the EPA cleanup complies with state standards. EPA estimates that the clean up may take up to six years, and is researching two Japanese firms as potential responsible parties. An advantage of the Superfund listing is that EPA has the ability to reach outside US territory to go after responsible parties. DEQ has already spent \$1.7 million on the site and estimates that our investigation and feasibility study will reduce the cost and time it takes EPA to select and implement a cleanup.

Columbia River Gorge Air Project – Science Day Event

In 2000, the Columbia River Gorge Commission asked the Oregon and Washington air quality agencies to study air quality in the Gorge and develop a strategy that will help protect and enhance the scenic, cultural, natural, and recreational resources of the Gorge. The agencies have been working since 2001 to study air quality in the Gorge and build a better scientific understanding of the local and regional emission sources that influence visibility impairment on the Scenic Area.

On September 25, DEQ and the Southwest Clean Air Agency (SWCAA) held a workshop to discuss the findings of a five-year technical study of visibility in the Columbia River Gorge Scenic Area. Approximately 50 people attended the event, including representatives of Friends of the Gorge, PGE, ConAgra, Yakama Nation, dairy

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industry, TransAlta, US Forest Service, and the media (Oregonian, The Columbian).

The main conclusions are

- Modeling information indicates that Gorge haze has remained steady and will likely show some improvement despite increasing growth pressures.
- For sources that can be controlled, the biggest area for improvement would be in the winter in the eastern part of the Gorge. However, there is no single dominant source that is responsible for haze and it will require a collection of actions over time to make progress toward haze reduction.
- The current scientific information is sound and provides enough information to initiate policy development.

That strategy will be developed over the next few months and will be presented to the Columbia River Gorge Commission for concurrence this spring (likely February or March 2008). From these conclusions DEQ and SWCAA will develop a strategy to reduce Gorge haze and gear up to host a public "Policy Day" event early in 2008 to discuss the draft strategy with stakeholders and the public before reporting to the Gorge Commission. The Gorge Strategy Document will chronicle the available science, list the existing state and federal emission reduction strategies to improve air quality regionally and highlight new initiatives to result in increased emission reduction.

The EQC will have a major decision making role in two key components of the strategy that will be presented to the Gorge Commission. In mid to late 2008, the EQC will consider rulemakings for "Best Available Retrofit Technology" (BART) and the next update of the Regional Haze (visibility) Plan. The BART rulemaking will involve the selection of appropriate emission control technology for PGE Boardman's coal-fired power plant to reduce visibility impairing pollution. We predict that this rulemaking will generate high public and stakeholder interest. The Commission will receive a full briefing on the BART and Regional Haze rules in 2008. Beyond these rulemakings, the Commission may want to review the policy approach being taken for improving air quality in the Gorge and discuss as needed with the Columbia River Gorge Commission.

For your information, all papers presented at the science day event are available on the DEQ web site by going to Air Quality, then Columbia Gorge, then Science Day.

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Greenhouse Gas Reporting Rule Advisory Committee

As you recall, this July Governor Kulongoski sent asked you to adopt a greenhouse gas reporting rule as soon as possible. I'm happy to report that DEQ, with assistance from the Department of Energy and the Public Utilities Commission, is moving ahead with this task. Today is the first meeting of the Greenhouse Gas Reporting Rule Advisory Committee. The Committee will make recommendations on who should report, how they report, methods for data collection, calculation and verification and other issues. Mark Reeve is Chair along with 16 committee members representing industry and the environment. Over the next two months, the group will participate in four all day meetings. We plan to bring the rule to the Commission in June 2008.

Ashgrove Cement Kiln

The Ash Grove Cement Kiln in Durkee, Oregon, is the only cement kiln in the state. It was constructed in 1977 and produces approximately 1,000,000 tons per year of cement. The plant uses locally-mined limestone in the cement making process. The limestone contains naturally occurring mercury which is released during the heating process in the kiln. This has resulted in Ash Grove being the largest emitter of mercury in Oregon at approximately 2,700 lbs. per year. There are currently no federal or state regulations that address mercury emissions from existing cement kilns, only new cement kilns are subject to federal mercury emission control regulations.

Ash Grove has voluntarily conducted extensive mercury emission source testing, with observation and review of the testing by DEQ. They have also spent over \$1 million to conduct a 6-week pilot study during April and May of 2007 at the facility to test the effectiveness of activated carbon injection and slipstream baghouse controls. No testing of this type and magnitude has been attempted by any other cement company in the country. They just released the results of this study and have presented it to the Department's "Ash Grove Mercury Reduction Advisory Committee."

The Advisory Committee is being chaired by former EQC Commissioner Mark Reeve and consists of 11 members representing persons from Baker County, Confederated Tribes of the Umatilla Indian Reservation, academia, Oregon Health Division, Northwest Environmental Defense Center, Columbia Riverkeepers, Ash Grove, and DEQ (ex-officio). Their task is to evaluate and comment on mercury control equipment, a reduction goal for mercury from exhaust gas, a timeline for installation of mercury controls, and requirements for testing, monitoring and reporting.

The committee met once on September 20th and is scheduled to meet for a tour of Ash Grove and a second (and last) meeting October 15th in Baker City. The product of the advisory committee will be a report to DEQ that summarizes comments, key discussions and recommendations by the committee. DEQ staff will draft the report in collaboration and review by the Chair.

DEQ will then draft a Mutual Agreement and Order with the Ash Grove Company, place the draft MAO on public notice, hold a public informational meeting and hearing in

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Baker City and Portland in mid-November. The schedule is to finalize and sign the MAO in mid-January.

Owens Corning

Owens Corning has submitted an application to DEQ for an air contaminant discharge program permit for a foam board facility in Gresham. The company has revised the manufacturing process to use hydrofluorocarbons and not hydrochlorofluorocarbons. The former are still greenhouse gas emissions, but not ozone depleters like the latter. Since DEQ doesn't regulate greenhouse gas emissions, we will only be evaluating the application on the basis of the pollutants we do regulate. The company has also submitted a life cycle analysis to support their claim, that over time, the energy efficiency aspects of their product will offset the emissions used in the manufacturing process. We are planning an extensive public involvement process to gather input.

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Chem Waste Q and A

Q: What areas could potentially be affected by contamination from the Chem Waste facility?

A. The area below the CW site it is described as the Columbia River Basalt Group (also referred to as "Formation"). Within the Columbia River Basalt Group or Formation is the following:

The Selah Aquifer is part of the Columbia River Basalt Group and is an extremely poor producing aquifer in the sand, clay and siltstone that sits above the Priest Rapid Basalt. The Selah aquifer is the first ground water encountered at the site and is approximately 120 - 200 feet below ground surface at the site. Ground water movement within the Selah aquifer is very slow- about 1 foot per year.

The Priest Rapids Aquifer is the next aquifer encountered and it is approximately 275 feet below the site and sits in the Priest Rapid Basalt Member of the Columbia River Basalt Group.

The Frenchman Springs Aquifer is below the Priest Rapid Aquifer and the Frenchman Springs Aquifer is approximately 300 to 400 feet below the site. The Frenchman Springs Aquifer sits in the Frenchman Springs Basalt Member of the Columbia River Basalt Group. The Frenchman Springs is the recognized aquifer for drinking and irrigation in the area.

Ground water contamination at the CW site is minimal and impacts only limited portions of the Selah Aquifer.

Q: Has there been any groundwater contamination from the Chem Waste facility?

A: The most likely source of GW contamination is from monitoring wells that have lost some of their integrity over the years (PVC joint casings separating, possible cracking) allowing contamination to enter a monitoring well. The site team has completed an extensive well integrity survey and will be proposing to remove and replace the most suspect wells within the monitoring program.

The contamination levels in the GW are such that they do not trigger mitigation measures at this time, however monitoring wells that are suspect will need to be removed and replaced where required. This action could be viewed as a mitigation measure, but it is required as a condition of maintaining a compliant monitoring program.

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Field Burning Q and A

How can the EQC stop field burning?

One of two ways:

Health effects findings – Statute authorizes the Commission to ban field burning in the Willamette Valley for a temporary period if it makes findings of fact that field burning contributes to extreme danger to public health or safety in the Willamette Valley and determines that the extreme danger constitutes an emergency.

Alternatives to field burning finding – Statute authorizes the Commission to reduce or eliminate the issuance of burn permits after holding public hearings if it makes findings of fact that “other reasonable and economically feasible, environmentally acceptable alternatives to the practice of annual open field burning have been developed.” The statute requires the findings to be made between January 1 and June 1 for that year’s burning season.

HEALTH EFFECTS

What information would the Commission need to make a Health effects finding?

- Information on the health effects of infrequent short-term exposure to high concentrations of fine particulate.
- Specific information about the health effects from field burning smoke exposures and how effects vary with the concentration, frequency and duration of exposure and the population exposed (e.g. asthmatics, elderly, and children).
- Assessment of the actual (Oregon) exposures from field burning to sensitive populations and how these exposures compare to exposures from other sources.
- If the information points to field burning as an extreme danger, does it constitute an emergency?

How would DEQ gather the information?

- Review of existing science in the literature (contractor).
- With help from the Health Division, access data gaps.
- Determine if or what additional research is necessary.

Budget for the research?

- \$200,000 – General Fund request for the 2008 special session.

ALTERNATIVES TO FIELD BURNING

How many acres can be burned each year according to statute?

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A maximum of 40,000 acres/year general purpose plus 25,000 acres/year for steep terrain and identified species.

What information would the Commission need to make the alternatives to field burning finding?

- Information on alternatives that are available.
- Information about the costs and environmental impacts of each alternative.

How would DEQ gather the information?

- DEQ would hire a contractor and with help from ODA and possibly the OSU Extension Service, take an in-depth look at who is doing what, where and why.
- Assessment of acres where alternatives are currently in use and the conditions under which they are used (e.g. soil type, terrain, sensitive receptors, species).
- Assessment of the growing conditions on acres where alternatives are not in use. Assessment would probably be field by field to look for opportunities to shift existing burned acres to alternatives.

Budget for research?

- \$100,000 – General Fund request for the 2008 special session.
- \$90,000 - Oregon Department of Agriculture has this money available through the alternatives to field burning research fiscal assistance program. (This is a change. ODA originally planned to do a health effects study with this money but changed to an alternatives to burning study because the funding/study line up better.)

Funding timing/results timing?

- Funding in the 2008 special session – earliest determination of “alternatives to burning” finding would be the 2009 burning season. The EQC must act between January and June 1, 2009 for the 2009 season.
- Funding in the 2009 session – earliest determination of “alternatives to burning” finding would be the 2010 burning season. The EQC must act between January and June 1, 2010 for the 2010 season.

Bonneville cleanup targets PCBs

Columbia | Divers are removing tainted sediment inch by inch in the latest effort

THE ASSOCIATED PRESS

NORTH BONNEVILLE, Wash. — In 1969, Bonneville Dam workers disposed of three old electrical capacitors by simply shoving them into the Columbia River.

Now, almost four decades later, the U.S. Army Corps of Engineers is conducting a complex, costly and time-consuming cleanup of a potentially cancer-causing compound. The latest aspect of the cleanup began earlier this month, with divers armed with a 4-inch-diameter suction pipe removing PCB-tainted sediment inch by inch.

Huang & Associates Inc. of Elk Grove, Calif., landed the \$1.9 million contract. The corps expects it will take another month to finish removing sediment from hot spots of polychlorinated biphenyls

spanning a little less than an acre of river bottom.

The shoreline is adjacent to a landfill operated between 1942 and 1982.

Corps officials maintain the landfill was mainly used for household garbage generated by corps employees who lived at the dam, but they said some higher-level waste from operating the dam apparently went into the landfill. In 1999, workers surveying the shoreline for groundwater seepage spotted three electrical capacitors poking out of the river.

Each capacitor contained between 10 and 12 gallons of oil heavily laden with PCBs, said Mark Dasso, cleanup manager for the corps.

The corps pulled the junk out of the river shortly afterward, and now they're carefully scooping PCB-tainted mud out of the river bottom.

The muddy water is piped into a treatment system that removes PCBs through various types of filters. Ultimately, the filtered water is returned to the river.

The corps will conduct a long-term risk assessment at Bradford Island, looking for potential ways that the pollutant could affect fish and people who eat the fish.

Health authorities have already discovered crayfish in the mud with enough PCBs in their tissue to be disposed of as hazardous waste.

Rather than wait to develop a longer cleanup strategy, Col. Thomas O'Donovan, the corps' Portland district commander, pressed to get the hot spots out of the river as soon as possible.

"The idea is to get the worst of it out of the river while we do more study," Dasso said.

During a visit to Vancouver earlier this year, O'Donovan expressed his sense of personal responsibility for reversing the damage that his agency caused. The corps has so far spent \$7 million on the cleanup, and Dasso expects it will cost \$15 million by the time it's finished.

Theodore R. Kulongoski
Governor



NEWS RELEASE

October 11, 2007

Contact:

Patty Wentz, 503-378-6169

Kristina Edmunson, 503-378-5040

Rem Nivens, 503-378-6469

Governor Kulongoski Forms Bottle Bill Task Force

(Salem) —Governor Ted Kulongoski today announced the members of the Bottle Bill Task Force created by Senate Bill 707 in the 2007 legislative session. The bill expanded the refundable deposit on containers to include water and flavored water bottles. At the same time, the bill set up a task force to propose legislative concepts to improve the bottle bill system and increase recycling even further.

“Our work to reduce litter from Oregon’s roadsides and waterways is not done,” said Governor Kulongoski. “This task force brings excellent experience to the issue and I look forward to the ideas they will present.”

Governor Kulongoski appointed the following members to the committee:

Chair, John Kopetski (Pendleton)-Financial Advisor, Smith Barney, former chair of Government Standards and Practices Commission.

Steve Emery (Bend) – President and CEO, Earth2O, serves on Economic and Community Development Commission.

Steve Apotheker (Portland) - Senior Recycling Analyst at Metro.

Jerry Powell (Portland) – Publisher and Editor of Resource Recycling, a national recycling magazine.

Kelly Griffith (Lake Oswego) -Division President, Safeway.

Eric Forrest (Eugene)- Co-President, Willamette Beverage, an independent Pepsi distributor.

Suzanne Johannsen (Bend) – Financial Advisor at Ameriprise Financial, former Board Chair of recyclers association, former Bend City Councilor.

In addition to the Governor’s appointees, the legislature has appointed Senate President Peter Courtney and Representative Ben Cannon to the task force.

“Expanding Oregon’s Bottle Bill is the essence of what it means to be an Oregonian,” said Senate President Peter Courtney. “This task force will lead the way to further improvements in a law that is part of Oregon’s DNA and central to maintaining our clean and healthy way of life.”

“It’s an honor to be appointed to the Bottle Bill Task Force,” said Rep. Cannon. “The Bottle Bill has worked well for over 30 years and the update passed during the last session was an important step forward. This task force offers more opportunity to make the Bottle Bill even better.”

The task force is expected to submit a report to the Governor by November 1, 2008.

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Greenhouse Gas Reporting Advisory Committee

On October 1, 2007, DEQ appointed an advisory committee to discuss issues and make recommendations on the details of an Oregon reporting system for greenhouse gas emissions.

Members

Chair: Mark Reeve, Reeve Kearns, and former chair of the Environmental Quality Commission.

Susan Anderson, City of Portland Office of Sustainable Development
Pam Barrow, Northwest Food Processors Association
Jeremiah Baumann, Environment Oregon
Steve Bicker, Northwest Natural
Kyle Davis, PacifiCorp
Angus Duncan, Bonneville Environmental Foundation
Jim Edelson, Oregon Interfaith Global Warming Campaign
Jason Eisdorfer, Citizens' Utility Board of Oregon
Lee Fortier, Dry Creek Landfill
Charles Gatchell, Nike
Suzanne Lacampagne, Associated Oregon Industries
Marv Lewallen, Weyerhaeuser
Scott Stewart, Intel
Tom O'Connor, Oregon Municipal Electric Utilities
Tom Wood, Stoel Rives
Tom Zelenka, Schnitzer Steel/Cascade Steel Rolling Mills

Meeting schedule

October 17, 2007

9:00 am - 4:00 pm

Location: DEQ Headquarters, Conference Room EQC A
811 SW 6th, 10th floor, Portland

November 1, 2007

9:00 am - 4:00 pm

Location: DEQ Headquarters, Conference Room EQC A
811 SW 6th, 10th floor, Portland

November 26, 2007

9:00 am - 4:00 pm

Location: DEQ Northwest Region, Conference Room A/B
2020 SW 4th Avenue, 4th floor, Portland

December 17, 2007

9:00 am - 4:00 pm

Location: DEQ Headquarters, Conference Room EQC A
811 SW 6th, 10th floor, Portland

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Notice of Information Meeting – Nov. 1, 2007
Notice of Public Hearing – Dec. 13, 2007
Public Comment Period begins Nov. 12, ends Dec. 21, 2007



State of Oregon
Department of
Environmental
Quality

Proposed Air Quality Permit for Owens Corning Foam Plant

The purpose of this notice is to inform you about the opportunity for public input associated with a new facility. On Sept. 24, DEQ received an Air Contaminant Discharge Permit (ACDP) application from Owens Corning to manufacture rigid polystyrene foam insulation boards in Gresham. There will be multiple opportunities for the public to provide input prior to drafting the permit and prior to its issuance. The schedule is as follows:

Oct. 2	Public notice issued
Nov. 1	Information meeting
Nov. 9	Draft permit and review report will be available;
	Public comment period begins
Dec. 13	Public hearing
Dec. 21	Public comment period ends at 5 p.m.

See below for meeting and hearing details.

DEQ's role:

The Oregon Department of Environmental Quality (DEQ) is responsible for protecting and enhancing Oregon's water and air quality, for cleaning up spills and releases of hazardous materials, and for managing the proper disposal of hazardous and solid wastes. One way DEQ does this is by requiring permits for certain activities. DEQ issues permits to regulate the type and amount of air emissions at a regulated facility.

Information meeting and hearing details:

The Nov. 1 information meeting and the Dec. 13 hearing will be held at the same location, both will begin at 6:30 p.m. Location:

Centennial High School
Community Room
3505 S.E. 182nd Ave.
Gresham, Oregon

At the information meeting about the permit application, there will be an opportunity to ask

questions and provide comments. DEQ will note the comments and consider them while drafting the permit.

At the public hearing for the draft permit, DEQ will hold an information session followed by a formal hearing to receive oral comments.

Draft permit and information availability:

The draft permit and review report will be available to the public no later than noon on Friday, Nov. 9. See the information below for access to these documents.

View on-line information including application materials concerning this proposed facility by clicking the following link(s):

Application
or type in the following address:
<add link to AQ permits page>

You can review hard copies of the draft permit and related documents at the Gresham Public Library located at 385 NW Miller Avenue, Gresham, and the nearest DEQ offices in Portland and Gresham. For an appointment, call Susan Curry at (503) 229-5554 in Portland or Susan Patterson at (503) 667-8414 x55022 in Gresham.

Written Comments due:

Written comments are due by 5 p.m., Friday, Dec. 21, 2007.

Where can I send my comments?

Catherine Blaine, Permits Coordinator
503-229-5582 or 1-800-452-4011
DEQ Northwest Region Office
2020 SW Fourth Avenue, Suite 400
Portland, OR 97201-4987
Fax: 503-229-6945
E-mail: blaine.catherine@deq.state.or.us

Where can I get technical information?

George Davis, Environmental Engineer
503-229-5534 or 1-800-452-4011
DEQ-Northwest Region

Northwest Region Air Quality

2020 S.W. Fourth Ave.
Suite 400
Portland, OR 97201-4987
Phone: (503) 229-5263
(800) 452-4011
Fax: (503) 229-6945
Contact: George Davis
E-mail:
davis.george@deq.state.or.us

www.oregon.gov/DEQ

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2020 SW Fourth Avenue, Suite 400
Portland, OR 97201-4987
Fax: 503-229-6945
E-mail: davis.george@deq.state.or.us

Who is the applicant?

Owens Corning Insulation Systems, LLC

Where is the facility located?

18456 N.E. Wilkes Road
Gresham, Oregon 97230

Who might have an interest?

People who work, live, and recreate in the area.

What does Owens Corning do that affects air quality?

Owens Corning proposes to manufacture rigid polystyrene foam insulation boards, known as XPS (extruded polystyrene) foam. The foam boards are made by mixing molten polystyrene plastic with a liquid "blowing agent", and then extruding the mixture (forcing it through an opening of a specific size). During extrusion, the blowing agent changes from liquid to gas, which forms the cells (bubbles) in the foam.

The blowing agent that Owens Corning proposes to use is a blend of HFCs (hydrofluorocarbons, compounds made up of carbon, hydrogen and fluorine). The HFCs that Owens Corning proposes to use are HFC-134a, HFC-143a, HFC-152a, HFC-245fa and HFC-365mfc. They are not volatile organic compounds (VOCs) or ozone depleting substances (ODSs) or hazardous air pollutants (HAPs). They are greenhouse gases (GHGs), but neither Oregon DEQ nor the US Environmental Protection Agency currently regulates for these compounds. Because these HFCs are not regulated air pollutants, the permit will not have any limits or conditions that pertain to them.

After the foam hardens, it is cut into boards. Foam boards that do not meet quality standards and other foam scraps are ground up and recycled. Cutting and grinding create foam dust. Most of the foam dust is captured and recycled into the process. The dust that is not captured and recycled is largely controlled by a baghouse filter, but a small amount is emitted.

Owens-Corning also proposes to recycle polystyrene foam made by other manufacturers. Some of this foam is made using blowing agents that are classified as VOCs, so the foam recycling process may release VOCs into the air.

Owens Corning will release Particulate Matter (PM), Carbon Monoxide (CO), Nitrogen Oxide (NOx), Sulfur Dioxide (SO₂), Volatile Organic

Compounds (VOC), and Hazardous Air Pollutants to the air. A permit is required because of the amount of dust (particulate matter, PM) and VOC that will be released to the air.

What legal requirements apply?

Oregon Administrative Rule 340-216-0020, Table 1, requires facilities that have emissions of 10 or more tons per year of any single criteria air pollutant before control to obtain a permit.

Oregon Revised Statutes (ORS) 468A.040 and Oregon Administrative Rules (OAR) Chapter 340 Division 216 and 218 give DEQ the authority to issue permits. OAR Chapter 340 Divisions 200 through 268 contains all pertinent rules that govern the air quality program.

How does DEQ determine what requirements go in the permit?

Various federal and state regulations apply to a facility depending on the type of industry, the type and amount of pollutants emitted, and the location of the facility. All applicable regulations must be contained in the permit, including the appropriate recordkeeping, monitoring, and reporting requirements to ensure compliance with these rules.

Meeting air quality standards

Air quality in the Greater Portland Metropolitan Area meets the National Ambient Air Quality Standards (NAAQS) established by the US Environmental Protection Agency (EPA) to protect public health. An initial review of Owens-Corning's application by DEQ indicates the air emissions from the XPS foam plant will not result in a violation of those standards. DEQ is responsible for establishing permit emissions limits that do not violate air quality standards.

What pollutants are considered in determining permitted limits?

EPA and DEQ use six key pollutants as indicators of air quality. These are known as "criteria pollutants" and are compounds that, if inhaled, may lead to health effects that generally aggravate cardiovascular and respiratory disease. If the amount of criteria pollutants emitted is greater than a regulated minimum, then emission limits are established.

Hazardous air pollutants (HAPs) are compounds that, if inhaled, may pose a threat of adverse human health or environmental effects, including, for example, acute or chronic toxicity, cancer, birth defects, or reproductive dysfunction. The mere presence of these pollutants in the air does not necessarily mean that a health risk exists. EPA has established a

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list of 187 compounds that are classified and regulated as HAPs. If the amount of HAPs released is greater than a regulated minimum level, then additional requirements may also apply.

For more information about criteria pollutants, go to:

www.deq.state.or.us/eq/forms/2005ar/2005ar.pdf

For more information about hazardous air pollutants, go to:

www.epa.gov/ttn/atw/hlthef/hapindex.html

Compliance history:

DEQ has issued notices of noncompliance with air quality permits to two Owens Corning facilities in NW Portland and one for constructing a new facility without a permit.

Owens Corning Trumbull has a Standard ACDP (#26-1815) and was last inspected in 2005. DEQ issued Notices of Noncompliance to this facility in 1999, 2000, and 2005 for failing to comply with various monitoring and reporting requirements. DEQ did not assess any civil penalties. This facility is currently in compliance.

Owens Corning Linnton has a Title V permit (#26-3067) and was last inspected in 2007. DEQ issued Notices of Noncompliance to this facility in 1998 for failing to report emissions and 2000 for failing to submit a timely renewal application. In 2000, DEQ assessed a civil penalty for that violation and the company paid the fine. This facility is currently in compliance.

DEQ issued a Notice of Noncompliance in 2005 for constructing a new facility in Gresham without a permit (permit application #26-0138). DEQ did not assess a civil penalty. Owens Corning withdrew this permit application in 2006.

What other sources of air pollutants are in the vicinity of the facility?

Various sources emit similar air pollutants. EPA and DEQ split up the sources into 3 categories: point, area, and mobile sources. Point sources are primarily large industrial facilities. Area sources are smaller than point sources and

include backyard burning, woodstoves, consumer products, gasoline stations, etc. Mobile sources include cars, trucks, airplanes, ships, railroads, and construction equipment.

There are no other known manufacturers of XPS foam in the area.

What other information about this company is related to this permit?

In 2005, Owens Corning proposed to manufacture a similar product using hydrochlorofluorocarbons (HCFCs) at this same location in Gresham and withdrew their permit application in 2006. The current application does not request the use of this chemical.

Permit expiration

Based on its emissions estimates, Owens Corning is applying for a Simple Air Contaminant Discharge Permit (ACDP). Oregon law requires facilities with a Simple ACDP to renew that permit every five years.

What happens after the hearing?

After the formal comment period closes on December 21, 2007, DEQ will consider and provide responses to all comments received. DEQ may modify provisions in the proposed permit, but the permit writers can only modify conditions of the permit in accordance with the rules and statutes under the authority of DEQ. Participation in the rulemaking or the legislative process is the only way to change the rules or statutes. Ultimately, if a facility meets all legal requirements, DEQ will issue the facility's air quality permit.

Accessibility information

DEQ is committed to accommodating people with disabilities at our hearings. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications & Outreach (503) 229-5696 or toll free in Oregon at (800) 452-4011; fax to 503-229-6762; or e-mail to deqinfo@deq.state.or.us.

People with hearing impairments may call DEQ's TTY number, 503-229-5471.

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Fact Sheet: Proposed Air Quality Permit for Owens Corning Foam Plant



State of Oregon
Department of
Environmental
Quality

In September, 2007, the Department of Environmental Quality (DEQ) received an Air Contaminant Discharge Permit (ACDP) application from Owens Corning to manufacture rigid extruded polystyrene (XPS) insulating foam boards at a new plant in Gresham. Owens Corning has similar manufacturing facilities in Ohio and Illinois.

Owens Corning previously submitted two permit applications for the proposed XPS foam plant. Both were subsequently withdrawn. The first application was submitted in August, 2004, and withdrawn in May, 2005. The second application was submitted in May, 2005, and withdrawn in late 2005 or early 2006.

XPS foam board is manufactured by extruding a mixture of molten polystyrene and a liquid "blowing agent." During the extrusion process the liquid blowing agent vaporizes, forming the bubbles (cells) in the foam.

The extrusion process forms a continuous foam board, which is then cut and trimmed to size. Finished boards that do not pass quality control are ground up and the polystyrene is reused. Cutting, trimming and grinding breaks open the cells in the foam, releasing the blowing agent.

These operations are the main source of blowing agent emissions during the manufacturing process. Based on information from the first two permit applications, DEQ believes that approximately 15 to 25 percent of the blowing agent is emitted during manufacturing operations.

In the first two permit applications Owens Corning proposed to use HCFC-142b as the blowing agent. In the current permit application, Owens Corning proposes to use a blend of five HFCs: HFC-134a, HFC-143a, HFC-152a, HFC-245fa and HFC-365mfc (HCFC-142b will not be used). Information about these compounds is summarized in the following table.

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	Proposed in the 2004 and 2005 permit applications (both withdrawn)	Proposed in the current permit application
Compounds Name(s)	HCFC-142b	HFC-134a, HFC-143a, HFC-152a, HFC-245fa and HFC-365mfc
Type of Compound(s)	HCFC (hydrochlorofluorocarbon), an organic compound comprised of carbon, hydrogen, fluorine and chlorine	HFC (hydrofluorocarbon), an organic compound comprised of carbon, hydrogen, and fluorine
Toxicity	Low, not considered a threat to workers under normal exposure	Low, not considered a threat to workers under normal exposure
Ozone Depleting Substance(s) ?	Yes, Class II	No
Regulated Air Pollutant(s) ?	Yes	No
Greenhouse Gas(es) ?	Yes	Yes
Global Warming Potential(s) – 100 year time horizon	HCFC-142b: 2400	HFC-134a: 1,300 HFC-143a: 4,300 HFC-152a: 120 HFC-245fa: 950 HFC-365mfc: 890
Global Warming Potential(s) – 20 year time horizon	HCFC-142b: 4200	HFC-134a: 3,400 HFC-143a: 5,000 HFC-152a: 460 HFC-245fa: not found HFC-365mfc: not found

The major difference between the first two permit applications and the current permit application is that HCFC-142b is a regulated air pollutant (because it is a Class II Ozone Depleting Substance), while HFC-134a, HFC-143a, HFC-152a, HFC-245fa and HFC-365mfc are not regulated air pollutants.

In the first two permit applications, detailed information was required about HCFC-142b emissions because it is a regulated air pollutant. In the current application, other than identifying the HFCs that will be used, no information is required because the proposed HFCs are not regulated air pollutants. However, Owens Corning submitted a Life Cycle Analysis (LCA) with the permit application; the LCA states that the maximum expected use of HFCs is 1139 tons per year.

Because the proposed HFCs are not regulated air pollutants, DEQ has no regulations that apply to them, and DEQ cannot set limits on HFC emissions.

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Major areas of concern with the first two permit applications were:

1. Increased incidence of skin cancer because HCFC-142b damages the ozone layer.
2. Increased global warming because HCFC-142b is a powerful greenhouse gas.
3. Emissions of styrene (a Hazardous Air Pollutant (HAP)) from use of polystyrene were not accounted for in the first permit application.

HFCs are not Ozone Depleting Substances, so they will not damage the ozone layer and will not increase the incidence of skin cancer.

Styrene (and other HAP) emissions have been quantified in the current permit application and total approximately 1 ton per year.

The major area of concern with the current permit application is expected to be global warming.

Carbon dioxide is the most important greenhouse gas (GHG), and is the standard to which other greenhouse gases are compared. By definition, carbon dioxide has a Global Warming Potential (GWP) of one (1). A GHG with a GWP of 10 has a global warming effect that is 10 times greater than the effect of carbon dioxide (i.e. 1 ton of a substance with a GWP of 10 is equivalent to 10 tons of carbon dioxide, expressed as 10 tons CO₂ equivalent).

Owens Corning has not divulged the exact blend of HFCs that they propose to use, so DEQ cannot closely estimate the GHG emissions from the proposed XPS foam plant. However, it is possible to estimate the possible range of GHG emissions from information given elsewhere in this fact sheet.

The maximum annual emissions of HFC = 1139 tons per year.

The assumed rate of emissions during the manufacturing process is 25 percent.

The lowest GWP of the proposed HFCs is 460 (HFC-152a, 20 year timeline).

The highest GWP of the proposed HFCs is 5,000 (HFC-143a, 20 year timeline).

Using this information, it is possible to estimate the possible range of GHG emissions from the proposed Owens Corning XPS foam plant.

$1139 \text{ ton/yr} \times 0.25 \text{ ton emitted/ton used} \times 460 \text{ GWP} = 131,000 \text{ ton/yr CO}_2 \text{ equivalent}$

$1139 \text{ ton/yr} \times 0.25 \text{ ton emitted/ton used} \times 5,000 \text{ GWP} = 1,424,000 \text{ ton/yr CO}_2 \text{ equivalent}$

The possible range of GHG emissions from the manufacturing process is 131,000 to 1,424,000 tons per year CO₂ equivalent. It should be noted that the blowing agent continues to slowly seep out of the foam during its usable lifetime, and the remainder of the blowing agent is released when the foam's useful life is over (assuming it is crushed for disposal or reuse).

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Comparison of proposed Owens Corning emissions with county, state, US and worldwide GHG emissions.

	tons per year CO ₂ equivalent
Owens Corning proposed XPS plant	131,000 to 1,424,000
Multnomah County	9,000,000
State of Oregon	60,000,000
United States	7,750,000,000
Worldwide	28,000,000,000

US GHG Emissions, year 2000, in CO₂ equivalent per year

	tons
Total	7,750,000,000
CO ₂	6,424,000,000
Methane	740,000,000
N ₂ O	447,000,000
HFCs, PFCs, SF ₆	138,000,000

History of changes to the XPS foam blowing agents

		ODP *	GWP-20	GWP-100
1940s – 1960s methyl chloride	First XPS foams developed using methyl chloride	0.2	25	not found
1960s -1990s CFC-12	methyl chloride replaced by CFC-12	1.0	7900	8500
1990s – 2010 HCFC-142b	CFC-12 replaced by HCFC-142b	0.06	4200	2400
2010 – future HFCs	HCFC-142b will be replaced by HFCs (most likely)	0	up to 5000	up to 4300

* ODP stands for ozone depleting potential. Note that the blowing agent changes from CFC-12 to HCFC-142b to HFCs have been driven by regulations that require the phase-out of ozone depleting substances.

Contact Information

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State of Oregon
Department of
Environmental
Quality

Memorandum

To: Chip Terhune, Governor's Chief of Staff
From: Stephanie Hallock, Director, DEQ
Date: July 30, 2007
Re: DEQ Agency Strategic Briefing Memo

Major accomplishments for 2005-07 biennium

- As recommended by the Governor's Global Warming Advisory Group, the Environmental Quality Commission (EQC) adopted the OR Low Emission Vehicle (LEV) program to reduce greenhouse gas emissions from light and medium duty passenger vehicles and trucks. When phased in, OR LEV will reduce greenhouse gas emissions from new vehicles by 30% and will also reduce air toxics and smog forming chemicals.
- The EQC adopted health benchmarks for the most significant air toxics in Oregon. The benchmarks are ambient concentrations that serve as goals and triggers for working with stakeholders and the public to reduce air toxic emissions. By comparing benchmarks to exposure data, we can prioritize source categories and geographic areas for emission reduction strategies, determine if individual sources trigger control requirements under the program, and communicate about risk to the public and measure program performance.
- As part of the West Coast Clean Diesel Initiative to reduce toxic emissions from diesel engines, a number of projects have been implemented such as clean diesel upgrades on garbage trucks, school buses, transit buses, and construction equipment as well as reduced idling emissions at truck stops and locomotive yards. The Governor's Clean Diesel initiative (HB 2172) was a centerpiece of DEQ's 2007-2009 budget request and legislative agenda, and will enable DEQ to significantly reduce public health risks from exposure to diesel exhaust. This successful legislation and budget request provides up to \$3.15 million to fund a grant program to reduce diesel emissions from a number of activities listed above and maintains a \$500,000/ per year tax credit program to encourage the retrofit of existing high pollution diesel engines or the purchase of new, efficient diesel engines.
- DEQ worked collaboratively with Senator Wyden's office and Congressman Blumenauer's office to successfully lobby the Environmental Protection Agency (EPA) to reduce benzene levels in Pacific NW gasoline. EPA's original proposal

would have left gasoline in the Northwest with twice the benzene content of gasoline on the East coast.

- The EQC adopted rules to reduce mercury emissions from the PGE Boardman coal-fired power plant and any new coal-fired plants that locate in Oregon. Mercury, which largely comes from air deposition, is a persistent toxic that bioaccumulates in fish. The Oregon rules require a 90% reduction in mercury emissions - the largest reduction possible for western coal. Without this rule, Oregon would be subject to a much less protective federal program that allows companies to trade mercury credits with other states rather than reduce their own emissions.
- Through oversight of the Army's hazardous waste permit at the Umatilla Chemical Weapons Depot, 27.3% of the chemical stockpile was safely destroyed, including the GB (Sarin) weapons, which has reduced the risk to the community by approximately 91%. Approximately 44% of the nation's stockpile has been destroyed, on track with the Chemical Weapons Convention treaty requirements to destroy at least 45% of the stockpile by December 2007.
- A significant number of Clean Water Plans or Total Maximum Daily Loads (TMDLs) were approved by EPA, including plans for the Willamette, Umpqua, Tillamook, Tualatin, Columbia Slough, Walla Walla and Willow watersheds. These plans serve as blueprints for communities to reduce water pollution from sources such as mercury, temperature, bacteria, phosphorus, and dissolved oxygen. Where Clean Water Plans have been implemented, water quality has improved, (e.g., Tualatin, Pudding, Yamhill, Columbia Slough, Bear Creek, and Grande Ronde rivers).
- The drinking water source protection program provided assistance to 42 communities and public water providers. Source Water Assessment Reports were completed for all 2471 public water systems in the state, providing data and detailed maps of watersheds and aquifers for local governments, county planning departments and other state agencies. DEQ and the Department of Human Services-Public Health Division are evaluating public health priorities and risks for additional monitoring and pollution prevention work.
- Over \$100 million dollars in low interest loans were made by DEQ from the state revolving fund to help 40 public agencies and communities construct or upgrade facilities to manage wastewater.
- DEQ began a number of customer service efficiencies at Vehicle Inspection Stations including: accepting debit and credit cards; repairing vehicles owned by low income drivers using donations from Oregonians; experimenting with 24/7 self service test lanes, and sending test information from a vehicle's on-board computer to DEQ over the internet. As efficiencies are implemented, the number of DEQ staff at stations continues to be reduced.

- Seventy-four contaminated properties were cleaned up statewide. Several have been returned to productive use, including Amy's Kitchen, the largest privately owned maker of organic frozen food and canned soup in the United States, who invested \$17 million in a new facility and created over 320 new jobs in the Ashland area; and, the former Franko #15 service station in Eugene, now operating as a retail biofuels filling station as a result of partnering between EPA, DEQ, Lane County, SeQuential Biofuels and others.
- With funding obtained by the Governor from EPA, construction was completed on the McCormick and Baxter Superfund site, controlling pollution to the Willamette River and freeing the property for productive reuse. Work at McCormick and Baxter sets the example for broader cleanup in the Portland Harbor Superfund site. DEQ is working with nearly 70 property owners to eliminate sources of contamination to this area of the Willamette River.
- With the Governor's assistance, attention is being paid to the problem of pollution from abandoned mines such as Black Butte and Formosa in Western Oregon. The Western Governor's Association provided \$60,000 for environmental studies in 2006 at the Black Butte mine, leading to EPA's recent commitment to spend \$500,000 for cleanup work in spring 2007. The Governor's support for EPA's Superfund listing of the Formosa mine will be instrumental in prioritizing federal action on this multi-million dollar cleanup.
- Stephanie Hallock, DEQ director, lead a national effort by states to restore EPA funding while serving as President of ECOS (Environmental Council of the States). As a result, states now have a place at the table in EPA budget deliberations they did not have before. Congress held hearings on EPA's budget for the first time in several years. EPA was chastised for cuts to states and Congress stressed the need for reform in how EPA oversees programs delegated to states.
- DEQ helped secured grant funds from EPA to help eight communities statewide establish permanent household hazardous waste collection facilities and co-sponsored two agriculture pesticide collection events in the Pudding River watershed (in 2006 and 2007) where a total of over 34,000 pounds of legacy pesticides were collected.
- Pesticide Stewardship Partnerships (PSPs) were implemented in five watersheds, which use a voluntary, collaborative approach to identify problems and improve water quality associated with pesticide use at the local level. The PSP approach uses local expertise in combination with water quality sampling and toxicology expertise of DEQ to encourage and support voluntary changes that result in measurable environmental improvements. PSPs have been initiated in Hood River, Walla Walla, Pudding/Molalla, Clackamas, and Yamhill watersheds.

- In June of 2003, the Governor and the Legislature began the process of providing funding for a new laboratory for DEQ and the Department of Human Services (DHS) Public Health Laboratory. In 2004, a \$6 million building was purchased in Hillsboro. This building is being converted into a \$34 million state-of-the-art laboratory to be shared by DEQ and DHS. The new laboratory is scheduled to be occupied late 2007.
- Through the leadership of DEQ's Information Technology section, Oregon worked with EPA and other states to establish the National Environmental Exchange Network, which allows environmental and health agencies to share data nationwide

Strategic Plan for 2007-09

DEQ began work on a strategic plan when Stephanie Hallock became the Director in 2000. After input from stakeholders and the EQC, a two year plan was finalized in 2002 and then updated in 2004. In 2006, the strategic plan:

<http://www.deq.state.or.us/about/strategicdirections.htm> was updated for five years and a commitment to "promote sustainable practices" was added. DEQ's strategic plan includes executive performance measures and is used to frame biennial budget requests.

2007-09 Legislatively Adopted Budget

The DEQ budget for 2007-09 is \$298 million, an increase in overall funding of 12.4% and an increase in General Fund monies of 67%, from \$22.7 million to \$38 million. Federal funding is \$7 million less than in 2005-07. The funding from fees increases by about 10%, from \$82 million to \$90 million.

Of the \$298 million overall budget, \$104 million is for grants and loans to local communities, and debt service. The remaining \$194 million is DEQ's operating budget, an 11.8% increase from 2005-07. General Funds make up 17% of the operating budget, Lottery Funds contribute 3%, Federal Funds provide 16%, and fees and other revenues provide the vast majority -- 64%.

The budget funds 796 DEQ staff (full time equivalents/FTE). Many of the approved positions are actually renewed positions that were to be cut due to a lack of revenue, and others are restored positions cut in prior years, so that the net increase in DEQ staffing levels from the previous biennium is 19 positions. DEQ's peak staffing level was 862 staff in 2001-03. DEQ is in full recruitment mode and, like many agencies, will be challenged to find qualified staff and to train and retain the new "Gen X" and "Gen Y" employees who have different expectations of the workplace and work life. State salaries are not competitive with the private sector and many local governments.

Fortunately, many people are attracted to the mission of DEQ, but without a significant investment in the infrastructure and employees of state government, we will be challenged to provide the leadership and expertise needed to address Oregon's future environmental

challenges. Oregon's legacy as an environmental leader, a legacy that brings people to Oregon and supports our economy, is at risk unless we significantly increase our investment in natural resource protection and in our state employees.

Future Challenges

Long-term, sustainable funding for state agencies to protect and manage natural resources. Oregon needs to start investing more in natural resource protection. In 1991-93, natural resource agencies accounted for 1.7% of the state general fund budget. The Legislatively Adopted Budget (LAB) for 2007-2009 funds natural resource agencies at 1.1% of the state general fund. When lottery dollars are added, the 2007-2009 LAB for natural resources goes up to 2.4% of the budget. Lottery dollars are not, however, provided to all natural resource agencies.

DEQ reflects particularly poorly in general fund allocation; in 1991-93 DEQ had 39.5% of the general fund allocated to natural resource agencies – in the 2007-2009 LAB that drops to 24.3%. Because DEQ does not receive much lottery funding, when lottery is added to general fund, DEQ's share of all natural resource funding drops to 11.6%.

Two points: 1) given that Oregon's natural resources and the care we take of them is an essential part of defining Oregon and making it a place people want to be, the overall allocation of public funding to natural resource protection and management is inadequate; 2) the share going to DEQ, the agency upon which most Oregonians depend for protection of the environment, has suffered a dramatically declining share of public funding and now relies on those who are regulated to pay for 64% of the budget.

This reliance on the regulated community for funding requires the agency to invest hours and hours of time negotiating, adopting, maintaining, and re-negotiating fee schedules and requires elaborate billing, accounting and cost recovery administration. Time spent on these activities could be better invested in on-the-ground environmental work. A dedicated source of funding would be one way to free up staff time.

Another long term funding issue that affects state agencies like DEQ is the on-going growth in the share of entitlement programs in the federal budget and the combination of entitlement and education programs in the Oregon state budget. This will mean over the next several decades there will be a continual erosion of federal funding for environmental protection work and Oregon will continue to experience very strong pressures to allocate more General Fund dollars to education and entitlement programs to the detriment of other state functions.

Some alternative funding ideas to consider:

- Broaden the use of lottery dollars for natural resource protection and allocate more to DEQ
- Allow DEQ civil penalty dollars to be used specifically for natural resource protection projects rather than going to the general fund to be used for any purpose

- Redesign pollution control tax credits to direct revenue from that program to fund natural resource programs. HB 3500 would have established an Environmental Enhancement Tax Credit Program to replace the existing tax credit program. The Oregon Business Association and Associated Oregon Industries drafted HB 3500 to include some funding for the DEQ groundwater protection program. This bill died in committee.
- Explore a broad “green tax” concept to fund all natural resource activities; Bill Blosser, Vice-Chair of the Environmental Quality Commission, could be involved in establishing some kind of “Blue Ribbon Committee” to figure out how to do this – he is interested in the issue
- Look at Washington Department of Ecology “first possession fee” and Model Toxics Control Act and see if any part of the concept will work in Oregon. Their big payers are oil refiners, which Oregon doesn’t have, but perhaps a similar approach could work
- Some of the escheat from returns under the Bottle Bill could be directed by the legislature to fund natural resource protection agencies/activities
- The solid waste tip fee could be used to fund other DEQ activities (this would take legislation, and there has been opposition in the past)

Integrated state regulation and management of water quality and water quantity. With the declining snowpack, uncertainty about future weather patterns, and demands on supply from cities and agriculture, Oregon needs to take a comprehensive, cohesive approach to protecting water quality and ensuring an adequate supply of clean groundwater and surface water for drinking, recreation, industry and growing crops.

Many agencies at all levels of government play a role in regulating and managing water. While there is often collaboration and cooperation among agencies, there is no coordinated, long-term, statewide plan for protecting and managing water as a resource, even among state agencies. For example, the Water Resources Department regulates the use and quantity of water, DEQ protects surface and groundwater quality (with roles played by the Departments of Agriculture, Forestry and Geology and Mineral Industries), Department of State Lands protects wetlands, and Department of Health and Human Services protects drinking water.

The Governor could appoint a multi-stakeholder, statewide group to develop a long-term strategic plan for water. It could be a group like the “Big Look” committee for land use, or it could be connected to the Oregon Business Plan sustainability cluster, or to an organization like Sustainable Northwest, or the Natural Resource Policy Institute at Oregon State. The group needs to include participants who can actually make a plan happen, and it would help to have a committed, charismatic leader or, better yet, urban-rural co-chairs with stature and vision.

In addition to establishing a group to develop a cohesive plan to protect water as a resource, the state should minimize the bureaucracy around water-related regulation. A serious look should be taken at consolidating and/or eliminating some of the entities in state government

August 27, 2007

that regulate some water activities. An in-house state agency group could be tasked with this, or a consultant could be hired, or both. This is not a recommendation for a single Department of Natural Resources; it is a recommendation to consolidate some water-related regulatory activities. HB 2251 would have established a removal-fill pilot program; it was an attempt by Department of State Lands and other natural resource agencies to better coordinate and streamline dredge and fill projects. This bill died in committee.

As part of the Governor's alternative plan for SB 483 and HB 3525, the OASIS bills to divert water from the Columbia River, DEQ has been asked to work on the Columbia Basin water issues, particularly on the issue of underground storage of "surplus" surface water. Our efforts will be part of a coordinated response by several state agencies.

The Legislature provided DEQ new resources to better manage stormwater and to provide additional groundwater protection. These represent excellent opportunities to minimize the amount of pollution flowing into Oregon's waterways and into groundwater. Since most Oregonians rely on groundwater for a portion or all of their drinking water, these enhanced protections are critical. Any statewide effort to protect water quality and quantity needs to include groundwater as well as surface water.

Climate change, development of alternative energy sources, and sustainable business. Leadership by the Governor's office should continue in these inter-related areas that will determine the economic and environmental future of Oregon. The Governor should ensure that the Oregon Leadership Summit and Oregon Business Plan continue to emphasize and build on the sustainable business theme for Oregon and support voluntary and regulatory efforts to reduce greenhouse gases and reliance on fossil fuels.

The Governor's office, in coordination with the Oregon Economic and Community Development Department (OECDD), EQC/DEQ, Department of Energy and others, should convene a broad, honest, "out of the box," problem-solving conversation with traditional manufacturing industries that are under increasing pressure because of location, use of natural resources, pollution generated, etc. about what it will take to create a viable future for these industries in a sustainable Oregon.

Efforts should be enhanced to unite urban and rural Oregon in pursuing sustainable business opportunities and practices.

Toxic Chemicals in the Environment. Much progress has been made since Earth Day 1970 in regulating and controlling pollution from industrial and municipal facilities. Until recently, when USEPA adopted more stringent federal standards for particulate matter, all areas of Oregon were in attainment with federal ambient air quality standards. Also until recently, water quality trends throughout the state were improving because of the enormous investment in pollution controls on point sources required under the Clean Water Act. In essence, we have picked the low hanging fruit in environmental regulation.

Today, we are faced with the challenge of an increasing level of complex toxic pollutants in our environment, determining where those pollutants are coming from, and what can be done to minimize their entry into the environment and to protect people from exposure. Toxic substances are in our environment because of human activity (e.g. burning, driving cars, applying fertilizers and pesticides, industrial processes, municipal wastewater discharges, agricultural and forest practices); from past practices (e.g. abandoned mining operations, heavy industry); and, in part, because they occur naturally in the environment (e.g. mercury, arsenic). We also face challenges from “new” pollutants such as dental amalgam and pharmaceuticals.

The 2007 legislative session resulted in a much needed infusion of resources for DEQ to more adequately address issues relating to toxics. Additional funding will add air toxics monitors in Salem/Albany and Medford, expand air toxics outreach and develop an air toxics plan for Portland. A fee increase in the asbestos program will continue current staff and add one position for prevention work with small businesses and homeowners. As noted earlier, the Clean Diesel Initiative (HB 2172) will provide grants and tax credits for fleet operators to reduce diesel emissions through new, retrofit or rebuilt diesel engines. Ten new positions will allow DEQ to develop a water quality toxics monitoring program for Oregon, where the initial focus will begin with the Willamette River. SB 737 provides resources for DEQ to work with large municipal wastewater treatment facilities to reduce the discharge of persistent bio-accumulative toxics into Oregon waters. SB 704 will help reduce mercury from dental amalgam going into wastewater systems.

Fee increases will maintain sufficient staff to protect the environment from toxic releases in three programs: Underground storage tank compliance work will continue, ensuring that hazardous petroleum products do not leak into the groundwater. An increase in hazardous waste generator fees, along with a restoration of General Funds, will maintain hazardous waste compliance efforts to ensure proper handling and storage of toxics. An increase in fees charged to users of major waterways supports marine spill prevention which will minimize petroleum spills in waterways or in adjacent areas.

Federal funding will never be adequate to clean up toxic pollution from past practices and when such funding is available, the process takes many years. The 2007 legislature provided \$4.4 million in bond funding to pay for continuing investigation and cleanup work at about 40 contaminated sites where there is no responsible party to fund the cleanup. Nevertheless, this much needed funding will do little to clean up the major orphan sites such as the abandoned mines. Oregon will need to decide whether we will make future, more robust, investments in cleaning up these “orphan” sites.

Toxic pollution often disproportionately affects low-income and otherwise disadvantaged populations. SB 420 creates of an Environmental Justice Task Force and requires natural resource agencies to better incorporate environmental justice concerns into daily work activities.

Need for Monitoring and Environmental Data. Oregon needs to make a significant investment in gathering detailed and accurate information about the pollution in our environment to help develop effective strategies. DEQ's air and water monitoring equipment and networks are inadequate to provide comprehensive, current and robust data upon which to base policy and regulatory responses, especially to the problem of toxics in air and water. The 2007 legislative session did provide DEQ with additional resources to restore or expand portions of our monitoring programs. These increases occurred in the air quality program for monitoring smog and fine particulate matter and for air toxics monitoring. In the water quality program, resources were restored to monitor groundwater and surface water pollution levels. In addition, funding was provided to establish a water quality toxics monitoring program.

Pollution from Non-Point Sources. If we are to make significant future gains in maintaining a clean and healthy environment, we must tackle the political and practical consequences of addressing pollution in Oregon, toxic or otherwise, that comes from multiple small sources and/or sources that are minimally regulated and may respond better to incentives than regulation. Addressing non-point sources, which produce most of the pollution in Oregon, means re-thinking and re-focusing our regulatory and incentive-based strategies.

SB 235 removes a state exemption and brings agriculture under Clean Air Act requirements. As a result of this bill, DEQ and the Oregon Department of Agriculture will lead a task force to look at options for further reducing emissions from dairy sources. The scope of the task force review can be expanded to include other agricultural sectors. This effort is driven in part by concerns over the creation of large-scale farms and their impacts resulting from highly concentrated animal wastes. The current controversies over new dairy and chicken farms are likely to grow in response to the changing nature of the agricultural industry.

A large number of pesticide bills were heard during the 2007 session and though no significant legislation was approved, it is clear that pesticide-related discussions will continue during the interim. Already the Governor's office has coordinated a meeting with a number of environmental organizations and state agencies.

Several proposals to curtail field burning were debated but did not pass in 2007. The Environmental Quality Commission has been asked by Lane County to make rules banning field burning. If the Commission chooses not to do so, we anticipate legislative proposals in 2009 which could go beyond field burning to address other agricultural burning, forest burning, and residential backyard burn barrels.

Retaining Oregon's Legacy as an Environmental Leader. People want to live and work in Oregon because of our reputation for taking care of our naturally beautiful environment. In Oregon, a healthy environment and a healthy economy go hand-in-hand. As more people move here and our natural resources are stressed by growth and changes in the climate, it will be a challenge to retain our reputation as an environmental leader.

August 27, 2007

The Governor's leadership on climate change resulted in passage of an impressive array of legislation in support of renewable, clean and efficient energy which will help DEQ ensure that Oregon's air stays clean, clear, and breathable.

In recycling, where Oregon has always been a leader, the legislature passed two landmark bills. SB 707 expands Oregon's Bottle Bill to require deposits on water bottles and sets up a task force to look at further enhancements to the Bottle Bill, which could include new redemption centers, a deposit greater than a nickel, and requirements for more containers to come under the redemption process. The legislature also passed HB 2626 which requires, for the first time, recycling of some electronic devices. This bill provides new resources to DEQ to create and implement this electronics recycling, or "e-waste" program.

A strong environmental future for Oregon will be ensured by courageous leadership from the Governor, the legislature, and the state's natural resource agencies. For state agencies to provide first-class leadership, then Oregon must ensure that first-class employees are attracted to public service. These means investing in the workforce of the future and ensuring that we create a welcoming, progressive and diverse workplace. The state's reputation as an environmental leader should be complemented by a reputation of fine public service.

Cc:

Mike Carrier

Environmental Quality Commission

STRATEGIC DIRECTIONS: 2006-2011

Mission:

To be a leader in restoring, maintaining and enhancing the quality of Oregon's air, water and land.

Vision:

To work collaboratively with all Oregonians for a healthy, sustainable environment.

Values:

- Environmental results
- Public service
- Partnerships
- Excellence and integrity
- Teamwork
- Employee growth
- Diversity
- Health, safety and wellness
- Economic growth through quality environment

DEQ Excellence is:

- Promoting sustainable practices
- Improving Oregon's air and water
- Protecting people and the environment from toxics
- Involving Oregonians in solving problems

DEQ commits to excellence by...

- Delivering outstanding public service and continuously seeking customer feedback to improve its service
- Providing a safe, healthy work climate to support its staff in protecting the environment
PP 140 – Business & Workplace Accountability

PP 151 – Environmental Information Exchange Network

DEQ promotes sustainable practices by...

- Helping to reduce global warming
- Encouraging reuse of wastewater
- Encouraging reinvestment in previously contaminated land
- Practicing sustainable use of resources within DEQ

DEQ measures success in promoting sustainability by...

- Reduction of greenhouse gas emissions from new cars
HB 2272 & PP 118 – OR LEV Registration Denial
- Increased number of electrified truck stops to reduce diesel truck idling
*HB 2172 & PP 119 – Clean Diesel
- Reduction of greenhouse gas emissions from solid waste
- Increased number of facilities that reclaim water for reuse
- Increased number of redeveloped Brownfield sites
*PP 133, 183 & 193 – Orphan Sites
- Reduction of energy and water use in DEQ offices

DEQ improves Oregon's air and water by...

- Strengthening connection between public and environmental health
- Cleaning up the Willamette River Basin
- Meeting air quality health standards for fine particulates and smog
- Protecting natural and scenic areas
- Issuing timely and protective permits
- Enforcing environmental laws and regulations

DEQ measures success protecting air and water by...

- Monitoring changes in water quality
 - *PP 121 – WQ Toxics Monitoring
 - PP 126 – Beach Monitoring
 - *PP 128 Monitoring/TMDLs
 - PP 172 – WQ Lab
- Reduced number of days Oregonians breathe unhealthy air
 - PP 110 – AQ Health Standards
 - PP 171 – AQ Lab
- Actions identified and taken by communities to clean up the Willamette River Basin in response to Total Maximum Daily Loads (TMDLs)
- Pollution controls in place to help clean up the Portland Harbor Superfund Site
- Air and water permits issued on time and kept up to date
 - SB 107 & PP 112 – Title V Fees
 - PP 114 – ACDP Fees
 - PP 120 – Wastewater Permitting Fees
- Improved visibility in the Columbia Gorge, Crater Lake, and wilderness areas
 - PP 115 – Columbia River Gorge Air Quality
- Making timely compliance and enforcement actions

SB 235 – Ag Air Emissions
HB 2118/PP 160 – Underground Injection Control Fees
PP 117 – VIP Technology
PP 122 – Stormwater
PP 123 – Drinking Water Protection
PP 124 – Protect Groundwater
PP 125 – Onsite
PP 127 – 401 Certification
PP 129 – WQ Standards
PP 153 – Liquefied Natural Gas
SB 643 & PP 807 – Ballast Water

DEQ protects Oregonians and our environment from toxic pollutants by...

- Preventing and reducing toxic chemical releases
- Cleaning up and reducing risks from toxics already in our environment

DEQ measures success in protection from toxic pollutants by...

- Chemical weapons at Umatilla Army Depot safely destroyed
- Effective response to toxic spills on land and in water
SB 105 & PP 134 – Marine Spills
- Reduced risks from exposure to toxics in our air, water and land
PP 111 – Air Toxics
PP 113 – Asbestos
SB 737 – WQ Toxics/PBTs
- Toxic pollutants reduced or removed from waste stream
- Contaminated and/or hazardous sites cleaned up
SB 106 & PP 132 – Heating Oil Tanks
HB 5005 – Bonding Bill
*PP 133, 183 & 193 – Orphan Sites
- Amount of legacy pesticides managed safely
- Tons of pollution reduced from diesel emissions
- Pounds of mercury removed from the environment
- Number of abandoned mines assessed for cleanup

SB 103 & PP 131 – Hazardous Waste Fees
SB 104 & PP 130 – Underground Storage Tank Fees
*HB 2172 & PP 119 – Clean Diesel
* PP 121 – WQ Toxics Monitoring
PP 152 – Homeland Security
PP 173 – LQ Lab

DEQ involves Oregonians in solving environmental problems by...

- Encouraging personal actions to protect the environment
- Supporting communities in solving environmental and economic problems
PP 181 & 191 – SRF Funding

DEQ measures success involving Oregonians by...

- Reduction of garbage landfilled or incinerated
SB 707 – Bottle Bill
- Increased collection of household hazardous waste
- Development of new options for managing electronic product waste
HB 2626 & PP 810 – Electronic Waste Recycling
- Increased number of Eco-Biz certified businesses
- Community problems solved as part of the Governor's Economic Revitalization Team
- Secured grant funding to support local environmental projects
- Increased education and involvement of diverse populations in protecting health and the environment
SB 420 – Environmental Justice

DEQ continues to work closely with its state and local agency partners:

- Human Services - *Drinking water*
- Water Resources - *Water rights and quantity*
- State Lands - *Wetlands management*
- Agriculture - *Water quality management plans*
- Forestry - *Oregon Forest Practices Act*
- Fish & Wildlife - *Fish passage, endangered species, fish recovery planning*
- Watershed Enhancement Board (OWEB) - *Grants to watersheds*
- Lane Regional Air Protection Agency (LRAPA) - *Lane County air quality*
- Tribal Nations
- Economic Revitalization Team (ERT) member agencies - *Transportation, Economic & Community Development, Housing, Land Conservation, Agriculture, State Lands and Consumer & Business Services*

Notes:

HB = House Bill

SB = Senate Bill

PP = Policy Package (part of the budget request)

*HB, *SB or *PP = Bill or Policy Package that fits in well in two or more places (it repeats)

----- = Bills or Policy Packages listed below this line "generally" fit into the boarder Strategic Direction entry. Bills or Policy Packages listed above this line directly relate to the sub-Strategic Direction entry or measure.

2007 Session Overview and Looking Forward

DEQ was very successful in the 2007 Session. This success could be attributed to three main factors:

- The change in the House majority party which resulted in more favorable outcomes for environmental activities,
- There were General Fund monies that could be used to fund activities and programs. This is a significant shift from the budget reduction mode that had been prevalent between 2002 and 2005, and
- A strong and positive reputation of DEQ

Three distinct outcomes have appeared from the 2007 Session.

- There was strong support to restore lost state funding for DEQ and to allow fee increases to support core programs and even to support several new initiatives. Most of the original DEQ Agency Request Budget was funded, including all of the fee bills.
- Toxics emerged as a driving theme and can be traced to several significant bills and budget policy packages – WQ toxics monitoring, WQ toxics/PBT reductions (SB 737), Clean Diesel, air toxics and electronic waste. There were a number of other bills that were not successful that focused on pesticides. These bills typically would involve DHS-Public Health, ODA, DEQ and sometimes ODF and ODFW.
- Funding for monitoring and science was given a high priority. Funding was restored for monitoring in the air and water programs and new funding was provided for the new water quality toxics monitoring program. There was continued support to provide needed funding for the new joint DHS/DEQ laboratory in Hillsboro.

Looking Forward

2008 Special Session – Details for this Session are still being worked out. At this time, the House and Senate appear to have different strategies on proceeding. The Senate is looking at it as a regular session where each member could introduce one bill. The House is looking at it as a special session with a few specific topics and a quick in and out. Much of what frames the session will depend on the September and December revenue forecasts. From the Governor's perspective, agencies are being asked to keep a low profile and instead focus on 2009. He expects that the 2008 focus will be mainly on unresolved issues that may come out of the November ballot measures such as the Healthy Children/Tobacco Tax (Measure 50) and Measure 49 (fix for Measure 37). Other big issues could be the Real ID for driver's licenses, restoring funding for state troopers, funding for the Big Look Task Force and funding for OMSI. At this time, DEQ is not planning to work on any legislative concepts for 2008.

2009 Session – The Governor has announced his desire to work on major topics relating to transportation, health care and education. To date, no environmental issues have been identified. However, several major environmental issues will likely be in the forefront in 2009. The Governor's Natural Resources Office is working on toxics and pesticide issues during the interim which will likely result in legislative concepts. There were a number of unsuccessful pesticide bills in 2007 and we can anticipate that some of them will be reintroduced..

Field burning and smoke management - Rep Holvey (D-Eugene) sponsored a field burning ban bill during 2007 which was not successful. He has indicated his desire to try again and will be working on this issue during the interim. The representative wants to work with DEQ and ODA on this issue. Also, Lane County has expressed interest in having the EQC ban field burning, so this may become a high profile issue prior to 2009.

Water quality toxics – it is likely that this topic will return in 2009. A number of people saw SB 737, water quality reductions of PBTs, as the first step towards reducing certain types of

discharges into the waters of the state. Expansion of this bill, which currently focuses on the 52 largest municipalities, or other related topics such as mixing zones may return.

080607

DEQ Legislative Update

July 27, 2007

DEQ Budget Bills

DEQ Appropriations Bill – House Bill 5022 is the main DEQ budget bill that includes the base budget as well as all the budget policy packages that are not supported by fee bills. This was passed with strong legislative support - passed the House 50-6 and the Senate (20-6). The bill was signed by Governor. Deals about the 2007-09 DEQ budget are described in this factsheet: <http://www.deq.state.or.us/msd/budget/DEQ0709BudgetFactsheet.pdf>

DEQ Fee Ratification Bill – House Bill 5023 provides approval for the WQ permitting and AQ Oregon Low Emission Vehicle fees passed by the EQC since 2005 legislative session. It passed the House 31-26 and the Senate 20-8. It was signed by Governor.

Bills Related to the Air Quality Program

Title V - Senate Bill 107 increases fees for major industrial permittees to equal the cost of the permitting program as required by federal law. While an existing statute allows annual adjustments to the fee based on changes in the Consumer Price Index, this bill is needed to align the fee to current costs. About two weeks before the first hearing, industry's "no position" on the proposed 24% fee increase changed to opposition. Industry was interested in concessions on both the fees and regulations that exceed federal requirements. Negotiations between stakeholders and DEQ resulted in a fee table that spreads the increase over three years (approximately 8% per year) and increased disclosure requirements when adopting a rule that affects Title V sources and is more stringent than federal requirements. The increased disclosure includes a description of alternatives considered and the reasons the alternatives were rejected, and groups affected by the rule can request a hearing directly in front of the EQC. It was signed by the Governor.

Clean Diesel – House Bill 2172 provides grants, loans and tax credits to retrofit, rebuild or replace older diesel engines and to reduce diesel idling. Incentives will be available for operators of all types of diesel engines, including trucking and construction companies, agricultural operations, municipalities, school districts, marine operators and railroads. This bill had broad support. It will provide \$1,150,000 in General Fund, \$1,500,000 in Federal Funds and \$500,000 federal transportation funds. It is waiting for the Governor's signature and will likely have a bill signing ceremony.

Heat Smart For Clean Air – The Senate Environment and Natural Resources Committee Bill (SB 338) would have provided funding to help homeowners replace old uncertified woodstoves with cleaner options and includes a requirement for removal of uncertified wood stoves upon sale of the home. The bill would have funded the grant program by redirecting Asbestos and Open Burning penalties from the General Fund to the grant fund. The Associated Oregon Industries originally strongly opposed this funding mechanism, but we negotiated a workable solution with them that preserves this funding mechanism. Even though there was considerable support for this bill from numerous lobbyists, legislators and the Governor's Office, it was never allowed to go forward by the Ways and Means Co-Chairs. Thus the bill died but is likely to come back in 2009.

Low Emission Vehicle Registration – House Bill 2272 would require proof of compliance with California emission standards when a new vehicle is registered in Oregon. It will protect Oregon consumers from unknowingly purchasing a noncompliant vehicle and Oregon dealers from unfair competition by violators. This approach is used by nearly all of the states that have adopted California's vehicle emission standards. It passed both chambers with strong supporting votes and has been signed by the Governor.

Agriculture Air Quality – Senate Bill 235 introduced jointly with the Oregon Department of Agriculture (ODA), would allow regulation of agriculture to the extent necessary to comply with the federal Clean Air Act. It would designate ODA as the lead implementing agency, and would authorize ODA to conduct research on best management practices to reduce emissions from agricultural operations. Environmental groups were not satisfied with the bill and were successful having their amendment passed by the Senate Environment and Natural Resources Committee. This amendment would have had a significant fiscal impact on DEQ and ODA as it would require setting ammonia and hydrogen sulfide standards. The agriculture industry was equally determined to undo the amendment. DEQ, ODA and the Governor's Office worked to develop a compromise amendment that could pass both chambers. Compromise was reached and this bill was amended to eliminate the fiscal concerns and creates a task force during the interim that will focus on the dairy industry. It was signed by the Governor. DEQ and ODA are currently working with the Governor's Natural Resource Office to create the interim task force.

Bills Related to the Land Quality Program

Land Quality Fee Bills - Four DEQ – Land Quality fee bills were successfully passed by the Legislature. SB 103 helps maintain adequate funding for our hazardous waste work by increasing hazardous waste generator fees. SB 104 maintains adequate funding for our underground storage tank (UST) work by increasing annual UST permit fees. The bill also makes permanent the pilot optional field ticket enforcement procedure. SB 105 maintains adequate funding for our work related to marine spill prevention and also expands spill prevention planning requirements to liquefied natural gas (LNG) vessels and facilities. SB 106 provides funding to pay for auditing heating oil tank (HOT) decommissioning and cleanup work by increasing the fee charged for filing HOT contractor reports. All four bills were signed by the Governor.

Electronic Waste – Three comprehensive electronic waste management bills were introduced (HB 2395 by a legislative interim committee, HB 2626 by Representatives Dingfelder and Bruun, and SB 541 by Senator Morse). The three bills focused on the recycling of personal computers, monitors, lap tops and televisions through a system managed or financed by product manufacturers. The House Committee on Energy and the Environment Committee Chair Dingfelder formed a work group of interested parties including DEQ to reach consensus on bill language using HB 2626 as the vehicle. This bill was unanimously passed by both chambers and was signed by the Governor.

Bottle Bill Changes – There were at least three bills introduced addressing Oregon's Bottle Bill. They ranged from adding water bottles to the existing statute to an expansion of the Bottle Bill to include all beverages other than milk, raise the deposit to 13 cents with a refund of 10 cents, capture the unredeemed deposits and establish redemption centers as an alternative to returning containers to stores. SB 707 was the successful bill that includes adding water bottles and sets up an interim committee to consider future increases to the bottle deposit, expanding to other types of beverage containers and consideration of redemption alternatives such as special redemption centers. It was signed by the Governor.

Ballast Water Bill – Senate Bill 643 creates the Shipping Transport of Aquatic Invasive Species Task Force to study and make recommendations for combating the introduction of aquatic non-indigenous species associated with shipping-related transport into the waters of the state. The DEQ director is authorized to appoint members of the task force and PSU staff may provide staff support or coordination support. In conjunction with this bill, one FTE has been added to the Land Quality budget to support ballast water reporting and regulation efforts. It was signed by the Governor.

Bills related to the Water Quality Program

Underground Injection Control (UIC) – House Bill 2118 is the result of joint stakeholder and DEQ efforts to secure statutory authority to establish fees to keep this program at DEQ. Last year DEQ initiated the process to return program primacy to EPA due to affordability issues. Stakeholders asked the EQC to reconsider this action and as a result, the EQC asked that stakeholders and DEQ work to seek funding support during the 2007 Session. The bill establishes fees to add 6 new positions to deliver the basic elements of a functional statewide UIC program and keep authority with the state rather than with the U.S. Environmental Protection Agency (EPA). It was signed by the Governor.

WQ Toxics Reduction – *This is a non-DEQ sponsored bill.* Senate Bill 737 is an agreement by municipalities to start reducing persistent bioaccumulative toxic pollutants (PBTs) through pollution prevention and toxics reduction, by 2011, statewide for the 52 large wastewater treatment plants. It requires DEQ to develop a list of priority PBTs that pose a threat to waters, human health, wildlife and aquatic life by June 2009. By June 2010, DEQ must submit a report to the Legislature on the priority list of PBTs that includes identification of point, nonpoint and legacy sources of priority PBTs "from existing data" and source reduction and control methods that can reduce PBT discharges. By June 2011, the largest wastewater treatment plants statewide must submit to DEQ a plan for reducing their discharges of priority listed PBTs. Their plans can include but not be limited to collection of legacy pesticides; reducing mercury amalgam in dental offices; working with businesses to reduce PBT use and discharge; recycling fluorescent lamps; etc. This work will be funded by a municipal surcharge to fund the first two years of the program begins in July 2008; we would hire as soon as possible after that, but program would probably not start until fall of 2008. There is ongoing work associated with this bill including the review of the reduction plans for the priority PBTs and incorporating those plans into permits.

To ensure that DEQ will be able to meet the deadlines set out in the bill, provide for public input into the process, and develop necessary guidance for permittees affected by this bill, DEQ will need two Natural Resource Specialist 4 limited duration positions that will be funded by the surcharge. After DEQ submits its report to the Legislature by June 1, 2010, the positions funded by the surcharge will be eliminated. Beginning in June 2009, DEQ will need a permanent position to conduct the ongoing work for this new program. We will need to request general funds for this position and for associated Attorney General costs in the 2009 Legislative Session. This bill was signed by the Governor.

Other Bills of Interest to DEQ

Environmental Justice - Senator Gordly's SB 420 will result in the creation of an Environmental Justice Task Force and will require natural resource agencies to better incorporate environmental justice concerns into daily work activities. DEQ as well as the other natural resource agencies will need to focus on implementing this new process. This bill is waiting for the Governor's signature; a signing ceremony is being planning. Implementation details have yet to be worked out.

State Agency Fee Ratification Process – This bill modifies the existing requirements for state agency fees that are not set in legislation. For DEQ, this means fees set by the Environmental Quality Commission (EQC). Until this bill became law, fees established by the EQC needed to go to the next legislative session for "ratification" of the fees by the Legislature. HB 5023 (second bill on this list) was the vehicle for the Legislature to approve the wastewater permit fees and low emission vehicle fees set by the EQC after the 2005 Session. From now on, fees will not need to go before the Legislature for ratification as long as they were anticipated as part of the agency's approved budget. This bill was signed by the Governor.

Environmental Enhancement Tax Credits – HB 3500 would have established the Environmental Enhancement Tax Credit Program to replace the existing Pollution Control Tax Credit program that sunsets at the end of 2007. The Oregon Business Association and Associated Oregon Industries drafted HB 3500 to include two classes of tax credits. One class would be very similar to the existing program where qualified businesses can receive tax credits for meeting existing federal, state or local pollution requirements. A second class of tax credits would be for pollution control equipment that exceed existing federal, state or local pollution requirements. A higher percent of credit would be offered to business that exceeded requirements. This bill died in committee but we understand that the Oregon Business Association will attempt to have this bill before the February 2008 Special Session.

Oregon Environmental Quality Commission Meeting
October 17, 2007

Agenda Item B
Rule Adoption: Clarification of Proposed Orders in Contested Enforcement Cases

Talking Points

- I. Introduction and background – Why are we here?
 - II. The rulemaking has 2 main parts:
 - a. Motion for Clarification
 - i. How the rule works
 - ii. Effects of the rule
 - b. Housekeeping items
 - i. Environmental Law Specialist (ELS) representation of agency at hearings involving permit revocations, etc.
 - ii. Attorney General's Model Rules
 - iii. Typographical error
 - iv. Updating Clean Air Act rule with today's date
 - III. Conclusion: The Department requests the Commission adopt the rules as set forth in Attachment A.
-

Office of Administrative Hearings

State of Oregon
Department of Environmental Quality

Memorandum

Date: October 1, 2007
To: Environmental Quality Commission
From: Stephanie Hallock, Director
Subject: Agenda Item B
Rule Adoption: Clarification of Proposed Orders in Contested Enforcement Cases
October 17, 2007, EQC Meeting

Why this is Important The Environmental Quality Commission (EQC) asked the Department of Environmental Quality (DEQ) to improve the clarity and completeness of contested case appeals coming before the EQC.

Additionally, DEQ regulations governing the appeals process (Division 11) need updating, clarification, and correction of an error in order to make the contested case process more effective.

Department Recommendation DEQ requests that the EQC adopt the proposed rules and rule amendments in Attachment A.

Background and Need for Rulemaking *Background*
One function of the DEQ is to enforce environmental laws to compel compliance and create deterrence. When a person or business does not agree with DEQ's enforcement action, they have the right to a contested case hearing before an administrative law judge (ALJ). If either party to a contested case is dissatisfied with the ALJ's decision (issued in the form of a "proposed order"), they may appeal that decision to the EQC. In order to make a sound decision on appeal, the EQC needs to be able to understand the issues and the basis for the ALJ's rulings.

Proposed Rule Changes

DEQ proposes two main changes to the existing rules in Division 11:

(1) Adopt Oregon Administrative Rule (OAR) 340-011-0573 and amend OAR 340-011-0575 to allow both parties (respondent and DEQ) in contested cases to request that the ALJ revise the proposed order when the proposed order does not contain all of the information required by OAR 137-003-0645(3).

Part (1) of the rule change is needed to ensure the EQC has the most clear and complete proposed order available for review. The rules do not currently provide both parties to contested case hearings with an opportunity to request this type of clarification of proposed orders. The proposed rule will allow both DEQ and respondents to request such a

Agenda Item B

Rule Adoption: Clarification of Proposed Orders in Contested Enforcement Cases

October 17, 2007, EQC Meeting

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clarification prior to deciding whether to appeal the proposed order to the EQC, which should eliminate the need for some appeals to the EQC and reduce the time necessary to reach some final orders. This rulemaking is needed to improve the clarity and legal sufficiency of proposed orders in contested cases, for the purpose of assisting the EQC in reaching fully informed and well reasoned decisions.

(2) Amend OAR 340-011-0510(1) to clarify the circumstances under which Environmental Law Specialists (ELs) are authorized to provide lay representation on behalf of DEQ in contested case proceedings.

Part (2) of the rule change is needed to explicitly authorize ELs to represent DEQ in contested case hearings involving permit, license, and certification revocations, modifications, and denials. EL representation of DEQ in contested case proceedings involving license, permit, or certification revocations, modifications, and denials is needed in order to effectively use agency staff and save agency resources.

Additionally, this rulemaking would:

- Correct a typographical error in OAR 340-011-0515 to reference the proper rule in the Oregon Administrative Procedures Act regarding the extent to which parties may be represented by attorneys or other authorized representatives in proceedings before ALJs or the EQC (the current rule references OAR 340-003-0555, and the proper reference is OAR 137-003-0555). Amend OAR 340-011-0005 to update the incorporation by reference of Divisions 003 and most of Division 001 of the Attorney General's Uniform and Model Rules (Model Rules), in order to keep DEQ's rules consistent with the Model Rules, which DOJ revises yearly. Additionally, the rulemaking would adopt OAR 340-011-0009 to incorporate Division 004 of the Model Rules (regulating Miscellaneous items and Orders in Other than Contested Cases). To date, the agency has not had any express authority for processing orders in other than contested cases (e.g. petitions for reconsideration), and we need procedures to apply to these circumstances.
- Finally, because this rulemaking may affect enforcement of Clean Air Act requirements, OAR 340-200-0040 would be updated to reflect the date the EQC adopts these rules. These amendments, if adopted, will be submitted to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan, which is a requirement of the Clean Air Act.

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Agenda Item B

Rule Adoption: Clarification of Proposed Orders in Contested Enforcement Cases

October 17, 2007, EQC Meeting

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Effect of Rule The proposed changes are procedural in nature and the general purpose of all of the proposed rule changes is to promote a more effective and efficient enforcement process.

In summary, the proposed changes will:

- Allow any party to a DEQ contested case proceeding to request that the ALJ revise the proposed order to provide a more clear and complete description and analysis of the record on appeal to the EQC;
- Clarify that ELSs may provide lay representation on behalf of the DEQ in contested case proceedings involving license, permit, or certification revocations, modifications, and denials;
- Correct a typographical error to reference the proper rule in the Oregon Administrative Procedures Act regarding the extent to which parties may be represented by attorneys or other authorized representatives in proceedings before ALJs or the EQC; and
- Update the incorporation by reference of the Attorney General's Model Rules, and incorporate the Attorney General's Model Rules for Miscellaneous and Orders in Other than Contested Cases.

Please note that the proposed language of OAR 340-011-0573(4) has been revised since the public comment period in order to correct a mistake in grammar.

Commission Authority The Commission has authority to take this action under ORS 468.020.

Stakeholder Involvement No advisory committee was used due to the limited procedural nature of the rulemaking. Anticipated stakeholders (the Office of Administrative Hearings (OAH), DOJ, and representatives of potential respondents) were informed of the proposed rulemaking and have informally provided input.

Public Comment A public comment period extended from May 16, 2007 to July 2, 2007, and included a public hearing in Portland, Oregon. No comments were submitted, and no testimony was given (see Attachments B and C).

Key Issues A key issue identified early in the rulemaking development process was the OAH's response to DEQ's proposal regarding motions for clarification. The EQC discussed this issue with DEQ and OAH at its October 6, 2006, and December 14, 2006 meetings. Specifically, OAH raised questions regarding alternative ways to achieve the EQC's goal. The EQC determined that the alternative presented would not meet the goals of the EQC, and the EQC authorized DEQ to proceed with drafting a rule that would provide for motions for clarification. The rule will

Agenda Item B

Rule Adoption: Clarification of Proposed Orders in Contested Enforcement Cases

October 17, 2007, EQC Meeting

Page 4 of 4

allow *both* parties to an enforcement action to make motions for clarification, but such a motion will not *require* ALJs to take any further action to clarify proposed orders.

Next Steps

For the rules to apply in contested case hearings, DEQ will need final approval from DOJ, which will involve DOJ consultation with OAH on the proposed rule regarding motions for clarification. The Department conferred with DOJ during the development of the rules and expects approval of the rules, possibly as early as the end of November 2007.

Effective date: Upon filing with the Secretary of State.

DEQ's Rule Implementation Plan is available upon request.


Attachments

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

Available Upon Request

- 1. Legal Notice of Hearing
- 2. Cover Memorandum from Public Notice
- 3. Rule Implementation Plan

Approved:



Jane K. Hickman, Administrator
Office of Compliance and Enforcement

Report Prepared By: Sarah Greenley

Phone: (503) 229-6927

004

PROPOSED RULE CHANGES

340-011-0005

Definitions

Unless otherwise defined in this division, the words and phrases used in this division have the same meaning given them in ORS 183.310, the rules of the Office of Administrative Hearings, the Model Rules or other divisions in Oregon Administrative Rules, Chapter 340, as context requires.

- (1) "Commission" means the Environmental Quality Commission.
- (2) "Department" means the Department of Environmental Quality.
- (3) "Director" means the director of the department or the director's authorized delegates.
- (4) " Rules of the Office of Administrative Hearings" means the Attorney General's Rules, OAR 137-003-0501 through 137-003-0700.
- (5) "Model Rules" or "Uniform Rules" means the Attorney General's Uniform and Model Rules of Procedure, OAR 137-001-0005 through 137-003-0500, excluding OAR 137-001-0008 through 137-001-0009, in effect as of August 15, 2003. OAR Chapter 137, Division 001 (excluding OAR 137-001-0008 through 137-001-0009), OAR Chapter 137, Division 003, and OAR Chapter 137, Division 004, as in effect on January 1, 2006.
- (6) "Participant" means the respondent, a person granted either party or limited party status in the contested case under OAR 137-003-0535, an agency participating in the contested case under OAR 137-003-0540, and the department.
- (7) "Respondent" means the person to whom a formal enforcement action is issued.
- (8) "Formal Enforcement Action" has the same meaning as defined in OAR 340, division 012.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.341

Hist.: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 25-1979, f. & ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 10-1997, f. & cert. ef. 6-10-97; DEQ 3-1998, f. & cert. ef. 3-9-98; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 10-2002, f. & cert. ef. 10-8-02; DEQ 18-2003, f. & cert. ef. 12-12-03

* * *

340-011-0009

Incorporation of Attorney General's Uniform and Model Rules

The following Attorney General's Uniform and Model Rules of Procedure are adopted and incorporated into this Division, except as otherwise provided in this Chapter: OAR Chapter 137, Division 001 (excluding OAR 137-001-0008 through 137-001-0009), OAR Chapter 137, Division 003, and OAR Chapter 137, Division 004, as in effect on January 1, 2006.

* * *

340-011-0510

Agency Representation by Environmental Law Specialist

(1) Environmental Law Specialists, and other department personnel as approved by the director, are authorized to appear on behalf of the department and commission in contested case hearings involving formal enforcement actions issued under OAR 340, division 012, and revocation, modification, or denial of licenses, permits, and certifications.

(2) Environmental Law Specialists or other approved personnel may not present legal argument as defined under OAR 137-003-0545 on behalf of the department or commission in contested case hearings.

(3) When the department determines it is necessary to consult with the Attorney General's office, an administrative law judge will provide a reasonable period of time for an agency representative to consult with the Attorney General's office and to obtain either written or oral legal argument, if necessary.

Stat. Auth.: ORS 183.341, ORS 183.452 & ORS 468.020

Stats. Implemented: ORS 183.452

Hist.: DEQ 16-1991, f. & cert. ef. 9-30-91; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0103 by DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0515

Authorized Representative of Respondent other than a Natural Person in a Contested Case Hearing

A corporation, partnership, limited liability company, unincorporated association, trust and government body may be represented by either an attorney or an authorized

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representative in a contested case hearing before an administrative law judge or the commission to the extent allowed by OAR ~~340~~137-003-0555.

Stat. Auth.: ORS 183.341 & ORS 468.020

Stats. Implemented: ORS 183.457

Hist.: DEQ 6-2002(Temp), f. & cert. ef. 4-24-02, thru 10-21-02; DEQ 10-2002, f. & cert. ef. 10-8-02; Renumbered from 340-011-0106 by DEQ 18-2003, f. & cert. ef. 12-12-03

* * *

OAR 340-011-0573

Proposed Orders in Contested Cases

(1) Following the close of the record for a contested case hearing, the administrative law judge will issue a proposed order. The administrative law judge will serve the proposed order on each participant. A proposed contested case order must conform to the requirements of OAR 137-003-0645(3).

(2) Within 15 days after a proposed contested case order is issued, a participant in the contested case hearing may file a motion requesting that the administrative law judge clarify or supplement a proposed order. The motion must specify why the participant believes that the proposed order fails to conform to the requirements of OAR 137-003-0645(3) and recommend changes to the order. The motion must be served on the administrative law judge and all participants in the contested case hearing.

(3) The administrative law judge may grant or deny a motion filed under section (2) of this rule within 15 days. If the motion is granted, the administrative law judge may take the matter under advisement and reissue the proposed order unchanged or may issue an amended proposed order. If the administrative law judge fails to act on the motion within 15 days, the motion is deemed denied by operation of law.

(4) The filing of a timely motion for clarification under section (2) of this rule tolls the period for filing a Petition for Commission Review of the proposed contested case order under OAR 340-011-0575. Tolling of the period begins on the day the motion is served on the administrative law judge and ends on the day the motion is denied, deemed denied by operation of law, or the proposed order is reissued without changes. If the administrative law judge issues an amended proposed order, the amended order will be treated as a new proposed order for purpose of the filling a timely Petition for Commission Review under OAR 340-011-0575.

(5) The motion for clarification authorized by this rule is intended to alter the provisions of OAR 137-003-0655 but not to eliminate the authority of the administrative law judge to correct a proposed order in the manner specified in section (2) of that rule.

(6) A motion for clarification and any response to a motion for clarification will be part of the record on appeal.

* * *

340-011-0575

Review of Proposed Orders in Contested Cases

(1) For purposes of this rule, filing means receipt in the office of the director or other office of the department.

~~(2) Following the close of the record for a contested case hearing, the administrative law judge will issue a proposed order. The administrative law judge will serve the proposed order on each participant.~~

(3) Commencement of Review by the Commission: The proposed order will become final unless a participant or a member of the commission files, with the commission, a Petition for Commission Review within 30 days of service of the proposed order. The timely filing of a Petition is a jurisdictional requirement and cannot be waived. Any participant may file a petition whether or not another participant has filed a petition.

(4) Contents of the Petition for Commission Review. A petition must be in writing and need only state the participant's or a commissioner's intent that the commission review the proposed order. Each petition and subsequent brief must be captioned to indicate the participant filing the document and the type of document (for example: Respondents Exceptions and Brief; Department's Answer to Respondent's Exceptions and Brief).

(5) Procedures on Review:

(a) Exceptions and Brief: Within 30 days from the filing of a petition, the participant(s) filing the petition must file written exceptions and brief. The exceptions must specify those findings and conclusions objected to, and also include proposed alternative findings of fact, conclusions of law, and order with specific references to the parts of the record upon which the participant relies. The brief must include the arguments supporting these alternative findings of fact, conclusions of law and order. Failure to take an exception to a finding or conclusion in the brief, waives the participant's ability to later raise that exception.

(b) Answering Brief: Each participant, except for the participant(s) filing that exceptions and brief, will have 30 days from the date of filing of the exceptions and brief under subsection (5)(a), in which to file an answering brief.

(c) Reply Brief: If an answering brief is filed, the participant(s) who filed a petition will have 20 days from the date of filing of the answering brief under subsection (5)(b), in which to file a reply brief.

(d) Briefing on Commission Invoked Review: When one or more members of the commission wish to review the proposed order, and no participant has timely filed a Petition, the chair of the commission will promptly notify the participants of the issue that the commission desires the participants to brief. The participants must limit their briefs to those issues. The chair of the commission will also establish the schedule for filing of briefs. When the commission wishes to review the proposed order and a participant also requested review, briefing will follow the schedule set forth in subsections (a), (b), and (c) of this section.

(e) Extensions: The commission or director may extend any of the time limits contained in section (5) of this rule. Each extension request must be in writing and filed with the commission before the expiration of the time limit. Any request for an extension may be granted or denied in whole or in part.

(f) Dismissal: The commission may dismiss any petition, upon motion of any participant or on its own motion, if the participant(s) seeking review fails to timely file the exceptions or brief required under subsection (5)(a) of this rule. A motion to dismiss made by a participant must be filed within 45 days after the filing of the Petition. At the time of dismissal, the commission will also enter a final order upholding the proposed order.

(g) Oral Argument: Following the expiration of the time allowed the participants to present exceptions and briefs, the matter will be scheduled for oral argument before the commission.

(65) Additional Evidence: A request to present additional evidence must be submitted by motion and must be accompanied by a statement showing good cause for the failure to present the evidence to the administrative law judge. The motion must accompany the brief filed under subsection (5)(a) or (b) of this rule. If the commission grants the motion or decides on its own motion that additional evidence is necessary, the matter will be remanded to an administrative law judge for further proceedings.

(76) Scope of Review: The commission may substitute its judgment for that of the administrative law judge in making any particular finding of fact, conclusion of law, or order except as limited by OAR 137-003-0655 and 137-003-0665.

(87) Service of documents on other participants: All documents required to be filed with the commission under this rule must also be served upon each participant in the contested case hearing. Service can be completed by personal service, certified mail or regular mail.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.460, 183,464 & ORS 183.470

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Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 115, f. & ef. 7-6-76; DEQ 25-1979, f. & ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0132 by DEQ 18-2003, f. & cert. ef. 12-12-03

* * *

340-200-0040

State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on ~~February 22,~~ October 17, 2007.

(3) Notwithstanding any other requirement contained in the SIP, the Department may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82;

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DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07

Attachment B
Summary of Public Comment and Agency Response

Title of Rulemaking: Clarification of Proposed Orders in Contested Enforcement Cases
Prepared by: Sarah Greenley
Date: October 18, 2007

Comment period The public comment period opened May 16, 2007 (notice was mailed and emailed on May 16, 2007, published in the Oregonian on May 17, 2007, and published in the Secretary of State's Bulletin on June 1, 2007). The comment period closed July 2, 2007 at 5:00 p.m. . DEQ held a public hearing on June 19, 2007, at 6:30 p.m. at DEQ Headquarters in Portland, Oregon.

Organization of comments and responses No written comments were submitted, and no one provided testimony at the hearing.

Presiding Officer's Report

To: Environmental Quality Commission

From: Sarah Greenley, Office of Compliance and Enforcement

Re: Presiding Officer's Report for Rulemaking Hearing
Title of Proposal: Clarifications of Proposed Orders in Contested Enforcement Cases
Hearing Date and Time: June 19, 2007, 6:30 p.m.
Hearing Location: DEQ Headquarters, Portland, Oregon

The Department convened the rulemaking hearing on the proposal referenced above at 6:30 p.m. and closed it at 7:00 p.m.

No one attended the hearing or testified about the rulemaking.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

**CLARIFICATION OF PROPOSED ORDERS IN CONTESTED
ENFORCEMENT CASES**

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).

1. Are there federal requirements that are applicable to this situation? If so, exactly what are they?

Not directly. There are no federal statutes or regulations that directly apply to the Department of Environmental Quality's (DEQ's) compliance and enforcement program, but DEQ's enforcement regulations and policies are developed in consultation with the U.S. Environmental Protection Agency (EPA). In order to keep delegation of federal environmental programs such as air quality, water quality and hazardous waste, EPA requires DEQ to adequately enforce state program requirements.

2. Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?

n/a

3. Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?

n/a

4. Will the proposed requirement (rulemaking) 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 motion for clarification would provide a new, low-cost, opportunity for the regulated community to clarify the ALJ's position in the proposed order, which may eliminate the need for appeal, or at least inform the parties what the issues are on appeal, thereby increasing certainty and preventing the need for some appeals.

5. Is there a timing issue which might justify changing the time frame for implementation of federal requirements?

n/a

6. Will the proposed requirement (rulemaking) assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?

n/a

7. Does the proposed requirement (rulemaking) establish or maintain reasonable equity in the requirements for various sources? (level the playing field)

n/a

8. Would others face increased costs if a more stringent rule is not enacted?

n/a

9. Does the proposed requirement (rulemaking) 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?

n/a

10. Is demonstrated technology available to comply with the proposed requirement (rulemaking)?

n/a

11. Will the proposed requirement (rulemaking) contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?

During the appeal process, the Environmental Quality Commission is frequently faced with incomplete records upon review. This lack of a complete administrative record creates unnecessary delays in decision-making. The proposed rule allowing motions for clarification will provide a cost-effective environmental gain because effective enforcement, through specific and general deterrence, improves environmental quality. The other proposed rules address a typographical error and out-of-date references, and make a clarification to an existing rule – all of which promote more cost-effective environmental enforcement.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT
This form accompanies a Notice of Proposed Rulemaking

Rule Caption	Clarification of Proposed Orders in Contested Enforcement Cases
Title of Proposed Rulemaking:	Motions for Clarification
Stat. Authority or other Legal Authority:	ORS 468.020, 183.341, 183.452
Stat. Implemented:	ORS 468A.035, 468.070, 468.090-140, 183.341, 183.452, 183.460, 183.464, 183.470
Need for the Rule(s)	<p>A) The rulemaking is needed to improve the clarity and legal sufficiency of proposed orders in contested cases. The rule should also eliminate the need for some appeals to the Environmental Quality Commission (EQC), reduce the time necessary to reach final orders, and improve the quality of the record on review to the EQC – ultimately assisting the EQC in reaching fully informed and well reasoned decisions.</p> <p>B) The proposed rulemaking would also clarify that Environmental Law Specialists (ELs) may provide lay representation on behalf of the Department of Environmental Quality (DEQ) in contested case proceedings involving license, permit, or certification revocations, modifications, and denials.</p> <p>Additionally, this rulemaking involves two areas of Division 11 which need updating and correcting. The rulemaking would correct a typographical error to reference the proper rule in the Oregon Administrative Procedures Act regarding the extent to which parties may be represented by attorneys or other authorized representatives in proceedings before Administrative Law Judges or the EQC. Finally, this rulemaking updates the incorporation by reference of the Attorney General's Model Rules, and incorporates the Attorney General's Model Rules for Miscellaneous and Orders in Other than Contested Cases. Neither of these items are expected to have an economic impact, and are not required to be analyzed as part of the Statement of Need and Economic Impact, per ORS 183.335(7)(d) and 183.341(1).</p>
Documents Relied Upon for Rulemaking	None.
Requests for Other Options	<i>ORS 183.335(2)(b)(G) requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.</i>
Fiscal and Economic Impact, Statement of Cost Compliance	
Overview	<p>A) The economic impacts associated with the motion for clarification rulemaking are related to the cost and/or savings of time and resources involved in the contested case hearing appeals process. These costs and savings will depend on the facts of each case, and cannot be reasonably estimated. The objective of the rulemaking is to reduce the expense of the post-contested case hearing process by clarifying proposed orders, thus making the appeal process more focused and efficient. The additional cost of preparing a motion for clarification (for both DEQ and respondents) is expected to be offset by cost savings in the reduction of appeals and a more efficient appeals process.</p> <p>For the small percentage of cases for which a contested case hearing is necessary, DEQ incurs the cost of the hearing officer, staff time, and sometimes legal fees paid to the Department of Justice (DOJ). If fewer cases are appealed to the EQC and the state Circuit Court of Appeals as a result of this rulemaking, DEQ would see a cost savings in legal fees and the cost of additional staff time. Further, if those cases that are appealed are more efficient as a result of this rulemaking, legal fees and staff time should decrease.</p> <p>The economic impact to the general public, small businesses, large businesses, local government, and other agencies will be basically the same, as the proposed rules apply equally to all respondents in contested case hearings.</p>

	B) The economic impacts associated with ELS representation of the agency in contested case hearings involving license, permit, or certification revocations, modifications, and denials are related to the DEQ paying for its own staff (ELSS) time rather than paying DOJ attorneys to represent the agency at these hearings. The use of the agency's own staff rather than DOJ is expected to save the agency money.	
General public	See Overview section above.	
Small Business (50 or fewer employees – ORS183.310(10))	a) Estimated number and types of businesses impacted	It is not feasible to estimate the number and types of businesses that may be impacted by this rulemaking, because all business subject to DEQ rules could potentially be impacted, if they violate those rules, are the subject of an enforcement action, and participate in a contested case hearing. A review of the last 9 years of DEQ enforcement data shows that on average, DEQ issues approximately 207 enforcement actions per year. On average, 13 of those actions are appealed in a contested case hearing, and three of those are appealed to the EQC. These numbers reflect <i>total</i> enforcement actions and appeals, some of which involve small businesses, but it is not known exactly how many involve small businesses.
	b) Additional reporting requirements	None.
	c) Additional equipment and administration requirements	None.
	d) Describe how businesses were involved in development of this rulemaking	The Office of Compliance and Enforcement (OCE) had initial informal consultations with representatives of the regulated community, and believes that potential respondents, including businesses, would be supportive of the rulemaking. Businesses will be able to continue to provide input through the public comment and hearing process.
Large Business	See Overview and Small Business discussions above.	
Local Government	See Overview section above.	
State Agencies	See Overview section above.	
DEQ	See Overview section above for general discussion of impacts. It is not possible to predict whether the net fiscal impact to DEQ will be positive or negative, but the expectation is that both proposed rules will save the agency money because enforcement actions may become more efficient, fewer cases may be appealed to the EQC, and DEQ employees would be doing the work that DEQ would otherwise pay DOJ attorneys to do. In addition, this rulemaking will not require any additional FTEs.	
Other agencies	See Overview section above.	
Assumptions	Based on past procedures and numbers of contested cases that are appealed, these proposed changes will increase the effectiveness of the state and the EQC in the contested case appeals process.	
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. (However, to the extent that the contested case enforcement process increases compliance with environmental regulations (as does any compliance or enforcement action taken by DEQ), it is possible that the cost of construction and development may be slightly affected. It is not reasonable to attempt to quantify this potential cost or savings).	
Administrative Rule Advisory Committee	No advisory committee was used due to the limited procedural nature of the rulemaking. Anticipated stakeholders (Office of Administrative Hearings (OAH), DOJ, and representatives of potential respondents) have been informed of the proposed rulemaking, have informally provided input, and will continue to do so throughout the rulemaking process.	

Sarah Greenley
Prepared by

Sarah Greenley
Printed name

5.15.07
Date

[Signature]
Approved by DEQ Budget Office

Audrey Pollock
Printed name

5-15-07
Date

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Land Use Evaluation Statement

Rulemaking Proposal
for

**CLARIFICATION OF PROPOSED ORDERS IN CONTESTED
ENFORCEMENT CASES**

1. Explain the purpose of the proposed rules.

The proposed changes are procedural in nature and the general purpose of all of the proposed rule changes is to promote a more effective and efficient enforcement process.

The rulemaking will:

- Allow any party to a Department of Environmental Quality (DEQ) contested case proceeding to request that the Administrative Law Judge (ALJ) revise the proposed order so as to provide a more clear and complete record on appeal to the Environmental Quality Commission (EQC);
- Clarify that Environmental Law Specialists may provide lay representation on behalf of the DEQ in contested case proceedings involving license, permit, or certification revocations, modifications, and denials;
- Correct a typographical error to reference the proper rule in the Oregon Administrative Procedures Act regarding the extent to which parties may be represented by attorneys or other authorized representatives in proceedings before ALJs or the EQC; and
- Update the incorporation by reference of the Attorney General's Model Rules, and incorporate the Attorney General's Model Rules for Miscellaneous and Orders in Other than Contested Cases.

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:

The proposed rules do not affect programs or activities considered land use programs. The changes being proposed in these rules may indirectly affect the process for enforcing such land use programs, but not the programs or activities themselves.

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):

c. If no, apply the following criteria to the proposed rules. N/A

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs and rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or
2. Reasonably expected to have significant effects on
 - a. resources, objectives or areas identified in the statewide planning goals, or
 - b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2 above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

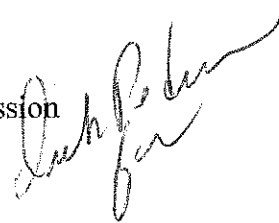
3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.

N/A

State of Oregon
Department of Environmental Quality

Memorandum

Date: October 1, 2007
To: Environmental Quality Commission
From: Stephanie Hallock, Director
Subject: Agenda Item B
Rule Adoption: Clarification of Proposed Orders in Contested Enforcement Cases
October 17, 2007, EQC Meeting



Why this is Important The Environmental Quality Commission (EQC) asked the Department of Environmental Quality (DEQ) to improve the clarity and completeness of contested case appeals coming before the EQC.

Additionally, DEQ regulations governing the appeals process (Division 11) need updating, clarification, and correction of an error in order to make the contested case process more effective.

Department Recommendation DEQ requests that the EQC adopt the proposed rules and rule amendments in Attachment A.

Background and Need for Rulemaking *Background*
One function of the DEQ is to enforce environmental laws to compel compliance and create deterrence. When a person or business does not agree with DEQ's enforcement action, they have the right to a contested case hearing before an administrative law judge (ALJ). If either party to a contested case is dissatisfied with the ALJ's decision (issued in the form of a "proposed order"), they may appeal that decision to the EQC. In order to make a sound decision on appeal, the EQC needs to be able to understand the issues and the basis for the ALJ's rulings.

Proposed Rule Changes
DEQ proposes two main changes to the existing rules in Division 11:

- (1) Adopt Oregon Administrative Rule (OAR) 340-011-0573 and amend OAR 340-011-0575 to allow both parties (respondent and DEQ) in contested cases to request that the ALJ revise the proposed order when the proposed order does not contain all of the information required by OAR 137-003-0645(3).

Part (1) of the rule change is needed to ensure the EQC has the most clear and complete proposed order available for review. The rules do not currently provide both parties to contested case hearings with an opportunity to request this type of clarification of proposed orders. The proposed rule will allow both DEQ and respondents to request such a

Agenda Item B

Rule Adoption: Clarification of Proposed Orders in Contested Enforcement Cases

October 17, 2007, EQC Meeting

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clarification prior to deciding whether to appeal the proposed order to the EQC, which should eliminate the need for some appeals to the EQC and reduce the time necessary to reach some final orders. This rulemaking is needed to improve the clarity and legal sufficiency of proposed orders in contested cases, for the purpose of assisting the EQC in reaching fully informed and well reasoned decisions.

(2) Amend OAR 340-011-0510(1) to clarify the circumstances under which Environmental Law Specialists (ELSS) are authorized to provide lay representation on behalf of DEQ in contested case proceedings.

Part (2) of the rule change is needed to explicitly authorize ELSS to represent DEQ in contested case hearings involving permit, license, and certification revocations, modifications, and denials. ELS representation of DEQ in contested case proceedings involving license, permit, or certification revocations, modifications, and denials is needed in order to effectively use agency staff and save agency resources.

Additionally, this rulemaking would:

- Correct a typographical error in OAR 340-011-0515 to reference the proper rule in the Oregon Administrative Procedures Act regarding the extent to which parties may be represented by attorneys or other authorized representatives in proceedings before ALJs or the EQC (the current rule references OAR 340-003-0555, and the proper reference is OAR 137-003-0555). Amend OAR 340-011-0005 to update the incorporation by reference of Divisions 003 and most of Division 001 of the Attorney General's Uniform and Model Rules (Model Rules), in order to keep DEQ's rules consistent with the Model Rules, which DOJ revises yearly. Additionally, the rulemaking would adopt OAR 340-011-0009 to incorporate Division 004 of the Model Rules (regulating Miscellaneous items and Orders in Other than Contested Cases). To date, the agency has not had any express authority for processing orders in other than contested cases (e.g. petitions for reconsideration), and we need procedures to apply to these circumstances.
- Finally, because this rulemaking may affect enforcement of Clean Air Act requirements, OAR 340-200-0040 would be updated to reflect the date the EQC adopts these rules. These amendments, if adopted, will be submitted to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan, which is a requirement of the Clean Air Act.

Agenda Item B

Rule Adoption: Clarification of Proposed Orders in Contested Enforcement Cases

October 17, 2007, EQC Meeting

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Effect of Rule The proposed changes are procedural in nature and the general purpose of all of the proposed rule changes is to promote a more effective and efficient enforcement process.

In summary, the proposed changes will:

- Allow any party to a DEQ contested case proceeding to request that the ALJ revise the proposed order to provide a more clear and complete description and analysis of the record on appeal to the EQC;
- Clarify that ELSs may provide lay representation on behalf of the DEQ in contested case proceedings involving license, permit, or certification revocations, modifications, and denials;
- Correct a typographical error to reference the proper rule in the Oregon Administrative Procedures Act regarding the extent to which parties may be represented by attorneys or other authorized representatives in proceedings before ALJs or the EQC; and
- Update the incorporation by reference of the Attorney General's Model Rules, and incorporate the Attorney General's Model Rules for Miscellaneous and Orders in Other than Contested Cases.

Please note that the proposed language of OAR 340-011-0573(4) has been revised since the public comment period in order to correct a mistake in grammar.

Commission Authority The Commission has authority to take this action under ORS 468.020.

Stakeholder Involvement No advisory committee was used due to the limited procedural nature of the rulemaking. Anticipated stakeholders (the Office of Administrative Hearings (OAH), DOJ, and representatives of potential respondents) were informed of the proposed rulemaking and have informally provided input.

Public Comment A public comment period extended from May 16, 2007 to July 2, 2007, and included a public hearing in Portland, Oregon. No comments were submitted, and no testimony was given (see Attachments B and C).

Key Issues A key issue identified early in the rulemaking development process was the OAH's response to DEQ's proposal regarding motions for clarification. The EQC discussed this issue with DEQ and OAH at its October 6, 2006, and December 14, 2006 meetings. Specifically, OAH raised questions regarding alternative ways to achieve the EQC's goal. The EQC determined that the alternative presented would not meet the goals of the EQC, and the EQC authorized DEQ to proceed with drafting a rule that would provide for motions for clarification. The rule will

Agenda Item B

Rule Adoption: Clarification of Proposed Orders in Contested Enforcement Cases

October 17, 2007, EQC Meeting

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allow *both* parties to an enforcement action to make motions for clarification, but such a motion will not *require* ALJs to take any further action to clarify proposed orders.

Next Steps

For the rules to apply in contested case hearings, DEQ will need final approval from DOJ, which will involve DOJ consultation with OAH on the proposed rule regarding motions for clarification. The Department conferred with DOJ during the development of the rules and expects approval of the rules, possibly as early as the end of November 2007.

Effective date: Upon filing with the Secretary of State.

DEQ's Rule Implementation Plan is available upon request.

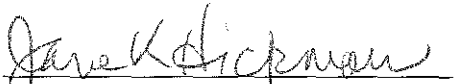
Attachments

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

Available Upon Request

- 1. Legal Notice of Hearing
- 2. Cover Memorandum from Public Notice
- 3. Rule Implementation Plan

Approved:



Jane K. Hickman, Administrator
Office of Compliance and Enforcement

Report Prepared By: Sarah Greenley
Phone: (503) 229-6927

PROPOSED RULE CHANGES

340-011-0005

Definitions

Unless otherwise defined in this division, the words and phrases used in this division have the same meaning given them in ORS 183.310, the rules of the Office of Administrative Hearings, the Model Rules or other divisions in Oregon Administrative Rules, Chapter 340, as context requires.

- (1) "Commission" means the Environmental Quality Commission.
- (2) "Department" means the Department of Environmental Quality.
- (3) "Director" means the director of the department or the director's authorized delegates.
- (4) " Rules of the Office of Administrative Hearings" means the Attorney General's Rules, OAR 137-003-0501 through 137-003-0700.
- (5) "Model Rules" or "Uniform Rules" means the Attorney General's Uniform and Model Rules of Procedure, ~~OAR 137-001-0005 through 137-003-0500, excluding OAR 137-001-0008 through 137-001-0009, in effect as of August 15, 2003. OAR Chapter 137, Division 001 (excluding OAR 137-001-0008 through 137-001-0009), OAR Chapter 137, Division 003, and OAR Chapter 137, Division 004, as in effect on January 1, 2006.~~
- (6) "Participant" means the respondent, a person granted either party or limited party status in the contested case under OAR 137-003-0535, an agency participating in the contested case under OAR 137-003-0540, and the department.
- (7) "Respondent" means the person to whom a formal enforcement action is issued.
- (8) "Formal Enforcement Action" has the same meaning as defined in OAR 340, division 012.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.341

Hist.: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 25-1979, f. & ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 10-1997, f. & cert. ef. 6-10-97; DEQ 3-1998, f. & cert. ef. 3-9-98; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 10-2002, f. & cert. ef. 10-8-02; DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0009

Incorporation of Attorney General's Uniform and Model Rules

The following Attorney General's Uniform and Model Rules of Procedure are adopted and incorporated into this Division, except as otherwise provided in this Chapter: OAR Chapter 137, Division 001 (excluding OAR 137-001-0008 through 137-001-0009), OAR Chapter 137, Division 003, and OAR Chapter 137, Division 004, as in effect on January 1, 2006.

340-011-0510

Agency Representation by Environmental Law Specialist

(1) Environmental Law Specialists, and other department personnel as approved by the director, are authorized to appear on behalf of the department and commission in contested case hearings involving formal enforcement actions issued under OAR 340, division 012, and revocation, modification, or denial of licenses, permits, and certifications.

(2) Environmental Law Specialists or other approved personnel may not present legal argument as defined under OAR 137-003-0545 on behalf of the department or commission in contested case hearings.

(3) When the department determines it is necessary to consult with the Attorney General's office, an administrative law judge will provide a reasonable period of time for an agency representative to consult with the Attorney General's office and to obtain either written or oral legal argument, if necessary.

Stat. Auth.: ORS 183.341, ORS 183.452 & ORS 468.020

Stats. Implemented: ORS 183.452

Hist.: DEQ 16-1991, f. & cert. ef. 9-30-91; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0103 by DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0515

Authorized Representative of Respondent other than a Natural Person in a Contested Case Hearing

A corporation, partnership, limited liability company, unincorporated association, trust and government body may be represented by either an attorney or an authorized

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representative in a contested case hearing before an administrative law judge or the commission to the extent allowed by OAR ~~340~~137-003-0555.

Stat. Auth.: ORS 183.341 & ORS 468.020

Stats. Implemented: ORS 183.457

Hist.: DEQ 6-2002(Temp), f. & cert. ef. 4-24-02, thru 10-21-02; DEQ 10-2002, f. & cert. ef. 10-8-02; Renumbered from 340-011-0106 by DEQ 18-2003, f. & cert. ef. 12-12-03

* * *

OAR 340-011-0573

Proposed Orders in Contested Cases

(1) Following the close of the record for a contested case hearing, the administrative law judge will issue a proposed order. The administrative law judge will serve the proposed order on each participant. A proposed contested case order must conform to the requirements of OAR 137-003-0645(3).

(2) Within 15 days after a proposed contested case order is issued, a participant in the contested case hearing may file a motion requesting that the administrative law judge clarify or supplement a proposed order. The motion must specify why the participant believes that the proposed order fails to conform to the requirements of OAR 137-003-0645(3) and recommend changes to the order. The motion must be served on the administrative law judge and all participants in the contested case hearing.

(3) The administrative law judge may grant or deny a motion filed under section (2) of this rule within 15 days. If the motion is granted, the administrative law judge may take the matter under advisement and reissue the proposed order unchanged or may issue an amended proposed order. If the administrative law judge fails to act on the motion within 15 days, the motion is deemed denied by operation of law.

(4) The filing of a timely motion for clarification under section (2) of this rule tolls the period for filing a Petition for Commission Review of the proposed contested case order under OAR 340-011-0575. Tolling of the period begins on the day the motion is served on the administrative law judge and ends on the day the motion is denied, deemed denied by operation of law, or the proposed order is reissued without changes. If the administrative law judge issues an amended proposed order, the amended order will be treated as a new proposed order for purpose of the filling a timely Petition for Commission Review under OAR 340-011-0575.

(5) The motion for clarification authorized by this rule is intended to alter the provisions of OAR 137-003-0655 but not to eliminate the authority of the administrative law judge to correct a proposed order in the manner specified in section (2) of that rule.

(6) A motion for clarification and any response to a motion for clarification will be part of the record on appeal.

* * *

340-011-0575

Review of Proposed Orders in Contested Cases

(1) For purposes of this rule, filing means receipt in the office of the director or other office of the department.

~~(2) Following the close of the record for a contested case hearing, the administrative law judge will issue a proposed order. The administrative law judge will serve the proposed order on each participant.~~

(3) Commencement of Review by the Commission: The proposed order will become final unless a participant or a member of the commission files, with the commission, a Petition for Commission Review within 30 days of service of the proposed order. The timely filing of a Petition is a jurisdictional requirement and cannot be waived. Any participant may file a petition whether or not another participant has filed a petition.

(4) Contents of the Petition for Commission Review. A petition must be in writing and need only state the participant's or a commissioner's intent that the commission review the proposed order. Each petition and subsequent brief must be captioned to indicate the participant filing the document and the type of document (for example: Respondents Exceptions and Brief; Department's Answer to Respondent's Exceptions and Brief).

(5) Procedures on Review:

(a) Exceptions and Brief: Within 30 days from the filing of a petition, the participant(s) filing the petition must file written exceptions and brief. The exceptions must specify those findings and conclusions objected to, and also include proposed alternative findings of fact, conclusions of law, and order with specific references to the parts of the record upon which the participant relies. The brief must include the arguments supporting these alternative findings of fact, conclusions of law and order. Failure to take an exception to a finding or conclusion in the brief, waives the participant's ability to later raise that exception.

(b) Answering Brief: Each participant, except for the participant(s) filing that exceptions and brief, will have 30 days from the date of filing of the exceptions and brief under subsection (5)(a), in which to file an answering brief.

(c) Reply Brief: If an answering brief is filed, the participant(s) who filed a petition will have 20 days from the date of filing of the answering brief under subsection (5)(b), in which to file a reply brief.

(d) Briefing on Commission Invoked Review: When one or more members of the commission wish to review the proposed order, and no participant has timely filed a Petition, the chair of the commission will promptly notify the participants of the issue that the commission desires the participants to brief. The participants must limit their briefs to those issues. The chair of the commission will also establish the schedule for filing of briefs. When the commission wishes to review the proposed order and a participant also requested review, briefing will follow the schedule set forth in subsections (a), (b), and (c) of this section.

(e) Extensions: The commission or director may extend any of the time limits contained in section (5) of this rule. Each extension request must be in writing and filed with the commission before the expiration of the time limit. Any request for an extension may be granted or denied in whole or in part.

(f) Dismissal: The commission may dismiss any petition, upon motion of any participant or on its own motion, if the participant(s) seeking review fails to timely file the exceptions or brief required under subsection (5)(a) of this rule. A motion to dismiss made by a participant must be filed within 45 days after the filing of the Petition. At the time of dismissal, the commission will also enter a final order upholding the proposed order.

(g) Oral Argument: Following the expiration of the time allowed the participants to present exceptions and briefs, the matter will be scheduled for oral argument before the commission.

(65) Additional Evidence: A request to present additional evidence must be submitted by motion and must be accompanied by a statement showing good cause for the failure to present the evidence to the administrative law judge. The motion must accompany the brief filed under subsection (5)(a) or (b) of this rule. If the commission grants the motion or decides on its own motion that additional evidence is necessary, the matter will be remanded to an administrative law judge for further proceedings.

(76) Scope of Review: The commission may substitute its judgment for that of the administrative law judge in making any particular finding of fact, conclusion of law, or order except as limited by OAR 137-003-0655 and 137-003-0665.

(87) Service of documents on other participants: All documents required to be filed with the commission under this rule must also be served upon each participant in the contested case hearing. Service can be completed by personal service, certified mail or regular mail.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.460, 183,464 & ORS 183.470

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Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 115, f. & ef. 7-6-76; DEQ 25-1979, f. & ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0132 by DEQ 18-2003, f. & cert. ef. 12-12-03

* * *

340-200-0040

State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on ~~February 22,~~ October 17, 2007.

(3) Notwithstanding any other requirement contained in the SIP, the Department may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82;

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DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-f1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07

Attachment B
Summary of Public Comment and Agency Response

Title of Rulemaking: Clarification of Proposed Orders in Contested Enforcement Cases

Prepared by: Sarah Greenley

Date: October 18, 2007

***Comment
period***

The public comment period opened May 16, 2007 (notice was mailed and emailed on May 16, 2007, published in the Oregonian on May 17, 2007, and published in the Secretary of State's Bulletin on June 1, 2007). The comment period closed July 2, 2007 at 5:00 p.m. . DEQ held a public hearing on June 19, 2007, at 6:30 p.m. at DEQ Headquarters in Portland, Oregon.

***Organization
of comments
and
responses***

No written comments were submitted, and no one provided testimony at the hearing.

Presiding Officer's Report

To: Environmental Quality Commission

From: Sarah Greenley, Office of Compliance and Enforcement

Re: Presiding Officer's Report for Rulemaking Hearing
Title of Proposal: Clarifications of Proposed Orders in Contested Enforcement Cases
Hearing Date and Time: June 19, 2007, 6:30 p.m.
Hearing Location: DEQ Headquarters, Portland, Oregon

The Department convened the rulemaking hearing on the proposal referenced above at 6:30 p.m. and closed it at 7:00 p.m.

No one attended the hearing or testified about the rulemaking.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

CLARIFICATION OF PROPOSED ORDERS IN CONTESTED
ENFORCEMENT CASES

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).

1. Are there federal requirements that are applicable to this situation? If so, exactly what are they?

Not directly. There are no federal statutes or regulations that directly apply to the Department of Environmental Quality's (DEQ's) compliance and enforcement program, but DEQ's enforcement regulations and policies are developed in consultation with the U.S. Environmental Protection Agency (EPA). In order to keep delegation of federal environmental programs such as air quality, water quality and hazardous waste, EPA requires DEQ to adequately enforce state program requirements.

2. Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?

n/a

3. Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?

n/a

4. Will the proposed requirement (rulemaking) 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 motion for clarification would provide a new, low-cost, opportunity for the regulated community to clarify the ALJ's position in the proposed order, which may eliminate the need for appeal, or at least inform the parties what the issues are on appeal, thereby increasing certainty and preventing the need for some appeals.

5. Is there a timing issue which might justify changing the time frame for implementation of federal requirements?

n/a

6. Will the proposed requirement (rulemaking) assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?

n/a

7. Does the proposed requirement (rulemaking) establish or maintain reasonable equity in the requirements for various sources? (level the playing field)

n/a

8. Would others face increased costs if a more stringent rule is not enacted?

n/a

9. Does the proposed requirement (rulemaking) 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?

n/a

10. Is demonstrated technology available to comply with the proposed requirement (rulemaking)?

n/a

11. Will the proposed requirement (rulemaking) contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?

During the appeal process, the Environmental Quality Commission is frequently faced with incomplete records upon review. This lack of a complete administrative record creates unnecessary delays in decision-making. The proposed rule allowing motions for clarification will provide a cost-effective environmental gain because effective enforcement, through specific and general deterrence, improves environmental quality. The other proposed rules address a typographical error and out-of-date references, and make a clarification to an existing rule – all of which promote more cost-effective environmental enforcement.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT
This form accompanies a Notice of Proposed Rulemaking

Rule Caption	Clarification of Proposed Orders in Contested Enforcement Cases
Title of Proposed Rulemaking:	Motions for Clarification
Stat. Authority or other Legal Authority:	ORS 468.020, 183.341, 183.452
Stat. Implemented:	ORS 468A.035, 468.070, 468.090-140, 183.341, 183.452, 183.460, 183.464, 183.470
Need for the Rule(s)	<p>A) The rulemaking is needed to improve the clarity and legal sufficiency of proposed orders in contested cases. The rule should also eliminate the need for some appeals to the Environmental Quality Commission (EQC), reduce the time necessary to reach final orders, and improve the quality of the record on review to the EQC – ultimately assisting the EQC in reaching fully informed and well reasoned decisions.</p> <p>B) The proposed rulemaking would also clarify that Environmental Law Specialists (ELs) may provide lay representation on behalf of the Department of Environmental Quality (DEQ) in contested case proceedings involving license, permit, or certification revocations, modifications, and denials.</p> <p>Additionally, this rulemaking involves two areas of Division 11 which need updating and correcting. The rulemaking would correct a typographical error to reference the proper rule in the Oregon Administrative Procedures Act regarding the extent to which parties may be represented by attorneys or other authorized representatives in proceedings before Administrative Law Judges or the EQC. Finally, this rulemaking updates the incorporation by reference of the Attorney General's Model Rules, and incorporates the Attorney General's Model Rules for Miscellaneous and Orders in Other than Contested Cases. Neither of these items are expected to have an economic impact, and are not required to be analyzed as part of the Statement of Need and Economic Impact, per ORS 183.335(7)(d) and 183.341(1).</p>
Documents Relied Upon for Rulemaking	None.
Requests for Other Options	<i>ORS 183.335(2)(b)(G) requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.</i>
Fiscal and Economic Impact, Statement of Cost Compliance	
Overview	<p>A) The economic impacts associated with the motion for clarification rulemaking are related to the cost and/or savings of time and resources involved in the contested case hearing appeals process. These costs and savings will depend on the facts of each case, and cannot be reasonably estimated. The objective of the rulemaking is to reduce the expense of the post-contested case hearing process by clarifying proposed orders, thus making the appeal process more focused and efficient. The additional cost of preparing a motion for clarification (for both DEQ and respondents) is expected to be offset by cost savings in the reduction of appeals and a more efficient appeals process.</p> <p>For the small percentage of cases for which a contested case hearing is necessary, DEQ incurs the cost of the hearing officer, staff time, and sometimes legal fees paid to the Department of Justice (DOJ). If fewer cases are appealed to the EQC and the state Circuit Court of Appeals as a result of this rulemaking, DEQ would see a cost savings in legal fees and the cost of additional staff time. Further, if those cases that are appealed are more efficient as a result of this rulemaking, legal fees and staff time should decrease.</p> <p>The economic impact to the general public, small businesses, large businesses, local government, and other agencies will be basically the same, as the proposed rules apply equally to all respondents in contested case hearings.</p>

	B) The economic impacts associated with ELS representation of the agency in contested case hearings involving license, permit, or certification revocations, modifications, and denials are related to the DEQ paying for its own staff (ELs) time rather than paying DOJ attorneys to represent the agency at these hearings. The use of the agency's own staff rather than DOJ is expected to save the agency money.	
General public	See Overview section above.	
Small Business (50 or fewer employees – ORS183.310(10))	a) Estimated number and types of businesses impacted	It is not feasible to estimate the number and types of businesses that may be impacted by this rulemaking, because all business subject to DEQ rules could potentially be impacted, if they violate those rules, are the subject of an enforcement action, and participate in a contested case hearing. A review of the last 9 years of DEQ enforcement data shows that on average, DEQ issues approximately 207 enforcement actions per year. On average, 13 of those actions are appealed in a contested case hearing, and three of those are appealed to the EQC. These numbers reflect <i>total</i> enforcement actions and appeals, some of which involve small businesses, but it is not known exactly how many involve small businesses.
	b) Additional reporting requirements	None.
	c) Additional equipment and administration requirements	None.
	d) Describe how businesses were involved in development of this rulemaking	The Office of Compliance and Enforcement (OCE) had initial informal consultations with representatives of the regulated community, and believes that potential respondents, including businesses, would be supportive of the rulemaking. Businesses will be able to continue to provide input through the public comment and hearing process.
Large Business	See Overview and Small Business discussions above.	
Local Government	See Overview section above.	
State Agencies	See Overview section above.	
DEQ	See Overview section above for general discussion of impacts. It is not possible to predict whether the net fiscal impact to DEQ will be positive or negative, but the expectation is that both proposed rules will save the agency money because enforcement actions may become more efficient, fewer cases may be appealed to the EQC, and DEQ employees would be doing the work that DEQ would otherwise pay DOJ attorneys to do. In addition, this rulemaking will not require any additional FTEs.	
Other agencies	See Overview section above.	
Assumptions	Based on past procedures and numbers of contested cases that are appealed, these proposed changes will increase the effectiveness of the state and the EQC in the contested case appeals process.	
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. (However, to the extent that the contested case enforcement process increases compliance with environmental regulations (as does any compliance or enforcement action taken by DEQ), it is possible that the cost of construction and development may be slightly affected. It is not reasonable to attempt to quantify this potential cost or savings).	
Administrative Rule Advisory Committee	No advisory committee was used due to the limited procedural nature of the rulemaking. Anticipated stakeholders (Office of Administrative Hearings (OAH), DOJ, and representatives of potential respondents) have been informed of the proposed rulemaking, have informally provided input, and will continue to do so throughout the rulemaking process.	

Sarah Greenley
Prepared by

Sarah Greenley
Printed name

5-15-07
Date

Approved by DEQ Budget Office

ANDREW POLLACK
Printed name

5-15-07
Date

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Land Use Evaluation Statement

Rulemaking Proposal
for

CLARIFICATION OF PROPOSED ORDERS IN CONTESTED
ENFORCEMENT CASES

1. Explain the purpose of the proposed rules.

The proposed changes are procedural in nature and the general purpose of all of the proposed rule changes is to promote a more effective and efficient enforcement process.

The rulemaking will:

- Allow any party to a Department of Environmental Quality (DEQ) contested case proceeding to request that the Administrative Law Judge (ALJ) revise the proposed order so as to provide a more clear and complete record on appeal to the Environmental Quality Commission (EQC);
- Clarify that Environmental Law Specialists may provide lay representation on behalf of the DEQ in contested case proceedings involving license, permit, or certification revocations, modifications, and denials;
- Correct a typographical error to reference the proper rule in the Oregon Administrative Procedures Act regarding the extent to which parties may be represented by attorneys or other authorized representatives in proceedings before ALJs or the EQC; and
- Update the incorporation by reference of the Attorney General's Model Rules, and incorporate the Attorney General's Model Rules for Miscellaneous and Orders in Other than Contested Cases.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?

Yes No

a. If yes, identify existing program/rule/activity:

The proposed rules do not affect programs or activities considered land use programs. The changes being proposed in these rules may indirectly affect the process for enforcing such land use programs, but not the programs or activities themselves.

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):

c. If no, apply the following criteria to the proposed rules. N/A

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs and rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or
2. Reasonably expected to have significant effects on
 - a. resources, objectives or areas identified in the statewide planning goals, or
 - b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2 above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

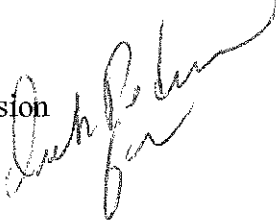
In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

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

State of Oregon
Department of Environmental Quality

Memorandum

Date: October 1, 2007
To: Environmental Quality Commission
From: Stephanie Hallock, Director 
Subject: Agenda Item B
Rule Adoption: Clarification of Proposed Orders in Contested Enforcement Cases
October 17, 2007, EQC Meeting

Why this is Important The Environmental Quality Commission (EQC) asked the Department of Environmental Quality (DEQ) to improve the clarity and completeness of contested case appeals coming before the EQC.

Additionally, DEQ regulations governing the appeals process (Division 11) need updating, clarification, and correction of an error in order to make the contested case process more effective.

Department Recommendation DEQ requests that the EQC adopt the proposed rules and rule amendments in Attachment A.

Background and Need for Rulemaking *Background*
One function of the DEQ is to enforce environmental laws to compel compliance and create deterrence. When a person or business does not agree with DEQ's enforcement action, they have the right to a contested case hearing before an administrative law judge (ALJ). If either party to a contested case is dissatisfied with the ALJ's decision (issued in the form of a "proposed order"), they may appeal that decision to the EQC. In order to make a sound decision on appeal, the EQC needs to be able to understand the issues and the basis for the ALJ's rulings.

Proposed Rule Changes

DEQ proposes two main changes to the existing rules in Division 11:

(1) Adopt Oregon Administrative Rule (OAR) 340-011-0573 and amend OAR 340-011-0575 to allow both parties (respondent and DEQ) in contested cases to request that the ALJ revise the proposed order when the proposed order does not contain all of the information required by OAR 137-003-0645(3).

Part (1) of the rule change is needed to ensure the EQC has the most clear and complete proposed order available for review. The rules do not currently provide both parties to contested case hearings with an opportunity to request this type of clarification of proposed orders. The proposed rule will allow both DEQ and respondents to request such a

Agenda Item B

Rule Adoption: Clarification of Proposed Orders in Contested Enforcement Cases

October 17, 2007, EQC Meeting

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clarification prior to deciding whether to appeal the proposed order to the EQC, which should eliminate the need for some appeals to the EQC and reduce the time necessary to reach some final orders. This rulemaking is needed to improve the clarity and legal sufficiency of proposed orders in contested cases, for the purpose of assisting the EQC in reaching fully informed and well reasoned decisions.

(2) Amend OAR 340-011-0510(1) to clarify the circumstances under which Environmental Law Specialists (ELSS) are authorized to provide lay representation on behalf of DEQ in contested case proceedings.

Part (2) of the rule change is needed to explicitly authorize ELSS to represent DEQ in contested case hearings involving permit, license, and certification revocations, modifications, and denials. ELS representation of DEQ in contested case proceedings involving license, permit, or certification revocations, modifications, and denials is needed in order to effectively use agency staff and save agency resources.

Additionally, this rulemaking would:

- Correct a typographical error in OAR 340-011-0515 to reference the proper rule in the Oregon Administrative Procedures Act regarding the extent to which parties may be represented by attorneys or other authorized representatives in proceedings before ALJs or the EQC (the current rule references OAR 340-003-0555, and the proper reference is OAR 137-003-0555). Amend OAR 340-011-0005 to update the incorporation by reference of Divisions 003 and most of Division 001 of the Attorney General's Uniform and Model Rules (Model Rules), in order to keep DEQ's rules consistent with the Model Rules, which DOJ revises yearly. Additionally, the rulemaking would adopt OAR 340-011-0009 to incorporate Division 004 of the Model Rules (regulating Miscellaneous items and Orders in Other than Contested Cases). To date, the agency has not had any express authority for processing orders in other than contested cases (e.g. petitions for reconsideration), and we need procedures to apply to these circumstances.
- Finally, because this rulemaking may affect enforcement of Clean Air Act requirements, OAR 340-200-0040 would be updated to reflect the date the EQC adopts these rules. These amendments, if adopted, will be submitted to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan, which is a requirement of the Clean Air Act.

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Rule Adoption: Clarification of Proposed Orders in Contested Enforcement Cases

October 17, 2007, EQC Meeting

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Effect of Rule	<p>The proposed changes are procedural in nature and the general purpose of all of the proposed rule changes is to promote a more effective and efficient enforcement process.</p> <p>In summary, the proposed changes will:</p> <ul style="list-style-type: none">• Allow any party to a DEQ contested case proceeding to request that the ALJ revise the proposed order to provide a more clear and complete description and analysis of the record on appeal to the EQC;• Clarify that ELSs may provide lay representation on behalf of the DEQ in contested case proceedings involving license, permit, or certification revocations, modifications, and denials;• Correct a typographical error to reference the proper rule in the Oregon Administrative Procedures Act regarding the extent to which parties may be represented by attorneys or other authorized representatives in proceedings before ALJs or the EQC; and• Update the incorporation by reference of the Attorney General's Model Rules, and incorporate the Attorney General's Model Rules for Miscellaneous and Orders in Other than Contested Cases. <p>Please note that the proposed language of OAR 340-011-0573(4) has been revised since the public comment period in order to correct a mistake in grammar.</p>
Commission Authority	<p>The Commission has authority to take this action under ORS 468.020.</p>
Stakeholder Involvement	<p>No advisory committee was used due to the limited procedural nature of the rulemaking. Anticipated stakeholders (the Office of Administrative Hearings (OAH), DOJ, and representatives of potential respondents) were informed of the proposed rulemaking and have informally provided input.</p>
Public Comment	<p>A public comment period extended from May 16, 2007 to July 2, 2007, and included a public hearing in Portland, Oregon. No comments were submitted, and no testimony was given (see Attachments B and C).</p>
Key Issues	<p>A key issue identified early in the rulemaking development process was the OAH's response to DEQ's proposal regarding motions for clarification. The EQC discussed this issue with DEQ and OAH at its October 6, 2006, and December 14, 2006 meetings. Specifically, OAH raised questions regarding alternative ways to achieve the EQC's goal. The EQC determined that the alternative presented would not meet the goals of the EQC, and the EQC authorized DEQ to proceed with drafting a rule that would provide for motions for clarification. The rule will</p>

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Rule Adoption: Clarification of Proposed Orders in Contested Enforcement Cases

October 17, 2007, EQC Meeting

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allow *both* parties to an enforcement action to make motions for clarification, but such a motion will not *require* ALJs to take any further action to clarify proposed orders.

Next Steps

For the rules to apply in contested case hearings, DEQ will need final approval from DOJ, which will involve DOJ consultation with OAH on the proposed rule regarding motions for clarification. The Department conferred with DOJ during the development of the rules and expects approval of the rules, possibly as early as the end of November 2007.

Effective date: Upon filing with the Secretary of State.

DEQ's Rule Implementation Plan is available upon request.

Attachments

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

Available Upon Request

- 1. Legal Notice of Hearing
- 2. Cover Memorandum from Public Notice
- 3. Rule Implementation Plan

Approved:



Jane K. Hickman, Administrator
Office of Compliance and Enforcement

Report Prepared By: Sarah Greenley

Phone: (503) 229-6927

004

PROPOSED RULE CHANGES

340-011-0005

Definitions

Unless otherwise defined in this division, the words and phrases used in this division have the same meaning given them in ORS 183.310, the rules of the Office of Administrative Hearings, the Model Rules or other divisions in Oregon Administrative Rules, Chapter 340, as context requires.

- (1) "Commission" means the Environmental Quality Commission.
- (2) "Department" means the Department of Environmental Quality.
- (3) "Director" means the director of the department or the director's authorized delegates.
- (4) " Rules of the Office of Administrative Hearings" means the Attorney General's Rules, OAR 137-003-0501 through 137-003-0700.
- (5) "Model Rules" or "Uniform Rules" means the Attorney General's Uniform and Model Rules of Procedure, ~~OAR 137-001-0005 through 137-003-0500, excluding OAR 137-001-0008 through 137-001-0009, in effect as of August 15, 2003. OAR Chapter 137, Division 001 (excluding OAR 137-001-0008 through 137-001-0009), OAR Chapter 137, Division 003, and OAR Chapter 137, Division 004, as in effect on January 1, 2006.~~
- (6) "Participant" means the respondent, a person granted either party or limited party status in the contested case under OAR 137-003-0535, an agency participating in the contested case under OAR 137-003-0540, and the department.
- (7) "Respondent" means the person to whom a formal enforcement action is issued.
- (8) "Formal Enforcement Action" has the same meaning as defined in OAR 340, division 012.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.341

Hist.: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 25-1979, f. & ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 10-1997, f. & cert. ef. 6-10-97; DEQ 3-1998, f. & cert. ef. 3-9-98; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 10-2002, f. & cert. ef. 10-8-02; DEQ 18-2003, f. & cert. ef. 12-12-03

* * *

340-011-0009

Incorporation of Attorney General's Uniform and Model Rules

The following Attorney General's Uniform and Model Rules of Procedure are adopted and incorporated into this Division, except as otherwise provided in this Chapter: OAR Chapter 137, Division 001 (excluding OAR 137-001-0008 through 137-001-0009), OAR Chapter 137, Division 003, and OAR Chapter 137, Division 004, as in effect on January 1, 2006.

* * *

340-011-0510

Agency Representation by Environmental Law Specialist

(1) Environmental Law Specialists, and other department personnel as approved by the director, are authorized to appear on behalf of the department and commission in contested case hearings involving formal enforcement actions issued under OAR 340, division 012, and revocation, modification, or denial of licenses, permits, and certifications.

(2) Environmental Law Specialists or other approved personnel may not present legal argument as defined under OAR 137-003-0545 on behalf of the department or commission in contested case hearings.

(3) When the department determines it is necessary to consult with the Attorney General's office, an administrative law judge will provide a reasonable period of time for an agency representative to consult with the Attorney General's office and to obtain either written or oral legal argument, if necessary.

Stat. Auth.: ORS 183.341, ORS 183,452 & ORS 468.020

Stats. Implemented: ORS 183.452

Hist.: DEQ 16-1991, f. & cert. ef. 9-30-91; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0103 by DEQ 18-2003, f. & cert. ef. 12-12-03

340-011-0515

Authorized Representative of Respondent other than a Natural Person in a Contested Case Hearing

A corporation, partnership, limited liability company, unincorporated association, trust and government body may be represented by either an attorney or an authorized

Attachment A

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006

representative in a contested case hearing before an administrative law judge or the commission to the extent allowed by OAR ~~340~~137-003-0555.

Stat. Auth.: ORS 183.341 & ORS 468.020

Stats. Implemented: ORS 183.457

Hist.: DEQ 6-2002(Temp), f. & cert. ef. 4-24-02, thru 10-21-02; DEQ 10-2002, f. & cert. ef. 10-8-02; Renumbered from 340-011-0106 by DEQ 18-2003, f. & cert. ef. 12-12-03

* * *

OAR 340-011-0573

Proposed Orders in Contested Cases

(1) Following the close of the record for a contested case hearing, the administrative law judge will issue a proposed order. The administrative law judge will serve the proposed order on each participant. A proposed contested case order must conform to the requirements of OAR 137-003-0645(3).

(2) Within 15 days after a proposed contested case order is issued, a participant in the contested case hearing may file a motion requesting that the administrative law judge clarify or supplement a proposed order. The motion must specify why the participant believes that the proposed order fails to conform to the requirements of OAR 137-003-0645(3) and recommend changes to the order. The motion must be served on the administrative law judge and all participants in the contested case hearing.

(3) The administrative law judge may grant or deny a motion filed under section (2) of this rule within 15 days. If the motion is granted, the administrative law judge may take the matter under advisement and reissue the proposed order unchanged or may issue an amended proposed order. If the administrative law judge fails to act on the motion within 15 days, the motion is deemed denied by operation of law.

(4) The filing of a timely motion for clarification under section (2) of this rule tolls the period for filing a Petition for Commission Review of the proposed contested case order under OAR 340-011-0575. Tolling of the period begins on the day the motion is served on the administrative law judge and ends on the day the motion is denied, deemed denied by operation of law, or the proposed order is reissued without changes. If the administrative law judge issues an amended proposed order, the amended order will be treated as a new proposed order for purpose of the filing a timely Petition for Commission Review under OAR 340-011-0575.

(5) The motion for clarification authorized by this rule is intended to alter the provisions of OAR 137-003-0655 but not to eliminate the authority of the administrative law judge to correct a proposed order in the manner specified in section (2) of that rule.

(6) A motion for clarification and any response to a motion for clarification will be part of the record on appeal.

* * *

340-011-0575

Review of Proposed Orders in Contested Cases

(1) For purposes of this rule, filing means receipt in the office of the director or other office of the department.

~~(2) Following the close of the record for a contested case hearing, the administrative law judge will issue a proposed order. The administrative law judge will serve the proposed order on each participant.~~

~~(3)~~ Commencement of Review by the Commission: The proposed order will become final unless a participant or a member of the commission files, with the commission, a Petition for Commission Review within 30 days of service of the proposed order. The timely filing of a Petition is a jurisdictional requirement and cannot be waived. Any participant may file a petition whether or not another participant has filed a petition.

~~(4)~~ Contents of the Petition for Commission Review. A petition must be in writing and need only state the participant's or a commissioner's intent that the commission review the proposed order. Each petition and subsequent brief must be captioned to indicate the participant filing the document and the type of document (for example: Respondents Exceptions and Brief; Department's Answer to Respondent's Exceptions and Brief).

~~(5)~~ Procedures on Review:

(a) Exceptions and Brief: Within 30 days from the filing of a petition, the participant(s) filing the petition must file written exceptions and brief. The exceptions must specify those findings and conclusions objected to, and also include proposed alternative findings of fact, conclusions of law, and order with specific references to the parts of the record upon which the participant relies. The brief must include the arguments supporting these alternative findings of fact, conclusions of law and order. Failure to take an exception to a finding or conclusion in the brief, waives the participant's ability to later raise that exception.

(b) Answering Brief: Each participant, except for the participant(s) filing that exceptions and brief, will have 30 days from the date of filing of the exceptions and brief under subsection (5)(a), in which to file an answering brief.

(c) Reply Brief: If an answering brief is filed, the participant(s) who filed a petition will have 20 days from the date of filing of the answering brief under subsection (5)(b), in which to file a reply brief.

(d) Briefing on Commission Invoked Review: When one or more members of the commission wish to review the proposed order, and no participant has timely filed a Petition, the chair of the commission will promptly notify the participants of the issue that the commission desires the participants to brief. The participants must limit their briefs to those issues. The chair of the commission will also establish the schedule for filing of briefs. When the commission wishes to review the proposed order and a participant also requested review, briefing will follow the schedule set forth in subsections (a), (b), and (c) of this section.

(e) Extensions: The commission or director may extend any of the time limits contained in section (5) of this rule. Each extension request must be in writing and filed with the commission before the expiration of the time limit. Any request for an extension may be granted or denied in whole or in part.

(f) Dismissal: The commission may dismiss any petition, upon motion of any participant or on its own motion, if the participant(s) seeking review fails to timely file the exceptions or brief required under subsection (5)(a) of this rule. A motion to dismiss made by a participant must be filed within 45 days after the filing of the Petition. At the time of dismissal, the commission will also enter a final order upholding the proposed order.

(g) Oral Argument: Following the expiration of the time allowed the participants to present exceptions and briefs, the matter will be scheduled for oral argument before the commission.

(65) Additional Evidence: A request to present additional evidence must be submitted by motion and must be accompanied by a statement showing good cause for the failure to present the evidence to the administrative law judge. The motion must accompany the brief filed under subsection (5)(a) or (b) of this rule. If the commission grants the motion or decides on its own motion that additional evidence is necessary, the matter will be remanded to an administrative law judge for further proceedings.

(76) Scope of Review: The commission may substitute its judgment for that of the administrative law judge in making any particular finding of fact, conclusion of law, or order except as limited by OAR 137-003-0655 and 137-003-0665.

(87) Service of documents on other participants: All documents required to be filed with the commission under this rule must also be served upon each participant in the contested case hearing. Service can be completed by personal service, certified mail or regular mail.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.460, 183,464 & ORS 183.470

Attachment A

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Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 115, f. & ef. 7-6-76; DEQ 25-1979, f. & ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0132 by DEQ 18-2003, f. & cert. ef. 12-12-03

* * *

340-200-0040

State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on ~~February 22,~~ October 17, 2007.

(3) Notwithstanding any other requirement contained in the SIP, the Department may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82;

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DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-f1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07

Attachment B
Summary of Public Comment and Agency Response

Title of Rulemaking: Clarification of Proposed Orders in Contested Enforcement Cases

Prepared by: Sarah Greenley

Date: October 18, 2007

***Comment
period***

The public comment period opened May 16, 2007 (notice was mailed and emailed on May 16, 2007, published in the Oregonian on May 17, 2007, and published in the Secretary of State's Bulletin on June 1, 2007). The comment period closed July 2, 2007 at 5:00 p.m. . DEQ held a public hearing on June 19, 2007, at 6:30 p.m. at DEQ Headquarters in Portland, Oregon.

***Organization
of comments
and
responses***

No written comments were submitted, and no one provided testimony at the hearing.

Presiding Officer's Report

To: Environmental Quality Commission

From: Sarah Greenley, Office of Compliance and Enforcement

Re: Presiding Officer's Report for Rulemaking Hearing
Title of Proposal: Clarifications of Proposed Orders in Contested Enforcement Cases
Hearing Date and Time: June 19, 2007, 6:30 p.m.
Hearing Location: DEQ Headquarters, Portland, Oregon

The Department convened the rulemaking hearing on the proposal referenced above at 6:30 p.m. and closed it at 7:00 p.m.

No one attended the hearing or testified about the rulemaking.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

CLARIFICATION OF PROPOSED ORDERS IN CONTESTED
ENFORCEMENT CASES

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).

1. Are there federal requirements that are applicable to this situation? If so, exactly what are they?

Not directly. There are no federal statutes or regulations that directly apply to the Department of Environmental Quality's (DEQ's) compliance and enforcement program, but DEQ's enforcement regulations and policies are developed in consultation with the U.S. Environmental Protection Agency (EPA). In order to keep delegation of federal environmental programs such as air quality, water quality and hazardous waste, EPA requires DEQ to adequately enforce state program requirements.

2. Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?

n/a

3. Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?

n/a

4. Will the proposed requirement (rulemaking) 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 motion for clarification would provide a new, low-cost, opportunity for the regulated community to clarify the ALJ's position in the proposed order, which may eliminate the need for appeal, or at least inform the parties what the issues are on appeal, thereby increasing certainty and preventing the need for some appeals.

5. Is there a timing issue which might justify changing the time frame for implementation of federal requirements?

n/a

6. Will the proposed requirement (rulemaking) assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?

n/a

7. Does the proposed requirement (rulemaking) establish or maintain reasonable equity in the requirements for various sources? (level the playing field)

n/a

8. Would others face increased costs if a more stringent rule is not enacted?

n/a

9. Does the proposed requirement (rulemaking) 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?

n/a

10. Is demonstrated technology available to comply with the proposed requirement (rulemaking)?

n/a

11. Will the proposed requirement (rulemaking) contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?

During the appeal process, the Environmental Quality Commission is frequently faced with incomplete records upon review. This lack of a complete administrative record creates unnecessary delays in decision-making. The proposed rule allowing motions for clarification will provide a cost-effective environmental gain because effective enforcement, through specific and general deterrence, improves environmental quality. The other proposed rules address a typographical error and out-of-date references, and make a clarification to an existing rule – all of which promote more cost-effective environmental enforcement.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT
This form accompanies a Notice of Proposed Rulemaking

Rule Caption	Clarification of Proposed Orders in Contested Enforcement Cases
Title of Proposed Rulemaking:	Motions for Clarification
Stat. Authority or other Legal Authority:	ORS 468.020, 183.341, 183.452
Stat. Implemented:	ORS 468A.035, 468.070, 468.090-140, 183.341, 183.452, 183.460, 183.464, 183.470
Need for the Rule(s)	<p>A) The rulemaking is needed to improve the clarity and legal sufficiency of proposed orders in contested cases. The rule should also eliminate the need for some appeals to the Environmental Quality Commission (EQC), reduce the time necessary to reach final orders, and improve the quality of the record on review to the EQC – ultimately assisting the EQC in reaching fully informed and well reasoned decisions.</p> <p>B) The proposed rulemaking would also clarify that Environmental Law Specialists (ELs) may provide lay representation on behalf of the Department of Environmental Quality (DEQ) in contested case proceedings involving license, permit, or certification revocations, modifications, and denials.</p> <p>Additionally, this rulemaking involves two areas of Division 11 which need updating and correcting. The rulemaking would correct a typographical error to reference the proper rule in the Oregon Administrative Procedures Act regarding the extent to which parties may be represented by attorneys or other authorized representatives in proceedings before Administrative Law Judges or the EQC. Finally, this rulemaking updates the incorporation by reference of the Attorney General's Model Rules, and incorporates the Attorney General's Model Rules for Miscellaneous and Orders in Other than Contested Cases. Neither of these items are expected to have an economic impact, and are not required to be analyzed as part of the Statement of Need and Economic Impact, per ORS 183.335(7)(d) and 183.341(1).</p>
Documents Relied Upon for Rulemaking	None.
Requests for Other Options	<i>ORS 183.335(2)(b)(G) requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.</i>
Fiscal and Economic Impact, Statement of Cost Compliance	
Overview	<p>A) The economic impacts associated with the motion for clarification rulemaking are related to the cost and/or savings of time and resources involved in the contested case hearing appeals process. These costs and savings will depend on the facts of each case, and cannot be reasonably estimated. The objective of the rulemaking is to reduce the expense of the post-contested case hearing process by clarifying proposed orders, thus making the appeal process more focused and efficient. The additional cost of preparing a motion for clarification (for both DEQ and respondents) is expected to be offset by cost savings in the reduction of appeals and a more efficient appeals process.</p> <p>For the small percentage of cases for which a contested case hearing is necessary, DEQ incurs the cost of the hearing officer, staff time, and sometimes legal fees paid to the Department of Justice (DOJ). If fewer cases are appealed to the EQC and the state Circuit Court of Appeals as a result of this rulemaking, DEQ would see a cost savings in legal fees and the cost of additional staff time. Further, if those cases that are appealed are more efficient as a result of this rulemaking, legal fees and staff time should decrease.</p> <p>The economic impact to the general public, small businesses, large businesses, local government, and other agencies will be basically the same, as the proposed rules apply equally to all respondents in contested case hearings.</p>

	B) The economic impacts associated with ELS representation of the agency in contested case hearings involving license, permit, or certification revocations, modifications, and denials are related to the DEQ paying for its own staff (ELSS) time rather than paying DOJ attorneys to represent the agency at these hearings. The use of the agency's own staff rather than DOJ is expected to save the agency money.	
General public	See Overview section above.	
Small Business (50 or fewer employees – ORS183.310(10))	a) Estimated number and types of businesses impacted	It is not feasible to estimate the number and types of businesses that may be impacted by this rulemaking, because all business subject to DEQ rules could potentially be impacted, if they violate those rules, are the subject of an enforcement action, and participate in a contested case hearing. A review of the last 9 years of DEQ enforcement data shows that on average, DEQ issues approximately 207 enforcement actions per year. On average, 13 of those actions are appealed in a contested case hearing, and three of those are appealed to the EQC. These numbers reflect <i>total</i> enforcement actions and appeals, some of which involve small businesses, but it is not known exactly how many involve small businesses.
	b) Additional reporting requirements	None.
	c) Additional equipment and administration requirements	None.
	d) Describe how businesses were involved in development of this rulemaking	The Office of Compliance and Enforcement (OCE) had initial informal consultations with representatives of the regulated community, and believes that potential respondents, including businesses, would be supportive of the rulemaking. Businesses will be able to continue to provide input through the public comment and hearing process.
Large Business	See Overview and Small Business discussions above.	
Local Government	See Overview section above.	
State Agencies	See Overview section above.	
DEQ	See Overview section above for general discussion of impacts. It is not possible to predict whether the net fiscal impact to DEQ will be positive or negative, but the expectation is that both proposed rules will save the agency money because enforcement actions may become more efficient, fewer cases may be appealed to the EQC, and DEQ employees would be doing the work that DEQ would otherwise pay DOJ attorneys to do. In addition, this rulemaking will not require any additional FTEs.	
Other agencies	See Overview section above.	
Assumptions	Based on past procedures and numbers of contested cases that are appealed, these proposed changes will increase the effectiveness of the state and the EQC in the contested case appeals process.	
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. (However, to the extent that the contested case enforcement process increases compliance with environmental regulations (as does any compliance or enforcement action taken by DEQ), it is possible that the cost of construction and development may be slightly affected. It is not reasonable to attempt to quantify this potential cost or savings).	
Administrative Rule Advisory Committee	No advisory committee was used due to the limited procedural nature of the rulemaking. Anticipated stakeholders (Office of Administrative Hearings (OAH), DOJ, and representatives of potential respondents) have been informed of the proposed rulemaking, have informally provided input, and will continue to do so throughout the rulemaking process.	

Sarah Greenley
Prepared by

Sarah Greenley
Printed name

5-15-07
Date

Approved by DEQ Budget Office

ANDREW POLLACK
Printed name

5-15-07
Date

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Land Use Evaluation Statement

Rulemaking Proposal
for

CLARIFICATION OF PROPOSED ORDERS IN CONTESTED
ENFORCEMENT CASES

1. Explain the purpose of the proposed rules.

The proposed changes are procedural in nature and the general purpose of all of the proposed rule changes is to promote a more effective and efficient enforcement process.

The rulemaking will:

- Allow any party to a Department of Environmental Quality (DEQ) contested case proceeding to request that the Administrative Law Judge (ALJ) revise the proposed order so as to provide a more clear and complete record on appeal to the Environmental Quality Commission (EQC);
- Clarify that Environmental Law Specialists may provide lay representation on behalf of the DEQ in contested case proceedings involving license, permit, or certification revocations, modifications, and denials;
- Correct a typographical error to reference the proper rule in the Oregon Administrative Procedures Act regarding the extent to which parties may be represented by attorneys or other authorized representatives in proceedings before ALJs or the EQC; and
- Update the incorporation by reference of the Attorney General's Model Rules, and incorporate the Attorney General's Model Rules for Miscellaneous and Orders in Other than Contested Cases.

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:

The proposed rules do not affect programs or activities considered land use programs. The changes being proposed in these rules may indirectly affect the process for enforcing such land use programs, but not the programs or activities themselves.

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):

c. If no, apply the following criteria to the proposed rules. N/A

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs and rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or
2. Reasonably expected to have significant effects on
 - a. resources, objectives or areas identified in the statewide planning goals, or
 - b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2 above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involved more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

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

Oregon Air Contaminant Discharge Permit (ACDP) Fee Increase

ACDP Program

- Part of Federally approved State Implementation Plan
- Meet national air quality standards
- Permitting, inspections, and compliance assistance
- 85% funded by permit fees

Need for fee increase

- Part of Legislatively approved budget for 2007-2009 biennium
- Prevent loss of 2 positions in 2007-2009 biennium
- Fund program for at least 2 biennia and help DEQ:
 - Issue and renew permits
 - Complete inspections
 - Monitor and enforce compliance

Effect of fee increase

- Increase all fees by 20%
- Of 1,130 businesses with ACDPs:
 - 78% would experience an annual fee increase between \$60 and \$320
 - 22% would experience an annual fee increase between \$640 and \$1,280

Annual Permitting Fees	From:	To:	Increase:	Number of Permits in 2006
Basic ACDP	\$300	\$360	\$60	161
General Class I ACDP	\$600	\$720	\$120	201
General Class II ACDP	\$1,080	\$1,296	\$216	331
General Class III ACDP	\$1,560	\$1,872	\$312	157
Simple Low ACDP	\$1,600	\$1,920	\$320	38
Simple High ACDP	\$3,200	\$3,840	\$640	94
Standard ACDP	\$6,400	\$7,680	\$1,280	149

Initial Permitting Fees for New Facilities	From:	To:	Increase:	Number of Initial Permits in 2006
Short Term Activity ACDP	\$2500	\$3000	\$500	0
Basic ACDP	\$100	\$120	\$20	19
Assignment to General ACDP	\$1,000	\$1,200	\$200	37
Simple ACDP	\$5,000	\$6,000	\$1,000	7
Construction ACDP	\$8,000	\$9,600	\$1,600	2
Standard ACDP	\$10,000	\$12,000	\$2,000	2
Standard ACDP (New Source Review)	\$35,000	\$42,000	\$7,000	0

Specific Activity Fees are in Attachment A of Staff Report

Attachment A

Oregon Administrative Rules Chapter 340, Division 216 - Department of Environmental Quality

Proposal to increase Oregon Air Contaminant Discharge Permit Fees by 20 percent

Proposed Rule Changes

Air Quality

Division 216, OAR 340-216-0020

DEQ Home > Air Quality > Rules > Division 216

Agenda Item C

Table 2

Part 1. Initial Permitting Application Fees:

- a. Short Term Activity ACDP
- b. Basic ACDP
- c. Assignment to General ACDP
- d. Simple ACDP
- e. Construction ACDP
- f. Standard ACDP
- g. Standard ACDP (PSD/NSR)

Part 2. Annual Fees: (Due 12/1 for 1/1 to 12/31 of the following year)

a. Short Term Activity ACDP		\$NA
b. Basic ACDP		\$300.00
		\$360.00
c. General ACDP	(A) Fee Class One	\$600.00
		\$720.00
	(B) Fee Class Two	\$1,080.00
		\$1,296.00
	(C) Fee Class Three	\$1,560.00
	\$1,872.00	
d. Simple ACDP	(A) Low Fee	\$1,600.00
		\$1,920.00
	(B) High Fee	\$3,200.00
		\$3,840.00
e. Standard ACDP		\$6,400.00
		\$7,680.00

Part 3. Specific Activity Fees:


a. Non-Technical Permit Modification (1)	\$300.00 <u>\$360.00</u>
b. Non-PSD/NSR Basic Technical Permit Modification (2)	\$300.00 <u>\$360.00</u>
c. Non-PSD/NSR Simple Technical Permit Modification(3)	\$1,000.00 <u>\$1,200.00</u>
d. Non-PSD/NSR Moderate Technical Permit Modification (4)	\$5,000.00 <u>\$6,000.00</u>
e. Non-PSD/NSR Complex Technical Permit Modification (5)	\$10,000.00 <u>\$12,000.00</u>
f. PSD/NSR Modification	\$35,000.00 <u>\$42,000.00</u>
g. Modeling Review (outside PSD/NSR)	\$5,000.00 <u>\$6,000.00</u>
h. Public Hearing at Source's Request	\$2,000.00 <u>\$2,400.00</u>
i. State MACT Determination	\$5,000.00 <u>\$6,000.00</u>
j. Compliance Order Monitoring (6)	\$100.00/month <u>\$120.00/month</u>

Part 4. Late Fees:

- a. 8-30 days late 5% of annual fee
 - b. 31-60 days late 10% of annual fee
 - c. 61 or more days late 20% of annual fee
1. Non-Technical modifications include, but are not limited to name changes, change of ownership and similar administrative changes.
 2. Basic Technical Modifications include, but are not limited to corrections of emission factors in compliance methods, changing source test dates for extenuating circumstances, and similar changes.
 3. Simple Technical Modifications include, but are not limited to-, incorporating a PSEL compliance method from a review report into an ACDP, modifying a compliance method to use different emission factors or process parameter, changing source test dates for extenuating circumstances, changing reporting frequency, incorporating NSPS and NESHAP requirements that do not require judgement, and similar changes.
 4. Moderate Technical Modifications include, but are not limited to incorporating a relatively simple new compliance method into a permit, adding a relatively simple compliance method or monitoring for an emission point or control device not previously addressed in a permit, revising monitoring and reporting requirements other than dates and frequency, adding a new applicable requirement into a permit due to a change in process or change in rules and that does not require judgment by the Department, incorporating NSPS and NESHAP requirements that do not require judgment, and similar changes.
 5. Complex Technical Modifications include, but are not limited to incorporating a relatively complex new compliance method into a permit, adding a relatively complex compliance method or monitoring for an emission point or control devise not previously addressed in a permit, adding a relatively complex new applicable requirement into a permit due to a change in process or change in rules and that requires judgement by the Department, and similar changes.
 6. This is a one time fee payable when a Compliance Order is established in a Permit or a Department Order containing a compliance schedule becomes a Final Order of the Department and is based on the number of months the Department will have to oversee the Order.

Date: September 25, 2007

To: Environmental Quality Commission

From: Stephanie Hallock, Director 

Subject: Agenda Item C, Rule Adoption: Oregon Air Contaminant Discharge Permit Fee Increase; October 18, 2007 EQC Meeting

Why is this Important

The Air Contaminant Discharge Permit (ACDP) program contributes to the prevention of air pollution and helps reduce the number of unhealthy air days and the risks from air toxics by reducing pollution through permit requirements and preventing pollution through technical assistance.

Oregon's ACDP program is part of Oregon's federally approved State Implementation Plan (SIP) to meet national air quality standards. The ACDP program requires additional funding to continue to effectively protect Oregon's air quality.

Department Recommendation

The Department recommends that the Commission:

- (1) Determine that the increased fees in the proposed rule (as presented in Attachment A) are necessary to cover the reasonable indirect and direct costs of implementing Oregon's Air Contaminant Discharge Permit program; and
- (2) Amend OAR 340-216-0020 Table 2 (as presented in Attachment A) to increase Oregon's Air Contaminant Discharge Permit fees by 20 percent ^[1].

^[1] It is not necessary to amend Oregon's SIP because the EPA does not require that Oregon's SIP include ACDP fees.

Background and Need for Rulemaking

ACDPs authorize the construction of new facilities and operation of existing facilities in Oregon. The ACDP program helps ensure that new sources of air pollution install controls such as afterburners and vapor degreasers needed to protect air quality and that existing pollution sources are in compliance with state and federal emissions standards. The program also administers tighter federal health standards, new air toxics requirements and other regulations.

The 2007 Oregon Legislature approved the Department's ACDP budget package requiring a 20 percent increase in ACDP fees. Fees pay 85 percent of ACDP program costs. State General Funds and federal funds pay the rest. ACDP fees help pay for permitting, technical assistance, inspections, enforcement, rule and policy development, data management and reporting to the EPA. ACDP fees also help support a portion of air quality monitoring, planning, and central services such as accounting and human resources.

ACDP program costs have increased since 2001, but through streamlining, the

Department has avoided a fee increase and has reduced program staffing. No additional reductions are possible without reducing essential program functions and services. If the legislature had not approved increased spending authority, the Department would have had to cut four ACDP positions over the next two biennia. These positions issue permits, inspect facilities and respond to complaints. Loss of these positions would cause delays in permitting, possible degradation of air quality due to out-of-date permits, reduced compliance assistance, and reduced technical assistance in permitting and pollution prevention.

The annual revenue from a 20 percent fee increase would fully fund the ACDP program for at least two biennia and would benefit Oregon's environment and economy by helping the Department:

- Issue and renew ACDP permits in a timely manner
- Meet the Oregon Progress Board economic benchmark to issue 90 percent of ACDP permits within the target timeframes
- Complete required ACDP inspections
- Monitor and enforce compliance with air quality regulations

Effect of Rule

The proposed rule amendments increase fees for all ACDP pollution sources by 20 percent. There are approximately 1,130 businesses with ACDPs in Oregon. Many are small businesses with 50 or fewer employees. Generally, facilities with less complex permits would feel a smaller annual economic impact than larger facilities with more complex permits. From 2006 invoice information, the Department estimates that about 78 percent of ACDP holders would have an annual fee increase between \$60 and \$320, and approximately 22 percent would experience an annual fee increase between \$640 and \$1,280.

The following two tables show the amount of the proposed fee increase and number of permits in each fee category for annual and initial permit fees. Specific Activity Fees, such as permit modification fees, would also increase by 20 percent. The proposed increase to Specific Activity Fees is available in Attachment A. Specific Activity Fees contribute a relatively small portion of program revenue.

Agenda Item C, Rule Adoption:
 Oregon Air Contaminant Discharge Permit Fee Increase
 October 18, 2007 EQC Meeting
 Page 3 of 4

Annual Permitting Fees	From:	To:	Increase:	Number of Permits in 2006
Basic ACDP	\$300	\$360	\$60	161
General Class I ACDP	\$600	\$720	\$120	201
General Class II ACDP	\$1,080	\$1,296	\$216	331
General Class III ACDP	\$1,560	\$1,872	\$312	157
Simple Low ACDP	\$1,600	\$1,920	\$320	38
Simple High ACDP	\$3,200	\$3,840	\$640	94
Standard ACDP	\$6,400	\$7,680	\$1,280	149

Initial Permitting Fees for New Facilities	From:	To:	Increase:	Number of Initial Permits in 2006
Short Term Activity ACDP	\$2500	\$3000	\$500	0
Basic ACDP	\$100	\$120	\$20	19
Assignment to General ACDP	\$1,000	\$1,200	\$200	37
Simple ACDP	\$5,000	\$6,000	\$1,000	7
Construction ACDP	\$8,000	\$9,600	\$1,600	2
Standard ACDP	\$10,000	\$12,000	\$2,000	2
Standard ACDP (New Source Review)	\$35,000	\$42,000	\$7,000	0

Commission Authority

The Commission has authority to take this action under ORS 468.020, 468A.040, 468A.035 and 468A.025.

Stakeholder Involvement

The Department held Air Quality Permit Program information sessions in 2006 for permit holders to describe the proposed ACDP fee increase. The Department shared the proposal with its Small Business Compliance Advisory Panel and with lobbyists for many of the industrial sectors required to have ACDPs in 2006 and to the Associated Oregon Industries Air Committee in early 2007.

The Department also convened an advisory committee to generate input and recommendations on the fiscal impact statement for the proposed ACDP fee increase. Committee members represented small businesses, industrial sectors required to have ACDPs, and environmental groups in Oregon. The Advisory Committee Membership and Report is provided in Attachment C.

The Department mailed copies of the public notice package to all ACDP businesses and interested parties in July 2007, and held a public hearing at DEQ Headquarters in Portland on the proposed rules in August 2007, but discovered

there were some access problems with the building. Members of the public had access up until the hearing's scheduled start time; however, the building was inadvertently locked for the first thirty minutes of the hearing. Access resumed for the remainder of the scheduled hour-and-a-half hearing. No members of the public attended the hearing nor did anyone notify the Department that the temporary access problems interfered with their intent to attend the hearing. The presiding officer's report for this hearing is provided in Attachment D.

Public Comment A public comment period extended from July 16, 2007 to August 20, 2007. The Department received two written comments. A summary of comments and Department responses is provided in Attachment B.

Key Issues While the ACDP Fee Increase Rulemaking Advisory Committee found that the proposed fee increases would have a fiscal and economic impact and could have a significant adverse effect on some small businesses, it did not recommend mitigation steps outlined in ORS 183.540 such as establishing less costly alternatives or exempting small businesses from requirements of program rules. The committee concluded that the benefits of an effective ACDP program such as adequate service to businesses and continued protection of public health outweigh the potential fiscal burdens of the proposed fee increase on small business.

Next Steps If adopted by the Commission, the proposed fee increases would become effective upon filing with the Secretary of State. The Department would mail invoices reflecting the fee increase to ACDP permittees in October 2007 with payment due in December 2007. Because this is a continuation of an existing program, no additional resources or training will be needed to implement the rule.

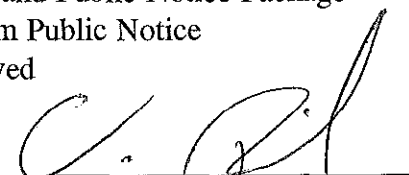
- Attachments**
- A. Proposed Rule Revisions
 - B. Summary of Public Comments and Agency Responses
 - C. Advisory Committee Membership and Report
 - D. Presiding Officer's Report for Rulemaking Hearing
 - E. Relationship to Federal Requirements
 - F. Statement of Need and Fiscal and Economic Impact
 - G. Land Use Evaluation Statement

- Available Upon Request**
- 1. Legal Notice of Hearing and Public Notice Package
 - 2. Cover Memorandum from Public Notice
 - 3. Written Comment Received

Approved:

Section:

Division:


*Margaret Skiphart for
Andy Gimsberg*
Report Prepared By: Andrea Cupfis
Phone: (503) 229-6866

Attachment A

Oregon Administrative Rules Chapter 340, Division 216 - Department of Environmental Quality

Proposal to increase Oregon Air Contaminant Discharge Permit Fees by 20 percent

Proposed Rule Changes

Air Quality

Division 216, OAR 340-216-0020

DEQ Home > Air Quality > Rules > Division 216

Table 2

Part 1. Initial Permitting Application Fees: (in addition to first annual fee)

a. Short Term Activity ACDP	\$2500.00	\$3,000.00
b. Basic ACDP	\$100.00	\$120.00
c. Assignment to General ACDP	\$1,000.00	\$1,200.00
d. Simple ACDP	\$5,000.00	\$6,000.00
e. Construction ACDP	\$8,000.00	\$9,600.00
f. Standard ACDP	\$10,000.00	\$12,000.00
g. Standard ACDP (PSD/NSR)	\$35,000.00	\$42,000.00

Part 2. Annual Fees: (Due 12/1 for 1/1 to 12/31 of the following year)

a. Short Term Activity ACDP		\$NA
b. Basic ACDP		\$300.00
		\$360.00
c. General ACDP	(A) Fee Class One	\$600.00
		\$720.00
	(B) Fee Class Two	\$1,080.00
		\$1,296.00
	(C) Fee Class Three	\$1,560.00
		\$1,872.00
d. Simple ACDP	(A) Low Fee	\$1,600.00
		\$1,920.00
	(B) High Fee	\$3,200.00
		\$3,840.00
e. Standard ACDP		\$6,400.00
		\$7,680.00

Part 3. Specific Activity Fees:

a. Non-Technical Permit Modification (1)	\$300.00 <u>\$360.00</u>
b. Non-PSD/NSR Basic Technical Permit Modification (2)	\$300.00 <u>\$360.00</u>
c. Non-PSD/NSR Simple Technical Permit Modification(3)	\$1,000.00 <u>\$1,200.00</u>
d. Non-PSD/NSR Moderate Technical Permit Modification (4)	\$5,000.00 <u>\$6,000.00</u>
e. Non-PSD/NSR Complex Technical Permit Modification (5)	\$10,000.00 <u>\$12,000.00</u>
f. PSD/NSR Modification	\$35,000.00 <u>\$42,000.00</u>
g. Modeling Review (outside PSD/NSR)	\$5,000.00 <u>\$6,000.00</u>
h. Public Hearing at Source's Request	\$2,000.00 <u>\$2,400.00</u>
i. State MACT Determination	\$5,000.00 <u>\$6,000.00</u>
j. Compliance Order Monitoring (6)	\$100.00/month <u>\$120.00/month</u>

Part 4. Late Fees:

- a. 8-30 days late 5% of annual fee
 - b. 31-60 days late 10% of annual fee
 - c. 61 or more days late 20% of annual fee
1. Non-Technical modifications include, but are not limited to name changes, change of ownership and similar administrative changes.
 2. Basic Technical Modifications include, but are not limited to corrections of emission factors in compliance methods, changing source test dates for extenuating circumstances, and similar changes.
 3. Simple Technical Modifications include, but are not limited to-, incorporating a PSEL compliance method from a review report into an ACDP, modifying a compliance method to use different emission factors or process parameter, changing source test dates for extenuating circumstances, changing reporting frequency, incorporating NSPS and NESHAP requirements that do not require judgement, and similar changes.
 4. Moderate Technical Modifications include, but are not limited to incorporating a relatively simple new compliance method into a permit, adding a relatively simple compliance method or monitoring for an emission point or control device not previously addressed in a permit, revising monitoring and reporting requirements other than dates and frequency, adding a new applicable requirement into a permit due to a change in process or change in rules and that does not require judgment by the Department, incorporating NSPS and NESHAP requirements that do not require judgment, and similar changes.
 5. Complex Technical Modifications include, but are not limited to incorporating a relatively complex new compliance method into a permit, adding a relatively complex compliance method or monitoring for an emission point or control devise not previously addressed in a permit, adding a relatively complex new applicable requirement into a permit due to a change in process or change in rules and that requires judgement by the Department, and similar changes.
 6. This is a one time fee payable when a Compliance Order is established in a Permit or a Department Order containing a compliance schedule becomes a Final Order of the Department and is based on the number of months the Department will have to oversee the Order.

Attachment B

Oregon Department of Environmental Quality

Proposal to increase Oregon Air Contaminant Discharge Permit Fees by 20 percent

Summary of Public Comments and Agency Responses

Prepared by: Andrea Curtis

Date: 8/21/2007

Comment period	The public comment period opened July 16 and closed August 20, 2007. Two written comments were submitted by mail.
Organization of comments and responses	Summaries of individual comments and DEQ's responses are provided below. Comments are summarized in categories. The persons who provided each comment are referenced by number. A list of commenters and their reference numbers follows the summary of comments and responses.
Explanation of acronyms used in this document	ACDP = Air Contaminant Discharge Permit DEQ = Department of Environmental Quality

Comments and Agency Responses	
1. Opposition to the fee increase	<ul style="list-style-type: none"> • I oppose your annual fee increase. (1) • We commend the DEQ's extensive streamlining efforts to avoid past fee increases in the ACDP program. But, we do not support any major fee increase including the proposed 20% increase in the Oregon ACDP fees. (2)
<i>Response</i>	The 2007 Oregon Legislature approved DEQ's ACDP budget package requiring a 20% increase in ACDP fees to cover increased program costs and avoid delays in permitting, possible degradation of air quality due to out of date permits, reduced compliance assistance, and reduced technical assistance in permitting and pollution prevention. Streamlining allowed DEQ to avoid a fee increase in the ACDP program since 2001.
2. Burden to permittees	<ul style="list-style-type: none"> • Freeman Rock Inc. is a small business that supplies rock and concrete products throughout Curry County. We help to produce and transport these products for federal, state and local projects as well as private and commercial construction projects. Government regulation has created an economic burden that has resulted in a series of past price increases to our company and our customers. (2) • Freeman Rock Inc. holds multiple permits from 14 governmental agencies. If each of the 14 agencies increased their fees by 20%, our business manager would have a hard time recommending that Freeman Rock Inc. should stay in business. (2) • I hold an ACDP permit that now costs \$300 a year. Perhaps in western Oregon, fee increases are appropriate for larger populated areas. In eastern Oregon, there is a much different situation. It cost me \$25,000 to install the equipment you require for pet cremation. I make approximately \$3,000 per year on cremations, which at this time doesn't pay for fuels or depreciation on the unit. To add another \$60 would be adding insult to injury. (1)
<i>Response</i>	DEQ is sympathetic to the financial constraints of small businesses. However, the proposed increase to ACDP fees is needed to cover the reasonable costs of DEQ in implementing Oregon's ACDP program. Failure to adequately fund Oregon's ACDP

	<p>program would affect DEQ's ability to administer essential program functions and services.</p> <p>DEQ convened an advisory committee that represented small businesses, industrial sectors required to have ACDPs, and environmental groups in Oregon to provide input and recommendations on the fiscal impact statement for the proposed increase to ACDP fees. The committee found that the proposed fee increases would have a fiscal and economic impact and could have a significant adverse effect on some small businesses, but did not recommend mitigation steps outlined in ORS 183.540, and concluded that the benefits of an effective ACDP program, such as adequate service to businesses and continued protection of public health, outweigh the potential fiscal burdens of the proposed fee increase on small business.</p> <p>DEQ offers payment plans that allow businesses holding ACDPs to pay ACDP annual fees in installments. ACDP holders may request a payment plan by contacting DEQ.</p>
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Summary of Comments Unrelated to this Rulemaking	
	I am unable to travel to your meeting in Portland as I am disabled and on oxygen. (1)
	Freeman Rock Inc. balances the economic and environmental needs of our society. We support the laws of our country that includes the Clean Air Act and the rulemaking needed for the DEQ. (2)

List of People Submitting Comments (by Commenter Number)			
Number	Name	Organization	Submit date
1	Penny Rodighiero	Penrod Kennels	July 31, 2007
2	Ted Freeman, Jr.	Freeman Rock, Inc.	August 9, 2007

Attachment C

Oregon Department of Environmental Quality

Proposal to increase Oregon Air Contaminant Discharge Permit Fees by 20 percent

ACDP Fee Increase Advisory Committee Membership and Report

Overview and purpose

The Oregon Department of Environmental Quality (DEQ) established the ACDP Fee Increase Rulemaking Advisory Committee to review the fiscal and economic impacts of DEQ's proposed rulemaking to increase Oregon's Air Contaminant Discharge Permit (ACDP) fees by 20 percent. DEQ requested that each committee member provide comments and recommendations on DEQ's draft Statement of Need and Fiscal and Economic Impact and answer three questions derived from Administrative Procedures Act requirements for fiscal impact analysis (OAR 183.333) as follows:

- Do the rules have a fiscal and economic impact?
- What is the extent of that fiscal and economic impact?
- Will the rule have a significant adverse impact on small businesses?

Committee members

Roald K. Berg, Small Business Compliance Advisory Panel

Barbara Crest, Northwest Auto Trade Association

Dona Hippert, Oregon Toxics Alliance and Northwest Environmental Defense Center

Chris Rich, Oregon Business Association

Tom Wood, Associated Oregon Industries

Others in attendance included DEQ staff Uri Papish, Sarah Armitage, Andrea Curtis, and Rebecca Hillwig.

Proposed rule background

The proposed rulemaking would increase ACDP fees by 20 percent for all permit categories. This increase matches the rise in ACDP program costs since 2001. The annual revenue from a 20 percent fee increase would fully fund the ACDP Program for two biennia. Without this fee increase, DEQ would need to cut two ACDP program positions in the 2007-2009 biennium, and two additional positions in the 2009-2011 biennium. The proposed ACDP fee increase will benefit Oregonians and the environment by helping DEQ:

- issue and renew ACDP permits in a timely manner;
- meet the Oregon Progress Board economic benchmark to issue 90% of ACDP permits within the target timeframes;
- complete required ACDP inspections;
- monitor and enforce compliance with air quality regulations that apply to ACDP facilities.

Meeting summary

This meeting took place June 27, 2007, from 1 p.m. to 2:30 p.m. at DEQ Headquarters. This meeting was tape recorded and that recording is incorporated by this reference. The committee was provided DEQ's draft Statement of Need and Fiscal and Economic Impact statement for the proposed rules, House Bill 3238, the Administrative Procedures Act requirements for fiscal

impact analysis, handouts from a DEQ staff fee increase presentation, and a list of businesses holding ACDPs. These materials are available upon request.

Committee recommendations

The ACDP Fee Increase Rulemaking Advisory Committee was tasked with answering three main questions derived from OAR 183.333. The questions as well as the Committee's answers are summarized below:

1. Does the rule have a fiscal and economic impact?

Yes

2. What is the extent of that fiscal and economic impact?

The extent of the impact is outlined adequately in the DEQ Statement of Need and Fiscal and Economic Impact. However, the ACDP Fee Increase Rulemaking Advisory Committee recommends adding the following information:

- A) A statement about positive economic benefits which may come from improvements in public health and welfare resulting from an adequately funded ACDP program. A fee increase that provides sufficient resources for compliance and technical assistance may help avoid public health costs associated with lower compliance and potentially increased air pollution.*
- B) Additional statements about the possible negative impacts of Specific Activity Fees including discouraging out of state businesses from coming to Oregon and greater obstacles to new businesses needing ACDPs.*
- C) A statement about whether the current fee structure (ratio of fee levels compared to one another) is thought to be equitable among sources.*

3. Will the rule have a significant adverse impact on small businesses?

The ACDP Advisory Committee concluded that the rule could have a significant adverse effect on small business but it does not have enough information to conclusively make a finding to that effect. However, the Advisory Committee stated that despite any possible adverse effect on small business it did not believe there is a need at this time for additional mitigation steps as outlined in ORS 183.540. The benefits of an effective ACDP program, such as adequate service to businesses and continued protection of public health outweigh the potential fiscal burdens on small business. The fees are currently structured in a way that minimizes fiscal impacts on sources with smaller emissions, many of which are small businesses. If comments received during the public comment period reveal significant adverse fiscal impacts on small businesses, DEQ may reconsider the need for alternative mitigation.

Committee Conclusion

The Committee reviewed DEQ's draft Statement of Need and Fiscal and Economic Impact and provided comments and recommendations. DEQ modified the document as recommended by the Committee.

Attachment D

State of Oregon
Department of Environmental Quality
Memorandum

Date: August 29, 2007

To: Environmental Quality Commission
From: Sarah Armitage, Air Quality Division
Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: August 16, 2007, beginning at 6:00 p.m.
Hearing Location: Department of Environmental Quality
Conference Room EQC-A, Floor 10
811 SW Sixth Avenue
Portland, Oregon 97204

Title of Proposal: Oregon Air Contaminant Discharge Permit Fee Increase

DEQ held an information session and public hearing on the proposed rules beginning at 6:00 p.m., but discovered problems with access to the building. The building door was inadvertently locked for the first thirty minutes of the hearing.

While the entrance to the hearing's location was locked at 6:00 p.m., people are frequently leaving the building at that time and could let anyone waiting outside into the building. The presiding officer recorded a statement on hearing attendance for the rulemaking record at 6:15 p.m. At 6:30 p.m., upon realizing that the entrance was locked, the presiding officer stationed a guard at the entrance to assist members of the public arriving to the hearing after 6:30 p.m. At 6:35 p.m., the presiding officer recorded a statement to close the hearing, with the intention to reopen the hearing if any members of the public arrived within the remainder of the hearing's scheduled time, until 7:30 p.m. The hearings officer and the guard stayed in place until 7:30 p.m.

No members of the public attended the hearing nor did anyone notify DEQ that the temporary access problems interfered with their intent to attend the hearing. DEQ received only two written comments from members of the public for this rulemaking proposal and it did not expect significant attendance at this hearing.

Attachment E

Oregon Department of Environmental Quality

Proposal to increase Oregon Air Contaminant Discharge Permit Fees by 20 percent

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).

1. Are there federal requirements that are applicable to this situation? If so, exactly what are they?

The Air Contaminant Discharge Permit (ACDP) program is part of Oregon's federally approved State Implementation Plan to achieve national air quality standards. Through ACDPs, DEQ implements numerous federal regulations and emission control requirements. The effectiveness of the ACDP program strongly influences the level of compliance with federal standards in Oregon.

The proposed rulemaking would increase Oregon's ACDP fees for all permit categories. There are no direct federal requirements for adequate funding of the ACDP program.

2. Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?

This question is not applicable to this rulemaking because there are no federal requirements for ACDP funding.

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?

The proposed rule changes incorporate no new federal requirements.

4. Will the proposed requirement (rulemaking) 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?

By providing adequate resources to implement the ACDP program, the proposed rule changes will provide increased certainty of timely and accurate permit processing for new facilities and facilities modifying their operations. Adequate ACDP resources will also allow DEQ to provide adequate technical assistance and cross media assistance, increasing the certainty that facilities operate in compliance with DEQ regulations.

5. Is there a timing issue which might justify changing the time frame for implementation of federal requirements?

There are no timing issues associated with clarifying federal requirements in the proposed rule revisions.

6. Will the proposed requirement (rulemaking) assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?

This question is not applicable to this rulemaking because it would not impose new standards.

7. Does the proposed requirement (rulemaking) establish or maintain reasonable equity in the requirements for various sources? (level the playing field)

Fees were established in their current form in a 2001 fee overhaul that improved equity among sources. The proposed rulemaking maintains equity among sources because it would raise fees 20% for all permit categories, rather than disproportionately affecting various categories.

8. Would others face increased costs if a more stringent rule is not enacted?

The proposed rules do not increase stringency. There would be no increased costs to others in the absence of more stringent rules.

9. Does the proposed requirement (rulemaking) 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?

The proposed rules do not differ from applicable federal requirements.

10. Is demonstrated technology available to comply with the proposed requirement (rulemaking)?

The proposed rules impose no new standards or compliance requirements.

11. Will the proposed requirement (rulemaking) contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?

The proposed rule will help prevent pollution by providing adequate ACDP resources for technical assistance and cross media assistance.

Attachment F

Oregon Department of Environmental Quality

Chapter 340

Proposed Rule Change:

Oregon Air Contaminant Discharge Permit Fee Increase

Statement of Need and Fiscal and Economic Impact

Rule Caption	The Department of Environmental Quality proposes to increase Oregon's Air Contaminant Discharge Permit Fees by 20%.
Title of Proposed Rulemaking	Oregon Air Contaminant Discharge Permit Fee Increase
Need for the Rule	<p>Oregon's Air Contaminant Discharge Permit (ACDP) program requires additional funding to continue to effectively protect Oregon's air quality. The proposed fee increase matches the rise in ACDP program costs since 2001. Without this increase, DEQ would have to cut program functions and services such as permitting, facility inspections and complaint response, which could cause delays in permitting, possible degradation of air quality due to out of date permits, reduced compliance assistance, and reduced technical assistance in permitting and pollution prevention. Because of inadequate resources, DEQ is currently unable to meet its target for timely issuance of ACDPs.</p> <p>The annual revenue from a 20% fee increase would fully fund the ACDP Program for at least two biennia. The proposed ACDP fee increase would benefit Oregonians and the environment by helping DEQ:</p> <ul style="list-style-type: none"> • Issue and renew ACDP permits in a timely manner • Meet the Oregon Progress Board economic benchmark to issue 90% of ACDP permits within the target timeframes • Complete required ACDP inspections • Monitor and enforce compliance with air quality regulations
Documents Relied Upon for Rulemaking	<p>Documents relied upon to provide the basis for this proposal include:</p> <ul style="list-style-type: none"> • 2007-2009 Legislatively Approved Budget • Fiscal Year 2008 ACDP Revenue Forecast • ACDP Fiscal Committee Meeting Summary <p>Copies of these documents may be reviewed at the Department of Environmental Quality's office at 811 SW 6th Avenue, Portland, Oregon 97204.</p>
Fiscal and Economic Impact	
Overview	<p>The ACDP program is an important part of DEQ's strategy to maintain clean air and controls the amount of air pollution from industrial facilities. Industrial permitting maintains healthy air and addresses new air quality challenges such as tighter federal health standards and air toxics requirements. Investing in clean air provides a healthy environment that supports vibrant economies and healthy communities while accommodating rapid population growth.</p> <p>ACDP fees pay approximately 85% of ACDP program costs. The remaining costs are funded by state General Funds and federal funds. The fees pay for permitting, technical assistance, inspections, enforcement, rule and policy development, data management, EPA reporting, and support a portion of air quality monitoring, planning and program management. Unlike fees in</p>

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the Title V program, which regulates air emissions from large industrial facilities, ACDP fees do not increase yearly based on cost increases from inflation.

ACDP fees were restructured during a fee overhaul in 2001 that created equity among ACDP permittees. The proposed rulemaking maintains equity among ACDP permittees because it maintains the fee ratios established in 2001.

The proposed ACDP fee increase would affect all of the approximately 1,130 businesses required to maintain ACDPs. Many are small businesses with 50 or fewer employees. In general, sources with lower emissions and less complex permits would experience a smaller annual impact than would large sources with more complex permits. Based on 2006 invoice information, DEQ estimates that with a 20% fee increase, about 78% of ACDP permittees would experience an annual fee increase between \$60 and \$320. The larger ACDP sources (approximately 22%) would experience an annual fee increase between \$640 and \$1,280.

The two tables below for annual and initial permit fees show the amount of the proposed fee increase and number of permits in each fee category. Specific Activity Fees, such as permit modification fees, contribute a relatively small portion of program revenue. The proposed fee increase to Specific Activity Fees is available in Attachment A.

Annual Permitting Fees	From:	To:	Increase:	Number of Permits in 2006
Basic ACDP	\$300	\$360	\$60	161
General Class I ACDP	\$600	\$720	\$120	201
General Class II ACDP	\$1,080	\$1,296	\$216	331
General Class III ACDP	\$1,560	\$1,872	\$312	157
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Initial Permitting Fees	From:	To:	Increase:	Number of Initial Permits in 2006
Short Term Activity ACDP	\$2500	\$3000	\$500	0
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Simple ACDP	\$5,000	\$6,000	\$1,000	7
Construction ACDP	\$8,000	\$9,600	\$1,600	2
Standard ACDP	\$10,000	\$12,000	\$2,000	2
Standard ACDP (New Source Review)	\$35,000	\$42,000	\$7,000	0

Request for Other Options

Pursuant to ORS 183.335(2)(b)(G), DEQ requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

Impacts on the

DEQ does not anticipate any direct fiscal or economic impacts from the proposed fee increases

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<p>General Public</p>	<p>on the general public. The proposed fee increases could indirectly affect the general public because the fee increases could be passed through by ACDP permit holders, resulting in a slight increase in the costs of products or services provided by businesses with ACDPs.</p> <p>Air pollution creates public health problems that can have negative economic impacts. The proposed fee increases could create positive economic benefits and improvements in public health and welfare resulting from an adequately funded ACDP program. A fee increase that provides sufficient resources for compliance and technical assistance may help avoid public health costs associated with lower compliance and increased air pollution.</p>	
<p>Impacts on Small Business (50 or fewer employees –ORS183.310(10))</p>	<p>The proposed increase of 20% for all fee categories would directly affect approximately 1,130 businesses with ACDPs in Oregon. DEQ estimates that approximately half of these (565) are small businesses with 50 or fewer employees. The increased Specific Activity Fees could potentially discourage out of state businesses from coming to Oregon and could pose greater obstacles for new companies and startup businesses needing ACDPs.</p> <p>The proposed fee increases could also indirectly impact small businesses because the fee increases could be passed through by ACDP holders, resulting in a slight increase in the costs of products or services.</p>	
<p>Cost of Compliance on Small Business (50 or fewer employees –ORS183.310(10))</p>	<p>a) The estimated number of small businesses subject to the proposed fee increases</p>	<p>DEQ estimates that approximately 565 small businesses would be subject to the proposed fee increases.</p>
	<p>b) The types of businesses and industries with small businesses subject to the proposed fee increases</p>	<p>Many different types of small businesses could be subject to the proposed fee increase. Categories include seed and grain companies; sand, rock and gravel operations; asphalt paving; crematories; commercial boilers; furniture manufacturing; food preparation; metal plating; wood products and printing.</p>
	<p>c) The projected reporting, recordkeeping and other administrative activities required by small businesses for compliance with the proposed fee increases</p>	<p>The proposed rule amendments do not establish any additional reporting, recordkeeping or other administrative activities.</p>
	<p>d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the proposed fee increases</p>	<p>The proposed rule amendments do not require any additional equipment, supplies, labor or increased administration.</p>
	<p>e) A description of the manner in which DEQ involved small businesses in the development of the proposed fee increases</p>	<p>In fall 2006, DEQ described the proposed ACDP fee increase at Air Quality Permit Program information sessions held in Medford, Bend, Pendleton and Portland. DEQ also communicated the proposed fee increase to its Small Business Compliance Advisory Panel in fall 2006 and to the Associated Oregon Industries Air Committee in early 2007. In November 2006, DEQ provided notice of the proposed fee increase to lobbyists for many of the industrial sectors requiring ACDPs. In December 2006, DEQ posted a fact sheet describing the proposed fee increase on its website. As part of its 2007 legislative budget process, DEQ submitted detailed information about ACDP program funding and the proposed fee increase to the legislature.</p>

DEQ sent the Notice of Proposed Rulemaking by mail or electronically to ACDP sources and interested parties on July 16, 2007. The August 16, 2007 public hearing provided a forum for both large and small ACDP holders and interested parties to comment on the rule.

Impacts on Large Business

The proposed fee increases would directly impact large businesses required to have an ACDP. DEQ estimates that approximately half of ACDP holders (565) are large businesses with more than 50 employees. The increased Specific Activity Fees could potentially discourage out of state businesses from coming to Oregon and could pose greater obstacles for new companies and startup businesses needing ACDPs.

Large businesses could also be indirectly affected because the fee increases could be passed through by ACDP holders, resulting in a slight increase in the costs of products or services.

Impacts on Local Government

The proposed fee increases would directly impact local governments required to have ACDPs. Based on 2006 invoice information, DEQ projects that the proposed fee increases would result in the following impacts on local government facilities in FY 2008:

- Sewage and Water Treatment facilities: seven facilities affected
 - One facility would have a \$216 increase
 - Three facilities would have a \$640 increase
 - Three facilities would have a \$1,280 increase
- Landfills and refuse systems: seven facilities affected
 - One facility would have a \$60 increase
 - Two facilities would have a \$120 increase
 - Four facilities would have a \$640 increase
- Institutional boilers: nineteen facilities affected
 - One facility would have a \$60 increase
 - Seventeen facilities would have a \$216 increase
 - One facility would have a \$320 increase
- Rock, gravel and paving: ten facilities affected
 - Three facilities would have a \$60 increase
 - One facility would have a \$120 increase
 - Six facilities would have a \$216 increase
- Electric power generation: one facility would have a \$216 increase

The proposed fee increases could indirectly impact local governments because the fee increases could be passed through by ACDP holders, resulting in a slight increase in the costs of products or services.

Impacts on State Entities

The proposed fee increases would directly impact state entities required to have ACDPs. Based on 2006 invoice information, DEQ projects that the proposed fee increases would result in the following impacts on state entities in FY 2008:


- Landfills and refuse systems: one facility would have a \$640 increase
- Institutional boilers: eight facilities affected
 - Seven facilities would have a \$216 increase
 - One facility would have a \$1,280 increase
- Rock, gravel and paving: two facilities would have a \$216 increase
- Electric power generation: three facilities affected
 - One facility would have a \$216 increase
 - Two facilities would have a \$320 increase

The proposed fee increases could indirectly impact state entities including DEQ and other agencies because the fee increases could be passed through by ACDP holders, resulting in a slight increase in the costs of products or services.

Impacts on DEQ	DEQ would not incur additional costs to implement the proposed fee increases. Instead, DEQ would gain additional resources needed to operate its ACDP Program.
Impacts on other Agencies	DEQ anticipates that no other agencies would be directly affected by the proposed rule amendments.
Assumptions	Estimated revenue forecasts and expenditures are based on the assumption that all facilities subject to the ACDP Program have been identified, and that the number of ACDP permits and facility emissions will remain approximately the same as in 2006. DEQ projects approximately 1,130 sources will be subject to ACDP permitting and fee requirements in FY 2008.
Housing Costs	DEQ has determined that the proposed fee increases may have a negative impact on the development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel if ACDP permit holders providing for such development and construction pass on the fee increase through their goods and services. The possible impact appears to be minimal. DEQ cannot quantify this impact at this time because the information available to it does not indicate whether the 20% fee increase would be passed on to consumers and any such estimate would be speculative.
Administrative Rule Advisory Committee	<p>An ACDP Fee Increase Rulemaking Advisory Committee was convened to generate input and recommendations on the fiscal impact statement for the proposed rule amendments. The committee concluded that the proposed fee increases would have a fiscal and economic impact and could have a significant adverse effect on some small businesses, but did not have enough information to conclusively make a finding to that effect. However, the committee stated that despite any possible adverse effect on small business it did not believe there is a need, at this time, for additional mitigation steps as outlined in ORS 183.540. The benefits of an effective ACDP program, such as adequate service to businesses and continued protection of public health outweigh the potential fiscal burdens on small business. In addition, the fees are currently structured in a way that minimizes fiscal impacts on sources with smaller emissions, many of which are small businesses. If comments received during the public comment period revealed significant adverse fiscal impacts on small businesses, DEQ would have reconsidered the need for alternative mitigation.</p> <p>The Notice of Proposed Rulemaking was distributed to ACDP businesses and interested parties in July 2007.</p>

Prepared by: Sarah Armitage

Approved by DEQ Budget Office: Andree Pollock

Date: September 25, 2007
To: Environmental Quality Commission
From: Stephanie Hallock, Director 
Subject: Agenda Item C, Rule Adoption: Oregon Air Contaminant Discharge Permit Fee Increase; October 18, 2007 EQC Meeting

Why is this Important

The Air Contaminant Discharge Permit (ACDP) program contributes to the prevention of air pollution and helps reduce the number of unhealthy air days and the risks from air toxics by reducing pollution through permit requirements and preventing pollution through technical assistance.

Oregon's ACDP program is part of Oregon's federally approved State Implementation Plan (SIP) to meet national air quality standards. The ACDP program requires additional funding to continue to effectively protect Oregon's air quality.

Department Recommendation

The Department recommends that the Commission:

- (1) Determine that the increased fees in the proposed rule (as presented in Attachment A) are necessary to cover the reasonable indirect and direct costs of implementing Oregon's Air Contaminant Discharge Permit program; and
- (2) Amend OAR 340-216-0020 Table 2 (as presented in Attachment A) to increase Oregon's Air Contaminant Discharge Permit fees by 20 percent ^[1].

^[1] It is not necessary to amend Oregon's SIP because the EPA does not require that Oregon's SIP include ACDP fees.

Background and Need for Rulemaking

ACDPs authorize the construction of new facilities and operation of existing facilities in Oregon. The ACDP program helps ensure that new sources of air pollution install controls such as afterburners and vapor degreasers needed to protect air quality and that existing pollution sources are in compliance with state and federal emissions standards. The program also administers tighter federal health standards, new air toxics requirements and other regulations.

The 2007 Oregon Legislature approved the Department's ACDP budget package requiring a 20 percent increase in ACDP fees. Fees pay 85 percent of ACDP program costs. State General Funds and federal funds pay the rest. ACDP fees help pay for permitting, technical assistance, inspections, enforcement, rule and policy development, data management and reporting to the EPA. ACDP fees also help support a portion of air quality monitoring, planning, and central services such as accounting and human resources.

ACDP program costs have increased since 2001, but through streamlining, the

Department has avoided a fee increase and has reduced program staffing. No additional reductions are possible without reducing essential program functions and services. If the legislature had not approved increased spending authority, the Department would have had to cut four ACDP positions over the next two biennia. These positions issue permits, inspect facilities and respond to complaints. Loss of these positions would cause delays in permitting, possible degradation of air quality due to out-of-date permits, reduced compliance assistance, and reduced technical assistance in permitting and pollution prevention.

The annual revenue from a 20 percent fee increase would fully fund the ACDP program for at least two biennia and would benefit Oregon's environment and economy by helping the Department:

- Issue and renew ACDP permits in a timely manner
- Meet the Oregon Progress Board economic benchmark to issue 90 percent of ACDP permits within the target timeframes
- Complete required ACDP inspections
- Monitor and enforce compliance with air quality regulations

Effect of Rule

The proposed rule amendments increase fees for all ACDP pollution sources by 20 percent. There are approximately 1,130 businesses with ACDPs in Oregon. Many are small businesses with 50 or fewer employees. Generally, facilities with less complex permits would feel a smaller annual economic impact than larger facilities with more complex permits. From 2006 invoice information, the Department estimates that about 78 percent of ACDP holders would have an annual fee increase between \$60 and \$320, and approximately 22 percent would experience an annual fee increase between \$640 and \$1,280.

The following two tables show the amount of the proposed fee increase and number of permits in each fee category for annual and initial permit fees. Specific Activity Fees, such as permit modification fees, would also increase by 20 percent. The proposed increase to Specific Activity Fees is available in Attachment A. Specific Activity Fees contribute a relatively small portion of program revenue.

Agenda Item C, Rule Adoption:
 Oregon Air Contaminant Discharge Permit Fee Increase
 October 18, 2007 EQC Meeting
 Page 3 of 4

Annual Permitting Fees	From:	To:	Increase:	Number of Permits in 2006
Basic ACDP	\$300	\$360	\$60	161
General Class I ACDP	\$600	\$720	\$120	201
General Class II ACDP	\$1,080	\$1,296	\$216	331
General Class III ACDP	\$1,560	\$1,872	\$312	157
Simple Low ACDP	\$1,600	\$1,920	\$320	38
Simple High ACDP	\$3,200	\$3,840	\$640	94
Standard ACDP	\$6,400	\$7,680	\$1,280	149

Initial Permitting Fees for New Facilities	From:	To:	Increase:	Number of Initial Permits in 2006
Short Term Activity ACDP	\$2500	\$3000	\$500	0
Basic ACDP	\$100	\$120	\$20	19
Assignment to General ACDP	\$1,000	\$1,200	\$200	37
Simple ACDP	\$5,000	\$6,000	\$1,000	7
Construction ACDP	\$8,000	\$9,600	\$1,600	2
Standard ACDP	\$10,000	\$12,000	\$2,000	2
Standard ACDP (New Source Review)	\$35,000	\$42,000	\$7,000	0

Commission Authority

The Commission has authority to take this action under ORS 468.020, 468A.040, 468A.035 and 468A.025.

Stakeholder Involvement

The Department held Air Quality Permit Program information sessions in 2006 for permit holders to describe the proposed ACDP fee increase. The Department shared the proposal with its Small Business Compliance Advisory Panel and with lobbyists for many of the industrial sectors required to have ACDPs in 2006 and to the Associated Oregon Industries Air Committee in early 2007.

The Department also convened an advisory committee to generate input and recommendations on the fiscal impact statement for the proposed ACDP fee increase. Committee members represented small businesses, industrial sectors required to have ACDPs, and environmental groups in Oregon. The Advisory Committee Membership and Report is provided in Attachment C.

The Department mailed copies of the public notice package to all ACDP businesses and interested parties in July 2007, and held a public hearing at DEQ Headquarters in Portland on the proposed rules in August 2007, but discovered

there were some access problems with the building. Members of the public had access up until the hearing's scheduled start time; however, the building was inadvertently locked for the first thirty minutes of the hearing. Access resumed for the remainder of the scheduled hour-and-a-half hearing. No members of the public attended the hearing nor did anyone notify the Department that the temporary access problems interfered with their intent to attend the hearing. The presiding officer's report for this hearing is provided in Attachment D.

Public Comment A public comment period extended from July 16, 2007 to August 20, 2007. The Department received two written comments. A summary of comments and Department responses is provided in Attachment B.

Key Issues While the ACDP Fee Increase Rulemaking Advisory Committee found that the proposed fee increases would have a fiscal and economic impact and could have a significant adverse effect on some small businesses, it did not recommend mitigation steps outlined in ORS 183.540 such as establishing less costly alternatives or exempting small businesses from requirements of program rules. The committee concluded that the benefits of an effective ACDP program such as adequate service to businesses and continued protection of public health outweigh the potential fiscal burdens of the proposed fee increase on small business.

Next Steps If adopted by the Commission, the proposed fee increases would become effective upon filing with the Secretary of State. The Department would mail invoices reflecting the fee increase to ACDP permittees in October 2007 with payment due in December 2007. Because 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. Summary of Public Comments and Agency Responses
- C. Advisory Committee Membership and Report
- D. Presiding Officer's Report for Rulemaking Hearing
- E. Relationship to Federal Requirements
- F. Statement of Need and Fiscal and Economic Impact
- G. Land Use Evaluation Statement

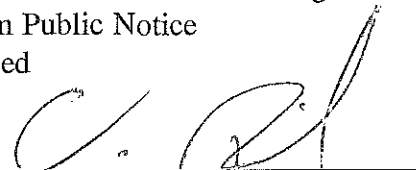
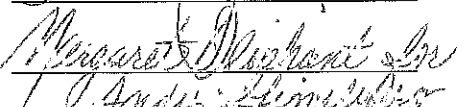
Available Upon Request

- 1. Legal Notice of Hearing and Public Notice Package
- 2. Cover Memorandum from Public Notice
- 3. Written Comment Received

Approved:

Section:

Division:



Report Prepared By: Andrea Curtis
Phone: (503) 229-6866

Attachment A

Oregon Administrative Rules Chapter 340, Division 216 - Department of Environmental Quality

Proposal to increase Oregon Air Contaminant Discharge Permit Fees by 20 percent

Proposed Rule Changes

Air Quality

Division 216, OAR 340-216-0020

DEQ Home > Air Quality > Rules > Division 216

Table 2

Part 1. Initial Permitting Application Fees: (in addition to first annual fee)

a. Short Term Activity ACDP	\$2500.00 \$3,000.00
b. Basic ACDP	\$100.00 \$120.00
c. Assignment to General ACDP	\$1,000.00 \$1,200.00
d. Simple ACDP	\$5,000.00 \$6,000.00
e. Construction ACDP	\$8,000.00 \$9,600.00
f. Standard ACDP	\$10,000.00 \$12,000.00
g. Standard ACDP (PSD/NSR)	\$35,000.00 \$42,000.00

Part 2. Annual Fees: (Due 12/1 for 1/1 to 12/31 of the following year)

a. Short Term Activity ACDP		\$NA
b. Basic ACDP		\$300.00 \$360.00
c. General ACDP	(A) Fee Class One	\$600.00 \$720.00
	(B) Fee Class Two	\$1,080.00 \$1,296.00
	(C) Fee Class Three	\$1,560.00 \$1,872.00
	(A) Low Fee	\$1,600.00 \$1,920.00
d. Simple ACDP	(B) High Fee	\$3,200.00 \$3,840.00
e. Standard ACDP		\$6,400.00 \$7,680.00

Part 3. Specific Activity Fees:

a. Non-Technical Permit Modification (1)	\$300.00 \$360.00
b. Non-PSD/NSR Basic Technical Permit Modification (2)	\$300.00 \$360.00
c. Non-PSD/NSR Simple Technical Permit Modification(3)	\$1,000.00 \$1,200.00
d. Non-PSD/NSR Moderate Technical Permit Modification (4)	\$5,000.00 \$6,000.00
e. Non-PSD/NSR Complex Technical Permit Modification (5)	\$10,000.00 \$12,000.00
f. PSD/NSR Modification	\$35,000.00 \$42,000.00
g. Modeling Review (outside PSD/NSR)	\$5,000.00 \$6,000.00
h. Public Hearing at Source's Request	\$2,000.00 \$2,400.00
i. State MACT Determination	\$5,000.00 \$6,000.00
j. Compliance Order Monitoring (6)	\$100.00/month \$120.00/month

Part 4. Late Fees:

- a. 8-30 days late 5% of annual fee
 - b. 31-60 days late 10% of annual fee
 - c. 61 or more days late 20% of annual fee
1. Non-Technical modifications include, but are not limited to name changes, change of ownership and similar administrative changes.
 2. Basic Technical Modifications include, but are not limited to corrections of emission factors in compliance methods, changing source test dates for extenuating circumstances, and similar changes.
 3. Simple Technical Modifications include, but are not limited to-, incorporating a PSEL compliance method from a review report into an ACDP, modifying a compliance method to use different emission factors or process parameter, changing source test dates for extenuating circumstances, changing reporting frequency, incorporating NSPS and NESHAP requirements that do not require judgement, and similar changes.
 4. Moderate Technical Modifications include, but are not limited to incorporating a relatively simple new compliance method into a permit, adding a relatively simple compliance method or monitoring for an emission point or control device not previously addressed in a permit, revising monitoring and reporting requirements other than dates and frequency, adding a new applicable requirement into a permit due to a change in process or change in rules and that does not require judgment by the Department, incorporating NSPS and NESHAP requirements that do not require judgment, and similar changes.
 5. Complex Technical Modifications include, but are not limited to incorporating a relatively complex new compliance method into a permit, adding a relatively complex compliance method or monitoring for an emission point or control devise not previously addressed in a permit, adding a relatively complex new applicable requirement into a permit due to a change in process or change in rules and that requires judgement by the Department, and similar changes.
 6. This is a one time fee payable when a Compliance Order is established in a Permit or a Department Order containing a compliance schedule becomes a Final Order of the Department and is based on the number of months the Department will have to oversee the Order.

Attachment B

Oregon Department of Environmental Quality

Proposal to increase Oregon Air Contaminant Discharge Permit Fees by 20 percent

Summary of Public Comments and Agency Responses

Prepared by: Andrea Curtis

Date: 8/21/2007

<i>Comment period</i>	The public comment period opened July 16 and closed August 20, 2007. Two written comments were submitted by mail.
<i>Organization of comments and responses</i>	Summaries of individual comments and DEQ's responses are provided below. Comments are summarized in categories. The persons who provided each comment are referenced by number. A list of commenters and their reference numbers follows the summary of comments and responses.
<i>Explanation of acronyms used in this document</i>	ACDP = Air Contaminant Discharge Permit DEQ = Department of Environmental Quality

Comments and Agency Responses	
1. Opposition to the fee increase	<ul style="list-style-type: none"> • I oppose your annual fee increase. (1) • We commend the DEQ's extensive streamlining efforts to avoid past fee increases in the ACDP program. But, we do not support any major fee increase including the proposed 20% increase in the Oregon ACDP fees. (2)
<i>Response</i>	The 2007 Oregon Legislature approved DEQ's ACDP budget package requiring a 20% increase in ACDP fees to cover increased program costs and avoid delays in permitting, possible degradation of air quality due to out of date permits, reduced compliance assistance, and reduced technical assistance in permitting and pollution prevention. Streamlining allowed DEQ to avoid a fee increase in the ACDP program since 2001.
2. Burden to permittees	<ul style="list-style-type: none"> • Freeman Rock Inc. is a small business that supplies rock and concrete products throughout Curry County. We help to produce and transport these products for federal, state and local projects as well as private and commercial construction projects. Government regulation has created an economic burden that has resulted in a series of past price increases to our company and our customers. (2) • Freeman Rock Inc. holds multiple permits from 14 governmental agencies. If each of the 14 agencies increased their fees by 20%, our business manager would have a hard time recommending that Freeman Rock Inc. should stay in business. (2) • I hold an ACDP permit that now costs \$300 a year. Perhaps in western Oregon, fee increases are appropriate for larger populated areas. In eastern Oregon, there is a much different situation. It cost me \$25,000 to install the equipment you require for pet cremation. I make approximately \$3,000 per year on cremations, which at this time doesn't pay for fuels or depreciation on the unit. To add another \$60 would be adding insult to injury. (1)
<i>Response</i>	DEQ is sympathetic to the financial constraints of small businesses. However, the proposed increase to ACDP fees is needed to cover the reasonable costs of DEQ in implementing Oregon's ACDP program. Failure to adequately fund Oregon's ACDP

	<p>program would affect DEQ's ability to administer essential program functions and services.</p> <p>DEQ convened an advisory committee that represented small businesses, industrial sectors required to have ACDPs, and environmental groups in Oregon to provide input and recommendations on the fiscal impact statement for the proposed increase to ACDP fees. The committee found that the proposed fee increases would have a fiscal and economic impact and could have a significant adverse effect on some small businesses, but did not recommend mitigation steps outlined in ORS 183.540, and concluded that the benefits of an effective ACDP program, such as adequate service to businesses and continued protection of public health, outweigh the potential fiscal burdens of the proposed fee increase on small business.</p> <p>DEQ offers payment plans that allow businesses holding ACDPs to pay ACDP annual fees in installments. ACDP holders may request a payment plan by contacting DEQ.</p>
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Summary of Comments Unrelated to this Rulemaking
I am unable to travel to your meeting in Portland as I am disabled and on oxygen. (1)
Freeman Rock Inc. balances the economic and environmental needs of our society. We support the laws of our country that includes the Clean Air Act and the rulemaking needed for the DEQ. (2)

List of People Submitting Comments (by Commenter Number)			
Number	Name	Organization	Submit date
1	Penny Rodighiero	Penrod Kennels	July 31, 2007
2	Ted Freeman, Jr.	Freeman Rock, Inc.	August 9, 2007

Attachment C

Oregon Department of Environmental Quality

Proposal to increase Oregon Air Contaminant Discharge Permit Fees by 20 percent

ACDP Fee Increase Advisory Committee Membership and Report

Overview and purpose

The Oregon Department of Environmental Quality (DEQ) established the ACDP Fee Increase Rulemaking Advisory Committee to review the fiscal and economic impacts of DEQ's proposed rulemaking to increase Oregon's Air Contaminant Discharge Permit (ACDP) fees by 20 percent. DEQ requested that each committee member provide comments and recommendations on DEQ's draft Statement of Need and Fiscal and Economic Impact and answer three questions derived from Administrative Procedures Act requirements for fiscal impact analysis (OAR 183.333) as follows:

- Do the rules have a fiscal and economic impact?
- What is the extent of that fiscal and economic impact?
- Will the rule have a significant adverse impact on small businesses?

Committee members

Roald K. Berg, Small Business Compliance Advisory Panel

Barbara Crest, Northwest Auto Trade Association

Dona Hippert, Oregon Toxics Alliance and Northwest Environmental Defense Center

Chris Rich, Oregon Business Association

Tom Wood, Associated Oregon Industries

Others in attendance included DEQ staff Uri Papish, Sarah Armitage, Andrea Curtis, and Rebecca Hillwig.

Proposed rule background

The proposed rulemaking would increase ACDP fees by 20 percent for all permit categories. This increase matches the rise in ACDP program costs since 2001. The annual revenue from a 20 percent fee increase would fully fund the ACDP Program for two biennia. Without this fee increase, DEQ would need to cut two ACDP program positions in the 2007-2009 biennium, and two additional positions in the 2009-2011 biennium. The proposed ACDP fee increase will benefit Oregonians and the environment by helping DEQ:

- issue and renew ACDP permits in a timely manner;
- meet the Oregon Progress Board economic benchmark to issue 90% of ACDP permits within the target timeframes;
- complete required ACDP inspections;
- monitor and enforce compliance with air quality regulations that apply to ACDP facilities.

Meeting summary

This meeting took place June 27, 2007, from 1 p.m. to 2:30 p.m. at DEQ Headquarters. This meeting was tape recorded and that recording is incorporated by this reference. The committee was provided DEQ's draft Statement of Need and Fiscal and Economic Impact statement for the proposed rules, House Bill 3238, the Administrative Procedures Act requirements for fiscal

impact analysis, handouts from a DEQ staff fee increase presentation, and a list of businesses holding ACDPs. These materials are available upon request.

Committee recommendations

The ACDP Fee Increase Rulemaking Advisory Committee was tasked with answering three main questions derived from OAR 183.333. The questions as well as the Committee's answers are summarized below:

1. Does the rule have a fiscal and economic impact?

Yes

2. What is the extent of that fiscal and economic impact?

The extent of the impact is outlined adequately in the DEQ Statement of Need and Fiscal and Economic Impact. However, the ACDP Fee Increase Rulemaking Advisory Committee recommends adding the following information:

- A) A statement about positive economic benefits which may come from improvements in public health and welfare resulting from an adequately funded ACDP program. A fee increase that provides sufficient resources for compliance and technical assistance may help avoid public health costs associated with lower compliance and potentially increased air pollution.*
- B) Additional statements about the possible negative impacts of Specific Activity Fees including discouraging out of state businesses from coming to Oregon and greater obstacles to new businesses needing ACDPs.*
- C) A statement about whether the current fee structure (ratio of fee levels compared to one another) is thought to be equitable among sources.*

3. Will the rule have a significant adverse impact on small businesses?

The ACDP Advisory Committee concluded that the rule could have a significant adverse effect on small business but it does not have enough information to conclusively make a finding to that effect. However, the Advisory Committee stated that despite any possible adverse effect on small business it did not believe there is a need at this time for additional mitigation steps as outlined in ORS 183.540. The benefits of an effective ACDP program, such as adequate service to businesses and continued protection of public health outweigh the potential fiscal burdens on small business. The fees are currently structured in a way that minimizes fiscal impacts on sources with smaller emissions, many of which are small businesses. If comments received during the public comment period reveal significant adverse fiscal impacts on small businesses, DEQ may reconsider the need for alternative mitigation.

Committee Conclusion

The Committee reviewed DEQ's draft Statement of Need and Fiscal and Economic Impact and provided comments and recommendations. DEQ modified the document as recommended by the Committee.

Attachment D

State of Oregon
Department of Environmental Quality
Memorandum

Date: August 29, 2007

To: Environmental Quality Commission
From: Sarah Armitage, Air Quality Division
Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: August 16, 2007, beginning at 6:00 p.m.
Hearing Location: Department of Environmental Quality
Conference Room EQC-A, Floor 10
811 SW Sixth Avenue
Portland, Oregon 97204

Title of Proposal: Oregon Air Contaminant Discharge Permit Fee Increase

DEQ held an information session and public hearing on the proposed rules beginning at 6:00 p.m., but discovered problems with access to the building. The building door was inadvertently locked for the first thirty minutes of the hearing.

While the entrance to the hearing's location was locked at 6:00 p.m., people are frequently leaving the building at that time and could let anyone waiting outside into the building. The presiding officer recorded a statement on hearing attendance for the rulemaking record at 6:15 p.m. At 6:30 p.m., upon realizing that the entrance was locked, the presiding officer stationed a guard at the entrance to assist members of the public arriving to the hearing after 6:30 p.m. At 6:35 p.m., the presiding officer recorded a statement to close the hearing, with the intention to reopen the hearing if any members of the public arrived within the remainder of the hearing's scheduled time, until 7:30 p.m. The hearings officer and the guard stayed in place until 7:30 p.m.

No members of the public attended the hearing nor did anyone notify DEQ that the temporary access problems interfered with their intent to attend the hearing. DEQ received only two written comments from members of the public for this rulemaking proposal and it did not expect significant attendance at this hearing.

Attachment E

Oregon Department of Environmental Quality

Proposal to increase Oregon Air Contaminant Discharge Permit Fees by 20 percent

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).

1. Are there federal requirements that are applicable to this situation? If so, exactly what are they?

The Air Contaminant Discharge Permit (ACDP) program is part of Oregon's federally approved State Implementation Plan to achieve national air quality standards. Through ACDPs, DEQ implements numerous federal regulations and emission control requirements. The effectiveness of the ACDP program strongly influences the level of compliance with federal standards in Oregon.

The proposed rulemaking would increase Oregon's ACDP fees for all permit categories. There are no direct federal requirements for adequate funding of the ACDP program.

2. Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?

This question is not applicable to this rulemaking because there are no federal requirements for ACDP funding.

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?

The proposed rule changes incorporate no new federal requirements.

4. Will the proposed requirement (rulemaking) 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?

By providing adequate resources to implement the ACDP program, the proposed rule changes will provide increased certainty of timely and accurate permit processing for new facilities and facilities modifying their operations. Adequate ACDP resources will also allow DEQ to provide adequate technical assistance and cross media assistance, increasing the certainty that facilities operate in compliance with DEQ regulations.

5. Is there a timing issue which might justify changing the time frame for implementation of federal requirements?

There are no timing issues associated with clarifying federal requirements in the proposed rule revisions.

6. Will the proposed requirement (rulemaking) assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?

This question is not applicable to this rulemaking because it would not impose new standards.

7. Does the proposed requirement (rulemaking) establish or maintain reasonable equity in the requirements for various sources? (level the playing field)

Fees were established in their current form in a 2001 fee overhaul that improved equity among sources. The proposed rulemaking maintains equity among sources because it would raise fees 20% for all permit categories, rather than disproportionately affecting various categories.

8. Would others face increased costs if a more stringent rule is not enacted?

The proposed rules do not increase stringency. There would be no increased costs to others in the absence of more stringent rules.

9. Does the proposed requirement (rulemaking) 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?

The proposed rules do not differ from applicable federal requirements.

10. Is demonstrated technology available to comply with the proposed requirement (rulemaking)?

The proposed rules impose no new standards or compliance requirements.

11. Will the proposed requirement (rulemaking) contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?

The proposed rule will help prevent pollution by providing adequate ACDP resources for technical assistance and cross media assistance.

Attachment F

Oregon Department of Environmental Quality

Chapter 340

Proposed Rule Change:

Oregon Air Contaminant Discharge Permit Fee Increase

Statement of Need and Fiscal and Economic Impact

Rule Caption	The Department of Environmental Quality proposes to increase Oregon's Air Contaminant Discharge Permit Fees by 20%.
Title of Proposed Rulemaking	Oregon Air Contaminant Discharge Permit Fee Increase
Need for the Rule	<p>Oregon's Air Contaminant Discharge Permit (ACDP) program requires additional funding to continue to effectively protect Oregon's air quality. The proposed fee increase matches the rise in ACDP program costs since 2001. Without this increase, DEQ would have to cut program functions and services such as permitting, facility inspections and complaint response, which could cause delays in permitting, possible degradation of air quality due to out of date permits, reduced compliance assistance, and reduced technical assistance in permitting and pollution prevention. Because of inadequate resources, DEQ is currently unable to meet its target for timely issuance of ACDPs.</p> <p>The annual revenue from a 20% fee increase would fully fund the ACDP Program for at least two biennia. The proposed ACDP fee increase would benefit Oregonians and the environment by helping DEQ:</p> <ul style="list-style-type: none"> • Issue and renew ACDP permits in a timely manner • Meet the Oregon Progress Board economic benchmark to issue 90% of ACDP permits within the target timeframes • Complete required ACDP inspections • Monitor and enforce compliance with air quality regulations
Documents Relied Upon for Rulemaking	<p>Documents relied upon to provide the basis for this proposal include:</p> <ul style="list-style-type: none"> • 2007-2009 Legislatively Approved Budget • Fiscal Year 2008 ACDP Revenue Forecast • ACDP Fiscal Committee Meeting Summary <p>Copies of these documents may be reviewed at the Department of Environmental Quality's office at 811 SW 6th Avenue, Portland, Oregon 97204.</p>
Fiscal and Economic Impact	
Overview	<p>The ACDP program is an important part of DEQ's strategy to maintain clean air and controls the amount of air pollution from industrial facilities. Industrial permitting maintains healthy air and addresses new air quality challenges such as tighter federal health standards and air toxics requirements. Investing in clean air provides a healthy environment that supports vibrant economies and healthy communities while accommodating rapid population growth.</p> <p>ACDP fees pay approximately 85% of ACDP program costs. The remaining costs are funded by state General Funds and federal funds. The fees pay for permitting, technical assistance, inspections, enforcement, rule and policy development, data management, EPA reporting, and support a portion of air quality monitoring, planning and program management. Unlike fees in</p>

the Title V program, which regulates air emissions from large industrial facilities, ACDP fees do not increase yearly based on cost increases from inflation.

ACDP fees were restructured during a fee overhaul in 2001 that created equity among ACDP permittees. The proposed rulemaking maintains equity among ACDP permittees because it maintains the fee ratios established in 2001.

The proposed ACDP fee increase would affect all of the approximately 1,130 businesses required to maintain ACDPs. Many are small businesses with 50 or fewer employees. In general, sources with lower emissions and less complex permits would experience a smaller annual impact than would large sources with more complex permits. Based on 2006 invoice information, DEQ estimates that with a 20% fee increase, about 78% of ACDP permittees would experience an annual fee increase between \$60 and \$320. The larger ACDP sources (approximately 22%) would experience an annual fee increase between \$640 and \$1,280.

The two tables below for annual and initial permit fees show the amount of the proposed fee increase and number of permits in each fee category. Specific Activity Fees, such as permit modification fees, contribute a relatively small portion of program revenue. The proposed fee increase to Specific Activity Fees is available in Attachment A.

Annual Permitting Fees	From:	To:	Increase:	Number of Permits in 2006
Basic ACDP	\$300	\$360	\$60	161
General Class I ACDP	\$600	\$720	\$120	201
General Class II ACDP	\$1,080	\$1,296	\$216	331
General Class III ACDP	\$1,560	\$1,872	\$312	157
Simple Low ACDP	\$1,600	\$1,920	\$320	38
Simple High ACDP	\$3,200	\$3,840	\$640	94
Standard ACDP	\$6,400	\$7,680	\$1,280	149

Initial Permitting Fees	From:	To:	Increase:	Number of Initial Permits in 2006
Short Term Activity ACDP	\$2500	\$3000	\$500	0
Basic ACDP	\$100	\$120	\$20	19
Assignment to General ACDP	\$1,000	\$1,200	\$200	37
Simple ACDP	\$5,000	\$6,000	\$1,000	7
Construction ACDP	\$8,000	\$9,600	\$1,600	2
Standard ACDP	\$10,000	\$12,000	\$2,000	2
Standard ACDP (New Source Review)	\$35,000	\$42,000	\$7,000	0

Request for Other Options

Pursuant to ORS 183.335(2)(b)(G), DEQ requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

Impacts on the

DEQ does not anticipate any direct fiscal or economic impacts from the proposed fee increases

<p>General Public</p>	<p>on the general public. The proposed fee increases could indirectly affect the general public because the fee increases could be passed through by ACDP permit holders, resulting in a slight increase in the costs of products or services provided by businesses with ACDPs.</p> <p>Air pollution creates public health problems that can have negative economic impacts. The proposed fee increases could create positive economic benefits and improvements in public health and welfare resulting from an adequately funded ACDP program. A fee increase that provides sufficient resources for compliance and technical assistance may help avoid public health costs associated with lower compliance and increased air pollution.</p>	
<p>Impacts on Small Business (50 or fewer employees –ORS183.310(10))</p>	<p>The proposed increase of 20% for all fee categories would directly affect approximately 1,130 businesses with ACDPs in Oregon. DEQ estimates that approximately half of these (565) are small businesses with 50 or fewer employees. The increased Specific Activity Fees could potentially discourage out of state businesses from coming to Oregon and could pose greater obstacles for new companies and startup businesses needing ACDPs.</p> <p>The proposed fee increases could also indirectly impact small businesses because the fee increases could be passed through by ACDP holders, resulting in a slight increase in the costs of products or services.</p>	
<p>Cost of Compliance on Small Business (50 or fewer employees –ORS183.310(10))</p>	<p>a) The estimated number of small businesses subject to the proposed fee increases</p>	<p>DEQ estimates that approximately 565 small businesses would be subject to the proposed fee increases.</p>
	<p>b) The types of businesses and industries with small businesses subject to the proposed fee increases</p>	<p>Many different types of small businesses could be subject to the proposed fee increase. Categories include seed and grain companies; sand, rock and gravel operations; asphalt paving; crematories; commercial boilers; furniture manufacturing; food preparation; metal plating; wood products and printing.</p>
	<p>c) The projected reporting, recordkeeping and other administrative activities required by small businesses for compliance with the proposed fee increases</p>	<p>The proposed rule amendments do not establish any additional reporting, recordkeeping or other administrative activities.</p>
	<p>d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the proposed fee increases</p>	<p>The proposed rule amendments do not require any additional equipment, supplies, labor or increased administration.</p>
	<p>e) A description of the manner in which DEQ involved small businesses in the development of the proposed fee increases</p>	<p>In fall 2006, DEQ described the proposed ACDP fee increase at Air Quality Permit Program information sessions held in Medford, Bend, Pendleton and Portland. DEQ also communicated the proposed fee increase to its Small Business Compliance Advisory Panel in fall 2006 and to the Associated Oregon Industries Air Committee in early 2007. In November 2006, DEQ provided notice of the proposed fee increase to lobbyists for many of the industrial sectors requiring ACDPs. In December 2006, DEQ posted a fact sheet describing the proposed fee increase on its website. As part of its 2007 legislative budget process, DEQ submitted detailed information about ACDP program funding and the proposed fee increase to the legislature.</p>

		<p>DEQ sent the Notice of Proposed Rulemaking by mail or electronically to ACDP sources and interested parties on July 16, 2007. The August 16, 2007 public hearing provided a forum for both large and small ACDP holders and interested parties to comment on the rule.</p>
<p>Impacts on Large Business</p>	<p>The proposed fee increases would directly impact large businesses required to have an ACDP. DEQ estimates that approximately half of ACDP holders (565) are large businesses with more than 50 employees. The increased Specific Activity Fees could potentially discourage out of state businesses from coming to Oregon and could pose greater obstacles for new companies and startup businesses needing ACDPs.</p> <p>Large businesses could also be indirectly affected because the fee increases could be passed through by ACDP holders, resulting in a slight increase in the costs of products or services.</p>	
<p>Impacts on Local Government</p>	<p>The proposed fee increases would directly impact local governments required to have ACDPs. Based on 2006 invoice information, DEQ projects that the proposed fee increases would result in the following impacts on local government facilities in FY 2008:</p> <ul style="list-style-type: none"> • Sewage and Water Treatment facilities: seven facilities affected <ul style="list-style-type: none"> ○ One facility would have a \$216 increase ○ Three facilities would have a \$640 increase ○ Three facilities would have a \$1,280 increase • Landfills and refuse systems: seven facilities affected <ul style="list-style-type: none"> ○ One facility would have a \$60 increase ○ Two facilities would have a \$120 increase ○ Four facilities would have a \$640 increase • Institutional boilers: nineteen facilities affected <ul style="list-style-type: none"> ○ One facility would have a \$60 increase ○ Seventeen facilities would have a \$216 increase ○ One facility would have a \$320 increase • Rock, gravel and paving: ten facilities affected <ul style="list-style-type: none"> ○ Three facilities would have a \$60 increase ○ One facility would have a \$120 increase ○ Six facilities would have a \$216 increase • Electric power generation: one facility would have a \$216 increase <p>The proposed fee increases could indirectly impact local governments because the fee increases could be passed through by ACDP holders, resulting in a slight increase in the costs of products or services.</p>	
<p>Impacts on State Entities</p>	<p>The proposed fee increases would directly impact state entities required to have ACDPs. Based on 2006 invoice information, DEQ projects that the proposed fee increases would result in the following impacts on state entities in FY 2008:</p> <ul style="list-style-type: none"> • Landfills and refuse systems: one facility would have a \$640 increase • Institutional boilers: eight facilities affected <ul style="list-style-type: none"> ○ Seven facilities would have a \$216 increase ○ One facility would have a \$1,280 increase • Rock, gravel and paving: two facilities would have a \$216 increase • Electric power generation: three facilities affected <ul style="list-style-type: none"> ○ One facility would have a \$216 increase ○ Two facilities would have a \$320 increase <p>The proposed fee increases could indirectly impact state entities including DEQ and other agencies because the fee increases could be passed through by ACDP holders, resulting in a slight increase in the costs of products or services.</p>	

Impacts on DEQ	DEQ would not incur additional costs to implement the proposed fee increases. Instead, DEQ would gain additional resources needed to operate its ACDP Program.
Impacts on other Agencies	DEQ anticipates that no other agencies would be directly affected by the proposed rule amendments.
Assumptions	Estimated revenue forecasts and expenditures are based on the assumption that all facilities subject to the ACDP Program have been identified, and that the number of ACDP permits and facility emissions will remain approximately the same as in 2006. DEQ projects approximately 1,130 sources will be subject to ACDP permitting and fee requirements in FY 2008.
Housing Costs	DEQ has determined that the proposed fee increases may have a negative impact on the development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel if ACDP permit holders providing for such development and construction pass on the fee increase through their goods and services. The possible impact appears to be minimal. DEQ cannot quantify this impact at this time because the information available to it does not indicate whether the 20% fee increase would be passed on to consumers and any such estimate would be speculative.
Administrative Rule Advisory Committee	<p>An ACDP Fee Increase Rulemaking Advisory Committee was convened to generate input and recommendations on the fiscal impact statement for the proposed rule amendments. The committee concluded that the proposed fee increases would have a fiscal and economic impact and could have a significant adverse effect on some small businesses, but did not have enough information to conclusively make a finding to that effect. However, the committee stated that despite any possible adverse effect on small business it did not believe there is a need, at this time, for additional mitigation steps as outlined in ORS 183.540. The benefits of an effective ACDP program, such as adequate service to businesses and continued protection of public health outweigh the potential fiscal burdens on small business. In addition, the fees are currently structured in a way that minimizes fiscal impacts on sources with smaller emissions, many of which are small businesses. If comments received during the public comment period revealed significant adverse fiscal impacts on small businesses, DEQ would have reconsidered the need for alternative mitigation.</p> <p>The Notice of Proposed Rulemaking was distributed to ACDP businesses and interested parties in July 2007.</p>

Prepared by: Sarah Armitage

Approved by DEQ Budget Office: Andree Pollock

018

Proposed Adoption of Air Quality Permit Program Streamlining and Updates

Margaret Oliphant
Sarah Armitage
Mark Fisher

1

AQ Permit Program Streamlining and Updates

- **Streamlining**
 - More efficient permitting
- **Updates**
 - Change outdated requirements
- **Corrections and Clean-up**
 - Fix errors, clarify language = less interpretation
- **Alignment with Federal Regulations**
 - Maintain federally approved air program

2

Streamlining Measures

- Permitting
 - Delete 12 unused basic ACDP categories
 - Update, and reissue six general ACDPs
 - About 500 facilities: Rock Crushers, Boilers, Concrete Plants, Asphalt Paving Plants, Crematories and Sawmills
 - Require only new information on Title V renewal applications
- Standards
 - Change sulfur dioxide standard for fuel burning equipment from 2 → 3 hours to match federal rules

3

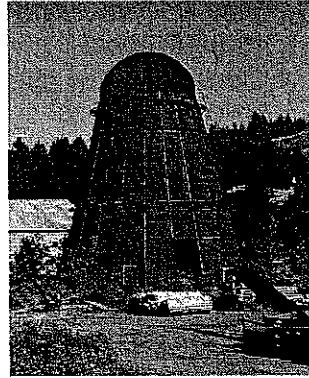
Streamlining Measures

- Standards (continued)
 - Decrease state and federal rule duplication in the Kraft Pulp Mill Rules
 - Delete redundant county standards
 - Specify uniform compliance methods for wood products facilities

4

Updates

- Wigwam burners
 - Repeal outdated regulations on wigwam burners, prohibit their use
- HFE-7300
 - De-list as a volatile organic compound (VOC)



5

Corrections and Clean-up

- Utility Mercury Rules
 - Distribute mercury emissions cap for new plants
 - Fix cross reference errors
- Incinerator Rules
 - Clarify definitions and crematory requirements
- Definitions
 - Relocate definitions
 - Revise “particulate matter” for consistency with other rules

6

Alignment with Federal Regulations

- Title V
 - Title V Permits do not supersede previous ACDP requirements
 - Corrections of plant emission limits must be made using full public process
- Excess Emissions Rules
 - Clarify that DEQ retains enforcement discretion
 - Title V facilities must report excess emissions within fifteen days of the event
- EPA Approved Emissions Tests
 - Removing “Director’s discretion” provisions from definitions assures that DEQ will only allow EPA-approved alternate emissions test methods

7

State of Oregon
Department of Environmental Quality

Memorandum

Date: October 1, 2007
To: Environmental Quality Commission
From: Stephanie Hallock, Director
Subject: Agenda Item D, Adoption of Air Quality Permit Program Streamlining and Updates; October 18, 2007 Environmental Quality Commission Meeting

Why this is Important

Controlling the amount of pollution from industrial facilities through the Air Permitting program is an important part of the Department of Environmental Quality's (Department) strategy to maintain clean air. Air permits ensure that existing industrial facilities comply with state and federal pollution emission standards and require new facilities to have pollution controls to protect air quality. The program helps reduce the number of unhealthy air days and reduces risk from air toxics through timely and up-to-date permits, inspections and by assisting facilities in complying with the law. This rulemaking will clarify, simplify and correct Air Permitting rules while maintaining equivalent environmental protection and stringency. The changes further streamline and better align the rules with requirements under the Federal Clean Air Act.

Department Recommendation

The Department recommends that the Environmental Quality Commission (Commission) adopt the proposed rule amendments and repeals in OAR chapter 340, Divisions 200, 208, 209, 214, 216, 218, 228, 230, 232, 234, and 236 as presented in Appendix A, amending the State Implementation Plan.

Background and Need for Rulemaking

In 2001, the Department streamlined the Air Quality Program's permitting process, allowing a reduction of over seven staff positions while maintaining the same level of service and environmental benefits from the program. This rulemaking proposes to further streamline and update the permitting process by clarifying requirements, eliminating duplicative and conflicting standards, keeping rules in line with federal requirements, and correcting errors. This second phase of streamlining would not reduce Department staffing but would make the permitting process more efficient.

Effect of Rule

The proposed rule changes will:

- Add the chemical HFE-7300 to a list of compounds exempt from the definition of volatile organic compounds (VOC), or ground-level ozone precursors to be consistent with federal regulations (see Attachment A,

001

- page 33);
- Repeal outdated and redundant requirements applicable in Clackamas, Columbia, Multnomah, and Washington Counties (see Attachment A, page 43);
- Revise Title V procedural rules consistent with federal requirements, and improve administration (see Attachment A, page 73);
- Revise Excess Emissions rules for greater consistency with federal requirements; (see Attachment A, page 51)
- Delete twelve unused Basic Permit categories (see Attachment A, page 69);
- Update, correct errors, and renew general permits for asphalt plants, boilers, concrete plants, crematories, rock crushers, and wood products facilities (see Attachment A, page 64 and Attachments H -1 through H-6);
- Change the averaging time in the sulfur dioxide standards for fuel-burning equipment from two hours to three hours to align with federal standards (see Attachment A, page 99);
- Add a requirement that the Department must receive notification prior to use of an exemption allowing a higher emission rate for burning salt laden wood waste (see Attachment A, page 100);
- Revise the Utility Mercury Rule to correct flaws related to the distribution of the mercury cap for new plants, and correct cross references (see Attachment A, page 101);
- Clarify and consolidate requirements for crematory incinerators (see Attachment A, page 112);
- Replace outdated regulations governing wigwam burners with a statewide prohibition on their use (see Attachment A, page 127);
- Streamline the Kraft Pulp Mill Rules by eliminating redundancies, simplifying permitting and compliance determinations, and eliminating unnecessary reporting (see Attachment a, page 130);
- Simplify emission standards for plywood, particleboard and hardboard manufacturing operations (see Attachment A, page 131); and
- Consolidate and clarify definitions (see Attachment A, page 4).

Commission Authority

The Commission has authority to take this action under ORS 468.020, 468A.025 and 468A.310.

Stakeholder Involvement

This proposal was developed by Department technical staff tasked with further improving the efficiency of the air permitting program. It was also developed in response to EPA Region 10's Comprehensive Title V Program Review conducted between 2004 and 2006. Since fall, 2006, the Department has been providing summary materials about this proposal to

business and public interest stakeholders. In October 2006, the Department conducted informational meetings on the proposed changes in Pendleton, Bend, Medford, Salem and Portland. The Department also reviewed the proposed revisions with the Air Quality Compliance Advisory Panel, a group that considers the impacts of air quality regulations on small businesses.

Public Comment The public comment period opened on March 22, 2007 and closed on April 27, 2007, and included public hearings on the proposed rule changes in Medford, Bend and Portland. The Department received comments from eight individuals.

Key Issues The key issues are listed below. For more information, see the summary of public comments and agency responses in Attachment C.

- Exempting HFE-7300 as a "Volatile Organic Compound" or "VOC"
- Including additional health information in permit public notices
- Clarifying that Title V Permits do not supersede previous Air Contaminant Discharge Permit requirements
- Clarifications and changes in the Excess Emissions Rules
- Utility Mercury Rule corrections

Next Steps If adopted by the EQC, this rule will become effective upon filing with the Secretary of State. After such rule adoption, the Department will add the new 15-day excess emission reporting requirement to all Title V permits by administrative amendment. For general permit changes, the Department will contact facilities currently assigned to the general permits that are part of this rulemaking and reassign those facilities to the new permits. Other streamlining rule changes can be made at the discretion of the Department's Air Quality managers as administrative amendments, during other permit modifications, or during renewal. No additional resources or training will be needed to implement the rule changes.

Attachments

- A. Proposed Rule Revisions
- B. Proposed Rule Summary
- 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
- H-1 Proposed Asphalt and Paving General Permit
- H-2 Proposed Rock Crusher General Permit
- H-3 Proposed Concrete and Ready Mix General Permit
- H-4 Proposed Sawmill General Permit

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- H-5 Proposed Boiler General Permit
- H-6 Proposed Crematory General Permit

- Available Upon Request**
1. Legal Notice of Hearing
 2. Proposed Rulemaking Announcement Memorandum
 3. Written Comments Received
 4. Rule Implementation Plan
 5. EPA's 2006 Title V Program Review

Approved:

Section:

Division:



Margaret Olschansky for
Andy Ginsburg
Report Prepared By: Sarah Armitage
Phone: 503-229-5186

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
Adoption of Air Quality Permit Program Streamlining and Updates

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DIVISION 200

GENERAL AIR POLLUTION PROCEDURES AND DEFINITIONS

General

340-200-0010

Purpose and Application

(1) This division provides general air pollution procedures and definitions that apply to all air quality rules in divisions 200 through 268.

(2) Divisions 200 through 268 apply in addition to all other rules adopted by the Environmental Quality Commission. In cases of apparent conflict between rules within these divisions, the most stringent rule applies unless otherwise expressly stated.

(3) The Department administers divisions 200 through 268 in all areas of the State of Oregon except in Lane County where Lane Regional Air ~~Protection~~pollution Agency~~authority~~ administers the air pollution control regulations.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 14-1999, f. & cert. ef. 10-14-99; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-200-0020

General Air Quality Definitions

As used in divisions 200 through 268, unless specifically defined otherwise:

(1) "Act" or "FCAA" means the Federal Clean Air Act, 42 U.S.C.A. §§ 7401 to 7671q.

(2) "Activity" means any process, operation, action, or reaction (e.g., chemical) at a source that emits a regulated pollutant.

(3) "Actual emissions" means the mass emissions of a pollutant from an emissions source during a specified time period.

(a) For determining actual emissions as of the baseline period:

(A) Except as provided in paragraph (B), actual emissions equal the average rate at which the source actually emitted the pollutant during a baseline period and that represents normal source operation;

(B) The Department presumes that the source-specific mass emissions limit included in a source's permit that was effective on September 8, 1981 is equivalent to the source's actual emissions during the baseline period if it is within 10% of the actual emissions calculated under paragraph (A).

(C) For any source that had not begun normal operation, actual emissions equal the potential to emit of the source.

(b) For determining actual emissions for Emission Statements under OAR 340-214-0200 through 340-214-0220 and Oregon Title V Operating Permit Fees under OAR 340 division 220, actual emissions include, but are not limited to, routine process emissions, fugitive emissions, excess emissions from maintenance, startups and shutdowns, equipment malfunction, and other activities, except categorically insignificant activities and secondary emissions.

(c) For Oregon Title V Operating Permit Fees under OAR 340 division 220, actual emissions must be directly measured with a continuous monitoring system or calculated using a material balance or verified emission factor in combination with the source's actual operating hours, production rates, or types of materials processed, stored, or combusted during the specified time period.

(4) "Adjacent" means interdependent facilities that are nearby to each other.

(5) "Affected source" means a source that includes one or more affected units that are subject to emission reduction requirements or limitations under Title IV of the FCAA.

(6) "Affected states" means all states:

(a) Whose air quality may be affected by a proposed permit, permit modification, or permit renewal and that are contiguous to Oregon; or

(b) That are within 50 miles of the permitted source.

(7) "Aggregate insignificant emissions" means the annual actual emissions of any regulated air pollutant from one or more designated activities at a source that are less than or equal to the lowest applicable level specified in this section. The total emissions from each designated activity and the aggregate emissions from all designated activities must be less than or equal to the lowest applicable level specified.

(a) One ton for total reduced sulfur, hydrogen sulfide, sulfuric acid mist, any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, and each criteria pollutant, except lead;

(b) 120 pounds for lead;

(c) 600 pounds for fluoride;

(d) 500 pounds for PM10 in a PM10 nonattainment area;

(e) The lesser of the amount established in OAR 340-244-0040, **Table 1** or 340-244-0230, **Table 3**, or 1,000 pounds;

(f) An aggregate of 5,000 pounds for all Hazardous Air Pollutants.

(8) "Air Contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter, or any combination thereof.

(9) "Air Contaminant Discharge Permit" or "ACDP" means a written permit issued, renewed, amended, or revised by the Department, pursuant to OAR 340 division 216.

(10) "Alternative method" means any method of sampling and analyzing for an air pollutant that is not a reference or equivalent method but has been demonstrated to the Department's satisfaction to, in specific cases, produce results adequate for determination of compliance. An alternative method used to meet an applicable federal requirement for which a reference method is specified must be approved by EPA unless EPA has delegated authority for the approval to the Department.

(11) "Ambient Air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(12) "Applicable requirement" means all of the following as they apply to emissions units in an Oregon Title V Operating Permit program source or ACDP program source, including requirements that have been promulgated or approved by the EPA through rule making at the time of issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by the EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in **40 CFR Part 52**;

(b) Any standard or other requirement adopted under OAR 340-200-0040 of the State of Oregon Clean Air Act Implementation Plan, that is more stringent than the federal standard or requirement which has not yet been approved by the EPA, and other state-only enforceable air pollution control requirements;

(c) Any term or condition in an ACDP, OAR 340 division 216, including any term or condition of any preconstruction permits issued pursuant to OAR 340 division 224, New Source Review, until or unless the Department revokes or modifies the term or condition by a permit modification;

(d) Any term or condition in a Notice of Construction and Approval of Plans, OAR 340-210-02005 through 340-210-0240, until or unless the Department revokes or modifies the term or condition by a Notice of Construction and Approval of Plans or a permit modification;

(e) Any term or condition in a Notice of Approval, OAR 340-218-0190, issued before July 1, 2001, until or unless the Department revokes or modifies the term or condition by a Notice of Approval or a permit modification;

(f) Any term or condition of a PSD permit issued by the EPA until or unless the EPA revokes or modifies the term or condition by a permit modification;

(g) Any standard or other requirement under section 111 of the Act, including section 111(d);

(h) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;

(i) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;

(j) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;

(k) Any standard or other requirement under section 126(a)(1) and (c) of the Act;

(l) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

(m) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(n) Any standard or other requirement for tank vessels, under section 183(f) of the Act;

(o) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

(p) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an Oregon Title V Operating Permit; and

(q) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

(132) "Assessable Emission" means a unit of emissions for which the major source owner or operator will be assessed a fee. It includes an emission of a pollutant as specified in OAR 340-220-0060 from one or more emissions devices or activities within a major source.

(143) "Baseline Emission Rate" means the actual emission rate during the baseline period. Baseline emission rate does not include increases due to voluntary fuel switches or increased hours of operation that occurred after the baseline period.

- (145) "Baseline Period" means any consecutive 12 calendar month period during calendar years 1977 or 1978. The Department may allow the use of a prior time period upon a determination that it is more representative of normal source operation.
- (165) "Best Available Control Technology" or "BACT" means an emission limitation, including, but not limited to, a visible emission standard, based on the maximum degree of reduction of each air contaminant subject to regulation under the Act which would be emitted from any proposed major source or major modification which, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air contaminant. In no event may the application of BACT result in emissions of any air contaminant that would exceed the emissions allowed by any applicable new source performance standard or any standard for hazardous air pollutant. If an emission limitation is not feasible, a design, equipment, work practice, or operational standard, or combination thereof, may be required. Such standard must, to the degree possible, set forth the emission reduction achievable and provide for compliance by prescribing appropriate permit conditions.
- (176) "Capacity" means the maximum regulated pollutant emissions from a stationary source under its physical and operational design.
- (187) "Capture system" means the equipment (including but not limited to hoods, ducts, fans, and booths) used to contain, capture and transport a pollutant to a control device.
- (198) "Categorically insignificant activity" means any of the following listed pollutant emitting activities principally supporting the source or the major industrial group. Categorically insignificant activities must comply with all applicable requirements.
- (a) Constituents of a chemical mixture present at less than 1% by weight of any chemical or compound regulated under divisions 200 through 268 excluding divisions 248 and 262 of this chapter, or less than 0.1% by weight of any carcinogen listed in the U.S. Department of Health and Human Service's Annual Report on Carcinogens when usage of the chemical mixture is less than 100,000 pounds/year;
 - (b) Evaporative and tail pipe emissions from on-site motor vehicle operation;
 - (c) Distillate oil, kerosene, and gasoline fuel burning equipment rated at less than or equal to 0.4 million Btu/hr;
 - (d) Natural gas and propane burning equipment rated at less than or equal to 2.0 million Btu/hr;
 - (e) Office activities;
 - (f) Food service activities;
 - (g) Janitorial activities;

- (h) Personal care activities;
- (i) Groundskeeping activities including, but not limited to building painting and road and parking lot maintenance;
- (j) On-site laundry activities;
- (k) On-site recreation facilities;
- (l) Instrument calibration;
- (m) Maintenance and repair shop;
- (n) Automotive repair shops or storage garages;
- (o) Air cooling or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment;
- (p) Refrigeration systems with less than 50 pounds of charge of ozone depleting substances regulated under Title VI, including pressure tanks used in refrigeration systems but excluding any combustion equipment associated with such systems;
- (q) Bench scale laboratory equipment and laboratory equipment used exclusively for chemical and physical analysis, including associated vacuum producing devices but excluding research and development facilities;
- (r) Temporary construction activities;
- (s) Warehouse activities;
- (t) Accidental fires;
- (u) Air vents from air compressors;
- (v) Air purification systems;
- (w) Continuous emissions monitoring vent lines;
- (x) Demineralized water tanks;
- (y) Pre-treatment of municipal water, including use of deionized water purification systems;
- (z) Electrical charging stations;
- (aa) Fire brigade training;
- (bb) Instrument air dryers and distribution;

- (cc) Process raw water filtration systems;
- (dd) Pharmaceutical packaging;
- (ee) Fire suppression;
- (ff) Blueprint making;
- (gg) Routine maintenance, repair, and replacement such as anticipated activities most often associated with and performed during regularly scheduled equipment outages to maintain a plant and its equipment in good operating condition, including but not limited to steam cleaning, abrasive use, and woodworking;
- (hh) Electric motors;
- (ii) Storage tanks, reservoirs, transfer and lubricating equipment used for ASTM grade distillate or residual fuels, lubricants, and hydraulic fluids;
- (jj) On-site storage tanks not subject to any New Source Performance Standards (NSPS), including underground storage tanks (UST), storing gasoline or diesel used exclusively for fueling of the facility's fleet of vehicles;
- (kk) Natural gas, propane, and liquefied petroleum gas (LPG) storage tanks and transfer equipment;
- (ll) Pressurized tanks containing gaseous compounds;
- (mm) Vacuum sheet stacker vents;
- (nn) Emissions from wastewater discharges to publicly owned treatment works (POTW) provided the source is authorized to discharge to the POTW, not including on-site wastewater treatment and/or holding facilities;
- (oo) Log ponds;
- (pp) Storm water settling basins;
- (qq) Fire suppression and training;
- (rr) Paved roads and paved parking lots within an urban growth boundary;
- (ss) Hazardous air pollutant emissions of fugitive dust from paved and unpaved roads except for those sources that have processes or activities that contribute to the deposition and entrainment of hazardous air pollutants from surface soils;
- (tt) Health, safety, and emergency response activities;

- (uu) Emergency generators and pumps used only during loss of primary equipment or utility service due to circumstances beyond the reasonable control of the owner or operator, or to address a power emergency as determined by the Department;
- (vv) Non-contact steam vents and leaks and safety and relief valves for boiler steam distribution systems;
- (ww) Non-contact steam condensate flash tanks;
- (xx) Non-contact steam vents on condensate receivers, deaerators and similar equipment;
- (yy) Boiler blowdown tanks;
- (zz) Industrial cooling towers that do not use chromium-based water treatment chemicals;
- (aaa) Ash piles maintained in a wetted condition and associated handling systems and activities;
- (bbb) Oil/water separators in effluent treatment systems;
- (ccc) Combustion source flame safety purging on startup;
- (ddd) Broke beaters, pulp and repulping tanks, stock chests and pulp handling equipment, excluding thickening equipment and repulpers;
- (eee) Stock cleaning and pressurized pulp washing, excluding open stock washing systems; and
- (fff) White water storage tanks.

(2019) "Certifying individual" means the responsible person or official authorized by the owner or operator of a source who certifies the accuracy of the emission statement.

(210) "CFR" means Code of Federal Regulations.

(221) "Class I area" means any Federal, State or Indian reservation land which is classified or reclassified as Class I area. Class I areas are identified in OAR 340-204-00250.

(232) "Commence" or "commencement" means that the owner or operator has obtained all necessary preconstruction approvals required by the Act and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed in a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed in a reasonable time.

(243) "Commission" or "EQC" means Environmental Quality Commission.

(254) "Constant Process Rate" means the average variation in process rate for the calendar year is not greater than plus or minus ten percent of the average process rate.

(265) "Construction":

(a) Except as provided in subsection (b) of this section means any physical change including, but not limited to, fabrication, erection, installation, demolition, or modification of a source or part of a source;

(b) As used in OAR 340 division 224 means any physical change including, but not limited to, fabrication, erection, installation, demolition, or modification of an emissions unit, or change in the method of operation of a source which would result in a change in actual emissions.

(276) "Continuous compliance determination method" means a method, specified by the applicable standard or an applicable permit condition, which:

(a) Is used to determine compliance with an emission limitation or standard on a continuous basis, consistent with the averaging period established for the emission limitation or standard; and

(b) Provides data either in units of the standard or correlated directly with the compliance limit.

(287) "Continuous Monitoring Systems" means sampling and analysis, in a timed sequence, using techniques which will adequately reflect actual emissions or concentrations on a continuing basis in accordance with the Department's Continuous Monitoring Manual, and includes continuous emission monitoring systems, continuous opacity monitoring system (COMS) and continuous parameter monitoring systems.

(298) "Control device" means equipment, other than inherent process equipment, that is used to destroy or remove air pollutant(s) prior to discharge to the atmosphere. The types of equipment that may commonly be used as control devices include, but are not limited to, fabric filters, mechanical collectors, electrostatic precipitators, inertial separators, afterburners, thermal or catalytic incinerators, adsorption devices (such as carbon beds), condensers, scrubbers (such as wet collection and gas absorption devices), selective catalytic or non-catalytic reduction systems, flue gas recirculation systems, spray dryers, spray towers, mist eliminators, acid plants, sulfur recovery plants, injection systems (such as water, steam, ammonia, sorbent or limestone injection), and combustion devices independent of the particular process being conducted at an emissions unit (e.g., the destruction of emissions achieved by venting process emission streams to flares, boilers or process heaters). For purposes of OAR 340-212-0200 through 340-212-0280, a control device does not include passive control measures that act to prevent pollutants from forming, such as the use of seals, lids, or roofs to prevent the release of pollutants, use of low-polluting fuel or feedstocks, or the use of combustion or other process design features or characteristics. If an applicable requirement establishes that particular

equipment which otherwise meets this definition of a control device does not constitute a control device as applied to a particular pollutant-specific emissions unit, then that definition will be binding for purposes of OAR 340-212-0200 through 340-212-0280.

(3029) "Criteria Pollutant" means nitrogen oxides, volatile organic compounds, particulate matter, PM10, sulfur dioxide, carbon monoxide, or lead.

(310) "Data" means the results of any type of monitoring or method, including the results of instrumental or non-instrumental monitoring, emission calculations, manual sampling procedures, recordkeeping procedures, or any other form of information collection procedure used in connection with any type of monitoring or method.

(342) "De minimis emission level" means: [Table not included. See ED. NOTE.]

NOTE: De minimis is compared to all increases that are not included in the PSEL.

(332) "Department":

(a) Means Department of Environmental Quality; except

(b) As used in OAR 340 divisions 218 and 220 means Department of Environmental Quality or in the case of Lane County, Lane Regional Air ~~Protection~~ Agency ~~Authority~~.

(343) "Device" means any machine, equipment, raw material, product, or byproduct at a source that produces or emits a regulated pollutant.

(354) "Director" means the Director of the Department or the Director's designee.

(365) "Draft permit" means the version of an Oregon Title V Operating Permit for which the Department or Lane Regional Air ~~Protection~~ Agency ~~Authority~~ offers public participation under OAR 340-218-0210 or the EPA and affected State review under OAR 340-218-0230.

(376) "Effective date of the program" means the date that the EPA approves the Oregon Title V Operating Permit program submitted by the Department on a full or interim basis. In case of a partial approval, the "effective date of the program" for each portion of the program is the date of the EPA approval of that portion.

(387) "Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency does not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

- (398) "Emission" means a release into the atmosphere of any regulated pollutant or any air contaminant.
- (4039) "Emission Estimate Adjustment Factor" or "EEAF" means an adjustment applied to an emission factor to account for the relative inaccuracy of the emission factor.
- (410) "Emission Factor" means an estimate of the rate at which a pollutant is released into the atmosphere, as the result of some activity, divided by the rate of that activity (e.g., production or process rate). Where an emission factor is required sources must use an emission factor approved by EPA or the Department.
- (421)(a) Except as provided in subsection (b) of this section, "Emission Limitation" and "Emission Standard" mean a requirement established by a State, local government, or the EPA which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.
- (b) As used in OAR 340-212-0200 through 340-212-0280, "Emission limitation or standard" means any applicable requirement that constitutes an emission limitation, emission standard, standard of performance or means of emission limitation as defined under the Act. An emission limitation or standard may be expressed in terms of the pollutant, expressed either as a specific quantity, rate or concentration of emissions (e.g., pounds of SO₂ per hour, pounds of SO₂ per million British thermal units of fuel input, kilograms of VOC per liter of applied coating solids, or parts per million by volume of SO₂) or as the relationship of uncontrolled to controlled emissions (e.g., percentage capture and destruction efficiency of VOC or percentage reduction of SO₂). An emission limitation or standard may also be expressed either as a work practice, process or control device parameter, or other form of specific design, equipment, operational, or operation and maintenance requirement. For purposes of OAR 340-212-0200 through 340-212-0280, an emission limitation or standard does not include general operation requirements that an owner or operator may be required to meet, such as requirements to obtain a permit, to operate and maintain sources in accordance with good air pollution control practices, to develop and maintain a malfunction abatement plan, to keep records, submit reports, or conduct monitoring.
- (432) "Emission Reduction Credit Banking" means to presently reserve, subject to requirements of OAR 340 division 268, Emission Reduction Credits, emission reductions for use by the reserver or assignee for future compliance with air pollution reduction requirements.
- (443) "Emission Reporting Form" means a paper or electronic form developed by the Department that must be completed by the permittee to report calculated emissions, actual emissions, or permitted emissions for interim emission fee assessment purposes.
- (454) "Emissions unit" means any part or activity of a source that emits or has the potential to emit any regulated air pollutant.

(a) A part of a source is any machine, equipment, raw material, product, or byproduct that produces or emits regulated air pollutants. An activity is any process, operation, action, or reaction (e.g., chemical) at a stationary source that emits regulated air pollutants. Except as described in subsection (d) of this section, parts and activities may be grouped for purposes of defining an emissions unit if the following conditions are met:

(A) The group used to define the emissions unit may not include discrete parts or activities to which a distinct emissions standard applies or for which different compliance demonstration requirements apply; and

(B) The emissions from the emissions unit are quantifiable.

(b) Emissions units may be defined on a pollutant by pollutant basis where applicable.

(c) The term emissions unit is not meant to alter or affect the definition of the term "unit" under Title IV of the FCAA.

(d) Parts and activities cannot be grouped for determining emissions increases from an emissions unit under OAR 340-224-0050 through 340-224-0070, or 340 division 210, or for determining the applicability of any New Source Performance Standard (NSPS).

(465) "EPA" or "Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's designee.

(476) "Equivalent method" means any method of sampling and analyzing for an air pollutant that has been demonstrated to the Department's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions. An equivalent method used to meet an applicable federal requirement for which a reference method is specified must be approved by EPA unless EPA has delegated authority for the approval to the Department.

(487) "Event" means excess emissions that arise from the same condition and occur during a single calendar day or continue into subsequent calendar days.

(498) "Exceedance" means a condition that is detected by monitoring that provides data in terms of an emission limitation or standard and that indicates that emissions (or opacity) are greater than the applicable emission limitation or standard (or less than the applicable standard in the case of a percent reduction requirement) consistent with any averaging period specified for averaging the results of the monitoring.

(5049) "Excess emissions" means emissions in excess of a permit limit or any applicable air quality rule.

(510) "Excursion" means a departure from an indicator range established for monitoring under OAR 340-212-0200 through 340-212-0280 and 340-218-0050(3)(a), consistent with any averaging period specified for averaging the results of the monitoring.

(524) "Federal Land Manager" means with respect to any lands in the United States, the Secretary of the federal department with authority over such lands.

(532) Federal Major Source means a source with potential to emit any individual regulated pollutant, excluding hazardous air pollutants listed in OAR 340 division 244, greater than or equal to 100 tons per year if in a source category listed below, or 250 tons per year if not in a source category listed. Potential to emit calculations must include emission increases due to a new or modified source.

- (a) Fossil fuel-fired steam electric plants of more than 250 million BTU/hour heat input;
- (b) Coal cleaning plants with thermal dryers;
- (c) Kraft pulp mills;
- (d) Portland cement plants;
- (e) Primary Zinc Smelters;
- (f) Iron and Steel Mill Plants;
- (g) Primary aluminum ore reduction plants;
- (h) Primary copper smelters;
- (i) Municipal Incinerators capable of charging more than 50 tons of refuse per day;
- (j) Hydrofluoric acid plants;
- (k) Sulfuric acid plants;
- (l) Nitric acid plants;
- (m) Petroleum Refineries;
- (n) Lime plants;
- (o) Phosphate rock processing plants;
- (p) Coke oven batteries;
- (q) Sulfur recovery plants;
- (r) Carbon black plants, furnace process;
- (s) Primary lead smelters;
- (t) Fuel conversion plants;

- (u) Sintering plants;
- (v) Secondary metal production plants;
- (w) Chemical process plants;
- (x) Fossil fuel fired boilers, or combinations thereof, totaling more than 250 million BTU per hour heat input;
- (y) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (z) Taconite ore processing plants;
- (aa) Glass fiber processing plants;
- (bb) Charcoal production plants.

(543) "Final permit" means the version of an Oregon Title V Operating Permit issued by the Department or Lane Regional Air Protection ~~pollution~~ Agency ~~authority~~ that has completed all review procedures required by OAR 340-218-0120 through 340-218-0240.

(554) "Fugitive Emissions":

(a) Except as used in subsection (b) of this section, means emissions of any air contaminant which escape to the atmosphere from any point or area that is not identifiable as a stack, vent, duct, or equivalent opening.

(b) As used to define a major Oregon Title V Operating Permit program source, means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(565) "General permit":

(a) Except as provided in subsection (b) of this section, means an Oregon Air Contaminant Discharge Permit established under OAR 340-216-0060;

(b) As used in OAR 340 division 218 means an Oregon Title V Operating Permit established under OAR 340-218-0090.

(576) "Generic PSEL" means: [Table not included. See ED. NOTE.]

NOTE: Sources are eligible for a generic PSEL if expected emissions are less than or equal to the levels listed in the table above. Baseline emission rate and netting basis do not apply to pollutants at sources using generic PSELS.

(587) "Growth Allowance" means an allocation of some part of an airshed's capacity to accommodate future proposed major sources and major modifications of sources.

(598) "Immediately" means as soon as possible but in no case more than one hour after a source knew or should have known of an excess emission period.

(6059) "Inherent process equipment" means equipment that is necessary for the proper or safe functioning of the process, or material recovery equipment that the owner or operator documents is installed and operated primarily for purposes other than compliance with air pollution regulations. Equipment that must be operated at an efficiency higher than that achieved during normal process operations in order to comply with the applicable emission limitation or standard is not inherent process equipment. For the purposes of OAR 340-212-0200 through 340-212-0280, inherent process equipment is not considered a control device.

(610) "Insignificant Activity" means an activity or emission that the Department has designated as categorically insignificant, or that meets the criteria of aggregate insignificant emissions.

(624) "Insignificant Change" means an off-permit change defined under OAR 340-218-0140(2)(a) to either a significant or an insignificant activity which:

(a) Does not result in a redesignation from an insignificant to a significant activity;

(b) Does not invoke an applicable requirement not included in the permit; and

(c) Does not result in emission of regulated air pollutants not regulated by the source's permit.

(632) "Late Payment" means a fee payment which is postmarked after the due date.

(643) "Lowest Achievable Emission Rate" or "LAER" means that rate of emissions which reflects: the most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent. The application of this term cannot permit a proposed new or modified source to emit any air contaminant in excess of the amount allowable under applicable New Source Performance Standards (NSPS) or standards for hazardous air pollutants.

(654) "Maintenance Area" means a geographical area of the State that was designated as a nonattainment area, redesignated as an attainment area by EPA, and redesignated as a maintenance area by the Environmental Quality Commission in OAR chapter 340, division 204.

(665) "Maintenance Pollutant" means a pollutant for which a maintenance area was formerly designated a nonattainment area.

(676) "Major Modification" means any physical change or change of operation of a source that results in the following for any regulated air pollutant:

(a) An increase in the PSEL by an amount equal to or more than the significant emission rate over the netting basis; and

(b) The accumulation of physical changes and changes of operation since baseline would result in a significant emission rate increase.

(A) Calculations of emission increases in (b) must account for all accumulated increases in actual emissions due to physical changes and changes of operation occurring at the source since the baseline period, or since the time of the last construction approval issued for the source pursuant to the New Source Review Regulations in OAR 340 division 224 for that pollutant, whichever time is more recent. These include emissions from insignificant activities.

(B) Emission increases due solely to increased use of equipment or facilities that existed during the baseline period are not included, if that increased use was possible during the baseline period under the baseline configuration of the source, and the increased use of baseline equipment capacity is not to support a physical change or change in operation.

(c) For new or modified major sources that were permitted to construct and operate after the baseline period and were not subject to New Source Review, a major modification means:

(A) Any change at a source, including production increases, that would result in a Plant Site Emission Limit increase of 1 ton or more for any regulated pollutant for which the source is a major source; or

(B) The addition or modification of any stationary source or sources after the initial construction that have cumulative potential emissions greater than or equal to the significant emission rate, excluding any emission decreases.

(C) Changes to the PSEL solely due to the availability of better emissions information are exempt from being considered an increase.

(d) The following are not considered major modifications:

(A) Except as provided in (c), proposed increases in hours of operation or production rates that would cause emission increases above the levels allowed in a permit and would not involve a physical change or change in method of operation in the source;

(B) Pollution control projects that are determined by the Department to be environmentally beneficial;

(C) Routine maintenance, repair, and replacement of components;

(D) Temporary equipment installed for maintenance of the permanent equipment if the temporary equipment is in place for less than six months and operated within the permanent equipment's existing PSEL;

(E) Use of alternate fuel or raw materials, that were available and the source was capable of accommodating in the baseline period.

(687) "Major Source":

(a) Except as provided in subsection (b), means a source that emits, or has the potential to emit, any regulated air pollutant at a Significant Emission Rate. This includes emissions from insignificant activities.

(b) As used in OAR 340 division 210, Stationary Source Notification Requirements, OAR 340 division 218, Rules Applicable to Sources Required to Have Oregon Title V Operating Permits, OAR 340 division 220, Oregon Title V Operating Permit Fees, and OAR 340-216-0066 Standard ACDPs, means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping or supporting the major industrial group and that is described in paragraphs (A), (B), or (C) of this subsection. For the purposes of this subsection, a stationary source or group of stationary sources is considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual (U.S. Office of Management and Budget, 1987) or support the major industrial group.

(A) A major source of hazardous air pollutants, which means:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutants that has been listed pursuant to OAR 340-244-0040; 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Emissions from any oil or gas exploration or production well, along with its associated equipment, and emissions from any pipeline compressor or pump station will not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" will have the meaning specified by the Administrator by rule.

(B) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit 100 tpy or more of any regulated air pollutant, including any major source of fugitive emissions of any such pollutant. The fugitive emissions of a stationary source are not considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);

- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 50 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) Any other stationary source category, that as of August 7, 1980 is being regulated under section 111 or 112 of the Act.

(C) A major stationary source as defined in part D of Title I of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of VOCs or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides do not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of VOCs;

(iii) For carbon monoxide nonattainment areas:

(I) That are classified as "serious"; and

(II) In which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide.

(iv) For particulate matter (PM₁₀) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM₁₀.

(698) "Material Balance" means a procedure for determining emissions based on the difference in the amount of material added to a process and the amount consumed and/or recovered from a process.

(7069) "Modification," except as used in the term "major modification," means any physical change to, or change in the method of operation of, a stationary source that results in an increase in the stationary source's potential to emit any regulated air pollutant on an hourly basis. Modifications do not include the following:

(a) Increases in hours of operation or production rates that do not involve a physical change or change in the method of operation;

(b) Changes in the method of operation due to using an alternative fuel or raw material that the stationary source was physically capable of accommodating during the baseline period; and

(c) Routine maintenance, repair and like-for-like replacement of components unless they increase the expected life of the stationary source by using component upgrades that would not otherwise be necessary for the stationary source to function.

(719) "Monitoring" means any form of collecting data on a routine basis to determine or otherwise assess compliance with emission limitations or standards. Monitoring may include record keeping if the records are used to determine or assess compliance with an emission limitation or standard (such as records of raw material content and usage, or records documenting compliance with work practice requirements). Monitoring may include conducting compliance method tests, such as the procedures in appendix A to 40 CFR part 60, on a routine periodic basis. Requirements to conduct such tests on a one-time basis, or at such times as a regulatory authority may require on a non-regular basis, are not considered monitoring requirements for purposes of this definition. Monitoring may include one or more than one of the following data collection techniques as appropriate for a particular circumstance:

- (a) Continuous emission or opacity monitoring systems.
- (b) Continuous process, capture system, control device or other relevant parameter monitoring systems or procedures, including a predictive emission monitoring system.
- (c) Emission estimation and calculation procedures (e.g., mass balance or stoichiometric calculations).
- (d) Maintaining and analyzing records of fuel or raw materials usage.
- (e) Recording results of a program or protocol to conduct specific operation and maintenance procedures.
- (f) Verifying emissions, process parameters, capture system parameters, or control device parameters using portable or in situ measurement devices.
- (g) Visible emission observations and recording.
- (h) Any other form of measuring, recording, or verifying on a routine basis emissions, process parameters, capture system parameters, control device parameters or other factors relevant to assessing compliance with emission limitations or standards.

(721) "Netting Basis" means the baseline emission rate MINUS any emission reductions required by rule, orders, or permit conditions required by the SIP or used to avoid SIP requirements, MINUS any unassigned emissions that are reduced from allowable under OAR 340-222-0045, MINUS any emission reduction credits transferred off site, PLUS any emission increases approved through the New Source Review regulations.

(a) With the first permitting action for a source after July 1, 2002, the baseline emissions rate will be frozen and recalculated only if:

(A) A better emission factor is established for the baseline period and approved by the Department;

(B) A currently operating emissions unit that the Department formerly thought had negligible emissions, is determined to have non-de minimis emissions and needs to be added to the baseline emission rate; or

(C) A new pollutant is added to the regulated pollutant list (e.g., PM_{2.5}). For a pollutant that is newly regulated after 11/15/90, the initial netting basis is the actual emissions during any 12 consecutive month period within the 24 months immediately preceding its designation as a regulated pollutant. The Department may allow a prior 12 consecutive month time period to be used if it is shown to be more representative of normal source operation.

(b) Netting basis is zero for:

(A) any source constructed after the baseline period and has not undergone New Source Review;

(B) Any pollutant that has a generic PSEL in a permit;

(C) Any source permitted as portable; and

(D) Any source with a netting basis calculation resulting in a negative number.

(c) If a source relocates to an adjacent site, and the time between operation at the old and new sites is less than six months, the source may retain the netting basis from the old site.

(d) Emission reductions required by rule, order, or permit condition affect the netting basis if the source currently has devices or emissions units that are subject to the rules, order, or permit condition. The baseline emission rate is not affected.

(e) Netting basis for a pollutant with a revised definition will be adjusted if the source is emitting the pollutant at the time of redefining and the pollutant is included in the permit's netting basis.

(f) Where EPA requires an attainment demonstration based on dispersion modeling, the netting basis will be established at no more than the level used in the dispersion modeling to demonstrate attainment with the ambient air quality standard (i.e., the attainment demonstration is an emission reduction required by rule).

(732) "Nitrogen Oxides" or "NO_x" means all oxides of nitrogen except nitrous oxide.

(743) "Nonattainment Area" means a geographical area of the State, as designated by the Environmental Quality Commission or the EPA, that exceeds any state or federal primary or secondary ambient air quality standard.

(754) "Nonattainment Pollutant" means a pollutant for which an area is designated a nonattainment area.

(765) "Normal Source Operation" means operations which do not include such conditions as forced fuel substitution, equipment malfunction, or highly abnormal market conditions.

(776) "Offset" means an equivalent or greater emission reduction that is required before allowing an emission increase from a proposed major source or major modification of an existing source.

(78) "Opacity" means the degree to which an emission reduces transmission of light and obscures the view of an object in the background as measured in accordance with OAR 340-212-0120 and 212-0140. Unless otherwise specified by rule, opacity shall be measured in accordance with EPA Method 9 or a continuous opacity monitoring system (COMS) installed and operated in accordance with the Department's Continuous Monitoring Manual. For all standards, the minimum observation period shall be six minutes, though longer periods may be required by a specific rule or permit condition. Aggregate times (e.g. 3 minutes in any one hour) consist of the total duration of all readings during the observation period that equal or exceed the opacity percentage in the standard, whether or not the readings are consecutive.

(797) "Oregon Title V Operating Permit" means any permit covering an Oregon Title V Operating Permit source that is issued, renewed, amended, or revised pursuant to division 218.

(8078) "Oregon Title V Operating Permit program" means a program approved by the Administrator under 40 CFR Part 70.

(8179) "Oregon Title V Operating Permit program source" means any source subject to the permitting requirements, OAR 340 division 218.

(820) "Ozone Season" means the contiguous 3 month period during which ozone exceedances typically occur (i.e., June, July, and August).

(831) "Particulate Matter" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air, as measured by. When used in emission standards, particulate matter is defined by the method specified within the standard or by an applicable reference method in accordance with OAR 340-212-0120 and OAR 340-212-0140, the Department's Source Sampling Manual, (January, 1992). Unless otherwise specified, sources with exhaust gases at or near ambient conditions may be tested with DEQ Method 5 or DEQ Method 8, as approved by the Department. Direct heat transfer sources shall be tested with DEQ Method 7; indirect heat transfer combustion sources and all other non-fugitive emissions sources not listed above shall be tested with DEQ Method 5.

(842) "Permit" means an Air Contaminant Discharge Permit or an Oregon Title V Operating Permit.

(853) "Permit modification" means a permit revision that meets the applicable requirements of OAR 340 division 216, 340 division 224, or 340-218-0160 through 340-218-0180.

(864) "Permit revision" means any permit modification or administrative permit amendment.

(875) "Permitted Emissions" as used in OAR division 220 means each assessable emission portion of the PSEL, as identified in an ACDP, Oregon Title V Operating Permit, review report, or by the Department pursuant to OAR 340-220-00190.

(886) "Permittee" means the owner or operator of the facility, authorized by the ACDP or the Oregon Title V Operating Permit to operate the source.

(897) "Person" means individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the State of Oregon and any agencies thereof, and the federal government and any agencies thereof.

(898) "Plant Site Emission Limit" or "PSEL" means the total mass emissions per unit time of an individual air pollutant specified in a permit for a source. The PSEL for a major source may consist of more than one assessable emission.

(9189) "PM10":

(a) When used in the context of emissions, means finely divided solid or liquid material, including condensable particulate, other than uncombined water, with an aerodynamic diameter less than or equal to a nominal 10 micrometers, emitted to the ambient air as measured by an applicable reference method in accordance with the Department's **Source Sampling Manual** (January, 1992);

(b) When used in the context of ambient concentration, means airborne finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured in accordance with **40 CFR Part 50, Appendix J**.

(920) "Pollutant-specific emissions unit" means an emissions unit considered separately with respect to each regulated air pollutant.

(931) "Potential to emit" or "PTE" means the lesser of:

(a) The capacity of a stationary source; or

(b) The maximum allowable emissions taking into consideration any physical or operational limitation, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, if the limitation is enforceable by the Administrator.

(c) This definition does not alter or affect the use of this term for any other purposes under the Act or the term "capacity factor" as used in Title IV of the Act and the

regulations promulgated thereunder. Secondary emissions are not considered in determining the potential to emit.

(942) "Predictive emission monitoring system (PEMS)" means a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

(953) "Process Upset" means a failure or malfunction of a production process or system to operate in a normal and usual manner.

(964) "Proposed permit" means the version of an Oregon Title V Operating Permit that the Department or a Regional Agency~~authority~~ proposes to issue and forwards to the Administrator for review in compliance with OAR 340-218-0230.

(975) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in **40 CFR Part 60, 61 or 63.**

(986) "Regional Agency~~authority~~" means Lane Regional Air ~~Protection~~~~pollution~~ Agency~~authority~~.

(997) "Regulated air pollutant" or "Regulated Pollutant":

(a) Except as provided in subsections (b) and (c) of this rule, means:

(A) Nitrogen oxides or any VOCs;

(B) Any pollutant for which a national ambient air quality standard has been promulgated;

(C) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or

(E) Any pollutant listed under OAR 340-244-0040 or 340-244-0230.

(b) As used in OAR 340 division 220, means any air pollutant as included in subsection (a) of this rule, except the following:

(A) Carbon monoxide;

(B) Any pollutant that is a regulated pollutant solely because it is a Class I or Class II substance subject to a standard promulgated under or established by Title VI of the Federal Clean Air Act; or

(C) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Federal Clean Air Act.

(c) As used in OAR 340 division 224 any pollutant listed under OAR 340-244-0040 or 340-244-0230 is not a regulated pollutant.

(10098) "Renewal" means the process by which a permit is reissued at the end of its term.

(10199) "Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(A) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(B) The delegation of authority to such representative is approved in advance by the Department or Lane Regional Air ~~Protection~~ ~~Agency~~ ~~Authority~~.

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

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this Division, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA); or

(d) For affected sources:

(A) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(B) The designated representative for any other purposes under the Oregon Title V Operating Permit program.

(1020) "Secondary Emissions" means emissions that are a result of the construction and/or operation of a source or modification, but that do not come from the source itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source associated with the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships and trains coming to or from a facility;

(b) Emissions from off-site support facilities that would be constructed or would otherwise increase emissions as a result of the construction or modification of a source.

- | (1034) "Section 111" means section 111 of the FCAA which includes Standards of Performance for New Stationary Sources (NSPS).
- | (1042) "Section 111(d)" means subsection 111(d) of the FCAA which requires states to submit to the EPA plans that establish standards of performance for existing sources and provides for implementing and enforcing such standards.
- | (1053) "Section 112" means section 112 of the FCAA which contains regulations for Hazardous Air Pollutants (HAP).
- | (1064) "Section 112(b)" means subsection 112(b) of the FCAA which includes the list of hazardous air pollutants to be regulated.
- | (1075) "Section 112(d)" means subsection 112(d) of the FCAA which directs the EPA to establish emission standards for sources of hazardous air pollutants. This section also defines the criteria to be used by the EPA when establishing the emission standards.
- | (1086) "Section 112(e)" means subsection 112(e) of the FCAA which directs the EPA to establish and promulgate emissions standards for categories and subcategories of sources that emit hazardous air pollutants.
- | (1097) "Section 112(r)(7)" means subsection 112(r)(7) of the FCAA which requires the EPA to promulgate regulations for the prevention of accidental releases and requires owners or operators to prepare risk management plans.
- | (1108) "Section 114(a)(3)" means subsection 114(a)(3) of the FCAA which requires enhanced monitoring and submission of compliance certifications for major sources.
- | (11019) "Section 129" means section 129 of the FCAA which requires the EPA to establish emission standards and other requirements for solid waste incineration units.
- | (1120) "Section 129(e)" means subsection 129(e) of the FCAA which requires solid waste incineration units to obtain Oregon Title V Operating Permits.
- | (1134) "Section 182(f)" means subsection 182(f) of the FCAA which requires states to include plan provisions in the State Implementation Plan for NOx in ozone nonattainment areas.
- | (1142) "Section 182(f)(1)" means subsection 182(f)(1) of the FCAA which requires states to apply those plan provisions developed for major VOC sources and major NOx sources in ozone nonattainment areas.
- | (1153) "Section 183(e)" means subsection 183(e) of the FCAA which requires the EPA to study and develop regulations for the control of certain VOC sources under federal ozone measures.
- | (1164) "Section 183(f)" means subsection 182(f) of the FCAA which requires the EPA to develop regulations pertaining to tank vessels under federal ozone measures.

- (1175) "Section 184" means section 184 of the FCAA which contains regulations for the control of interstate ozone air pollution.
- (1186) "Section 302" means section 302 of the FCAA which contains definitions for general and administrative purposes in the Act.
- (1197) "Section 302(j)" means subsection 302(j) of the FCAA which contains definitions of "major stationary source" and "major emitting facility."
- (12048) "Section 328" means section 328 of the FCAA which contains regulations for air pollution from outer continental shelf activities.
- (12149) "Section 408(a)" means subsection 408(a) of the FCAA which contains regulations for the Title IV permit program.
- (1220) "Section 502(b)(10) change" means a change which contravenes an express permit term but is not a change that:
- (a) Would violate applicable requirements;
 - (b) Would contravene federally enforceable permit terms and conditions that are monitoring, recordkeeping, reporting, or compliance certification requirements; or
 - (c) Is a Title I modification.
- (1234) "Section 504(b)" means subsection 504(b) of the FCAA which states that the EPA can prescribe by rule procedures and methods for determining compliance and for monitoring.
- (1242) "Section 504(e)" means subsection 504(e) of the FCAA which contains regulations for permit requirements for temporary sources.
- (1253) "Significant Air Quality Impact" means an additional ambient air quality concentration equal to or greater than in the concentrations listed in **Table 1**. The threshold concentrations listed in Table 1 are used for comparison against the ambient air quality standard and do not apply for protecting PSD Class I increments or air quality related values (including visibility). For sources of VOC or NOx, a major source or major modification has a significant impact if it is located within the Ozone Precursor Significant-Impact-Distance defined in OAR 340-225-0020.
- (1264) "Significant Emission Rate" or "SER," except as provided in subsections (a) through (c) of this section, means an emission rate equal to or greater than the rates specified in **Table 2**.
- (a) For the Medford-Ashland Air Quality Maintenance Area, the Significant Emission Rate for PM10 is defined in **Table 3**.

(b) For regulated air pollutants not listed in **Table 2** or **3**, the significant emission rate is zero unless the Department determines the rate that constitutes a significant emission rate.

(c) Any new source or modification with an emissions increase less than the rates specified in **Table 2** or **3** associated with a new source or modification which would construct within 10 kilometers of a Class I area, and would have an impact on such area equal to or greater than 1 ug/m³ (24 hour average) is emitting at a significant emission rate.

(1275) "Significant Impairment" occurs when the Department determines that visibility impairment interferes with the management, protection, preservation, or enjoyment of the visual experience within a Class I area. The Department will make this determination on a case-by-case basis after considering the recommendations of the Federal Land Manager and the geographic extent, intensity, duration, frequency, and time of visibility impairment. These factors will be considered along with visitor use of the Class I areas, and the frequency and occurrence of natural conditions that reduce visibility.

(1286) "Source" means any building, structure, facility, installation or combination thereof that emits or is capable of emitting air contaminants to the atmosphere, is located on one or more contiguous or adjacent properties and is owned or operated by the same person or by persons under common control. The term includes all pollutant emitting activities that belong to a single major industrial group (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, (U.S. Office of Management and Budget, 1987) or that support the major industrial group.

(1297) "Source category":

(a) Except as provided in subsection (b) of this section, means all the pollutant emitting activities that belong to the same industrial grouping (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, (U.S. Office of Management and Budget, 1987).

(b) As used in OAR 340 division 220, Oregon Title V Operating Permit Fees, means a group of major sources that the Department determines are using similar raw materials and have equivalent process controls and pollution control equipment.

(13028) "Source Test" means the average of at least three test runs conducted in accordance with ~~during operating conditions representative of the period for which emissions are to be determined and in accordance with the Department's Source Sampling Manual, or other Department approved methods.~~

(12931) "Startup" and "shutdown" means that time during which an air contaminant source or emission-control equipment is brought into normal operation or normal operation is terminated, respectively.

- (1320) "State Implementation Plan" or "SIP" means the State of Oregon Clean Air Act Implementation Plan as adopted by the Commission under OAR 340-200-0040 and approved by EPA.
- (1334) "Stationary source" means any building, structure, facility, or installation at a source that emits or may emit any regulated air pollutant.
- (1342) "Substantial Underpayment" means the lesser of ten percent (10%) of the total interim emission fee for the major source or five hundred dollars.
- (1353) "Synthetic minor source" means a source that would be classified as a major source under OAR 340-200-0020, but for limits on its potential to emit air pollutants contained in a permit issued by the Department under OAR 340 division 216 or 218.
- (1364) "Title I modification" means one of the following modifications pursuant to Title I of the FCAA:
- (a) A major modification subject to OAR 340-224-0050, Requirements for Sources in Nonattainment Areas;
 - (b) A major modification subject to OAR 340-224-0060, Requirements for Sources in Maintenance Areas;
 - (c) A major modification subject to OAR 340-224-0070, Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas;
 - (d) A modification that is subject to a New Source Performance Standard under Section 111 of the FCAA; or
 - (e) A modification under Section 112 of the FCAA.
- (1375) "Total Reduced Sulfur" or "TRS" means the sum of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides present expressed as hydrogen sulfide (H₂S).
- (1386) "Typically Achievable Control Technology" or "TACT" means the emission limit established on a case-by-case basis for a criteria pollutant from a particular emissions unit in accordance with OAR 340-226-0130. For existing sources, the emission limit established will be typical of the emission level achieved by emissions units similar in type and size. For new and modified sources, the emission limit established will be typical of the emission level achieved by well controlled new or modified emissions units similar in type and size that were recently installed. TACT determinations will be based on information known to the Department while considering pollution prevention, impacts on other environmental media, energy impacts, capital and operating costs, cost effectiveness, and the age and remaining economic life of existing emission control equipment. The Department may consider emission control technologies typically applied to other types of emissions units where such technologies could be readily applied to the

emissions unit. If an emission limitation is not feasible, a design, equipment, work practice, operational standard, or combination thereof, may be required.

(1397) "Unassigned Emissions" means the amount of emissions that are in excess of the PSEL but less than the Netting Basis.

(14038) "Unavoidable" or "could not be avoided" means events that are not caused entirely or in part by poor or inadequate design, operation, maintenance, or any other preventable condition in either process or control equipment.

(13941) "Upset" or "Breakdown" means any failure or malfunction of any pollution control equipment or operating equipment that may cause excess emissions.

(1420) "Visibility Impairment" means any humanly perceptible change in visual range, contrast or coloration from that which existed under natural conditions. Natural conditions include fog, clouds, windblown dust, rain, sand, naturally ignited wildfires, and natural aerosols.

(1434) "Volatile Organic Compounds" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions.

(a) This includes any such organic compound except the following, which have been determined to have negligible photochemical reactivity in the formation of tropospheric ozone: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); perchlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C4F9OCH3 or HFE-7100); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCF2OCH3); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C4F9OC2H5 or HFE-7200); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCF2OC2H5); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane

(n-C₃F₇OCH₃, HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); and methyl formate (HCOOCH₃); (1) 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); and perfluorocarbon compounds that fall into these classes:

(A) Cyclic, branched, or linear, completely fluorinated alkanes;

(B) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(C) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(D) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For purposes of determining compliance with emissions limits, VOC will be measured by an applicable reference method in accordance with the Department's Source Sampling Manual, January, 1992. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and the Department approves the exclusion.

(c) The Department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the Department's satisfaction, the amount of negligibly-reactive compounds in the source's emissions.

(d) The following compound(s) are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and must be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

(1442) "Year" means any consecutive 12 month period of time.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

[ED. NOTE: Tables referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: [DEQ 15-1978, f. & ef. 10-13-78; DEQ 4-1993, f. & cert. ef. 3-10-93]; [DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033.04; DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 8-1988, f. & cert. ef. 5-19-88 (and corrected 5-31-88); DEQ 14-1989, f. & cert. ef. 6-26-89; DEQ 42-1990, f. 12-13-90, cert.

ef. 1-2-91; DEQ 2-1992, f. & cert. ef. 1-30-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93, Renumbered from 340-020-0145, 340-020-0225, 340-020-0305, 340-020-0355, 340-020-0460 & 340-020-0520; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 21-1994, f. & cert. ef. 10-14-94; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99]; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0205, 340-028-0110; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 2-2006, f. & cert. ef. 3-14-06

340-200-0025

Abbreviations and Acronyms

- (1) "ACDP" means Air Contaminant Discharge Permit.
- (2) "ACT" means Federal Clean Air Act.
- (3) "AE" means Actual Emissions.
- (4) "AICPA" means Association of Independent Certified Public Accountants.
- (5) "AQCR" means Air Quality Control Region.
- (6) "AQMA" means Air Quality Maintenance Area.
- (7) "ASME" means American Society of Mechanical Engineers.
- (8) "ASTM" means American Society for Testing & Materials.
- (9) "ATETP" means Automotive Technician Emission Training Program.
- (10) "AWD" means all wheel drive.
- (11) "BACT" means Best Available Control Technology.
- (12) "BLS" means black liquor solids.
- (13) "CAA" means Clean Air Act
- (14) "CAR" means control area responsible party.
- (15) "CBD" means central business district.

- (16) "CCTMP" means Central City Transportation Management Plan.
- (17) "CEM" means continuous emissions monitoring.
- (18) "CEMS" means continuous emission monitoring system.
- (19) "CERCLA" means Comprehensive Environmental Response Compensation and Liability Act.
- (20) "CFRMS" means continuous flow rate monitoring system.
- (21) "CFR" means Code of Federal Regulations.
- (22) "CMS" means continuous monitoring system.
- (23) "CO" means carbon monoxide.
- (24) "COMS" means continuous opacity monitoring system.
- (25) "CPMS" means continuous parameter monitoring system.
- (26) "DEQ" means Department of Environmental Quality.
- (27) "DOD" means Department of Defense.
- (28) "EA" means environmental assessment.
- (29) "ECO" means employee commute options.
- (30) "EEAF" means emissions estimate adjustment factor.
- (31) "EF" means emission factor.
- (32) "EGR" means exhaust gas re-circulation.
- (33) "EIS" means Environmental Impact Statement
- (34) "EPA" means Environmental Protection Agency.
- (35) "EQC" means Environmental Quality Commission.
- (36) "ESP" means electrostatic precipitator.
- (37) "FCAA" means Federal Clean Air Act.
- (38) "FHWA" means Federal Highway Administration.
- (39) "FONSI" means finding of no significant impact.

- (40) "FTA" means Federal Transit Administration.
- (41) "GFA" means gross floor area.
- (42) "GLA" means gross leasable area.
- (43) "GPM" means grams per mile.
- (44) "gr/dscf" means grains per dry standard cubic foot.
- (45) "GTBA" means grade tertiary butyl alcohol.
- (46) "GVWR" means gross vehicle weight rating.
- (47) "HAP" means hazardous air pollutant.
- (48) "HEPA" means high efficiency particulate air.
- (49) "HMIWI" means hospital medical infectious waste incinerator.
- (50) "I/M" means inspection and maintenance program.
- (51) "IG" means inspection grade.
- (52) "IRS" means Internal Revenue Service.
- (53) "ISECP" means indirect source emission control program.
- (54) "ISTEA" means Intermodal Surface Transportation Efficiency Act.
- (55) "LAER" means Lowest Achievable Emission Rate.
- (56) "LDT2" means light duty truck 2.
- (57) "LIDAR" means laser radar; light detection and ranging.
- (58) "LPG" means liquefied petroleum gas.
- (59) "LRAPA" means Lane Regional Air ~~Protection~~ pollution Agency ~~authority~~.
- (60) "LUCS" means Land Use Compatibility Statement.
- (61) "MACT" means Maximum Achievable Control Technology.
- (62) "MPO" means Metropolitan Planning Organization.
- (63) "MTBE" means methyl tertiary butyl ether.

- (64) "MWC" means municipal waste combustor.
- (65) "NAAQS" means National Ambient Air Quality Standards.
- (66) "NEPA" means National Environmental Policy Act.
- (67) "NESHAP" means National Emissions Standard for Hazardous Air Pollutants.
- (68) "NIOSH" means National Institute of Occupational Safety & Health.
- (69) "NO_x" means nitrogen oxides.
- (70) "NSPS" means New Source Performance Standards.
- (71) "NSR" means New Source Review.
- (72) "NSSC" means neutral sulfite semi-chemical.
- (73) "O₃" means ozone.
- (74) "OAR" means Oregon Administrative Rules.
- (75) "ODOT" means Oregon Department of Transportation.
- (76) "ORS" means Oregon Revised Statutes.
- (77) "OSAC" means orifice spark advance control.
- (78) "OSHA" means Occupational Safety & Health Administration.
- (79) "PCDE" means pollution control device collection efficiency.
- (80) "PEMS" means predictive emission monitoring system.
- (81) "PM" means particulate matter.
- (82) "PM₁₀" means particulate matter less than 10 microns.
- (83) "POTW" means Publicly Owned Treatment Works.
- (84) "POV" means privately owned vehicle.
- (85) "PSD" means Prevention of Significant Deterioration.
- (86) "PSEL" means Plant Site Emission Limit.
- (87) "QIP" means quality improvement plan.

- (88) "RACT" means Reasonably Available Control Technology.
- (89) "RVCOG" means Rogue Valley Council of Governments.
- (90) "RWOC" means running weighted oxygen content.
- (91) "SKATS" means Salem-Kaiser Area Transportation Study.
- (92) "scf" means standard cubic feet.
- (93) "SCS" means speed control switch.
- (94) "SD" means standard deviation.
- (95) "SIP" means State Implementation Plan.
- (96) "SO₂" means sulfur dioxide.
- (97) "SOCMI" means synthetic organic chemical manufacturing industry.
- (98) "SOS" means Secretary of State.
- (99) "TAC" means thermostatic air cleaner.
- (100) "TACT" means Typically Achievable Control Technology.
- (101) "TCM" means transportation control measures.
- (102) "TCS" means throttle control solenoid.
- (103) "TIP" means Transportation Improvement Program.
- (104) "TRS" means total reduced sulfur.
- (105) "TSP" means total suspended particulate matter.
- (106) "UGA" means urban growth area.
- (107) "UGB" means urban growth boundary.
- (108) "US DOT" means United States Department of Transportation.
- (109) "UST" means underground storage tanks.
- (110) "UTM" means universal transverse mercator.
- (111) "VIN" means vehicle identification number.

(112) "VMT" means vehicle miles traveled.

(113) "VOC" means volatile organic compounds.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-200-0040

State of Oregon Clean Air Act Implementation Plan

- (1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A. 7401 to 7671q.
- (2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on October 18, 2007 ~~June 21, 2007~~.
- (3) Notwithstanding any other requirement contained in the SIP, the Department may:
 - (a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and
 - (b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

DIVISION 208

VISIBLE EMISSIONS AND NUISANCE REQUIREMENTS

340-208-0010

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

- (1) "Abate" means to eliminate the nuisance or suspected nuisance by reducing or managing the emissions using reasonably available practices. The degree of abatement will depend on an evaluation of all of the circumstances of each case and does not necessarily mean completely eliminating the emissions.
- (2) "Air Contaminant" means a dust, fume, gas, mist, odor, smoke, pollen, vapor, soot, carbon, acid or particulate matter, or any combination thereof.
- (3) "Emission" means a release into the outdoor atmosphere of air contaminants.
- (4) "Fuel Burning Equipment" means a ~~device-boiler or process heater~~ that burns a solid, liquid, or gaseous fuel, the principal purpose of which is to produce heat or power by indirect heat transfer, ~~except marine installations and internal combustion engines that are not stationary gas turbines.~~
- (5) "Fugitive Emissions" means emissions of any air contaminant that escape to the atmosphere from any point or area not identifiable as a stack, vent, duct, or equivalent opening.
- (6) "New source" means, for purposes of OAR 340-208-0110, any air contaminant source installed, constructed, or modified after June 1, 1970.
- (7) "Nuisance" means a substantial and unreasonable interference with another's use and enjoyment of real property, or the substantial and unreasonable invasion of a right common to members of the general public.
- (8) "Odor" means that property of an air contaminant that affects the sense of smell.
- (9) "Opacity" means the degree to which an emission reduces transmission of light and obscures the view of an object in the background as measured in accordance with OAR 340-212-0120 and 212-0140. Unless otherwise specified by rule, opacity shall be measured in accordance with EPA Method 9. For all standards, the minimum observation

~~period shall be six minutes, though longer periods may be required by a specific rule or permit condition. Aggregate times (e.g., 3 minutes in any one hour) consist of the total duration of all readings during the observation period that exceed the opacity percentage in the standard, whether or not the readings are consecutive. Alternatives to EPA Method 9, such as a continuous opacity monitoring system (COMS), alternate Method 1 (LIDAR), or EPA Methods 22, or 203, may be used if approved in advance by the department, in accordance with the Source Sampling Manual.~~

~~(10) "Particulate matter" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by an applicable reference method in accordance with OAR 340-212-0120 and OAR 340-212-0140. Sources with exhaust gases at or near ambient conditions may be tested with DEQ Method 5 or DEQ Method 8, as approved by the department. Direct heat transfer sources shall be tested with DEQ Method 7; indirect heat transfer combustion sources and all other non-fugitive emissions sources not listed above shall be tested with DEQ Method 5 or an equivalent method approved by the department.;~~

~~(11) "Special Control Area" means an area designated in OAR 340-204-0070.~~

~~(12) "Standard conditions" means a temperature of 68° Fahrenheit and a pressure of 14.7 pounds per square inch absolute.~~

~~(13) "Standard cubic foot" means the amount of gas that would occupy a volume of one cubic foot, if the gas were free of uncombined water at standard conditions. When applied to combustion flue gases from fuel, "standard cubic foot" also implies adjustment of gas volume to that which would result at a concentration of 12% carbon dioxide or 50% excess air.~~

~~[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.]~~

~~[Publications: Publications referenced in this rule are available from the agency.]~~

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468.020 & ORS 468A.025

Hist.: [DEQ 16, f. 6-12-70, ef. 7-11-70; DEQ 1-1984, f. & ef. 1-16-84; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 3-1996, f. & cert. ef. 1-29-96]; [DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 3-1996, f. & cert. ef. 1-29-96]; [DEQ 4-1978, f. & ef. 4-7-78; DEQ 9-1979, f. & ef. 5-3-79; DEQ 3-1980, f. & ef. 1-28-80; DEQ 14-1981, f. & ef. 5-6-81; DEQ 22-1989, f. & cert. ef. 9-26-89; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 4-1995, f. & cert. ef. 2-17-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 3-1996, f. & cert. ef. 1-29-96]; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-021-0005, 340-021-0050, 340-030-0010; DEQ 2-2001, f. & cert. ef. 2-5-01

340-208-0110

Visible Air Contaminant Limitations

(1) Existing sources outside special control areas. No person may emit or allow to be emitted any air contaminant into the atmosphere from any existing air contaminant source located outside a special control area for a period or periods aggregating more than three minutes in any one hour which is equal to or greater than 40% opacity.

(2) New sources in all areas and existing sources within special control areas: No person may emit or allow to be emitted any air contaminant into the atmosphere from any new air contaminant source, or from any existing source within a special control area, for a period or periods aggregating more than three minutes in any one hour which is equal to or greater than 20% opacity.

(3) Exceptions to sections (1) and (2) of this rule:

(a) Where the presence of uncombined water is the only reason for failure of any emission source to meet the requirements of sections (1) and (2) of this rule, such sections shall not apply;

(b) Existing fuel burning equipment installed on or before June 1, 1970 that has not been modified since June 1, 1970 utilizing wood wastes and located within special control areas shall comply with the emission limitations of section (1) of this rule in lieu of section (2) of this rule.

(42) Opacity is determined in accordance with the procedures specified in the definition of "opacity".

[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 468 & ORS 468A

Stats. Implemented: ORS 468.020 & ORS 468A.025

Hist.: DEQ 16, f. 6-12-70, ef. 7-11-70; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 3-1996, f. & cert. ef. 1-29-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-021-0015; DEQ 2-2001, f. & cert. ef. 2-5-01

Clackamas, Columbia, Multnomah, and Washington Counties

340-208-0500

Application

OAR 340-208-0501 through 340-208-0631 apply in Clackamas, Columbia, Multnomah, and Washington Counties.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 61, f. 12-5-73, ef. 12-25-73; DEQ 4-1993, f. & cert. ef. 3-10-93; Renumbered

from 340-028-0001; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0400; DEQ 2-2001, f. & cert. ef. 2-5-01

340-208-0510

Exclusions

(1) The requirements contained in OAR 340-208-050~~10~~ through 340-208-063~~10~~ apply to all activities conducted in Clackamas, Columbia, Multnomah, and Washington Counties, other than those for which specific industrial standards have been adopted (Divisions 230, 234, 236, and 238), and except for the reduction of animal matter, OAR ~~340-236-0310(1) and (2).~~

(2) The requirements outlined in OAR 340-208-050~~10~~ through 340-208-063~~10~~ do not apply to activities related to a domestic residence of four or fewer family-living units.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 61, f. 12-5-73, ef. 12-25-73; DEQ 4-1993, f. & cert. ef. 3-10-93; Renumbered from 340-028-0003; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0410; DEQ 2-2001, f. & cert. ef. 2-5-01

340-208-0550

Odor Control Measures

(1) Control apparatus and equipment, using the highest and best practicable treatment currently available, must be installed and operated to reduce to a minimum odor-bearing gases or odor-bearing particulate matter emitted into the atmosphere.

(2) Gas effluents from incineration operations and process after-burners installed under section (1) of this rule must be maintained at a temperature of 1,400° Fahrenheit for at least a 0.5 second residence time, or controlled in another manner determined by the department to be equally or more effective.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 61, f. 12-5-73, ef. 12-25-73; DEQ 4-1993, f. & cert. ef. 3-10-93; Renumbered from 340-028-0045; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0450; DEQ 2-2001, f. & cert. ef. 2-5-01

~~340-208-0560~~

~~Storage and Handling of Petroleum Products~~

~~(1) In volumes of greater than 40,000 gallons, gasoline or any volatile petroleum distillate or organic liquid having a vapor pressure of 1.5 psia or greater under actual storage~~

conditions must be stored in pressure tanks or reservoirs, or in containers equipped with a floating roof or vapor recovery system or other vapor emission control device.

(2) Gasoline or petroleum distillate tank car or tank loading facilities handling 20,000 gallons per day or more must be equipped with submersible filling devices or other vapor emission control systems.

(3) Gasoline tanks with a capacity of 500 gallons or more that were installed after January 1, 1970 must be equipped with a submersible filling device or other vapor emission control systems.

Stat. Auth.: ~~ORS 468 & ORS 468A~~

Stats. Implemented: ~~ORS 468A.025~~

Hist.: ~~DEQ 61, f. 12-5-73, ef. 12-25-73; DEQ 4-1993, f. & cert. ef. 3-10-93; Renumbered from 340-028-0050; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0460; DEQ 2-2001, f. & cert. ef. 2-5-01~~

~~340-208-0630~~

~~Sulfur Dioxide Emission Standard~~

~~For any air contaminant source that may emit sulfur dioxide, no person may cause or permit emission of sulfur dioxide in excess of 1,000 ppm from any air contamination source as measured in accordance with the department's Source Test Manual, except those persons burning natural gas, liquefied petroleum gas, or fuel conforming to provisions of rules relating to the sulfur content of fuels. This rule applies to sources installed, constructed, or modified after October 1, 1970.~~

~~[Publications: Publications referenced in this rule are available from the agency.]~~

Stat. Auth.: ~~ORS 468 & ORS 468A.~~

Stats. Implemented: ~~ORS 468.020 & ORS 468A.025.~~

Hist.: ~~DEQ 61, f. 12-5-73, ef. 12-25-73; DEQ 4-1993, f. & cert. ef. 3-10-93; Renumbered from 340-028-0085; DEQ 3-1996, f. & cert. ef. 1-29-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-030-0530; DEQ 2-2001, f. & cert. ef. 2-5-01~~

DIVISION 209

PUBLIC PARTICIPATION

340-209-0010

Purpose

The purpose of this Division is to specify the requirements for notifying the public of certain permit actions and providing an opportunity for the public to participate in those permit actions.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-209-0040

Public Notice Information

(1) The following information is required in public notices for all proposed ACDP and draft Oregon Title V Operating Permit actions, except for General Permit actions:

- (a) Name of applicant and location of the facility;
- (b) Type of facility, including a description of the facility's processes subject to the permit;
- (c) Description of the air contaminant emissions including, the type of pollutants, quantity of emissions, and any decreases or increases since the last permit action for the facility;
- (d) Location and description of documents relied upon in preparing the draft permit;
- (e) Other permits required by the Department;
- (f) Date of previous permit actions;
- (g) Opportunity for public comment and a brief description of the comment procedures, whether in writing or in person, including the procedures for requesting a hearing (unless a hearing has already been scheduled or is not an option for the public notice category); ~~Opportunity for public comment, whether in writing or in person;~~
- (h) Compliance, enforcement, and complaint history along with resolution of the same;

- (i) A summary of the discretionary decisions made by the Department in drafting the permit;
- (j) Type and duration of the proposed or draft permit action;
- (k) Basis of need for the proposed or draft permit action;
- (l) Any special conditions imposed in the proposed or draft permit action;
- (m) Whether each proposed permitted emission is a criteria pollutant and whether the area in which the source is located is designated as attainment or nonattainment for that pollutant;
- (n) If the proposed permit action is for a federal major source, whether the proposed permitted emission would have a significant impact on a Class I airshed;
- (o) If the proposed permit action is for a major source for which dispersion modeling has been performed, an indication of what impact each proposed permitted emission would have on the ambient air quality standard and PSD increment consumption within an attainment area;
- (p) Other available information relevant to the permitting action;
- (q) The name and address of the Department office processing the permit;
- (r) The name, address, and telephone number and e-mail address of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, permit, and monitoring and compliance certification report, except for information that is exempt from disclosure, and all other materials available to the Department that are relevant to the permit decision; and
- (s) If applicable, a statement that an enhanced New Source Review process under OAR 340 division 224, including the external review procedures required under OAR 340-218-0210 and 340-218-0230, is being used to allow for subsequent incorporation of the operating approval into an Oregon Title V Operating Permit as an administrative amendment.

(2) General Permit Actions. The following information is required for General ACDP and General Oregon Title V Operating Permit actions:

- (a) The name and address of potential or actual facilities assigned to the General Permit;
- (b) Type of facility, including a description of the facility's process subject to the permit;
- (c) Description of the air contaminant emissions including, the type of pollutants, quantity of emissions, and any decreases or increases since the last permit action for the potential or actual facilities assigned to the permit;

- (d) Location and description of documents relied upon in preparing the draft permit;
- (e) Other permits required by the Department;
- (f) Date of previous permit actions;
- (g) Opportunity for public comment and a brief description of the comment procedures, whether in writing or in person, including the procedures for requesting a hearing (unless a hearing has already been scheduled or is not an option for the Public Notice category);
- (h) Compliance, enforcement, and complaint history along with resolution of the same;
- (i) A summary of the discretionary decisions made by the Department in drafting the permit;
- (j) Type and duration of the proposed or draft permit action;
- (k) Basis of need for the proposed or draft permit action;
- (l) Any special conditions imposed in the proposed or draft permit action;
- (m) Whether each proposed permitted emission is a criteria pollutant and whether the area in which the sources are located are designated as attainment or nonattainment for that pollutant;
- (n) If the proposed permit action is for a federal major source, whether the proposed permitted emission would have a significant impact on a Class I airshed;
- (o) Other available information relevant to the permitting action; and
- (p) The name and address of the Department office processing the permit;
- (q) The name, address, and telephone number and e-mail address of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, permit, and monitoring and compliance certification report, except for information that is exempt from disclosure, and all other materials available to the Department that are relevant to the permit decision.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033; DEQ 13-1988, f. & cert. ef. 6-17-88; DEQ 34-1990, f. 8-20-90, cert. ef. 9-1-90; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0150; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1710; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01, Renumbered from 340-216-0050

Hearing and Meeting Procedures

(1) Informational Meeting. For category IV permit actions, the Department will provide an informational meeting at a reasonable place and time.

(a) The meeting will be held after a complete application is received and before the Department makes a preliminary decision on the application.

(b) Notice of the meeting will be provided at least 14 days before the meeting;

(c) During the meeting, the Department will:

(A) Describe the requested permit action; and

(B) Accept comments from the public.

(d) The Department will consider any information gathered during the meeting, but will not maintain an official record of the meeting and will not provide a written response to the comments.

(2) Public Hearing. When a public hearing is required or requested, the Department will provide the hearing at a reasonable place and time before taking the final permit action.

(a) Notice of the hearing may be given either in the notice accompanying the proposed or draft permit action or in such other manner as is reasonably calculated to inform interested persons. The Department will provide notice of the hearing at least 30 days before the hearing

(b) Presiding Officer. A Presiding Officer will preside over the public hearing and ensure that proper procedures are followed to allow for the public to comment on the proposed permit action.

(A) Before accepting oral or written comments by members of the public, the Presiding Officer or Department representative will present a summary of the proposed permit action and the Department's preliminary decision. During this period, there will be an opportunity to ask questions about the proposed or draft permit action.

(B) The Presiding Office will then provide an opportunity for interested persons to submit oral or written comments regarding the proposed permit action. Interested persons are encouraged to submit written comments because time constraints may be imposed, depending on the level of participation. While public comment is being accepted, discussion of the proposed or draft permit action will not be allowed.

(C) After the public hearing, the Presiding Officer will prepare a report of the hearing that includes the date and time of the hearing, the permit action, names of persons attending

the hearing, written comments, and a summary of the oral comments. The Presiding Officer's report will be entered into the permit action record.

~~(D) The applicant may submit a written response to any comments submitted by the public within 10 working days after the close of the public comment period. The Department will consider the applicant's response in making a final decision.~~

~~(c) Following the public hearing, or within a reasonable time after receipt of the Presiding Officer's report, the Department will take action upon the matter. Before taking such action, the Department will prepare a written response to separately address each substantial, distinct issue raised in the hearing record.~~

~~(d) The Department will make a record of the public comments, including the names and affiliation of persons who commented, and the issues raised during the public participation process. The public comment records are available to the public in the location(s) listed in OAR 340-209-0040. The public comment records may be in summary form rather than a verbatim transcript.~~

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468 & ORS 468A

Hist.: Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 7-1988, f. & cert. ef. 5-6-88 (and corrected 9-30-88); DEQ 34-1990, f. 8-20-90, cert. ef. 9-1-90; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 15-2000, f. & cert. ef. 10-11-00, Renumbered from 340-011-0007; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; Renumbered from 340-014-0022

340-209-0080

Issuance or Denial of a Permit

(1) Following the public comment period and public hearing, if one is held, the Department will take action upon the matter as expeditiously as possible. Before taking such action, the Department will prepare a written response to address each relevant, distinct issue raised during the comment period and during the hearing record.

(2) The Department will make a record of the public comments, including the names and affiliation of persons who commented, and the issues raised during the public participation process. The public comment records may be in summary form rather than a verbatim transcript. The public comment records are available to the public in the location(s) listed in OAR 340-209-0040.

(3) The applicant may submit a written response to any comments submitted by the public within 10 working days after the close of the public comment period. The Department will consider the applicant's response in making a final decision.

~~(1) The Department will take final action on the application as expeditiously as possible after the close of the public comment period.~~

(2) In making the final decision on the application, the Department will consider all relevant timely submitted comments.

(34) After considering the comments, the Department may adopt or modify the provisions requested in the permit application.

(45) Issuance of permit: The Department will promptly notify the applicant in writing of the final action as provided in OAR 340-011-0525097 and will include a copy of the permit. If the permit conditions are different from those contained in the proposed permit, the notification will identify the affected conditions and include the reasons for the changes.

(56) Denial of a permit: The Department will promptly notify the applicant in writing of the final action as provided in OAR 340-011-0525097. If the Department denies a permit application, the notification will include the reasons for the denial.

(67) The Department's decision under (45) and (56) is effective 20 days from the date of service of the notice unless, within that time, the Department receives a request for a hearing from the applicant. The request for a hearing must be in writing and state the grounds for the request. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR 340 division 11.

Stat. Auth.: ORS 183.335 \$ ORS 468.020

Stats. Implemented: ORS 183.341, ORS 183.413, ORS 183.415, ORS 468 & ORS 468A

Hist.: DEQ 42, f. 4-5-72, ef. 4-15-72; DEQ 13-1988, f. & cert. ef. 6-17-88; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01, Renumbered from 340-014-0025 & 340-014-0035

DIVISION 214

STATIONARY SOURCE REPORTING REQUIREMENTS

340-214-0010

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) "Large Source", as used in OAR 340-214-0300 through 340-214-0350, means any stationary source required to maintain a Title V Operating Permit source or whose actual emissions or potential controlled emissions while operating full time at the design capacity are equal to or exceed 100 tons per year of any regulated air pollutant, or which is subject to a National Emissions Standard for Hazardous Air Pollutants (NESHAP). Where PSELs have been incorporated into the ACDP, the PSEL will be used to determine actual emissions.

(2) "Small Source" means any other stationary source with a general, simple or standard ACDP, or an Oregon Title V Operating Permit that is not classified as a large source.

[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 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 14-1999, f. & cert. ef. 10-14-99; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

Excess Emissions and Emergency Provision

340-214-0300

Purpose and Applicability

Emissions of air contaminants in excess of applicable standards or permit conditions are unauthorized and subject to enforcement action. OAR 340-214-0300 through 340-214-0360 apply to any source that emits air contaminants in excess of any applicable air quality rule or permit condition, including but not limited to excess emissions resulting from the breakdown of air pollution control equipment or operating equipment, process upset, startup, shutdown, or scheduled maintenance. Sources that do not emit air contaminants in excess of any applicable air quality rule or permit condition, are not subject to the recordkeeping and reporting requirements in OAR 340-214-0300 through 340-214-0360. The purpose of these rules is to:

(1) Require that, where applicable, the owner or operator immediately report all excess emissions to the Department;

(2) Require the owner or operator to submit information and data regarding conditions that resulted or could result in excess emissions;

(3) Identify criteria for the Department to use in determining whether it will take enforcement action against an owner or operator for an excess emission; and

(4) Provide owners and operators an affirmative defense to a penalty action enforcement when noncompliance with technology-based emission limits is due to an emergency, as provided in OAR 340-214-0360.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91;

Renumbered from 340-021-0065; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0350; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1400; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-214-0310

Planned Startup and Shutdown

(1) This rule applies to any source where startup or shutdown of a production process or system may result in excess emissions, and

(a) That is a major source; or

(b) That is in a non-attainment or maintenance area for the pollutant which may constitute excess emissions; or

(c) From which the Department requires the application in section (2) of this rule.

(2) The owner or operator must obtain prior Department authorization of startup and shutdown procedures. The owner or operator must submit to the Department a written application for approval of new procedures or modifications to existing procedures. The application must be submitted in time for the Department to receive it at least 72 hours before the first occurrence of a startup or shutdown event to which the procedures apply. The application must:

(a) Explain why the excess emissions during startup and shutdown cannot be avoided;

(b) Identify the specific production process or system that will cause the excess emissions;

(c) Identify the nature of the air contaminants likely to be emitted and estimate the amount and duration of the excess emissions; and

(d) Identify specific procedures to be followed that will minimize excess emissions at all times during startup and shutdown.

(3) The Department will approve the procedures if it determines that they are consistent with good pollution control practices, will minimize emissions during such period to the extent practicable, and that no adverse health impact on the public will occur. The owner or operator must record all excess emissions in the excess emissions log, as required in OAR 340-214-0340(3). Approval of the procedures does not shield the owner or operator from an enforcement action if the approved procedures are not followed, or if the Department determines pursuant to OAR 340-214-0350 that the excess emissions were avoidable, but the Department will consider whether the procedures were followed will be considered by the Department in determining whether an enforcement penalty action is appropriate.

(4) Once the Department approves startup and shutdown procedures, the owner or operator does not have to notify the Department of a planned startup or shutdown event unless it results in excess emissions.

(5) When notice is required by section (4) of this rule, it must be made in accordance with OAR 340-214-0330(12)(a)

(6) The Department may revoke or require modifications to previously approved procedures at any time by written notification to the owner or operator.

(7) No startups or shutdowns ~~that may result~~ resulting in excess emissions associated with the approved procedures in section (3) of this rule are allowed during any period in which an Air Pollution Alert, Air Pollution Warning, or Air Pollution Emergency has been declared, or during an announced yellow or red woodstove curtailment period in areas designated by the Department as PM₁₀ Non-attainment Areas.

(8) The owner or operator ~~must notify the Department immediately by telephone of a startup or shutdown event and is subject to the requirements under All Other Excess Emissions in OAR 340-214-0330 if the owner or operator fails to:~~

~~(a) obtain~~ Obtain Department approval of start-up and shutdown procedures in accordance with section (2) of this rule; or

~~(b) Notify the Department of a startup or shutdown event that may result in excess emissions in accordance with section (4) of this rule.~~

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0360; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1410; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-214-0320

Scheduled Maintenance

(1) If the owner or operator anticipates that shutdown, by-pass, or operation at reduced efficiency of air pollution control equipment for necessary scheduled maintenance may result in excess emissions, the owner or operator must obtain prior Department authorization of procedures that will be used. The owner or operator must submit a written application for approval of new procedures or modifications to existing procedures. The application must be submitted in time for the Department to receive it at least 72 hours before the first occurrence of a maintenance event to which the procedures apply. The application must:

(a) Explain the need for maintenance, including why it would be impractical to shut down the source operation during the period, and why the by-pass or reduced efficiency could not be avoided through better scheduling for maintenance or through better operation and maintenance practices;

(b) Identify the specific production or emission control equipment or system to be maintained;

(c) Identify the nature of the air contaminants likely to be emitted during the maintenance period and the estimated amount and duration of the excess emissions, including measures such as the use of overtime labor and contract services and equipment, that will be taken to minimize the length of the maintenance period;

(d) Identify specific procedures to be followed that will minimize excess emissions at all times during the scheduled maintenance.

(2) The Department will approve the procedures if it determines that they are consistent with good pollution control practices, will minimize emissions during such period to the extent practicable, and that no adverse health impact on the public will occur. The owner or operator must record all excess emissions in the excess emissions log, as required in OAR 340-214-0340(3). Approval of the above procedures does not shield the owner or operator from an enforcement action if the approved procedures are not followed, or if the Department determines pursuant to OAR 340-214-0350 that the excess emissions were avoidable, but the Department will consider whether the procedures were followed will be considered by the Department in determining whether an enforcement penalty action is appropriate.

(3) Once the Department approves the maintenance procedures the owner or operator does not have to notify the Department of a scheduled maintenance event unless it results in excess emissions.

(4) When required by section (3) of this rule, notification must be made in accordance with OAR 340-214-0330(1~~2~~)(a).

(5) The Department may revoke or require modifications to previously approved procedures at any time by written notification to the owner or operator.

(6) No scheduled maintenance associated with the approved procedures in section (2) of this rule, that is likely to result in excess emissions, may occur during any period in which an Air Pollution Alert, Air Pollution Warning, or Air Pollution Emergency has been declared, or during an announced yellow or red woodstove curtailment period in areas designated by the Department as PM₁₀ Nonattainment Areas.

(7) The owner or operator ~~must notify the Department immediately by telephone of a maintenance event, and is subject to the requirements under All Other Excess Emissions in OAR 340-214-0330 if the owner or operator fails to obtain Department approval of maintenance procedures in accordance with section (1) of this rule.~~

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0365; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1420; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-214-0330

All Other Excess Emissions

~~(1) For excess emissions caused by an emergency, the owner or operator is in violation of the standard, but may be entitled to an affirmative defense to enforcement if:~~

~~(a) The Department is notified immediately of the emergency condition; and~~

~~(b) The owner or operator fulfills the requirements outlined in the Emergency Provision in OAR 340-214-0360.~~

~~(2) For all other excess emissions not addressed in OAR 340-214-310, 340-214-320, or 340-214-360, the following requirements apply:~~

~~(a) The owner or operator of a large source, as defined by OAR 340-214-0010, must immediately notify ~~report~~ to the Department of the first onset per calendar day of any excess emissions event, other than those described in section (1) of this rule or unless otherwise specified by a permit condition. Based on the severity of the event, the Department will require either a written report pursuant to OAR 340-214-0340(1) and (2)~~

or a recording of the event in the excess emissions log as required in OAR 340-214-0340(3).

(b) The owner or operator of a small source, as defined by OAR 340-20014-00210, need not immediately notify the Department of report excess emissions events unless otherwise required by a permit condition, written notice by the Department, subsection (1)(a) of this rule, or if the excess emission is of a nature that could endanger public health.

(c) Additional reporting and recordkeeping requirements are specified in OAR 340-214-0340. Based on the severity of the event, the Department will require either a written report pursuant to OAR 340-214-0340(1) and (2), or a recording of the event in the excess emissions log as required in OAR 340-214-0340(3).

(23) During any period of excess emissions, the Department may require that an owner or operator immediately reduce or cease operation of the equipment or facility until the condition causing the excess emissions has been corrected or brought under control. The Department will consider the following factors:

- (a) The potential risk to the public or environment;
- (b) Whether shutdown could result in physical damage to the equipment or facility, or cause injury to employees;
- (c) Whether any Air Pollution Alert, Warning, Emergency, or yellow or red woodstove curtailment period exists; and
- (d) Whether continued excess emissions were avoidable.

(34) If there is an on-going period of excess emissions caused, the owner or operator must cease operation of the equipment or facility no later than 48 hours after the beginning of the excess emission period, if the condition causing the emissions is not corrected within that time. The owner or operator does not have to cease operation if the Department approves procedures to minimize excess emissions until the condition causing the excess emissions is corrected or brought under control. The Department will consider the following before approving the procedures:

- (a) Why the condition(s) causing the excess emissions cannot be corrected or brought under control, including equipment availability and difficulty of repair or installation; and
- (b) Information as required in OAR 340-214-0310(2)(b), (c), and (d) or OAR 340-214-0320(1)(b), (c), and (d), as appropriate.

(45) The Department will approve the procedures if it determines that they are consistent with good pollution control practices, will minimize emissions during such period to the extent practicable, and that no adverse health impact on the public will occur. The owner or operator must record all excess emissions in the excess emissions log as required in OAR 340-214-0340 (3) section (2) of this rule. At any time during the period of excess

emissions the Department may require the owner or operator to cease operation of the equipment or facility, in accordance with section (32) of this rule. Approval of these procedures does not shield the owner or operator from an enforcement action, but the Department will consider whether the procedures were followed will be considered by the Department in determining whether an enforcement penalty action is appropriate. if the approved procedures are not followed, or if the Department determines excess emissions were avoidable.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; DEQ 4-1933, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0370; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1430; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-214-0340

Reporting Requirements

(1) For any excess emissions event at a source with a Title V permit and for any other source as required by permit, the owner or operator shall the Department may require the owner or operator to submit a written report of excess emissions for each calendar day of the event. The report must be submitted within 15 days of the date of the event and include the following:

(a) The date and time of the beginning of the excess emissions event and the duration or best estimate of the time until return to normal operation;

(ba) The date and time the owner or operator notified event was reported to the Department of the event;

(c) The equipment involved;

(db) Whether the event occurred during planned startup, planned shutdown, scheduled maintenance, or as a result of a breakdown, or malfunction, or emergency;

(e) Steps taken to mitigate emissions and corrective actions taken, including whether the approved procedures for a planned startup, shutdown, or maintenance activity were followed;

(f) The magnitude and duration of each occurrence of excess emissions during the course of an event and the increase over normal rates or concentrations as determined by continuous monitoring or a best estimate (supported by operating data and calculations);

~~(e) Information as described in OAR 340-214-0350(1) through (5);~~

~~(gd) The final resolution of the cause of the excess emissions; and~~

~~(he) Where applicable, evidence supporting any claim that emissions in excess of technology-based limits were due to an emergency pursuant to OAR 340-214-0360.~~

~~(2) Based on the severity of event, the Department may waive the 15-day reporting requirement, and specify either a shorter or longer time period for report submittal. The Department may also waive the submittal of the written report if the Department determines that the period or magnitude of excess emissions was minor. In such cases, the owner or operator must record the event in the excess emissions log pursuant to section (3) of this rule.~~

(3) All source owners or operators must keep an excess emissions log of all planned and unplanned excess emissions. The log must include all pertinent information as required in section (1) of this rule and be kept by the owner or operator for five calendar years.

(4) At each annual reporting period specified in a permit, or sooner if the Department requires, the owner or operator must submit:

(a) A copy of the excess emissions log entries for the reporting period; unless previously submitted in accordance with section (1) of this rule, and

(b) Where applicable, current procedures to minimize emissions during startup, shutdown, or maintenance as outlined in OAR 340-214-0310 and 340-214-0320. The owner or operator must specify in writing whether these procedures are new, modified, or have already been approved by the Department.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0375; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1440; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-214-0350

Enforcement Action Criteria

In determining whether to take enforcement action assess a penalty for excess emissions, if a period of excess emissions is avoidable, and whether enforcement action is warranted, the Department considers, based upon information submitted by the owner or operator, the following:

~~(1) Whether the owner or operator met the notification, recordkeeping and reporting requirements of OAR 340-214-0330 and OAR 340-214-0340; Where applicable, whether the owner or operator submitted a description of any emergency that may have caused emissions in excess of technology-based limits and sufficiently demonstrated through properly signed, contemporaneous operating logs, excess emissions logs, or other relevant evidence that an emergency caused the excess emissions and that all causes of the emergency were identified.~~

~~(2) Whether notification occurred immediately pursuant to OAR 340-214-0330(1)(a), (2), or (3).~~

~~(3) Whether the Department was furnished with complete details of the event, including, but not limited to:~~

~~(a) The date and time of the beginning of the excess emissions event and the duration or best estimate of the time until return to normal operation;~~

~~(b) The equipment involved;~~

~~(c) Steps taken to mitigate emissions and corrective actions taken; and~~

~~(d) The magnitude and duration of each occurrence of excess emissions during the course of an event and the increase over normal rates or concentrations as determined by continuous monitoring or a best estimate (supported by operating data and calculations).~~

~~(24) Whether during the period of the excess emissions event the owner or operator took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other permit requirements.~~

~~(35) Whether the owner or operator took the appropriate remedial action.~~

~~(46) Whether the event was due to the owner's or operator's negligent or intentional operation. For the Department to find that an incident of excess emissions was not due to the owner's or operator's negligent or intentional operation, the Department may ask the owner or operator to demonstrate that all of the following conditions were met:~~

~~(a) The process or handling equipment and the air pollution control equipment were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;~~

~~(b) Repairs or corrections were made in an expeditious manner when the owner or operator knew or should have known that emission limits were being or were likely to be exceeded. "Expeditious manner" may include activities such as use of overtime labor or contract labor and equipment that would reduce the amount and duration of excess emissions;~~

~~(c) The event was not one in a recurring pattern of incidents that indicate inadequate design, operation, or maintenance.~~

(5) Whether the owner or operator was following procedures approved in OAR 340-214-0310 or OAR 340-214-0320 at the time of the excess emissions.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0380; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1450; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-214-0360

Emergency as an Affirmative Defense

(1) An emergency constitutes an affirmative defense to penalty enforcement actions due to noncompliance with technology-based emission limits if the owner or operator source meets criteria specified in OAR 340-214-0350(1) through (6) and notifies the Department immediately of the emergency condition and demonstrates through properly signed, contemporaneous operating logs, excess emission logs, or other relevant evidence:

(a) that an emergency occurred and caused the excess emissions;

(b) the cause(s) of the emergency;

(c) the facility was at the time being properly operated;

(d) during the occurrence of the emergency, the owner or operator took all reasonable steps to minimize levels of excess emissions; and

(e) the notification to the Department contained a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(2) The person seeking to establish the occurrence of an emergency has the burden of proof by a preponderance of the evidence.

(3) This provision is in addition to any emergency or any other excess emissions provision contained in any applicable requirement.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1460; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

DIVISION 216

AIR CONTAMINANT DISCHARGE PERMITS

340-216-0020

Applicability

This division applies to all sources referred to in Table 1. This division also applies to Oregon Title V Operating Permit program sources when an ACDP is required by OAR 340-218-0020 or 340-224-0010.

(1) No person may construct, install, establish, develop or operate any air contaminant source which is referred to in Table 1 without first obtaining an Air Contaminant Discharge Permit (ACDP) from the Department or Regional Authority. No person may continue to operate an air contaminant source if the ACDP expires, or is terminated or revoked; except as provided in OAR 340-216-0082.

(a) For portable sources, a single permit may be issued for operating at any area of the state if the permit includes the requirements from both the Department and Regional Authorities.

(b) The Department or Regional Authority where the portable source's Corporate offices are located will be responsible for issuing the permit. If the corporate office of a portable source is located outside of the state, the Department will be responsible for issuing the permit.

(2) No person may construct, install, establish, or develop any source that will be subject to the Oregon Title V Operating Permit program without first obtaining an ACDP from the Department or Regional Authority.

(3) No person may modify any source that has been issued an ACDP without first complying with the requirements of OAR 340-210-0200~~5~~ through 340-210-0250.

(4) No person may modify any source required to have an ACDP such that the source becomes subject to the Oregon Title V Operating Permit program without complying with the requirements of OAR 340-210-0200~~5~~ through 340-210-0250.

(5) No person may increase emissions above the PSEL by more than the de minimis levels specified in OAR 340-200-0020 without first applying for and obtaining a modified ACDP.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-211~~00~~-0040.

[ED. NOTE: Tables referenced in this rule are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033; DEQ 125, f. & ef. 12-16-76; DEQ 20-1979, f. & ef. 6-29-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 13-1981, f. 5-6-81, ef. 7-1-81; DEQ 11-1983, f. & ef. 5-31-83; DEQ 3-1986, f. & ef. 2-12-86; DEQ 12-1987, f. & ef. 6-15-87; DEQ 27-1991, f. & cert. ef. 11-29-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0155; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 22-1994, f. & cert. ef. 10-4-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1720; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2002, f. & cert. ef. 3-14-02

340-216-0056

Basic ACDPs

(1) Application requirements. Any person requesting a Basic ACDP must submit an application in accordance with OAR 340-216-0040 and provide the information specified in OAR 340-216-0040(1).

(2) Fees. Applicants for a new Basic ACDP must pay the fees set forth in Table 2 of 340-216-0020.

(3) Permit content:

(a) A Basic ACDP contains only the most significant and relevant rules applicable to the source;

(b) A Basic ACDP does not contain a PSEL;

(c) A Basic ACDP requires a simplified annual report be submitted to the Department; and

(d) A Basic ACDP may be issued for a period not to exceed ten years.

(4) Permit issuance procedures. A Basic ACDP requires public notice in accordance with OAR 340 division 209 for Category I permit actions.

[ED. NOTE: The Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

General Air Contaminant Discharge Permits

(1) Applicability.

(a) The Commission may issue a General ACDP under the following circumstances:

(A) There are several sources that involve the same or substantially similar types of operations;

(B) All requirements applicable to the sources can be contained in a General ACDP;

(C) The emission limitations, monitoring, recordkeeping, reporting and other enforceable conditions are the same for all sources covered by the General ACDP; and

(D) The pollutants emitted are of the same type for all covered sources.

(b) Permit content. Each General ACDP must include the following:

(A) All relevant requirements;

(B) Generic PSELS for all pollutants emitted at more than the de minimis level in accordance with OAR 340, division 222;

(C) Testing, monitoring, recordkeeping, and reporting requirements necessary to ensure compliance with the PSEL and other applicable emissions limits and standards; and

(D) A permit duration not to exceed 10 years.

(c) Permit issuance procedures: A General ACDP requires public notice and opportunity for comment in accordance with ORS 183.325 to 183.410. All General ACDPs are on file and available for review at the Department's headquarters.

(2) Source assignment:

(a) Application requirements. Any person requesting that a source be assigned to a General ACDP must submit a written application in accordance with OAR 340-216-0040 that includes the information in OAR 340-216-0040(1), specifies the General ACDP source category, and shows that the source qualifies for the General ACDP.

(b) Fees. Applicants must pay the fees set forth in Table 2 of OAR 340-216-0020.

(c) Source assignment procedures:

(A) Assignment of a source to a General ACDP is a Category I permit action and is subject to the Category I public notice requirements in accordance with OAR 340, division 209.

(B) A person is not a permittee under the General ACDP until the Department assigns the General ACDP to the person.

(C) Assignments to General ACDPs terminate when the General ACDP expires or is modified, terminated or revoked.

(3) Commission Initiated Modification. If the Commission determines that the conditions have changed such that a General ACDP for a category needs to be modified, the Commission may issue a new General ACDP for that category and the Department may assign all existing General ACDP permit holders to the new General ACDP.

(4) Rescission. In addition to OAR 340-216-0082 (Termination or Revocation of an ACDP), the Department may rescind an individual source's assignment to a General ACDP if the source no longer meets the requirements of this rule or the conditions of the permit, including, but not limited to the source having an ongoing, reoccurring or serious compliance problem. Upon rescinding a source's assignment to a General ACDP the Department will place the source on a Simple or Standard ACDP. The Commission may also revoke a General ACDP if conditions, standards or rules have changed so the permit no longer meets the requirements of this rule.

(5) General ACDPs adopted by reference. The following General ACDPs are adopted by this reference and incorporated herein:

- (a) AQGP-001, Hard chrome platers (February 3, 2006)³;
- (b) AQGP-002, Decorative chrome platers (February 3, 2006)²;
- (c) AQGP-003, Halogenated solvent degreasers -- batch cold (August 10, 2001)²;
- (d) AQGP-004, Halogenated solvent degreasers -- batch vapor and in-line (August 10, 2001)²;
- (e) AQGP-005, Halogenated solvent degreasers -- batch cold, batch vapor, and in-line (August 10, 2001)²;
- (f) AQGP-006, Dry cleaners (August 10, 2001)¹;
- (g) AQGP-007, Asphalt plants (~~August 10, 2001~~ October 18, 2007)³;
- (h) AQGP-008, Rock crushers (~~August 10, 2001~~ October 18, 2007)²;
- (i) AQGP-009, Ready-mix concrete (~~August 10, 2001~~ October 18, 2007)¹;
- (j) AQGP-010, Sawmills, planing mills, millwork, plywood manufacturing and veneer drying (~~August 10, 2001~~ October 18, 2007)³;
- (k) AQGP-011, Boilers (~~August 10, 2001~~ October 18, 2007)²;

- (l) AQGP-012, Crematories (August 10, 2001¹October 18, 2007)¹;
- (m) AQGP-013, Grain elevators (August 10, 2001)¹;
- (n) AQGP-014, Prepared feeds, flour, and cereal (August 10, 2001)¹;
- (o) AQGP-015, Seed cleaning (August 10, 2001)¹;
- (p) AQGP-016, Coffee roasters (August 10, 2001)¹;
- (q) AQGP-017, Bulk gasoline plants (August 10, 2001)¹;
- (r) AQGP-018, Electric power generators (August 10, 2001)².

NOTES: ¹ The referenced General ACDPs specify that they are Fee Class One under OAR 340-216-0020, Table 2. ² The referenced General ACDPs specify that they are Fee Class Two under OAR 340-216-0020, Table 2. ³ The referenced General ACDPs specify that they are Fee Class Three under OAR 340-216-0020, Table 2.

NOTE: Except for OAR 340-216-0060(5), this rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

[ED. NOTE: Tables referenced in this rule are available from the agency.]

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1725; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 10-2001, f. & cert. ef. 8-30-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 2-2006, f. & cert. ef. 3-14-06

340-216-0082

Expiration, Termination or Revocation of an ACDP

(1) Expiration.

(a) A source may not be operated after the expiration date of a permit, unless any of the following occur prior to the expiration date of the permit:

(A) a timely and complete application for renewal or for an Oregon Title V Operating Permit has been submitted; or

(B) another type of permit (ACDP or Oregon Title V Operating Permit) has been issued authorizing operation of the source.

(b) For a source operating under an ACDP or Oregon Title V Operating Permit, a requirement established in an earlier ACDP remains in effect notwithstanding expiration

of the ACDP, unless the provision expires by its terms or unless the provision is modified or terminated according to the procedures used to establish the requirement initially.

(~~2~~) Automatic Termination. A permit is automatically terminated upon:

(a) Issuance of a renewal or -new permitACDP for the same activity or operation;

(b) Written request of the permittee, if the Department determines that a permit is no longer required;

(c) Failure to submit a timely application for permit renewal. Termination is effective on the permit expiration date; or

(d) Failure to pay annual fees within 90 days of invoice by the Department, unless prior arrangements for payment have been approved in writing by the Department.

(~~23~~) Reinstatement of Terminated Permit: A permit automatically terminated under 340-216-0082(~~2~~)(b) through (~~2~~)(d) may only be reinstated by the permittee by applying for a new permit, including the applicable new source permit application fees as set forth in this Division.

(~~34~~) Revocation:

(a) If the Department determines that a permittee is in noncompliance with the terms of the permit, submitted false information in the application or other required documentation, or is in violation of any applicable rule or statute, the Department may revoke the permit. Notice of the intent to revoke the permit will be provided to the permittee in accordance with OAR 340-011-0525097. The notice will include the reasons why the permit will be revoked, and include an opportunity for hearing prior to the revocation. A written request for hearing must be received within 60 days from service of the notice, and must state the grounds of the request. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR chapter 340 division 011. The permit will continue in effect until the 60 days expires, or until a final order is issued if an appeal is filed, whichever is later.

(b) If the Department finds there is a serious danger to the public health, safety or the environment caused by a permittee's activities, the Department may immediately revoke or refuse to renew the permit without prior notice or opportunity for a hearing. If no advance notice is provided, notification will be provided to the permittee as soon as possible as provided in OAR 340-011-0525097. The notification will set forth the specific reasons for the revocation or refusal to renew. For the permittee to contest the Department's revocation or refusal to renew the Department must receive a written request for a hearing within 90 days of service of the notice and the request must state the grounds for the request. The hearing will be conducted as a contested case hearing in accordance with ORS 183.413 through 183.470 and OAR chapter 340, division 011. The revocation or refusal to renew becomes final without further action by the Department if a request for a hearing is not received within the 90 days.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A

Hist.: DEQ 42, f. 4-5-72, ef. 4-15-72; DEQ 125, f. & ef. 12-16-76; DEQ 21-1990, f. & cert. ef. 7-6-90; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01, Renumbered from 340-014-0015 & 340-014-0045

Division 216 (OAR 340-216-0020) Table 1

Part A: Activities and Sources

The following commercial and industrial sources must obtain a Basic ACDP under the procedures set forth in 340-216-0056 unless the source is required to obtain a different form of ACDP by Part B or C hereof: (Production and emission parameters are based on the latest consecutive 12 month period, or future projected operation, whichever is higher. Emission cutoffs are based on actual emissions.)

1. ** Autobody Repair or Painting Shops painting more than 25 automobiles in a year.
2. Natural Gas and Propane Fired Boilers (with or without #2 diesel oil back-up(a)) of 10 or more MMBTU but less than 30 MMBTU/hr heat input constructed after June 9, 1989.
3. Bakeries, Commercial baking more than 500 tons of dough per year.
4. * Cereal Preparations and Associated Grain Elevators more than 2,000 but less than 10,000 tons per year throughput.
5. Coffee Roasters roasting more than 6 tons coffee beans in a year, but less than 30 tons/yr.
6. 3. Concrete Manufacturing including Redimix and CTB more than 5,000 but less than 25,000 cubic yards per year output.
7. 4. Crematory and Pathological Waste Incinerators with less than 20 tons/yr. material input.
8. * Flour, Blended and/or Prepared and Associated Grain Elevators more than 2,000 but less than 10,000 tons per year throughput.
9. * Grain Elevators used for intermediate storage more than 1,000 but less than 10,000 tons/yr. throughput.
10. Gray iron and steel foundries, malleable iron foundries, steel investment foundries, steel foundries more than one ton/yr. but less than 100 tons/yr. metal charged (not elsewhere identified).
11. Millwork (including kitchen cabinets and structural wood members) more than 5,000 but less than 25,000 bd. ft./maximum 8 hour input.
12. Non-Ferrous Metal Foundries more than one ton/yr. but less than 100 tons/yr. of metal charged.
13. Pesticide Manufacturing more than 1,000 tons/yr. but less than 5,000 tons/yr.
14. 5. Prepared feeds for animals and fowl and associated grain elevators more than 1,000 tons/yr. but less than 10,000 tons per year throughput.
15. 6. Rock, Concrete or Asphalt Crushing both portable and stationary more than 5,000 tons/yr. but less than 25,000 tons/yr. crushed.
16. Sawmills and/or Planing Mills more than 5,000 but less than 25,000 bd. ft./maximum 8 hour finished product.
17. * Seed Cleaning and Associated Grain Elevators more than 1,000 but less than 5000 tons per year throughput, if particulate emission equal or exceed 1/2 ton/yr. (sources in this Basic permit category that have less than 1/2 ton of PM emissions are not required to have an ACDP).
18. 7. Surface coating operations whose actual or expected usage of coating materials is greater than 250 gallons per month, excluding sources that exclusively use non-VOC and non-HAP containing coatings (e.g. powder coating operations).
19. Wood Furniture and Fixtures more than 5,000 but less than 25,000 bd. ft./maximum 8 hour input.

Part B: Activities and Sources

The following commercial and industrial sources must obtain either:

- a General ACDP, if one is available for the source classification and the source qualifies for a General ACDP under the procedures set forth in 340-216-0060;
 - a Simple ACDP under the procedures set forth in 340-216-0064; or
 - a Standard ACDP under the procedures set forth in 340-216-0066 if the source fits one of the criteria of Part C hereof.
1. Aerospace or Aerospace Parts Manufacturing
 2. Aluminum Production - Primary
 3. Ammonia Manufacturing
 4. Animal Rendering and Animal Reduction Facilities
 5. Asphalt Blowing Plants
 6. Asphalt Felts or Coating
 7. Asphaltic Concrete Paving Plants both stationary and portable
 8. Bakeries, Commercial over 10 tons of VOC emissions per year
 9. Battery Separator Manufacturing
 10. Battery Manufacturing and Re-manufacturing
 11. Beet Sugar Manufacturing
 12. Boilers and other Fuel Burning Equipment over 10 MMBTU/hr. heat input, except exclusively Natural Gas and Propane fired units (with or without #2 diesel backup) under 30 MMBTU/hr. heat input
 13. Building paper and Buildingboard Mills
 14. Calcium Carbide Manufacturing
 15. *** Can or Drum Coating
 16. Cement Manufacturing
 17. * Cereal Preparations and Associated Grain Elevators 10,000 or more tons/yr. throughput
 18. Charcoal Manufacturing
 19. Chlorine and Alkalies Manufacturing
 20. Chrome Plating
 21. Coffee Roasting (roasting 30 or more tons per year)
 22. Concrete Manufacturing including Redimix and CTB 25,000 or more cubic yards per year output
 23. Crematory and Pathological Waste Incinerators 20 or more tons/yr. material input
 24. Degreasers (halogenated solvents subject to a NESHAP)
 25. Electrical Power Generation from combustion (excluding units used exclusively as emergency generators)
 26. Ethylene Oxide Sterilization
 27. *** Flatwood Coating regulated by Division 232
 28. *** Flexographic or Rotogravure Printing subject to RACT
 29. * Flour, Blended and/or Prepared and Associated Grain Elevators 10,000 or more tons/yr. throughput
 30. Galvanizing and Pipe Coating (except galvanizing operations that use less than 100 tons of zinc/yr.)
 31. *** Gasoline Plants and Bulk Terminals subject to OAR 232
 32. Gasoline Terminals
 33. Glass and Glass Container Manufacturing
 34. * Grain Elevators used for intermediate storage 10,000 or more tons/yr. throughput
 35. Grain terminal elevators
 36. Gray iron and steel foundries, malleable iron foundries, steel investment foundries, steel foundries 100 or more tons/yr. metal charged (not elsewhere identified)
 37. Gypsum Products Manufacturing
 38. Hardboard Manufacturing (including fiberboard)
 39. Incinerators with two or more ton per day capacity

40. Lime Manufacturing
41. *** Liquid Storage Tanks subject to OAR Division 232
42. Magnetic Tape Manufacturing
43. Manufactured and Mobile Home Manufacturing
44. Marine Vessel Petroleum Loading and Unloading
45. Millwork (including kitchen cabinets and structural wood members) 25,000 or more bd. ft./maximum 8 hr. input
46. Molded Container
47. Motor Coach Manufacturing
48. Natural Gas and Oil Production and Processing and associated fuel burning equipment
49. Nitric Acid Manufacturing
50. Non-Ferrous Metal Foundries 100 or more tons/yr. of metal charged
51. Organic or Inorganic Chemical Manufacturing and Distribution with ½ or more tons per year emissions of any one criteria pollutant (sources in this category with less than ½ ton/yr. of each criteria pollutant are not required to have an ACDP)
52. *** Paper or other Substrate Coating
53. Particleboard Manufacturing (including strandboard, flakeboard, and waferboard)
54. Perchloroethylene dry cleaners that do not submit a complete Dry Cleaner Annual Hazardous Waste and Air Compliance Report by June 1 of any given year
55. Pesticide Manufacturing 5,000 or more tons/yr. annual production
56. Petroleum Refining and Re-refining of Lubricating Oils and Greases including Asphalt Production by Distillation and the reprocessing of oils and/or solvents for fuels
57. Plywood Manufacturing and/or Veneer Drying
58. Prepared feeds for animals and fowl and associated grain elevators 10,000 or more tons per year throughput
59. Primary Smelting and/or Refining of Ferrous and Non-Ferrous Metals
60. Pulp, Paper and Paperboard Mills
61. Rock, Concrete or Asphalt Crushing both portable and stationary 25,000 or more tons/yr. crushed
62. Sawmills and/or Planing Mills 25,000 or more bd. ft./maximum 8 hr. finished product
63. Secondary Smelting and/or Refining of Ferrous and Non-Ferrous Metals
64. * Seed Cleaning and Associated Grain Elevators 5,000 or more tons/yr. throughput
65. Sewage Treatment Facilities employing internal combustion for digester gasses
66. Soil Remediation Facilities stationary or portable
67. Steel Works, Rolling and Finishing Mills
68. *** Surface Coating in Manufacturing subject to RACT
69. Surface Coating Operations with actual emissions of VOCs before add on controls of 10 or more tons/yr.
70. Synthetic Resin Manufacturing
71. Tire Manufacturing
72. Wood Furniture and Fixtures 25,000 or more bd. ft./maximum 8 hr. input
73. Wood Preserving (excluding waterborne)
74. All Other Sources not listed herein that the Department determines an air quality concern exists or one which would emit significant malodorous emissions
75. All Other Sources not listed herein which would have actual emissions, if the source were to operate uncontrolled, of 5 or more tons a year of PM10 if located in a PM10 non-attainment or maintenance area, or 10 or more tons of any single criteria pollutant in any part of the state

Part C: Activities and Sources

The following sources must obtain a Standard ACDP under the procedures set forth in 340-216-0066:

1. Incinerators for PCBs and / or other hazardous wastes
2. All Sources that the Department determines have emissions that constitute a nuisance

3. All Sources electing to maintain the source's baseline emission rate, or netting basis
4. All Sources subject to a RACT, BACT, LAER, NESHAP, NSPS, State MACT, or other significant Air Quality regulation(s), except:
 - a. Source categories for which a General ACDP has been issued, and
 - b. Sources with less than 10 tons/yr. actual emissions that are subject to RACT, NSPS or a NESHAP which qualify for a Simple ACDP
5. All Sources having the Potential to Emit more than 100 tons of any regulated air contaminant in a year
6. All Sources having the Potential to Emit more than 10 tons of a single hazardous air pollutant in a year
7. All Sources having the Potential to Emit more than 25 tons of all hazardous air pollutants combined in a year

Notes:

* Applies only to Special Control Areas

** Portland AQMA only

*** Portland AQMA, Medford-Ashland AQMA or Salem SKATS only

(a) "back-up" means less than 10,000 gallons of fuel per year

DIVISION 218

OREGON TITLE V OPERATING PERMITS

340-218-0010

Policy and Purpose

These rules establish a program to implement Title V of the FCAA for the State of Oregon as part of the overall industrial source control program:

(1) All sources subject to this division shall have an Oregon Title V Operating Permit that assures compliance by the source with all applicable requirements in effect as of the date of permit issuance.

(2) The requirements of the Oregon Title V Operating Permit program, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to the permitting of affected sources under the national acid rain program, except as provided herein.

(3) All sources subject to this division are exempt from the following:

(a) Registration as required by ORS 468A.050 and OAR 340-210-0100 through 340-210-0120; and

(b) Air Contaminant Discharge Permits, OAR 340 division 216, unless required by OAR 340-216-0020 sections (2) or (4), or OAR 340-224-0010(1).

(A) Oregon Title V Operating Permits do not replace requirements in Air Contaminant Discharge Permits issued to the source even if the ACDP(s) have expired. For a source operating under a Title V Permit, requirements established in an earlier ACDP remain in effect notwithstanding expiration of the ACDP or the Title V permit, unless a provision expires by its terms or unless a provision is modified or terminated following the procedures used to establish the requirement initially.

(B) Source specific requirements, including, but not limited to TACT, RACT, BACT, and LAER requirements, established in an ACDP must be incorporated into the Oregon Title V Operating Permit and any revisions to those requirements must follow the procedures used to establish the requirements initially.

(4) Subject to the requirements in this Division, the Lane Regional Air Protection~~ion~~ Agency~~authority~~ is designated by the Commission as the permitting agency to implement the Oregon Title V Operating Permit program within its area of jurisdiction. The Regional Agency~~authority~~'s program is subject to Department oversight. The requirements

and procedures contained in this Division pertaining to the Oregon Title V Operating Permit program shall be used by the Regional Agency~~authority~~ to implement its permitting program until the Regional Agency~~authority~~ adopts superseding rules which are at least as restrictive as state rules.

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2100; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-218-0020

Applicability

(1) Except as provided in Section (4) of this rule, this division applies to the following sources:

(a) Any major source;

(b) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the FCAA;

(c) Any source, including an area source, subject to a standard or other requirement under section 112 of the FCAA, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the FCAA;

(d) Any affected source under Title IV; and

(e) Any source in a source category designated by the Commission pursuant to this rule.

(2) The owner or operator of a source with an Oregon Title V Operating Permit whose potential to emit later falls below the emission level that causes it to be a major source, and which is not otherwise required to have an Oregon Title V Operating Permit, may submit a request for revocation of the Oregon Title V Operating Permit. Granting of the request for revocation does not relieve the source from compliance with all applicable requirements or ACDP requirements.

(3) Synthetic minor sources.

(a) A source which would otherwise be a major source subject to this division may choose to become a synthetic minor source by limiting its emissions below the emission level that causes it to be a major source through limits contained in an ACDP issued by the Department under 340 division 216.

(b) The reporting and monitoring requirements of the emission limiting conditions contained in the ACDPs of synthetic minor sources issued by the Department under 340

division 216 must meet the requirements of OAR 340-212-0120 through 340-212-0150 and OAR 340 division 214.

(c) Synthetic minor sources who request to increase their potential to emit above the major source emission rate thresholds will become subject to this division and must submit a permit application under OAR 340-218-0040 and obtain an Oregon Title V Operating Permit before increasing emissions above the major source emission rate thresholds.

(d) Synthetic minor sources that exceed the limitations on potential to emit are in violation of OAR 340-218-0020(1)(a).

(4) Source category exemptions.

~~(a) The following source categories~~ All sources listed in 340-218-0020(1) that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the FCAA are not required to obtain a Title V permit, except non-major sources subject to a standard under section 111 or section 112 of the FCAA promulgated after July 21, 1992 are required to obtain a Title V permit unless specifically exempted from the requirement to obtain a Title V permit in section 111 or 112 standards.

~~(b) The following source categories~~ are exempted from the obligation to obtain an Oregon Title V Operating Permit:

~~(A) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 60, Subpart AAA -- Standards of Performance for New Residential Wood Heaters; and~~

~~(B) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 61, Subpart M -- National Emission Standard for Hazardous Air Pollutants for Asbestos, section 61.145, Standard for Demolition and Renovation; and~~

~~(C) All sources that are not major sources, provided the sources are not:~~

~~(i) Affected sources;~~

~~(ii) Solid waste incineration units required to obtain a permit pursuant to section 129(e) of the FCAA; or~~

~~(iii) Specifically required to obtain an Oregon Title V Operating Permit by a rule adopted in OAR 340 divisions 230 or 244.~~

~~(cb) Any source listed in OAR 340-218-0020(1) exempt from the requirement to obtain a permit under this rule may opt to apply for an Oregon Title V Operating Permit.~~

(5) Emissions units and Oregon Title V Operating Permit program sources. The Department will include in the permit all applicable requirements for all relevant emissions units in the Oregon Title V Operating Permit source, including any equipment used to support the major industrial group at the site.

(6) Fugitive emissions. Fugitive emissions from an Oregon Title V Operating Permit program source must be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(7) Insignificant activity emissions. All emissions from insignificant activities, including categorically insignificant activities and aggregate insignificant emissions, shall be included in the determination of the applicability of any requirement.

(8) Oregon Title V Operating Permit program sources that are required to obtain an ACDP, OAR 340 division 216, or a Notice of Approval, OAR 340-210-0200~~5~~ through 340-210-0250, because of a Title I modification, must operate in compliance with the Oregon Title V Operating Permit until the Oregon Title V Operating Permit is revised to incorporate the ACDP or the Notice of Approval for the Title I modification.

[Publications: The publication(s) referenced in this rule is available from the agency.]

Stat. Auth.: ORS 468.020, ORS 468.065, ORS 468A.040 & ORS 468A.310

Stats. Implemented: ORS 468.020, ORS 468.065, ORS 468A.025 & ORS 468A.310

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 24-1995, f. & cert. ef. 10-11-95; DEQ 1-1997, f. & cert. ef. 1-21-97; DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2110; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-218-0040

Permit Applications

(1) Duty to apply. For each Oregon Title V Operating Permit program source, the owner or operator must submit a timely and complete permit application in accordance with this rule:

(a) Timely application:

(A) A timely application for a source that is in operation as of the effective date of the Oregon Title V Operating Permit program is one that is submitted 12 months after the effective date of the Oregon Title V Operating Permit program in Oregon or on or before such earlier date as the Department may establish. If an earlier date is established, the Department will provide at least six (6) months for the owner or operator to prepare an application. A timely application for a source that is not in operation or that is not subject to the Oregon Title V Operating Permit program as of the effective date of the Oregon

Title V Operating Permit program is one that is submitted within 12 months after the source becomes subject to the Oregon Title V Operating Permit program.

(B) Any Oregon Title V Operating Permit program source required to have obtained a permit prior to construction under the ACDP program, OAR 340 division 216; New Source Review program, OAR 340 division 224; or the Notice of Construction and Approval of Plans rules, OAR 340-210-02005 through 340-210-0250, must file a complete application to obtain the Oregon Title V Operating Permit or permit revision within 12 months after commencing operation. Commencing operation will be considered initial startup. Where an existing Oregon Title V Operating Permit would prohibit such construction or change in operation, the owner or operator must obtain a permit revision before commencing operation;

(C) Any Oregon Title V Operating Permit program source owner or operator must follow the appropriate procedures under this division prior to commencement of operation of a source permitted under the Notice of Construction and Approval of Plans rules, OAR 340-210-02005 through 340-0210-0250;

(D) For purposes of permit renewal, a timely application is one that is submitted at least 12 months prior to the date of permit expiration, or such other longer time as may be approved by the Department that ensures that the term of the permit will not expire before the permit is renewed. If more than 12 months is required to process a permit renewal application, the Department will provide no less than six (6) months for the owner or operator to prepare an application. In no event will this time be greater than 18 months;

(E) Applications for initial phase II acid rain permits shall be submitted to the Department by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides;

(F) Applications for Compliance Extensions for Early Reductions of HAP must be submitted before proposal of an applicable emissions standard issued under section 112(d) of the FCAA and shall be in accordance with provisions prescribed in OAR 340-244-0100 through 340-244-0180.

(b) Complete application:

(A) To be deemed complete, an application must provide all information required pursuant to section (3) of this rule, except applications for permit renewal only need to include information that has changed since issuance of the last permit and applications for permit revision only or renewal need to include supply such information only if it is related to proposed changes. The application must include ~~three~~ ~~four~~ ~~(4)~~ ~~(3)~~ copies of all required forms and exhibits in hard copy and one (1) copy in electronic format as specified by the Department. Applications for permit revision need to supply information required under section (3) of this rule only if it is related to the proposed change. Information required under section (3) of this rule must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A

responsible official must certify the submitted information is in accordance with section (5) of this rule;

(B) Applications which are obviously incomplete, unsigned, or which do not contain the required exhibits, clearly identified, will not be accepted by the Department for filing and will be returned to the applicant for completion;

(C) If the Department determines that additional information is necessary before making a completeness determination, it may request such information in writing and set a reasonable deadline for a response. The application will not be considered complete for processing until the adequate information has been received. When the information in the application is deemed adequate, the applicant will be notified that the application is complete for processing;

(D) Unless the Department determines that an application is not complete within 60 days of receipt of the application, such application will be deemed to be complete, except as otherwise provided in OAR 340-218-0120(1)(e). If, while processing an application that has been determined or deemed to be complete, the Department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. If the additional information is not provided by the deadline specified, the application will be determined to be incomplete, and the application shield will cease to apply;

(E) Applications determined or deemed to be complete will be submitted by the Department to the EPA as required by OAR 340-218-0230(1)(a);

(F) The source's ability to operate without a permit, as set forth in 340-218-0120(2), will be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the Department.

(2) Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application must, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant must provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(3) Standard application form and required information. Applications must be submitted on forms and in electronic formats specified by the Department. Information as described below for each emissions unit at an Oregon Title V Operating Permit program source must be included in the application. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, including those requirements that apply to categorically insignificant activities, or to evaluate the fee amount required. The application must include the elements specified below:

(a) Identifying information, including company name and address, plant name and address if different from the company's name, owner's name and agent, and telephone number and names of plant site manager/contact;

(b) A description of the source's processes and products by **Standard Industrial Classification Code** including any associated with each alternative operating scenario identified by the owner or operator and related flow chart(s);

(c) The following emissions-related information for all requested alternative operating scenarios identified by the owner or operator:

(A) All emissions of pollutants for which the source is major, all emissions of regulated air pollutants and all emissions of pollutants listed in OAR 340-224-0040. A permit application must describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under section (3) of this rule. The Department may require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed;

(B) Identification and description of all points of emissions described in paragraph (3)(c)(A) of this rule in sufficient detail to establish the basis for fees and applicability of requirements of the FCAA and state rules;

(C) Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method and to establish PSELS for all regulated air pollutants except as restricted by OAR 340-222-0060 and OAR 340-222-0070:

(i) If a short term PSEL is required, an applicant may request that a period longer than daily be used for the short term PSEL provided that the requested period is consistent with the means for demonstrating compliance with any other applicable requirement and the PSEL requirement, and:

(I) The requested period is no longer than the shortest period of the Ambient Air Quality Standards for the pollutant or daily for VOC and NO_x; or

(II) The applicant demonstrates that the requested period, if longer than the shortest period of the Ambient Air Quality Standards for the pollutant, is the shortest period compatible with source operations but no longer than monthly.

(ii) The requirements of the applicable rules must be satisfied for any requested increase in PSELS, establishment of baseline emissions rates, requested emission reduction credit banking, or other PSEL changes.

(D) Additional information as determined to be necessary to establish any alternative emission limit in accordance with OAR 340-226-0400, if the permit applicant requests one;

(E) The application must include a list of all categorically insignificant activities and an estimate of all emissions of regulated air pollutants from those activities which are designated insignificant because of aggregate insignificant emissions. Owners or operators that use more than 100,000 pounds per year of a mixture that contains not greater than 1% by weight of any chemical or compound regulated under divisions 200 through 268 of this chapter, and not greater than 0.1% by weight of any carcinogen listed in the U.S. Department of Health and Human Service's Annual Report on Carcinogens must contact the supplier and manufacturer of the mixture to try and obtain information other than Material Safety Data Sheets in order to quantify emissions;

(F) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel sulfur content, fuel use, raw materials, production rates, and operating schedules;

(G) Any information on pollution prevention measures and cross-media impacts the owner or operator wants the Department to consider in determining applicable control requirements and evaluating compliance methods; and

(H) Where the operation or maintenance of air pollution control equipment and emission reduction processes can be adjusted or varied from the highest reasonable efficiency and effectiveness, information necessary for the Department to establish operational and maintenance requirements under OAR 340-226-0120(1) and (2);

(I) Identification and description of air pollution control equipment, including estimated efficiency of the control equipment, and compliance monitoring devices or activities;

(J) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the Oregon Title V Operating Permit program source;

(K) Other information required by any applicable requirement, including information related to stack height limitations developed pursuant to OAR 340-212-0130;

(L) Calculations on which the information in items (A) through (K) of this section is based.

(d) A plot plan showing the location of all emissions units identified by Universal Transverse Mercator or "UTM" as provided on United States Geological Survey maps and the nearest residential or commercial property;

(e) The following air pollution control requirements:

(A) Citation and description of all applicable requirements; and

(B) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(f) The following monitoring, recordkeeping, and reporting requirements:

- (A) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including OAR 340-212-0200 through 340-212-0280;
- (B) Proposed periodic monitoring to determine compliance where an applicable requirement does not require periodic testing or monitoring;
- (C) The proposed use, maintenance, and installation of monitoring equipment or methods, as necessary;
- (D) Documentation of the applicability of the proposed monitoring protocol, such as test data and engineering calculations;
- (E) Proposed consolidation of reporting requirements, where possible;
- (F) A proposed schedule of submittal of all reports; and
- (G) Other similar information as determined by the Department to be necessary to protect human health or the environment or to determine compliance with applicable requirements.
- (g) Other specific information that may be necessary to implement and enforce other applicable requirements of the FCAA or state rules or of this division or to determine the applicability of such requirements;
- (h) An explanation of any proposed exemptions from otherwise applicable requirements.
- (i) A copy of any existing permit attached as part of the permit application. Owners or operators may request that the Department make a determination that an existing permit term or condition is no longer applicable by supplying adequate information to support such a request. The existing permit term or condition will remain in effect unless or until the Department determines that the term or condition is no longer applicable by permit modification.
- (j) Additional information as determined to be necessary by the Department to define permit terms and conditions implementing off-permit changes for permit renewals;
- (k) Additional information as determined to be necessary by the Department to define permit terms and conditions implementing section 502(b)(10) changes for permit renewals;
- (l) Additional information as determined to be necessary by the Department to define permit terms and conditions implementing emissions trading under the PSEL including but not limited to proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable if the applicant requests such trading;
- (m) Additional information as determined to be necessary by the Department to define permit terms and conditions implementing emissions trading, to the extent that the

applicable requirements provide for trading without a case-by-case approval of each emissions trade if the applicant requests such trading;

(n) A compliance plan that contains all the following:

(A) A description of the compliance status of the source with respect to all applicable requirements.

(B) A description as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(C) A compliance schedule as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements;

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement;

(iii) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule will include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance and interim measures to be taken by the source to minimize the amount of excess emissions during the scheduled period. This compliance schedule must resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance must be supplemental to, and must not sanction noncompliance with, the applicable requirements on which it is based.

(D) A schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.

(E) The compliance plan content requirements specified in this section will apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the FCAA with

regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(o) Requirements for compliance certification, including the following:

(A) A certification of compliance with all applicable requirements by a responsible official consistent with section (5) of this rule and section 114(a)(3) of the FCAA;

(B) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(C) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Department; and

(D) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the FCAA or state rules.

(p) A Land Use Compatibility Statement (LUCS), if applicable, to assure that the type of land use and activities in conjunction with that use have been reviewed and approved by local government before a permit is processed and issued.

(q) The use of nationally standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the FCAA.

(r) For purposes of permit renewal, the owner or operator must submit all information as required in section (3) of this rule. The owner or operator may identify information in its previous permit or permit application for emissions units that should remain unchanged and for which no changes in applicable requirements have occurred and provide copies of the previous permit or permit application for ~~only~~ those emissions units.

(4) Quantifying Emissions:

(a) When quantifying emissions for purposes of a permit application, modification, or renewal an owner or operator must use the most representative data available or required in a permit condition. The Department will consider the following data collection methods as acceptable for determining air emissions:

(A) Continuous emissions monitoring system data obtained in accordance with the Department's **Continuous Monitoring Manual** (January, 1992);

(B) Source testing data obtained in accordance with the Department's **Source Sampling Manual** (January, 1992) except where material balance calculations are more accurate and more indicative of an emission unit's continuous operation than limited source test results (e.g. a volatile organic compound coating operation);

(C) Material balance calculations;

(D) Emission factors subject to Department review and approval; and

(E) Other methods and calculations subject to Department review and approval.

(b) When continuous monitoring or source test data has previously been submitted to and approved by the Department for a particular emissions unit, that information must be used for quantifying emissions. Material balance calculations may be used as the basis for quantifying emissions when continuous monitoring or source test data exists if it can be demonstrated that the results of material balance calculations are more indicative of actual emissions under normal continuous operating conditions. Emission factors or other methods may be used for calculating emissions when continuous monitoring data, source test data, or material balance data exists if the owner or operator can demonstrate that the existing data is not representative of actual operating conditions. When an owner or operator uses emission factors or other methods as the basis of calculating emissions, a brief justification for the validity of the emission factor or method must be submitted with the calculations. The Department will review the validity of the emission factor or method during the permit application review period. When an owner or operator collects emissions data that is more representative of actual operating conditions, either as required under a specific permit condition or for any other requirement imposed by the Department, the owner or operator must use that data for calculating emissions when applying for a permit modification or renewal. Nothing in this provision requires owners or operators to conduct monitoring or testing solely for the purpose of quantifying emissions for permit applications, modifications, or renewals.

(5) Any application form, report, or compliance certification submitted pursuant to this division must contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this division shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

[Publications: The publications referenced in this rule are available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 19-1993, f. & ef. 11-4-93; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2120; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-218-0050

Standard Permit Requirements

Each permit issued under this division must include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance:

(a) The permit must specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based;

(b) For sources regulated under the national acid rain program, the permit must state that, where an applicable requirement of the FCAA or state rules is more stringent than an applicable requirement of regulations promulgated under Title IV of the FCAA, both provisions must be incorporated into the permit and will be enforceable by the EPA;

(c) For any alternative emission limit established in accordance with OAR 340-226-0400, the permit must contain an equivalency determination and provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) Permit duration. The Department will issue permits for a fixed term of 5 years in the case of affected sources, and for a term not to exceed 5 years in the case of all other sources.

(3) Monitoring and related recordkeeping and reporting requirements:

(a) Each permit must contain the following requirements with respect to monitoring:

(A) A monitoring protocol to provide accurate and reliable data that:

(i) Is representative of actual source operation;

(ii) Is consistent with the averaging time in the permit emission limits;

(iii) Is consistent with monitoring requirements of other applicable requirements; and

(iv) Can be used for compliance certification and enforcement.

(B) All emissions monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including OAR 340-212-0200 through 340-212-0280 and any other procedures and methods that may be promulgated pursuant to sections 504(b) or 114(a)(3) of the FCAA. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(C) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to OAR 340-218-0050(3)(c). Such monitoring requirements must assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Continuous monitoring and source testing must be

conducted in accordance with the Department's **Continuous Monitoring Manual** (January, 1992) and the **Source Sampling Manual (January, 1992)**, respectively. Other monitoring must be conducted in accordance with Department approved procedures. The monitoring requirements may include but are not limited to any combination of the following:

- (i) Continuous emissions monitoring systems (CEMS);
- (ii) Continuous opacity monitoring systems (COMS);
- (iii) Continuous parameter monitoring systems (CPMS);
- (iv) Continuous flow rate monitoring systems (CFRMS);
- (v) Source testing;
- (vi) Material balance;
- (vii) Engineering calculations;
- (viii) Recordkeeping; or
- (ix) Fuel analysis; and

(D) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods;

(E) A condition that prohibits any person from knowingly rendering inaccurate any required monitoring device or method;

(F) Methods used to determine actual emissions for fee purposes must also be used for compliance determination and can be no less rigorous than the requirements of OAR 340-218-0080. For any assessable emission for which fees are paid on actual emissions, the compliance monitoring protocol must include the method used to determine the amount of actual emissions;

(G) Monitoring requirements must commence on the date of permit issuance unless otherwise specified in the permit.

(b) With respect to recordkeeping, the permit must incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(A) Records of required monitoring information that include the following:

- (i) The date, place as defined in the permit, and time of sampling or measurements;
- (ii) The date(s) analyses were performed;

- (iii) The company or entity that performed the analyses;
- (iv) The analytical techniques or methods used;
- (v) The results of such analyses;
- (vi) The operating conditions as existing at the time of sampling or measurement; and
- (vii) The records of quality assurance for continuous monitoring systems (including but not limited to quality control activities, audits, calibrations drifts).

(B) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit;

(C) Recordkeeping requirements must commence on the date of permit issuance unless otherwise specified in the permit.

(c) With respect to reporting, the permit must incorporate all applicable reporting requirements and require the following:

(A) Submittal of ~~four~~ ^{three} (3) copies of reports of any required monitoring at least every 6 months, completed on forms approved by the Department. Unless otherwise approved in writing by the Department, six month periods are January 1 to June 30, and July 1 to December 31. The reports required by this rule must be submitted within 30 days after the end of each reporting period, unless otherwise approved in writing by the Department. One copy of the report must be submitted to the EPA Air Quality Division, and two copies to the Department's regional office identified in the permit, and one copy to the EPA. All instances of deviations from permit requirements must be clearly identified in such reports:

(i) The semi-annual report will be due on July 30, unless otherwise approved in writing by the Department, and must include the semi-annual compliance certification, OAR 340-218-0080;

(ii) The annual report will be due on February 15, unless otherwise approved in writing by the Department, but may not be due later than March 15, and must consist of the annual reporting requirements as specified in the permit; the emission fee report; the emission statement, if applicable, OAR 340-214-0220; the ~~excess emissions upset log~~, OAR 214-0340; the annual certification that the risk management plan is being properly implemented, OAR 340-22418-023050; and the semi-annual compliance certification, OAR 340-218-0080.

(B) Prompt reporting of deviations from permit requirements that do not cause excess emissions, including those attributable to upset conditions, as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures

taken. "Prompt" means within ~~fifteen~~ seven (715) days of the deviation. Deviations that cause excess emissions, as specified in OAR 340-214-0300 through 340-214-0360 must be reported in accordance with OAR 340-214-0340;

(C) Submittal of any required source test report within 30 days after the source test unless otherwise approved in writing by the Department or specified in a permit;

(D) All required reports must be certified by a responsible official consistent with OAR 340-218-0040(5);

(E) Reporting requirements must commence on the date of permit issuance unless otherwise specified in the permit.

(d) The Department may incorporate more rigorous monitoring, recordkeeping, or reporting methods than required by applicable requirements in an Oregon Title V Operating Permit if they are contained in the permit application, are determined by the Department to be necessary to determine compliance with applicable requirements, or are needed to protect human health or the environment.

(4) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the FCAA or the regulations promulgated thereunder:

(a) No permit revision will be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement;

(b) No limit may be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement;

(c) Any such allowance must be accounted for according to the procedures established in regulations promulgated under Title IV of the FCAA.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Provisions stating the following:

(a) The permittee must comply with all conditions of the Oregon Title V Operating Permit. Any permit condition noncompliance constitutes a violation of the FCAA and state rules and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application;

(b) The need to halt or reduce activity will not be a defense. It will not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit;

(c) The permit may be modified, revoked, reopened and reissued, or terminated for cause as determined by the Department. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition;

(d) The permit does not convey any property rights of any sort, or any exclusive privilege;

(e) The permittee must furnish to the Department, within a reasonable time, any information that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee must also furnish to the Department copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the EPA along with a claim of confidentiality.

(7) A provision to ensure that an Oregon Title V Operating Permit program source pays fees to the Department consistent with the fee schedule.

(8) Terms and conditions for reasonably anticipated alternative operating scenarios identified by the owner or operator in its application as approved by the Department. Such terms and conditions:

(a) Must require the owner or operator, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(b) Must extend the permit shield described in OAR 340-218-0110 to all terms and conditions under each such alternative operating scenario; and

(c) Must ensure that the terms and conditions of each such alternative operating scenario meet all applicable requirements and the requirements of this division.

(9) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with the PSEs. Such terms and conditions:

(a) Must include all terms required under OAR 340-218-0050 and OAR 340-218-0080 to determine compliance;

(b) Must extend the permit shield described in OAR 340-218-0110 to all terms and conditions that allow such increases and decreases in emissions;

(c) Must ensure that the trades are quantifiable and enforceable;

(d) Must ensure that the trades are not Title I modifications;

(e) Must require a minimum 7-day advance, written notification to the Department and the EPA of the trade that must be attached to the Department's and the source's copy of the permit. The written notification must state when the change will occur and must describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit; and

(f) Must meet all applicable requirements and requirements of this division.

(10) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emission trade. Such terms and conditions:

(a) Must include all terms required under OAR 340-218-0050 and OAR 340-218-0080 to determine compliance;

(b) Must extend the permit shield described in OAR 340-218-0110 to all terms and conditions that allow such increases and decreases in emissions; and

(c) Must meet all applicable requirements and requirements of this division.

(11) Terms and conditions allowing for off-permit changes, OAR 340-218-0140(2).

(12) Terms and conditions allowing for section 502(b)(10) changes, OAR 340-218-0140(3).

[Publications: The publications referenced in this rule are available from the agency.]

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468.020 & ORS 468A.310

Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2130; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-218-0120

Permit Issuance

(1) Action on application:

(a) A permit, permit modification, or permit renewal may be issued only if all of the following conditions have been met:

(A) The Department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under OAR 340-218-0090;

(B) Except for modifications qualifying for minor permit modification procedures under OAR 340-218-0170, the Department has complied with the requirements for public participation under OAR 340-218-0210;

(C) The Department has complied with the requirements for notifying and responding to affected States under OAR 340-218-0230(2);

(D) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this division; and

(E) The EPA has received a copy of the proposed permit and any notices required under OAR 340-218-0230(1) and (2), and has not objected to issuance of the permit under OAR 340-218-0230(3) within the time period specified therein or such earlier time as agreed to with the Department if no changes were made to the draft permit.

(b) When a multiple-source permit includes air contaminant sources subject to the jurisdiction of the Department and the Regional Agency~~authority~~, the Department may require that it will be the permit issuing agency. In such cases, the Department and the Regional Authority will otherwise maintain and exercise all other aspects of their respective jurisdictions over the permittee;

(c) Denial of a Permit. If the Department proposes to deny issuance of a permit, permit renewal, permit modification, or permit amendment, it must notify the applicant by registered or certified mail of the intent to deny and the reasons for denial. The denial will become effective 60 days from the date of mailing of such notice unless within that time the applicant requests a hearing. Such a request for hearing must be made in writing to the Director and must state the grounds for the request. Any hearing held will be conducted pursuant to the applicable provisions of ORS Chapter 183;

(d) The Department or Lane Regional Air Pollution Agency~~authority~~ is the permitting authority for purposes of the 18 month requirement contained in 42 USC § 7661b(c) and this subsection. Except as provided under the initial transition plan or under regulations promulgated under Title IV of the FCAA or under this division for the permitting of affected sources under the national acid rain program, the Department will take final action on each permit application (including a request for permit modification or renewal) within 18 months after receiving a complete application. In the case of any complete permit application containing an early reductions demonstration pursuant to OAR 340-2424-0100, the Department will take final action within 9 months of receipt;

(e) The Department will promptly provide notice to the applicant of whether the application is complete. Unless the Department requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application will be deemed complete. For modifications processed through minor permit modification procedures, OAR 340-218-0170(2), the Department will not require a completeness determination;

(f) The Department will provide a review report that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or

regulatory provisions). The Department will send this report to the EPA and to any other person who requests it;

(g) The submittal of a complete application will not affect the requirement that any source have a Notice of Approval in accordance with OAR 340-210-0200 through 340-0210-0250 or a preconstruction permit in accordance with OAR 340 division 216 or OAR 340 division 224;

(h) Failure of the Department to take final action on a complete application or failure of the Department to take final action on an EPA objection to a proposed permit within the appropriate time will be considered to be a final order for purposes of ORS Chapter 183;

(i) If the final permit action being challenged is the Department's failure to take final action, a petition for judicial review may be filed any time before the Department denies the permit or issues the final permit.

(2) Requirement for a permit:

(a) Except as provided in OAR 340-218-0120(2)(b), OAR 340-218-0140(3), and OAR 340-218-0170(2)(d), no Oregon Title V Operating Permit program source may operate after the time that it is required to submit a timely and complete application after the effective date of the program, except in compliance with a permit issued under an Oregon Title V Operating Permit program;

(b) If an Oregon Title V Operating Permit program source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have an Oregon Title V Operating Permit is not a violation of this division until the Department takes final action on the permit application, except as noted in this rule. This protection will cease to apply if, subsequent to the completeness determination made pursuant to OAR 340-218-0120(1)(e), and as required by OAR 340-218-0040(1)(b), the applicant fails to submit by the deadline specified in writing by the Department any additional information identified as being needed to process the application. If the final permit action being challenged is the Department's failure to take final action, a petition for judicial review may be filed any time before the Department denies the permit or issues the final permit.

[Publications: The publications referenced in this rule are available from the agency.]

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2200; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-218-0150

Administrative Permit Amendments

(1) An "administrative permit amendment" is a permit revision that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of the responsible official(s) identified in the permit, or provides a similar minor administrative change at the source;

(c) Allows for a change in the name of the permittee;

(d) Allows for a change in ownership or operational control of a source where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department;

(e) Requires more frequent monitoring or reporting by the permittee;

(f) Allows for a change in the date for reporting or source testing requirements for extenuating circumstances a source or emissions unit that is temporarily shutdown or would otherwise have to be operated solely for the purposes of conducting the source test, except when required by a compliance schedule;

(g) Relaxes monitoring, reporting or recordkeeping due to a permanent source shutdown for only the emissions unit(s) being shutdown; or

(h) Incorporates into the Oregon Title V Operating Permit the requirements from preconstruction review permits authorized under OAR 340 division 224 or OAR 340-210-02005 through 340-0210-0250, provided that the procedural requirements followed in the preconstruction review are substantially equivalent to the requirements of OAR 340-218-0120 through 340-218-0210 and OAR 340-218-0230 that would be applicable to the change if it were subject to review as a permit modification, compliance requirements are substantially equivalent to those contained in OAR 340-218-0050 through 340-218-0110, and no changes in the construction or operation of the facility that would require a permit modification under OAR 340-218-0160 through 340-218-0180 have taken place;
or

~~(i) Corrects baseline or PSEs when more accurate emissions data is obtained but does not increase actual emissions.~~

(2) Administrative permit amendments for purposes of the national acid rain portion of the permit will be governed by regulations promulgated under Title IV of the FCAA.

(3) Administrative permit amendment procedures. An administrative permit amendment will be made by the Department consistent with the following:

- (a) The owner or operator must promptly submit an application for an administrative permit amendment upon becoming aware of the need for one on forms provided by the Department along with a copy of the draft amendment;
 - (b) The Department will take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this rule;
 - (c) The Department will issue the administrative permit amendment in the form of a permit addendum for only those conditions that will change;
 - (d) The Department will submit a copy of the permit addendum to the EPA;
 - (e) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request;
 - (f) If the source fails to comply with its draft permit terms and conditions upon submittal of the application and until the Department takes final action, the existing permit terms and conditions it seeks to modify may be enforced against it.
- (4) The Department must, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in OAR 340-218-0110 only for administrative permit amendments made pursuant to OAR 340-218-0150(1)(h) which meet the relevant requirements of OAR 340-218-0050 through 340-218-0240 for significant permit modifications.
- (5) If it becomes necessary for the Department to initiate an administrative amendment to the permit, the Department will notify the permittee of the intended action by certified or registered mail. The action will become effective 20 days after the date of mailing unless within that time the permittee makes a written request for a hearing. The request must state the grounds for the hearing. Any hearing held will be conducted pursuant to the applicable provisions of ORS Chapter 183.

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2230; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-218-0180

Significant Permit Modifications

- (1) Criteria. Significant modification procedures must be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Significant modifications must include:

(a) Increases in PSEs except those increases subject to OAR 340-210-02005 through 340-210-0250; OAR 340-218-0150(1)(i); or OAR 340 division 224;

(b) Every significant change in existing monitoring permit terms or conditions;

(c) Every relaxation of reporting or recordkeeping permit terms or conditions;

(d) Incorporation into the Oregon Title V Operating Permit the requirements from pre-construction review permits authorized under OAR 340 division 224 unless the incorporation qualifies as an administrative amendment;

(e) Incorporation into the Oregon Title V Operating Permit the requirements from preconstruction review permits authorized under OAR 340-210-2005 through 340-210-0250 unless otherwise specified in OAR 340-218-0190(2); and

(f) Nothing herein may be construed to preclude the permittee from making changes consistent with this division that would render existing permit compliance terms and conditions irrelevant.

(2) Significant permit modifications will be subject to all requirements of this division, including those for applications, public participation, review by affected States, and review by the EPA, as they apply to permit issuance and permit renewal.

(3) Major modifications, as defined in OAR 340-200-0020, require an ACDP under OAR 340 division 224.

(4) Constructed and reconstructed major hazardous air pollutant sources are subject to OAR 340 210-02005 through 340-210-0250 and OAR 340-244-0200.

Stat. Auth.: ORS 468.020 & ORS 468A.310

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2260; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-218-0190

Construction/Operation Modifications

(1) Notice of Approval. The owner or operator of a major stationary source must obtain approval from the Department prior to construction or modification of any stationary source or air pollution control equipment in accordance with OAR 340-210-02005 through OAR 340-210-0250.

(2) Incorporation into an Oregon Title V Operating Permit:

(a) Where an Oregon Title V Operating Permit would allow incorporation of such construction or modification as an off-permit change (OAR 340-218-0140(2)) or a FCAA section 502(b)(10) change (OAR 340-218-0140(3)):

(A) The owner or operator of the stationary source or air pollution control equipment listed in section (1) of this rule must submit to the Department the applicable notice; and

(B) The Department will incorporate the construction or modification at permit renewal, if applicable.

(b) Where an Oregon Title V Operating Permit would allow incorporation of such construction or modification as an administrative amendment (OAR 340-218-0150), the owner or operator of the stationary source or air pollution control equipment listed in section (1) of this rule may:

(A) Submit the permit application information required under OAR 340-218-0150(3) with the information required under OAR 340-210-0220(2) upon becoming aware of the need for an administrative amendment; and

(B) Request that the external review procedures required under OAR 340-218-0210 and OAR 340-218-0230 be used in addition to the public notice procedures of OAR 340 division 209 for Category III permit actions to allow for subsequent incorporation of the construction permit as an administrative amendment.

(c) Where an Oregon Title V Operating Permit would require incorporation of such construction or modification as a minor permit modification (OAR 340-218-0170) or a significant permit modification (OAR 340-218-0180), the owner or operator of the stationary source or air pollution control equipment listed in section (1) of this rule must submit the permit application information required under OAR 340-218-0040(3) within one year of initial startup of the construction or modification, except as prohibited in paragraph (2)(d) of this rule.

(d) Where an existing Oregon Title V Operating Permit would prohibit such construction or change in operation, the owner or operator must obtain a permit revision before commencing operation.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 24-1994, f. & ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2270; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

340-218-0250

Permit Program For Regional Air Protection Agency Authority

Subject to the provisions of this rule, the Commission authorizes the Regional Agency authority to issue, modify, renew, suspend, and revoke Oregon Title V Operating Permits for air contamination sources within its jurisdiction:

(1) Each permit proposed to be issued or modified by the Regional Agency authority must be submitted to the Department at least thirty (30) days prior to the proposed issuance date.

(2) A copy of each permit issued, modified, or revoked by the Regional Agency authority must be promptly submitted to the Department.

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468 & ORS 468A

Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0185; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-1790; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

DIVISION 228

REQUIREMENTS FOR FUEL BURNING EQUIPMENT AND FUEL SULFUR CONTENT

340-228-0020

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

- (1) "ASTM" means the American Society for Testing and Materials.
- (2) "Coastal Areas" means Clatsop, Tillamook, Lincoln, Coos, and Curry Counties and those portions of Douglas and Lane County west of Range 8 West, Willamette Meridian.
- (3) "Distillate Fuel Oil" means any oil meeting the specifications of ASTM Grade 1 or 2 fuel oils;
- (4) "Fuel burning equipment" means equipment, other than internal combustion engines, the principal purpose of which is to produce heat or power by indirect heat transfer.
- (5) "New source" means any air contaminant source installed, constructed, or modified:
 - (a) For purposes of OAR 340-228-0200, after January 1, 1972; and
 - (b) For purposes of OAR 340-228-0210, after June 1, 1970.
- ~~(6) "Particulate matter" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by an applicable reference method in accordance with OAR 340-212-0120 and OAR 340-212-0140. Sources with exhaust gases at or near ambient conditions may be tested with DEQ Method 5 or DEQ Method 8, as approved by the Department. Direct heat transfer sources shall be tested with DEQ Method 7; indirect heat transfer combustion sources and all other non-fugitive emissions sources not listed above shall be tested with DEQ Method 5 or an equivalent method approved by the Department;~~
- (67) "Residual Fuel Oil" means any oil meeting the specifications of ASTM Grade 4, 5, or 6 fuel oils.
- (78) "Standard conditions" means a temperature of 68° Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

(89) "Standard cubic foot" means the amount of gas that would occupy a volume of one cubic foot, if the gas were free of uncombined water at standard conditions. When applied to combustion flue gases from fuel or refuse burning, "standard cubic foot" also implies adjustment of gas volume to that which would result at a concentration of 12% carbon dioxide or 50% excess air.

[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.]

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468.020 & ORS 468A.025

Hist.: [DEQ 16, f. 6-12-70, ef. 7-11-70; DEQ 1-1984, f. & ef. 1-16-84; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 3-1996, f. & cert. ef. 1-29-96]; [DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93]; [DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93]; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-021-0005, 340-022-0005, 340-022-0050

General Emission Standards for Fuel Burning Equipment

340-228-0200

Sulfur Dioxide Standards

The following emission standards are applicable to new sources only:

(1) For fuel burning equipment having a heat input capacity between 150 million BTU per hour and 250 million BTU, no person may cause, suffer, allow, or permit the emission into the atmosphere of sulfur dioxide in excess of:

(a) 1.4 lb. per million BTU heat input, maximum ~~2~~three-hour average, when liquid fuel is burned;

(b) 1.6 lb. per million BTU heat input, maximum ~~2~~three-hour average, when solid fuel is burned.

(2) For fuel burning equipment having a heat input capacity of more than 250 million BTU per hour, no person may cause, suffer, allow, or permit the emission into the atmosphere of sulfur dioxide in excess of:

(a) 0.8 lb. per million BTU heat input, maximum ~~2~~three-hour average, when liquid fuel is burned;

(b) 1.2 lb. per million BTU heat input, maximum ~~2~~three-hour average, when solid fuel is burned.

[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 468 & ORS 468A

Stats. Implemented: ORS 468.020 & ORS 468A.025

Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-022-0055

340-228-0210

Grain Loading Standards

(1) No person shall cause, suffer, allow, or permit the emission of particulate matter, from any fuel burning equipment in excess of:

(a) 0.2 grains per standard cubic foot for existing sources;

(b) 0.1 grains per standard cubic foot for new sources.

(2) For sources burning salt laden wood waste on July 1, 1981, where salt in the fuel is the only reason for failure to comply with the above limits and when the salt in the fuel results from storage or transportation of logs in salt water, the resulting salt portion of the emissions shall be exempted from subsection (1)(a) or (b) of this rule and OAR 340-208-0110. In no case shall sources burning salt laden woodwaste exceed 0.6 grains per standard cubic foot.

(a) This exemption and the alternative emissions standard are only applicable upon prior notice to the Department.

(b) Sources which utilize this exemption, to demonstrate compliance otherwise with subsection (1)(a) or (b) of this rule, shall submit the results of a particulate emissions source test of the boiler stacks bi-annually.

[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.]

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468.020 & ORS 468A.025

Hist.: DEQ 16, f. 6-12-70, ef. 7-11-70; DEQ 12-1979, f. & ef. 6-8-79; DEQ 6-1981, f. & ef. 2-17-81; DEQ 18-1982, f. & ef. 9-1-82; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 3-1996, f. & cert. ef. 1-29-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-021-0020.

340-228-0672

Emission Caps

Beginning in calendar year 2018, the state's annual allowable mercury emissions from electric generating units shall apply as the following Hg Budget unit specific emission caps.

(1) Existing Boardman Hg Budget unit cap. The existing Hg Budget unit in Boardman shall emit no more than:

(a) 60 pounds of mercury in any calendar year in which there are no new Hg Budget units operated in Oregon.

(b) 35 pounds of mercury in any calendar year in which there are new Hg Budget units operated in Oregon.

(2) New Hg Budget units cap.

(a) New Hg Budget units, in aggregate, shall emit no more than:

(aA) 25 pounds of mercury in any calendar year in which the existing Hg Budget unit in Boardman is operated.

(bB) 60 pounds of mercury in any calendar year in which the existing Hg Budget unit in Boardman is not operated.

(b) The Hg designated representative of each new Hg Budget unit shall submit to the Department a request, in a format specified by the Department, to receive a portion of the new Hg Budget unit cap. The request may not be submitted until the new Hg Budget unit has received its Site Certification from the Facility Siting Council, or if the new Hg Budget unit is not required to obtain a Site Certificate, all governmental approvals necessary to commence construction.

~~(c) The Department will allocate the emission cap under subsection (2)(a) or (b) of this rule to each new Hg Budget unit in an amount determined by multiplying the total amount of Hg allowances allocated under subsection (2)(a) or (b) of this rule by the ratio of the design heat input of such Hg Budget unit to the total amount of design heat input of all such new Hg Budget units in the State and rounding to the nearest pound as appropriate.~~

(c) The Department will allocate the new Hg Budget unit cap in order of receipt of requests and, once allocated, the new Hg Budget unit shall be entitled to receive and equal allocation in future years unless the new Hg Budget unit permanently ceases operations.

(d) Each individual new Hg Budget unit shall emit no more than the lesser of:

(A) An amount of mercury determined by multiplying the design heat input in TBtu of such Hg Budget unit by 0.60 pounds per TBtu rounded to the nearest pound as appropriate, or

(B) The amount of the emission cap under (2)(a) or (b) less the amount of the emission cap under (2)(a) or (b) that has been allocated to other new Hg Budget units.

(3) Compliance demonstration. Each Hg Budget unit must demonstrate compliance with the applicable calendar year emission cap in sections (1) or (2) of this rule using a mercury CEMS or sorbent trap monitoring system.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0673

Monitoring Requirements for the Hg Emission Standards

(1) Requirements for installation, certification, and data accounting. The owners and operators of a Hg Budget unit must:

(a) Install all applicable monitoring systems required under OAR 340-228-0674 through 0678 for monitoring individual unit heat input and inlet Hg.

(b) Successfully complete certification tests under OAR 340-228-0660 and meet all other requirements of this rule, OAR 340-228-0660 through 0670, and 40 CFR part 75 subpart I for the monitoring systems under subsection (1)(a) of this rule.

(c) Record, report, and quality-assure the data from the monitoring systems under subsection (1)(a) of this rule.

(d) Reports and petitions required in subsections (1)(b) and (1)(c) of this rule must be submitted to the Department, not to the Administrator.

(2) Compliance deadlines. The owner or operator must meet the monitoring system certification and other requirements of subsections (1)(a) and (b) of this rule on or before the following dates. The owner or operator must record, report, and quality-assure the data from the monitoring systems under subsection (1)(a) of this rule on and after the following dates.

(a) Heat input. For monitoring systems used to monitor heat input in accordance with OAR ~~340-228-0674~~ 340-228-0671(+4)(a), if applicable, by the later of the following dates:

(A) July 1, 2012 or the date established under OAR 340-228-0671(3); or

(B) The date on which the unit commences commercial operation.

(b) Inlet Hg. If required to perform coal sampling and analysis in accordance with OAR 340-228-0611-0671(24)(ab)(A)(i) and 340-228-0676 or measure Hg emission prior to any control device(s) in accordance with OAR 340-228-0611-0671(24)(ab)(BA)(ii) and 340-228-0678, if applicable, by the later of the following dates:

(A) July 1, 2012 or the date established under OAR 340-228-0671(3); or

(B) The date on which the unit commences commercial operation.

(3) Reporting data.

(a) The owner or operator of a Hg Budget unit that does not meet the applicable compliance date set forth in section (2) of this rule for any monitoring system under subsection (1)(a) of this rule must, for each monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for heat input, inlet Hg, and any other parameters required to determine heat input and Hg inlet in accordance with OAR 340-228-0674 through 0678.

(b) On and after January 1, 2018, the owner or operator of a Hg Budget unit must submit to the Department quarterly reports of monthly and 12-month rolling average mercury emissions per trillion Btu of energy input and/or mercury capture efficiency, for each month in the calendar quarter.

(4) Prohibitions. No owner or operator of a Hg Budget unit shall disrupt any emission monitoring method, and thereby avoid monitoring and recording heat input, and/or inlet Hg, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this rule, OAR 340-228-0660 through 0670, and 40 CFR part 75 subpart I.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0674

Heat Input Determination

To demonstrate compliance with OAR 340-228-0611-0671(12) for each Hg Budget unit, the owner or operator of such Hg Budget unit must determine the heat input according to **40 CFR part 75, appendix F** (procedures 5 and 9).

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0676

Coal Sampling and Analysis

To demonstrate compliance with OAR 340-228-~~06110671~~(2) with coal sampling and analysis for each Hg Budget unit, the owner or operator of such Hg Budget unit must test its coal for mercury consistent with a coal sampling and analysis plan. The coal sampling and analysis plan must be consistent with the requirements of **40 CFR 63.7521**.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

340-228-0678

Hg Mass Emissions Measurement Prior to Any Control Device(s)

To demonstrate compliance with OAR 340-228-~~06110671~~(2) by measuring Hg mass emissions for each Hg Budget unit, the owner or operator of such Hg Budget unit must measure mercury emissions prior to any control device(s) according to **40 CFR part 75 subpart I** or **40 CFR 75.15**.

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025
Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06

DIVISION 230

INCINERATOR REGULATIONS

340-230-0020

Applicability

(1) OAR 340-230-01030 through 340-230-0150 apply to all solid and infectious waste incinerators other than:

(a) Municipal waste combustors, including those municipal waste combustors that burn some medical waste, that are subject to either OAR 340-238-0060, or 340-230-0300 through 340-230-0395; and

(b) Hospital/medical/infectious waste incinerators that are subject to OAR 340-230-0400 through 340-230-0410.

(2) OAR 340-230-0200 through 340-230-0230 apply to all new and existing crematory incinerators;

(3) OAR 340-230-0300 through 340-230-0395 apply to municipal waste combustors as specified in OAR 340-230-0300.

(4) OAR 340-230-0400 through 340-230-0410 apply to hospital/medical/infectious waste incinerators as specified in OAR 340-230-0400.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 14-1999, f. & cert. ef. 10-14-99,

Renumbered from 340-025-0852; DEQ 4-2003, f. & cert. ef. 2-06-03

340-230-0030

Definitions

The definitions in OAR 340-200-0020, 340-238-0040 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-238-0040, the definition in this rule applies to this division. Applicable definitions have the same meaning as those provided in 40 CFR 60.51c including, but not limited to:

(1) "Acid Gases" means any exhaust gas that includes hydrogen chloride and sulfur dioxide.

(2) "Air curtain incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of

that type can be constructed above or below ground and with or without refractory walls and floor.

(3) "Best Available Control Technology (BACT)" means an emission limitation as defined in OAR 340-200-0020.

(4) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 2004 edition.

(5) "Chemotherapeutic waste" means waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

(6) "Co-fired combustor" means a unit combusting hospital waste and/or medical/infectious waste with other fuels or wastes (e.g., coal, municipal solid waste) and subject to an enforceable requirement limiting the unit to combusting a fuel feed stream, 10 percent or less of the weight of which is comprised, in aggregate, of hospital waste and medical/infectious waste as measured on a calendar quarter basis. For purposes of this definition, pathological waste, chemotherapeutic waste, and low-level radioactive waste are considered "other" wastes when calculating the percentage of hospital waste and medical/infectious waste combusted.

(7) "Commercial and industrial solid waste incineration unit (CISWI) means any combustion device that combusts commercial and industrial waste, as defined in this subpart. The boundaries of a CISWI unit are defined as, but not limited to the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(a) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(b) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(8) "Commercial and industrial waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(9) "Continuous Emission Monitoring (CEM)" means a monitoring system for continuously measuring the emissions of a pollutant from an affected incinerator. Continuous monitoring equipment and operation must be certified in accordance with

EPA performance specifications and quality assurance procedures outlined in 40 CFR 60, Appendices B and F, and the Department's CEM Manual.

(10) "Crematory Incinerator" means an incinerator used solely for the cremation of human and animal bodies.

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

(12) "Dry Standard Cubic Foot" means the amount of gas that would occupy a volume of one cubic foot, if the gas were free of uncombined water at standard conditions. When applied to combustion flue gases from waste or refuse burning, "Standard Cubic Foot (SCF)" implies adjustment of gas volume to that which would result at a concentration of seven percent oxygen or 50 percent excess air.

~~(13) "Existing" means constructed or modified before March 13, 1990.~~

(134) "Emission" means a release into the atmosphere of any regulated pollutant or any air contaminants.

(145) "Fluidized bed combustion unit" means a unit where municipal waste is combusted in a fluidized bed of material. The fluidized bed material may remain in the primary combustion zone or may be carried out of the primary combustion zone and returned through a recirculation loop.

~~(16) "Fugitive Emissions" means the same as defined in OAR 340-200-0020(50).~~

(157) "Hospital" means any facility that has an organized medical staff, maintains at least six inpatient beds, and where the primary function of the institution is to provide diagnostic and therapeutic patient services and continuous nursing care primarily to human inpatients who are not related and who stay on average in excess of 24 hours per admission. This definition does not include facilities maintained for the sole purpose of providing nursing or convalescent care to human patients who generally are not acutely ill but who require continuous medical supervision.

~~(168) "Hospital/medical/infectious waste incinerator" or HMIWI means any device that combusts any amount of hospital waste and/or medical/infectious waste.~~

(179) "Hospital waste" means discards generated at a hospital, except unused items returned to the manufacturer. This definition does not include human corpses, remains and anatomical parts intended for interment or cremation.

~~(2018) "Incinerator" means any structure or furnace in which combustion takes place, the primary purpose of which is the reduction in volume and weight of unwanted material.~~

(2119) "Infectious agent" means any organism such as a virus or bacteria that is capable of being communicated by invasion and multiplication in body tissues and capable of causing disease or adverse health impacts in humans.

(2220) "Infectious Waste" means waste as defined in ORS Chapter 763, Oregon Laws 1989, that contains or may contain any disease producing microorganism or material, and includes, but is not limited to the following:

(a) "Biological waste", which includes blood and blood products, and body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include soiled diapers;

(b) "Cultures and stocks", which includes etiologic agents and associated biologicals; including specimen cultures and dishes, devices used to transfer, inoculate and mix cultures, wastes from production of biologicals, and serums and discarded live and attenuated vaccines. "Cultures" does not include throat and urine cultures;

(c) "Pathological waste", which includes biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals. "Pathological wastes" does not include teeth or formaldehyde or other preservative agents;

(d) "Sharps", which includes needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

(213) "Infectious Waste Facility" or "Infectious Waste Incinerator" means an incinerator that is operated or utilized for the disposal or treatment of infectious waste, including combustion for the recovery of heat, and which utilizes high temperature thermal destruction technologies.

(224) "Large HMIWI", except as provided in Subsection (d)(A) and (B) means:

(a) A HMIWI whose maximum design waste burning capacity is more than 500 pounds per hour; or

(b) A continuous or intermittent HMIWI whose maximum charge rate is more than 500 pounds per hour; or

(c) A batch HMIWI whose maximum charge rate is more than 4,000 pounds per day;

(d) The following are not large HMIWI:

(A) A continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 500 pounds per hour; or

(B) A batch HMIWI whose maximum charge rate is less than or equal to 4,000 pounds per day.

(235) "Low-level radioactive waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or

quantities that exceed applicable federal or state standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined by the **Atomic Energy Act of 1954** (42 U.S.C. 2014(e)(2)).

(246) "Mass burn refractory municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, that includes municipal waste combustion units with a cylindrical rotary refractory wall furnace.

(257) "Mass burn rotary waterwall municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a cylindrical rotary waterwall furnace.

(268) "Mass burn waterwall municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a waterwall furnace.

(279) "Medical/infectious waste" means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production of testing of biologicals that is listed in paragraphs (a) through (g) of this definition. The definition of medical/infectious waste does not include hazardous waste identified or listed under the regulations in part 261 of Chapter I; household waste as defined in Subsection 261.4(b)(1) of Chapter I; ash from incineration of medical/infectious waste once the incineration process is completed; human corpses, remains, and anatomical parts intended for interment or cremation and domestic sewage materials identified in Subsection 261.4(a)(1) of Chapter I:

(a) Cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate and mix cultures;

(b) Human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers;

(c) Human blood and blood products including:

(A) Liquid waste human blood;

(B) Products of blood;

(C) Items saturated and/or dripping with human blood; or

(D) Items that were saturated and/or dripping with human blood that are now caked with dried human blood; including serum, plasma, and other blood components, and their containers that were used or intended for use in either patient care, testing and laboratory

analysis or the development of pharmaceuticals. Intravenous bags are also included in this category.

(d) Sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips;

(e) Animal waste including contaminated animal carcasses, body parts and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals or testing of pharmaceuticals;

(f) Isolation wastes including biological waste and discarded materials contaminated with blood, excretions, exudates or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases;

(g) Unused sharps including the following unused, discarded sharps: hypodermic needles, suture needles, syringes and scalpel blades.

(3028) "Medium HMIWI", except as provided in Subsection (d)(A) and (B)(i) means:

(a) A HMIWI whose maximum design waste burning capacity is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or

(b) A continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or

(c) A batch HMIWI whose maximum charge rate is more than 1,600 pounds per day but less than or equal to 4,000 pounds per day.

(d) The following are not medium HMIWI:

(A) A continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour or more than 500 pounds per hour; or

(B) A batch HMIWI whose maximum charge rate is more than 4,000 pounds per day or less than or equal to 1,600 pounds per day.

(2931) "Modification or modified hospital/medical/infectious waste incinerator" means any change to a HMIWI unit ~~after the effective date of these standards~~ such that:

(a) The cumulative costs of the modifications, over the life of the unit, exceed 50 per cent of the original cost of the construction and installation of the unit (not including the cost

of any land purchased in connection with such construction or installation) updated to current costs; or

(b) The change involves a physical change or change in the method of operation of the unit that increases the amount of any air pollutant emitted by the unit for which standards have been established under Section 129 or Section 111.

(302) "Modular excess-air municipal waste combustion unit" means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

(313) "Modular starved-air municipal waste combustion unit" means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

(324) "Municipal waste combustor plant" means one or more municipal waste combustor units at the same location, for which construction was commenced on or before September 20, 1994.

(335) "Municipal waste combustor plant capacity" means the aggregate municipal waste combustor unit capacity of all municipal waste combustor units at a municipal waste combustor plant for which construction was commenced on or before September 20, 1994.

(36) "New" means constructed or modified on or after March 13, 1990.

(37) "Opacity" means the degree to which an emission reduces transmission of light and obscures the view of an object in the background.

(38) "Particulate Matter" means all solid or liquid material, other than uncombined water, emitted to the ambient air as measured by EPA Method 5 or an equivalent test method in accordance with the Department Source Test Manual. Particulate matter emission determinations by EPA Method 5 must consist of the average of three separate consecutive runs having a minimum sampling time of 60 minutes each and a minimum sampling volume of 30.0 dscf each.

(349) "Parts Per Million (ppm)" means parts of a contaminant per million parts of gas by volume on a dry-gas basis (1 ppm equals 0.0001 percent by volume).

(4035) "Pathological waste" means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material and animal bedding (if applicable).

(4136) "Person" means individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof.

(4237) "Primary Combustion Chamber" means the discrete equipment, chamber or space in which drying of the waste, pyrolysis, and essentially the burning of the fixed carbon in the waste occurs.

(438) "Pyrolysis" means the endothermic gasification of ~~hospital waste and/or medical/infectious waste material~~ using external energy.

(3944) "Refuse-derived fuel" means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. That includes all classes of refuse-derived fuel including two fuels:

(a) Low-density fluff refuse-derived fuel through densified refuse-derived fuel

(b) Pelletized refuse-derived fuel.

(405) "Secondary" or "Final Combustion Chamber" means the discrete equipment, chamber, or space in which the products of pyrolysis are combusted in the presence of excess air such that essentially all carbon is burned to carbon dioxide.

(416) "Small hospital/medical/infectious waste incinerator", except as provided in Subsection (d)(A) and (B)(i), means:

(a) A HMIWI whose maximum design waste burning capacity is less than or equal to 200 pounds per hour; or

(b) A continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour; or

(c) A batch HMIWI whose maximum charge rate is less than or equal to 1,600 pounds per day.

(d) The following are not small HMIWI:

(A) A continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour;

(B) A batch HMIWI whose maximum charge rate is more than 1,600 pounds per day.

(427) "Solid Waste" means refuse, more than 50 percent of which is waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials, and noncombustible materials such as metal, glass, and rock.

(438) "Solid Waste Facility" or "Solid Waste Incinerator" means an incinerator that is operated or utilized for the disposal or treatment of solid waste including combustion for the recovery of heat, and that utilizes high temperature thermal destruction technologies.

(449) "Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel) combustion unit" means a municipal waste combustion unit that combusts coal and refuse-derived fuel

simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

(4550) "Standard Conditions" means temperature of 68 degrees Fahrenheit (15.6 degrees Celsius) and a pressure of 14.7 pounds per square inch absolute (1.03 kilograms per square centimeter).

(4654) "Startup/Shutdown" means the time during which an air contaminant source or emission control equipment is brought into normal operation and normal operation is terminated, respectively.

(4752) "Transmissometer" means a device that measures opacity and conforms to EPA Specification Number 1 in **40 CFR 60, Appendix B**.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183, 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: [DEQ 22-1998, f. & cert. ef. 10-21-98]; [DEQ 9-1990, f. & cert. ef. 3-13-90; DEQ 4-1993, f. & cert. ef. 3-10-93]; [DEQ 27-1996, f. & cert. ef. 12-11-96]; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0750, 340-025-0855, 340-025-0950; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05

Solid and Infectious Waste Incinerators

340-230-0100

Best Available Control Technology

(1) Notwithstanding the specific emission limits set forth in OAR 340-230-0110, in order to maintain overall air quality at the highest possible levels, all solid waste facilities and infectious waste facilities are required to use Best Available Control Technology

(BACT). In no event shall the application of BACT result in emissions of any air contaminant which would exceed the emission limits set forth in OAR 340-230-0100 through 340-230-0150.

(2) All installed equipment shall be operated and maintained in such a manner that emissions of air contaminants are kept at lowest possible levels.

Stat. Auth.: ORS 183, ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 9-1990, f. & cert. ef. 3-13-90; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0860

~~Solid and Infectious Waste Incinerators~~

Emissions Limitations

No person shall cause, suffer, allow, or permit the operation of any solid waste facility or infectious waste facility in a manner which violates the following emission limits and requirements:

(1) Particulate Emissions:

(a) For new incinerator facilities constructed or modified on or after March 13, 1990, emissions from each stack shall not exceed 0.015 grains per dry standard cubic foot of exhaust gases corrected to seven percent O₂ at standard conditions;

(b) For existing incinerator facilities constructed or modified before March 13, 1990, emissions from each stack shall not exceed 0.030 grains per dry standard cubic foot of exhaust gases corrected to seven percent O₂ at standard conditions.

(2) Hydrogen Chloride (HC₁). For all incinerator facilities, emissions of hydrogen chloride from each stack shall not exceed 50 ppm during any 60-minute period corrected to seven percent O₂; or shall be reduced by at least 90 percent by weight on an hourly basis.

(3) Sulfur Dioxide (SO₂). For all incinerator facilities, emissions of sulfur dioxide from each stack shall not exceed 50 ppm as a running three-hour average corrected to seven percent O₂; or shall be reduced by at least 70 percent by weight on a three-hour basis.

(4) Carbon Monoxide (CO). For all incinerator facilities, emissions of carbon monoxide from each stack shall not exceed 100 ppm as a running eight-hour average corrected to seven percent O₂.

(5) Nitrogen Oxide (NO_x). Emissions of nitrogen oxide from each stack shall not exceed 200 ppm as a running 24-hour average corrected to seven percent O₂ for new incinerator facilities constructed or modified on or after March 13, 1990 capable of processing more than 250 tons/day of wastes.

(6) Opacity. The opacity as measured visually or by a transmissometer shall not exceed ten percent for a period aggregating more than six minutes in any 60-minute period.

(7) Fugitive Emissions. Solid waste incinerator facilities shall be operated in a manner which prevents or minimizes fugitive emissions, including the paving of all normally traveled roadways within the plant boundary and enclosing all material transfer points.

(8) Other Wastes. No solid waste incinerator or infectious waste incinerator shall burn radioactive or hazardous waste, or any other waste not specifically authorized in the Department's Air Contaminant Discharge Permit.

(9) Other Contaminants. In the absence of an air-contaminant-specific emission limit or ambient air quality standard, the Department may establish by permit emission limits for any hazardous air contaminants that are more protective of human health and the environment for any solid waste incinerator or infectious waste incinerator.

Stat. Auth.: ORS 183, ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 9-1990, f. & cert. ef. 3-13-90; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0865

340-230-0150

Compliance

(1) All ~~existing~~ waste incinerators constructed or modified before March 13, 1990 must demonstrate compliance with the applicable provisions of OAR 340-230-0100 through 340-230-0150 by March 13, 1995, or by the date required by applicable federal guidelines adopted by the Environmental Protection Agency, whichever is sooner. Existing data such as that collected in accordance with the requirements of an Air Contaminant Discharge Permit may be used to demonstrate compliance.

(2) ~~New~~ Solid waste incinerators and infectious waste incinerators constructed or modified on or after March 13, 1990 must demonstrate compliance with the emission limits and operating requirements of OAR 340-230-0100 through 340-230-0150 in accordance with a schedule established by the Department before commencing regular operation.

(3) Compliance with OAR 340-230-0100 through 340-230-0150 does not relieve the owner or operator of the source from the responsibility to comply with requirements of the Department's Solid and Hazardous Waste rules, OAR Chapter 340, Division 61, regarding the disposal of ash generated from waste incinerators.

Stat. Auth.: ORS 183, ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 9-1990, f. & cert. ef. 3-13-90; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0885

Crematory Incinerators

340-230-0200

Emission Limitations

(1) No person may cause to be emitted particulate matter from any crematory incinerator in excess of 0.080 grains per dry standard cubic foot of exhaust gases corrected to 7 percent θ_2 - O_2 at standard conditions.

(2) Opacity. No visible emissions may be present except for a one 6 minute period aggregating no more than six minutes in any 60 minute period per hour and not exceeding of not more than 20% opacity as measured by EPA Method 9.

(3) Odors. In cases where incinerator operation may cause odors which unreasonably interfere with the use and enjoyment of property, the Department may require by permit the use of good practices and procedures to prevent or eliminate those odors.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 9-1990, f. & cert. ef. 3-13-90; DEQ 15-1992, f. & cert. ef. 8-3-92 (and corrected 8-11-92); Section (3) Renumbered from 340-025-0895(3); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0890

340-230-0210

Design and Operation

(1) Temperature and Residence Time. ~~The temperature at the final combustion chamber shall be 1800°F. for new incinerators installed on or after March 13, 1993, and 1600°F. for existing incinerators installed on or before March 12, 1993, with a residence time of at least 0.5 second. The temperature in the final chamber must be 1400°F prior to igniting the primary burner. At no time while firing material may the temperature in the final chamber fall below 1400°F.~~

(a) For a crematory incinerator installed on or after March 13, 1993, the temperature at the final combustion chamber must be equal to or greater than 1800° F with a residence time of at least 0.5 seconds. The temperature in the final chamber must be equal to or greater than 1400° F prior to igniting the primary burner.

(b) For a crematory incinerator installed prior to March 13, 1993, the temperature at the final combustion chamber must be equal to or greater than 1600° F with a residence time of at least 0.5 seconds. The temperature in the final chamber must be equal to or greater than 1200° F prior to igniting the primary burner.

(2) Operator Training and Certification. Each crematory incinerator shall be operated at all times under the direction of individuals who have received training necessary for proper operation. The following shall be available on-site at all times for Department inspection:

(a) A description of a Department-approved training program; and

(b) A written statement signed by each operator stating that the operator has undergone and understood the training program.

(3) As defined in OAR 340-230-0030(410), crematory incinerators may only be used for incineration of human and animal bodies, and appropriate containers. No waste, including

infectious waste as defined in OAR 340-230-0030, may be incinerated unless specifically authorized in the Department's Air Contaminant Discharge Permit.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 9-1990, f. & cert. ef. 3-13-90; DEQ 15-1992, f. & cert. ef. 8-3-92 (and corrected 8-11-92); Section (3) Renumbered from 340-025-0890 (3); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0895.

340-230-0220

Monitoring and Reporting

(1) All crematory incinerators shall operate and maintain continuous monitoring for final combustion chamber exit temperature. The monitoring device shall be installed and operated in accordance with the manufacturer's instructions, and shall be located in an area of the secondary combustion chamber that will allow evaluation of compliance with OAR 340-230-0210

(2) All records associated with continuous monitoring data including, but not limited to, original data sheets, charts, calculations, calibration data, production records and final reports shall be maintained for a continuous period of at least ~~one~~ two years and shall be furnished to the Department upon request.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 9-1990, f. & cert. ef. 3-13-90; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0900

340-230-0230

Compliance

(1) ~~A source crematory incinerator installed on or after March 13, 1993, must demonstrate within 180 days of startup compliance with OAR 340-230-0200(1) by:~~

~~(a) If the source is a new crematory incinerator~~ Conducting a source test for particulate matter emissions in accordance with OAR 340-212-0120 through 340-212-0140; or ~~or~~

~~(b) If the source violates the requirements OAR 340-230-0200(2) or (3); or~~ Submitting the results of testing performed on a crematory incinerator that the Department agrees is comparable to the incinerator in question.

~~(c) At the Department's request.~~

(2) As proof of compliance, a source may submit to the Department:

(a) A source test conducted in accordance with OAR 340-212-0120 through 340-212-0140; or

(b) ~~For a crematory incinerator demonstrating initial compliance, The results of testing performed on a crematory incinerator that the Department agrees is comparable to the incinerator in question.~~

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 9-1990, f. & cert. ef. 3-13-90; DEQ 15-1992, f. & cert. ef. 8-3-92 (and corrected 8-11-92); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0905

DIVISION 232

EMISSION STANDARDS FOR VOC POINT SOURCES

340-232-0010

Introduction

- (1) This division regulates sources of VOC which contribute to the formation of photochemical oxidant, mainly ozone.
- (2) Since ozone standards are not violated in Oregon from October through April (because of insufficient solar energy), natural gas-fired afterburners may be permitted, on a case-by-case basis, to lay idle during the winter months.
- (3) Sources regulated by this division are new and existing sources in the Portland and Medford AQMA's and in the Salem SATS listed in subsections (a) through (m) of this section, including:
 - (a) Gasoline dispensing facilities, storage tank filling;
 - (b) Bulk gasoline plants and delivery vessels;
 - (c) Bulk gasoline terminal loading;
 - (d) Cutback asphalt;
 - (e) Petroleum refineries, petroleum refinery leaks;
 - (f) VOC liquid storage, secondary seals;
 - (g) Coating including paper coating and miscellaneous painting;
 - (h) Aerospace component coating;
 - (i) Degreasers;
 - (j) Asphaltic and coal tar pitch in roofing;
 - (k) Flat wood coating;
 - (l) Rotogravure and Flexographic printing;
 - (m) Automotive Gasoline.

(4) Emissions units not covered by the source categories listed in section (3) of this rule which emit or have the potential to emit over 100 tons of VOC per year are subject to OAR 340-232-0040(5).

[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 468.020 & ORS 468A.025

Stats. Implemented: ORS 468A.025

Hist.: DEQ 21-1978, f. & ef. 12-28-78; DEQ 17-1979, f. & ef. 6-22-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 3-1986, f. & ef. 2-12-86; DEQ 8-1991, f. & cert. ef. 5-16-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-022-0100; DEQ 15-2001, f. & cert. ef. 12-26-01

340-232-0040

General Non-Categorical Requirements

(1) All existing sources, operating prior to November 15, 1990, located inside the areas cited in OAR 340-232-0020(2)(a) or (2)(c), containing emissions units or devices for which no categorical RACT requirements exist and which have potential emissions before add-on controls of over 100 tons per year (TPY) of VOC from aggregated, non-regulated emission units, shall have RACT requirements developed on a case-by-case basis by the Department. Sources that have complied with New Source Review requirements per OAR 340 division 224 and are subject to Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) requirements are presumed to have met RACT requirements. A source may request RACT not be applied by demonstrating to the Department that their potential emissions before add-on controls are below 100 tons per year. Once a source becomes subject to RACT requirements under this section, it shall continue to be subject to RACT, unless VOC emissions fall below 100 tons per year and the source requests that RACT be removed, by demonstrating to the Department that their potential VOC emissions before add-on controls are below 100 tons per year.

(2) Within 3 months of written notification by the Department of the applicability of this rule, or, for good cause shown, up to an additional three months as approved by the Department, the source shall submit to the Department a complete analysis of RACT for each category of emissions unit at the source, taking into account technical and economic feasibility of available control technology, and the emission reductions each technology would provide. This analysis does not need to include any emissions units subject to a specific categorical RACT requirement under this division. These RACT requirements approved by the Department shall be incorporated in the source's Air Contaminant Discharge Permit, and shall not become effective until approved by EPA as a source specific SIP revision. The source shall have one year from the date of notification by the Department of EPA approval to comply with the applicable RACT requirements.

(3) Failure by a source to submit a RACT analysis required by section (2) of this rule shall not relieve the source of complying with a RACT determination established by the Department.

DIVISION 234

EMISSION STANDARDS FOR WOOD PRODUCTS INDUSTRIES

[NOTE: Administrative Order DEQ 37 repealed applicable portions of SA 22, filed 6-7-68.]

340-234-0010

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) "Acid Absorption Tower" means the device where the sodium carbonate and sulfur dioxide react to form a sodium sulfite solution prior to use as the cooking liquor.
- (2) "Acid Plant" means the facility in which the cooking liquor is either manufactured or fortified when not associated with a recovery furnace.
- (3) "Average Daily Emission" means the total weight of sulfur oxides emitted in each month divided by the number of days of production that month.
- (4) "Average Daily Production" means air dry tons of unbleached pulp produced in a month, divided by the number of days of production in that month.
- (5) "Average Operating Opacity" means the opacity of emissions determined using EPA Method 9 on any three days within a 12-month period which are separated from each other by at least 30 days; a violation of the average operating opacity limitation is judged to have occurred if the opacity of emissions on each of the three days is greater than the specified average operating opacity limitation.
- (6) "Baseline emissions rate" means a source's actual emissions rate during the baseline period, as defined in OAR 340-200-0020, expressed as pounds of emissions per thousand square feet of finished product, on a 1/8" basis.
- (7) "Blow System" means the storage chest, tank, or pit to which the digester pulp is discharged following the cook.
- (8) "BLS" means Black Liquor Solids, dry weight.
- (9) "Continual Monitoring:"

- (a) As used in OAR 340-234-0200 through 340-234-0350 means sampling and analysis, in a timed sequence, using techniques which will adequately reflect actual emission levels or concentrations on an ongoing basis;
- (b) As used in OAR 340-234-0400 through 340-234-0430 means sampling and analysis in a continuous or timed sequence, using techniques which will adequately reflect actual emission levels, ambient air levels, or concentrations on a continuous basis.
- (10) "Continuous monitoring" means instrumental sampling of a gas stream on a continuous basis, excluding periods of calibration.
- (11) "Continuous-Flow Conveying Methods" means methods which transport materials at uniform rates of flow, or at rates generated by the production process.
- (12) "Daily Arithmetic Average" means the average concentration over the twenty-four hour period in a calendar day, or Department approved equivalent period, as determined by continuous monitoring equipment or reference method testing. Determinations based on EPA reference methods or equivalent methods in accordance with the Department **Source Sampling Manual** consist of three separate consecutive runs having a minimum sampling time of sixty minutes each and a maximum sampling time of eight hours each. The three values for concentration (ppm or grains/dscf) are averaged and expressed as the daily arithmetic average which is used to determine compliance with process weight limitations, grain loading or volumetric concentration limitations and to determine daily emission rate.
- (13) "Department" means the Department of Environmental Quality.
- (14) "Emission" means a release into the atmosphere of air contaminants.
- (15) "EPA Method 9" means the method for Visual Determination of the Opacity of Emissions From Stationary Sources described as Method 9 (average of 24 consecutive observations) in the Department Source Sampling Manual (January, 1992).
- (16) "Fuel Moisture Content by Weight Greater Than 20 Percent" means bark, hogged wood waste, or other wood with an average moisture content of more than 20 percent by weight on a wet basis as used for fuel in the normal operation of a wood-fire veneer dryer as measured by **ASTM D4442-84** during compliance source testing.
- (17) "Fugitive Emissions" means dust, fumes, gases, mist, odorous matter, vapors or any combination thereof not easily given to measurement, collection, and treatment by conventional pollution control methods.
- (18) "Hardboard" means a flat panel made from wood that has been reduced to basic wood fibers and bonded by adhesive properties under pressure.
- (19) "Kraft Mill" or "Mill" means any industrial operation which uses for a cooking liquor an alkaline sulfide solution containing sodium hydroxide and sodium sulfide in its pulping process.

(20) "Lime Kiln" means any production device in which calcium carbonate is thermally converted to calcium oxide.

(21) "Maximum Opacity" means the opacity as determined by EPA Method 9 (average of 24 consecutive observations).

(22) "Modified Wigwam Waste Burner" means a device having the general features of a wigwam waste burner, but with improved combustion air controls and other improvements installed in accordance with design criteria approved by the Department.

(23) "Neutral Sulfite Semi-Chemical (NSSC) Pulp Mill" means any industrial operation which uses for cooking, a liquor prepared from a sodium carbonate solution and sulfur dioxide at a neutral pH, range 6-8.

(24) "Non-Condensibles" mean gases and vapors, contaminated with TRS compounds, from the digestion and multiple-effect evaporation processes of a mill.

~~(25) "Opacity" means the degree to which an emission reduces transmission of light or obscures the view of an object in the background.~~

~~(256) "Operations" includes plant, mill, or facility.~~

~~(267) "Other Sources:"~~

~~(a) As used in OAR 340-234-0200 through 340-234-0270 means sources of TRS emissions in a kraft mill other than recovery furnaces, and lime kilns, smelt dissolving tanks, sewers, drains, categorically insignificant activities and wastewater treatment facilities including but not limited to:~~

~~(A) Vents from knotters, brown stock washing systems, evaporators, blow tanks, blow heat accumulators, black liquor storage tanks, black liquor oxidation system, pre-steaming vessels, tall oil recovery operations; and~~

~~(B) Any vent which is shown to contribute to an identified nuisance condition.~~

~~(b) As used in OAR 340-234-0400 through 340-234-0430 means sources of sulfur oxide emissions including, but not limited to washers, washer filtrate tanks, digester dilution tanks, knotters, multiple effect evaporators, storage tanks, any operation connected with the handling of condensate liquids or storage of condensate liquids, and any vent or stack which may be a significant contributor of sulfur oxide gases other than those mentioned in emission standard limitations (OAR 340-234-0410).~~

~~(278) "Particleboard" means matformed flat panels consisting of wood particles bonded together with synthetic resin or other suitable binder.~~

~~(289) "Particulate Matter:"~~

(a) As used in OAR 340-234-0200 through 340-234-0350 means all solid or liquid material, other than uncombined water, emitted to the ambient air as measured by EPA Method 5 or an equivalent test method in accordance with the Department **Source Sampling Manual**. Particulate matter emission determinations by EPA Method 5 shall use water as the cleanup solvent instead of acetone, and consist of the average of three separate consecutive runs having a minimum sampling time of 60 minutes each, a maximum sampling time of eight hours each, and a minimum sampling volume of 31.8 dscf each;

(b) As used in OAR 340-234-0400 through 340-234-0430 means a small, discrete mass of solid matter, including the solids dissolved or suspended in liquid droplets but not including uncombined water;

(c) As used in OAR 340-234-0500 through 340-234-0530 means all solid or liquid material, other than uncombined water, emitted to the ambient air as measured in accordance with the Department **Source Sampling Manual** (January, 1992). Particulate matter emission determinations shall consist of the average of three separate consecutive runs. For sources tested using DEQ Method 7, each run shall have a minimum sampling time of one-hour, a maximum sampling time of eight hours, and a minimum sampling volume of 31.8 dscf. For sources tested using DEQ Method 8, each run shall have a minimum sampling time of 15 minutes and shall collect a minimum particulate sample of 100 mg. Veneer dryers, wood particle dryers, fiber dryers and press/cooling vents shall be tested with DEQ Method 7; and air conveying systems shall be tested with DEQ Method 8.

(2930) "Parts Per Million (ppm)" means parts of a contaminant per million parts of gas by volume on a dry-gas basis (1 ppm equals 0.0001% by volume).

(304) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the Federal Government and any agencies thereof.

(312) "Plywood" means a flat panel built generally of an odd number of thin sheets of veneers of wood in which the grain direction of each ply or layer is at right angles to the one adjacent to it.

(323) "Press/Cooling Vent" means any opening through which particulate and gaseous emissions from plywood, particleboard, or hardboard manufacturing are exhausted, either by natural draft or powered fan, from the building housing the process. Such openings are generally located immediately above the board press, board unloader, or board cooling area.

(334) "Production:"

(a) As used in OAR 340-234-0200 through 340-234-0270 means the daily amount of air-dried unbleached pulp, or equivalent, produced during the 24-hour period each calendar day, or Department approved equivalent period, and expressed in air-dried metric tons (admt) per day. The corresponding English unit is air-dried tons (adt) per day;

(b) As used in OAR 340-234-0300 through 340-234-0350 means the daily amount of virgin air-dried unbleached NSSC pulp, or equivalent, produced during the 24-hour period each calendar day, or Department approved equivalent period, expressed in air-dried metric tons (ADMT) per day. The corresponding English unit is air-dried tons (ADT) per day.

(345) "Recovery Furnace" means the combustion device in which dissolved wood solids are incinerated and pulping chemicals recovered from the molten smelt. For OAR 340-234-0200 through 340-234-0270, and where present, this term shall include the direct contact evaporator.

(356) "Recovery System" means the process by which all or part of the cooking chemicals may be recovered, and cooking liquor regenerated from spent cooking liquor, including evaporation, combustion, dissolving, fortification, and storage facilities associated with the recovery cycle.

(367) "Significant Upgrading of Pollution Control Equipment" means a modification or a rebuild of an existing pollution control device for which a capital expenditure of 50 percent or more of the replacement cost of the existing device is required, other than ongoing routine maintenance.

(378) "Smelt dissolving tank vent" means the vent serving the vessel used to dissolve the molten smelt produced by the recovery furnace.

(389) "Special Problem Area" means the formally designated Portland, Eugene-Springfield, and Medford AQMAs and other specifically defined areas that the Environmental Quality Commission may formally designate in the future. The purpose of such designation will be to assign more stringent emission limits as may be necessary to attain and maintain ambient air standards or to protect the public health or welfare.

(3940) "Spent Liquor Incinerator" means the combustion device in which pulping chemicals are subjected to high temperature to evaporate the water, incinerate organics and reclaim the sodium sulfate (saltcake) and sodium carbonate.

(401) "Standard Dry Cubic Meter" means the amount of gas that would occupy a volume of one cubic meter, if the gas were free of uncombined water, at a temperature of 20° C. (68° F.) and a pressure of 760 mm of mercury (29.92 inches of mercury). The corresponding English unit is standard dry cubic foot. When applied to recovery furnace gases "standard dry cubic meter" requires adjustment of the gas volume to that which would result in a concentration of 8% oxygen if the oxygen concentration exceeds 8%. When applied to lime kiln gases "standard dry cubic meter" requires adjustment of the gas volume to that which would result in a concentration of 10% oxygen if the oxygen concentration exceeds 10%. The mill shall demonstrate that oxygen concentrations are below noted values or furnish oxygen levels and corrected pollutant data.

(412) "Tempering Oven" means any facility used to bake hardboard following an oil treatment process.

(423) "Sulfite Mill" or "Mill" means a pulp mill producing cellulose pulp using a cooking liquor consisting of sulfurous acid and/or a bisulfite salt.

(434) "Sulfur Oxides" means sulfur dioxide, sulfur trioxide, and other sulfur oxides.

(445) "Total Reduced Sulfur (TRS)" means the sum of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide, and any other organic sulfides present expressed as hydrogen sulfide (H₂S).

(456) "Veneer" means a single flat panel of wood not exceeding 1/4 inch in thickness formed by slicing or peeling from a log.

(476) "Wigwam Waste Burner" means a burner which consists of a single combustion chamber, has the general features of a truncated cone, and is used for incineration of wastes.

(478) "Wood Fired Veneer Dryer" means a veneer dryer which is directly heated by the products of combustion of wood fuel in addition to or exclusive of steam or natural gas or propane combustion.

[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 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: [DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93]; [DEQ 50, f. 2-9-73, ef. 3-1-73; DEQ 137, f. & ef. 6-10-77; DEQ 2-1990, f. & cert. ef. 1-24-90; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 22-1995, f. & cert. ef. 10-6-95]; [DEQ 2-1990, f. & cert. ef. 1-24-90; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 22-1995, f. & cert. ef. 10-6-95]; [DEQ 26, f. 3-31-71, ef. 4-25-71; DEQ 132, f. & ef. 4-11-77; DEQ 7-1979, f. & ef. 4-20-79; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 4-1995, f. & cert. ef. 2-17-95]; [DEQ 32, f. 11-23-71, ef. 12-15-71; DEQ 15-1980, f. & ef. 5-23-80; DEQ 4-1993, f. & cert. ef. 3-10-93]; [DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93]; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0005, 340-025-0150, 340-025-0220, 340-025-0305, 340-025-0350, 340-025-0410

Wigwam Waste Burners

340-234-0100

Statement of Policy and Applicability

(1) Policy. Recent technological and economic developments have enhanced the degree to which wood waste residues currently being disposed of in wigwam waste burners may be utilized or otherwise disposed of in ways not damaging to the environment. While recognizing that complete utilization of wood wastes is not presently possible in all

instances, consistent with the economic and geographical conditions in Oregon, it is hereby declared to be the policy of the Environmental Quality Commission to:

- ~~(a) Encourage the complete utilization of wood waste residues.~~
- ~~(b) Phase out, wherever reasonably practicable, all disposal of wood waste residues by incineration.~~
- ~~(c) Require the modification of all wigwam waste burners to minimize air contaminant emissions.~~
- ~~(d) Require effective monitoring and reporting of wigwam waste burner operating conditions.~~

~~(2) Applicability. OAR 340-234-0100 through 340-234-0140 apply to the construction and operation of wigwam waste burners. (1) Operation of wigwam waste burners is prohibited.~~

~~(2) Emissions from wigwam waste burners included in a source's netting basis as of October 18, 2007 shall not be subtracted from the netting basis, except as provided in OAR 340-222-0045.~~

[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 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0010

340-234-0110

Authorization to Operate a Wigwam Burner

- ~~(1) Operation of wigwam waste burners other than modified wigwam waste burners is prohibited without approval of the Department of Environmental Quality.~~
- ~~(2) Persons seeking authorization to modify a wigwam waste burner or establish a new wigwam waste burner shall request authorization by submitting a Notice of Construction and submitting plans in accordance with OAR 340-210-0200 through 340-210-0220.~~
- ~~(3) Authorization to establish a modified waste burner installation shall not be approved unless it is demonstrated to the Department that:
 - ~~(a) No feasible alternative to incineration of wood waste residues exists. In demonstrating this, the applicant shall provide a statement of the relative technical and economic feasibility of alternatives, including but not limited to: Utilization, off-site disposal and incineration in a boiler or incinerator other than a wigwam waste burner;~~~~

~~(b) The modified wigwam waste burner facility is to be constructed and operated in accordance with design criteria approved by the Department, and the emission standards set forth in OAR 340-234-0120.~~

~~(4) Authorization for establishment of a new modified wigwam waste burner in conjunction with the establishment of a new industrial facility or significant expansion of an existing facility shall not be granted without approval of the Department of Environmental Quality.~~

~~[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 468 & ORS 468A~~

~~Stats. Implemented: ORS 468A.025~~

~~Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0015~~

~~340-234-0120~~

~~Emission and Operation Standards for Wigwam Waste Burners~~

~~(1) No person shall cause, suffer, allow, or permit the emission of air contaminants into the atmosphere from any wigwam waste burner for a period or periods aggregating more than three minutes in any one hour which is equal to or greater than 20 percent opacity.~~

~~(2) Resultant emissions notwithstanding, no person shall use a wigwam waste burner for the incineration of other than production process wood wastes. Such wood wastes shall be transported to the burner by continuous flow conveying methods.~~

~~[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 468 & ORS 468A~~

~~Stats. Implemented: ORS 468A.025~~

~~Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0020~~

~~340-234-0130~~

~~Monitoring and Reporting~~

~~(1) A thermocouple and recording pyrometer or other approved temperature measurement and recording devices shall be installed and maintained on every modified wigwam waste burner.~~

~~(2) Exit gas temperature shall be recorded continuously using the installed pyrometer at all times when the burner is in operation.~~

~~(3) Records of temperature and burner operation, or summaries thereof, shall be submitted at such frequency as the Department may prescribe.~~

~~(4) In addition to temperature monitoring as prescribed above, in accordance with OAR 340-212-0110 through 340-212-0160, the Department may require installation of visible emissions monitoring devices and subsequent reporting of data therefrom.~~

~~[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 468 & ORS 468A~~

~~Stats. Implemented: ORS 468A.025~~

~~Hist.: DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99; Renumbered from 340-025-0025~~

340-234-0140

Existing Administrative Agency Orders

~~(1) The provisions of OAR 340-234-0100 through 340-234-0120 and 340-234-0130(1) are in addition thereto and do not modify, amend, repeal, alter, postpone, or in any other manner affect supersede any specific existing agency orders directed against specific parties or persons to abate air pollution.~~

~~(2) The provisions of OAR 340-234-0130(2) shall not be made applicable nor extend in any manner to any specific existing agency orders directed against specific parties or persons to abate air pollution.~~

~~[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 468 & ORS 468A~~

~~Stats. Implemented: ORS 468A.025~~

~~Hist.: SA 30 f. 6-7-68, ef. 8-1-68; DEQ 4-1993, f. & cert. ef. 3-10-93; Renumbered from 340-025-0080; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99; Renumbered from 340-025-0027~~

Kraft Pulp Mills

340-234-0210

Emission Limitations

(1) Emission of Total Reduced Sulfur (TRS):

(a) Recovery Furnaces:

(A) The emissions of TRS from each recovery furnace placed in operation before January 1, 1969, shall not exceed 10 ppm and 0.15 Kg/metric ton (0.30 lb./ton) of production as daily arithmetic averages;

(B) TRS emissions from each recovery furnace placed in operation after January 1, 1969, and before September 25, 1976, or any recovery furnace modified significantly after January 1, 1969, and before September 25, 1976, to expand production shall be controlled such that the emissions of TRS shall not exceed 5 ppm and 0.075 Kg/metric ton (0.150 lb./ton) of production as daily arithmetic averages.

(b) Lime Kilns. Lime kilns shall be operated and controlled such that emissions of TRS shall not exceed 20 ppm as a daily arithmetic average and 0.05 Kg/metric ton (0.10 lb./ton) of production as a daily arithmetic average. This subsection applies to those sources where construction was initiated prior to September 25, 1976.

(c) Smelt Dissolving Tanks:

(A) TRS emissions from each smelt dissolving tank shall not exceed 0.0165 gram/Kg BLS (0.033 lb./ton BLS) as a daily arithmetic average, except as provided in paragraph (B) of this subsection;

~~(B) Where an explosion hazard, which was in existence on March 26, 1989, exists and control is not practical or economically not feasible and adequate documentation of these conditions is provided to the Department, the affected smelt dissolving tank shall not exceed 0.033 gram/Kg BLS (0.066 lb./ton BLS) as a daily average.~~

(d) Non-Condensibles. Non-condensibles from digesters, multiple-effect evaporators and contaminated condensate stripping shall be continuously treated to destroy TRS gases by thermal incineration in a lime kiln or incineration device capable of subjecting the non-condensibles to a temperature of not less than 650° C. (1,200° F.) for not less than 0.3 second. An alternate device meeting the above requirements shall be available in the event adequate incineration in the primary device cannot be accomplished. Venting of TRS gases during changeover shall be minimized but in no case shall the time exceed one-hour;

(e) Other Sources:

(A) The total emission of TRS from other sources including, but not limited to, knotters and brown stock washer vents, brown stock washer filtrate tank vents, and black liquor oxidation vents shall not exceed 0.078 Kg/metric ton (0.156 lb./ton) of production as a daily arithmetic average;

(B) Miscellaneous Sources and Practices. If it is determined that sewers, drains, and anaerobic lagoons significantly contribute to an odor problem, a program for control shall be required.

(2) Particulate Matter:

(a) Recovery Furnaces. The emissions of particulate matter from each recovery furnace stack shall not exceed:

(A) 2.0 kilograms per metric ton (4.0 pounds per ton) of production as a daily arithmetic average;

(B) 0.30 gram per dry standard cubic meter (0.13 grain per dry standard cubic foot) as a daily arithmetic average; and

(C) Thirty-five percent opacity for a period or periods aggregating more than 30 minutes in any 180 consecutive minutes or more than 60 minutes in any 24 consecutive hours (excluding periods when the facility is not operating).

(b) Lime Kilns. The emissions of particulate matter from each lime kiln stack shall not exceed:

(A) 0.50 kilogram per metric ton (1.00 pound per ton) of production as a daily arithmetic average;

(B) 0.46 gram per dry standard cubic meter (0.20 grain per dry standard cubic foot) as a daily arithmetic average; and

(C) The visible emission limitations in section (4) of this rule.

(c) Smelt Dissolving Tanks. The emission of particulate matter from each smelt dissolving tank vent shall not exceed:

(A) A daily arithmetic average of 0.25 kilogram per metric ton (0.50 pound per ton) of production; and

(B) The visible emission limitations in section (4) of this rule.

(d) Replacement or Significant Upgrading of existing particulate pollution control equipment after July 1, 1988 shall result in more restrictive standards as follows:

(A) Recovery Furnaces:

(i) The emission of particulate matter from each affected recovery furnace stack shall not exceed 1.00 kilogram per metric ton (2.00 pounds per ton) of production as a daily arithmetic average; and

(ii) 0.10 gram per dry standard cubic meter (0.044 grain per dry standard cubic foot) as a daily arithmetic average.

(B) Lime Kilns:

(i) The emission of particulate matter from each affected lime kiln stack shall not exceed 0.25 kilogram per metric ton (0.50 pound per ton) of production as a daily arithmetic average; and

(ii) 0.15 gram per dry standard cubic meter (0.067 grain per dry standard cubic foot) as a daily arithmetic average when burning gaseous fossil fuel; or

(iii) 0.50 kilogram per metric ton (1.00 pound per ton) of production as a daily arithmetic average; and

(iv) 0.30 gram per dry standard cubic meter (0.13 grain per dry standard cubic foot) as a daily arithmetic average when burning liquid fossil fuel.

(C) Smelt Dissolving Tanks. The emissions of particulate matter from each smelt dissolving tank vent shall not exceed 0.15 kilogram per metric ton (0.30 pound per ton) of production as a daily arithmetic average.

(3) Sulfur Dioxide (SO₂). Emissions of sulfur dioxide from each recovery furnace stack shall not exceed a three-hour arithmetic average of 300 ppm on a dry-gas basis except when burning fuel oil. The sulfur content of fuel oil used shall not exceed the sulfur content of residual and distillate oil established in OAR 340-228-0100(2) and 340-228-0110, respectively.

(4) All kraft mill sources with the exception of recovery furnaces shall not exceed an opacity equal to or greater than 20 percent for a period exceeding three minutes in any one hour.

(5) New Source Performance Standards. New or modified sources that commenced construction after September 24, 1976, are subject to each provision of this rule and the **New Source Performance Standards, 40 CFR 60 subpart BB** as adopted under OAR 340-238-0060, whichever is more stringent.

[NOTE: Except for OAR 340-234-0210(1), 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.]

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 50, f. 2-9-73, ef. 3-1-73; DEQ 137, f. & ef. 6-10-77; DEQ 2-1990, f. & cert. ef. 1-24-90; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0165

340-234-0220

More Restrictive Emission Limits

The Department may establish more restrictive emission limits than the numerical emission standards contained in OAR 340-234-0210 and maximum allowable daily mill site emission limits in kilograms or pounds per day for an individual mill upon a finding by the Department that:

- (1) The individual mill is located or is proposed to be located in a special problem area or an area where ambient air standards are exceeded or are projected to be exceeded or where the emissions will have a significant air quality impact in an area where the standards are exceeded; or
- (2) An odor or nuisance problem has been documented at any mill, in which case the TRS emission limits may be reduced below the regulatory limits; or the Department may require the mill to undertake an odor emission reduction study program; or
- (3) Other rules which are more stringent apply.

[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 with the exception of references to Total Reduced Sulfur.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 50, f. 2-9-73, ef. 3-1-73; DEQ 137, f. & ef. 6-10-77; DEQ 2-1990, f. & cert. ef. 1-24-90; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0170

~~340-234-0230~~

~~Plans and Specifications~~

~~Prior to construction of new kraft mills or modification of facilities affecting emissions at existing kraft mills, complete and detailed engineering plans and specifications for air pollution control devices and facilities and such other data as may be required to evaluate projected emissions and potential effects on air quality shall be submitted to and approved by the Department. All construction shall be in accordance with plans as approved in writing by the Department.~~

~~[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 with the exception of references to Total Reduced Sulfur.]~~

~~Stat. Auth.: ORS 468 & ORS 468A~~

~~Stats. Implemented: ORS 468A.025~~

~~Hist.: DEQ 50, f. 2-9-73, ef. 3-1-73; DEQ 137, f. & ef. 6-10-77; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0175~~

Monitoring

(1) General:

(a) The details of the monitoring program for each mill shall be submitted to and approved by the Department. This submittal shall include diagrams and descriptions of all monitoring systems, monitoring frequencies, calibration schedules, descriptions of all sampling sites, data reporting formats and duration of maintenance of all data and reports. Any changes that are subsequently made in the approved monitoring program shall be submitted in writing to the Department for review and approved in writing prior to change;

(b) All records associated with the approved monitoring program including, but not limited to, original data sheets, charts, calculations, calibration data, production records and final reports shall be maintained for a continuous period of at least two calendar years and shall be furnished to the Department upon request;

(c) All source test data; TRS and SO₂ concentrations (ppm), corrected for oxygen content, if required, that are determined by continuous monitoring equipment; and opacity as determined by continuous monitoring equipment or EPA Method 9 will be used to determine compliance with applicable emission standards. All continuous monitoring data, excluding the above, will be used to evaluate performance of emitting processes and associated control systems, and for the qualitative determination of plant site emissions.

(12) Total Reduced Sulfur (TRS). Each mill shall continuously monitor TRS in accordance with the following:

(a) The monitoring equipment shall determine compliance with the emission limits and reporting requirements established by OAR 340-234-0200 through 340-234-0270, and shall continuously sample and record concentrations of TRS;

(b) The sources monitored shall include, but are not limited to individual recovery furnaces, and lime kilns. All sources shall be monitored down-stream of their respective control equipment, in either the ductwork or the stack, in accordance with the Department **Continuous Monitoring Manual**;

(c) Unless otherwise authorized or required by permit, ~~A~~at least once per year, vents from other sources as required in OAR 340-234-0210(1)(e), Other Sources, shall be sampled to demonstrate the representativeness of the emission of TRS using EPA Method 16, 16A, 16B or continuous emission monitors. EPA methods shall consist of three separate consecutive runs of one-hour each in accordance with the Department **Source Sampling Manual**. Continuous emissions monitors shall be operated for three consecutive hours in accordance with the Department **Continuous Monitoring Manual**. All results shall be reported to the Department;

(d) Smelt dissolving tank vents shall be sampled for TRS quarterly except that testing may be semi-annual when the preceding six source tests were less than 0.0124 gram/Kg BLS (0.025 lb./ton BLS) using EPA Method 16, 16A, 16B or continuous emission monitors. EPA methods shall consist of three separate consecutive runs of one-hour each in accordance with the Department **Source Sampling Manual**.

(23) Particulate Matter:

(a) Each mill shall sample the recovery furnace(s), lime kiln(s) and smelt dissolving tank vent(s) for particulate emissions in accordance with the Department **Source Sampling Manual**;

(b) Each mill shall provide continuous monitoring of opacity of emissions discharged to the atmosphere from each recovery furnace stack in accordance with the Department **Continuous Monitoring Manual**; ~~or~~

~~(c) Where monitoring of opacity from each recovery furnace is not feasible, provide continuous monitoring of particulate matter from each recovery furnace using sodium ion probes in accordance with the Department **Continuous Monitoring Manual**;~~

~~(d)~~ Recovery furnace particulate source tests shall be performed quarterly except that testing may be semi-annual when the preceding six source tests were less than 0.225 gram/dscm (0.097 grain/dscf) for furnaces subject to OAR 340-234-0210(2)(a) or 0.075 gram/dscm (0.033 grain/dscf) for furnaces subject to OAR 340-234-0210(2)(d)(A);

~~(e)~~ Lime kiln source tests shall be performed semi-annually;

~~(f)~~ Smelt dissolving tank vent source tests shall be performed quarterly except that testing may be semi-annual when the preceding six source tests were less than 0.187 kilogram per metric ton (0.375 pound per ton) of production.

(34) Sulfur Dioxide (SO₂). Representative sulfur dioxide emissions from each recovery furnace shall be determined at least once each month by the average of three one-hour source tests in accordance with the Department **Source Sampling Manual** or from continuous emission monitors. If continuous emission monitors are used, the monitors shall be operated for three consecutive hours in accordance with the Department **Continuous Monitoring Manual**.

(45) Combined Monitoring. The Department may allow the monitoring for opacity of a combination of more than one emission stream if each individual emission stream has been demonstrated with the exception of opacity to be in compliance with all the emission limits of OAR 340-234-0210. The Department may establish more stringent emission limits for the combined emission stream.

(5) New Source Performance Standards Monitoring. New or modified sources that are subject to the New Source Performance Standards, 40 CFR Part 60, Subpart BB, shall conduct monitoring or source testing as required by Subpart BB. In addition, when it is

more stringent than Subpart BB, the Department may require some or all of the relevant monitoring in this section.

[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 with the exception of references to Total Reduced Sulfur.]

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

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 50, f. 2-9-73, ef. 3-1-73; DEQ 137, f. & ef. 6-10-77; DEQ 2-1990, f. & cert. ef. 1-24-90; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0180

340-234-0250

Reporting

If required by the Department ~~Unless otherwise authorized or required by permit,~~ data shall be reported by each mill for each calendar month by the ~~fifteenth~~last day of the subsequent calendar month as follows:

(1) Applicable daily average emissions of TRS gases expressed in parts per million of H₂S on a dry gas basis with oxygen concentrations, if oxygen corrections are required, for each source included in the approved monitoring program.

(2) Daily average emissions of TRS gases in pounds of total reduced sulfur per equivalent ton of pulp processed, expressed as H₂S, for each source included in the approved monitoring program.

(3) Maximum daily ~~Three-hour~~ average emission of SO₂ based on all samples collected ~~in one sampling period~~ from the recovery furnace(s), expressed as ppm, dry basis.

(4) All daily average opacities for each recovery furnace stack where transmissometers are utilized.

(5) All six-minute average opacities from each recovery furnace stack that exceeds 35 percent.

(6) Daily average kilograms of particulate per equivalent metric ton (pounds of particulate per equivalent ton) of pulp produced for each recovery furnace stack. Where transmissometers are not feasible, the mass emission rate shall be determined by alternative sampling approved by the Department ~~conducted in accordance with OAR 340-234-0240(3)(c).~~

~~(7) The results of each recovery furnace particulate source test in grams per standard cubic meter (grains per dry standard cubic foot) and for the same source test period the hourly average opacity, where transmissometers are used, and the particulate monitoring record obtained in accordance with the approved or the alternate monitoring program in OAR 340-234-0240(3)(c);~~

(78) Unless otherwise approved in writing, all periods of non-condensable gas bypass shall be reported.

~~(9) Upset conditions shall be reported in accordance with OAR 340-234-0260(3).~~

(810) Each kraft mill shall furnish, upon request of the Department, such other pertinent data as the Department may require to evaluate the mill's emission control program.

(911) Monitoring data reported shall reflect actual observed levels corrected for oxygen, if required, and analyzer calibration.

(102) Oxygen concentrations used to correct pollutant data shall reflect oxygen concentrations at the point of measurement of pollutants.

~~(13) The Department shall be notified at least 15 days in advance of all scheduled reference method testing including all scheduled changes.~~

[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 with the exception of references to Total Reduced Sulfur.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 50, f. 2-9-73, ef. 3-1-73; DEQ 137, f. & ef. 6-10-77; DEQ 2-1990, f. & cert. ef. 1-24-90; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0185

~~340-234-0260~~

~~Upset Conditions~~

~~(1) Each mill shall report to the Department abnormal mill operations including control and process equipment maintenance, or unexpected upsets that result in emissions in excess of the regulatory or air contaminant discharge permit limits within one hour, or when conditions prevent prompt notice, as soon as possible but no later than one hour after the start of the next working day. The mill shall also take immediate corrective action to reduce emission levels to regulatory or permit levels.~~

(2) Upsets shall be reported in writing with an accompanying report on measures taken or to be taken to correct the condition and prevent its reoccurrence within five working days of each incident.

~~(3) Each mill shall report the cumulative duration in hours each month of the upsets reported in section (1) of this rule and classified as to:~~

~~(a) Recovery Furnace:~~

~~(A) TRS;~~

~~(B) Particulate.~~

~~(b) Lime Kiln:~~

~~(A) TRS;~~

~~(B) Particulate.~~

~~(c) Smelt Tank Particulate.~~

~~[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 with the exception of references to Total Reduced Sulfur.]~~

~~Stat. Auth.: ORS 468 & ORS 468A~~

~~Stats. Implemented: ORS 468A.025~~

~~Hist.: DEQ 50, f. 2-9-73, ef. 3-1-73; DEQ 137, f. & ef. 6-10-77; DEQ 2-1990, f. & cert. ef. 1-24-90; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0190~~

Board Products Industries (Veneer, Plywood, Particleboard, Hardboard)

340-234-0500

Applicability and General Provisions

(1) OAR 340-234-0500 through 340-234-0530 establish minimum performance and emission standards for veneer, plywood, particleboard, and hardboard manufacturing operations.

(2) Emission limitations established herein are in addition to, and not in lieu of, general emission standards for visible emissions, fuel burning equipment, and refuse burning equipment, except as provided for in OAR 340-234-0510.

~~(3) Emission limitations established herein and stated in terms of pounds per 1,000 square feet of production shall be computed on an hourly basis using the maximum eight-hour production capacity of the plant.~~

(43) Each affected veneer, plywood, particleboard, and hardboard plant shall proceed with a progressive and timely program of air pollution control. Each plant shall at the request of the Department submit periodic reports in such form and frequency as directed to demonstrate the progress being made toward full compliance with OAR 340-234-0500 through 340-234-0530.

[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 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 26, f. 3-31-71, ef. 4-25-71; DEQ 132, f. & ef. 4-11-77; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0500

340-234-0510

Veneer and Plywood Manufacturing Operations

(1) Veneer Dryers:

(a) Consistent with OAR 340-234-0500(1) through (4), it is the object of this section to control air contaminant emissions, including, but not limited to, condensable hydrocarbons such that visible emissions from each veneer dryer are limited to a level which does not cause a characteristic "blue haze" to be observable;

(b) No person shall operate any veneer dryer such that visible air contaminants emitted from any dryer stack or emission point exceed:

(A) An average operating opacity of ten percent; and

(B) A maximum opacity of 20 percent.

(c) Particulate emissions from wood fired veneer dryers shall not exceed:

(A) 0.75 pounds per 1,000 square feet of veneer dried (3/8 inch basis) for units using fuel which has a moisture content by weight of 20 percent or less;

(B) 1.50 pounds per 1,000 square feet of veneer dried (3/8 inch basis) for units using fuel which has a moisture content by weight of greater than 20 percent;

(C) In addition to paragraphs (1)(c)(A) and (B) of this rule, 0.40 pounds per 1,000 pounds of steam generated in boilers which exhaust gases to the veneer dryer.

(d) Exhaust gases from fuel-burning equipment vented to the veneer dryer are exempt from OAR 340-228-0210;

(e) Each veneer dryer shall be maintained and operated at all times such that air contaminant generating processes and all contaminant control equipment shall be at full efficiency and effectiveness so that the emission of air contaminants are kept at the lowest practicable levels;

(f) No person shall willfully cause or permit the installation or use of any means, such as dilution, which, without resulting in a reduction in the total amount of air contaminants emitted, conceals an emission which would otherwise violate this rule;

(g) Where effective measures are not taken to minimize fugitive emissions, the Department may require that the equipment or structures in which processing, handling, and storage are done, be tightly closed, modified, or operated in such a way that air contaminants are minimized, controlled, or removed before discharge to the open air;

(h) The Department may require more restrictive emission limits than provided in subsections (1)(b) and (c) of this rule for an individual plant upon a finding by the Commission that the individual plant is located or is proposed to be located in a special problem area. The more restrictive emission limits for special problem areas may be established on the basis of allowable emissions expressed in opacity, pounds per hour, or total maximum daily emissions to the atmosphere, or a combination thereof.

(2) Other Emission Sources:

~~(a) No person shall cause to be emitted particulate matter~~ The combined particulate emissions from veneer and plywood mill sources, including, but not limited to, sanding machines, saws, presses, barkers, hogs, chippers, and other material size reduction equipment, process or space ventilation systems, and truck loading and unloading facilities must not exceed a plant specific average hourly emission rate (lbs/hr) determined by multiplying the plant production capacity by in excess of a total from all sources within the plant site of one pound per 1,000 square feet. The plant production capacity is the maximum production in terms of 1,000 square feet of plywood or veneer production on a 3/8 inch basis of finished product for a typical operating shift divided by the number of hours in the operating shift. of finished product equivalent;

(b) Excepted from subsection (2)(a) of this rule are veneer dryers, fuel burning equipment, and refuse burning equipment.

(c) Compliance with the average hourly emission rate is determined by summing the emissions from the affected sources as determined by emission factor calculations or actual emissions data for a twenty-four hour period divided by 24.

(3) Monitoring and Reporting: The Department may require any veneer dryer facility to establish an effective program for monitoring the visible air contaminant emissions from each veneer dryer emission point. The program shall be subject to review and approval by the Department and shall consist of the following:

(a) A specified minimum frequency for performing visual opacity determinations on each veneer dryer emission point;

(b) All data obtained shall be recorded on copies of a "Veneer Dryer Visual Emissions Monitoring Form" which shall be provided by the Department of Environmental Quality or on an alternative form which is approved by the Department; and

(c) A specified period during which all records shall be maintained at the mill site for inspection by authorized representatives of the Department.

[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 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 26, f. 3-31-71, ef. 4-25-71; DEQ 37, f. 2-15-72, ef. 3-1-72; DEQ 43(Temp), f. & ef. 5-5-72 thru 9-1-72; DEQ 48, f. 9-20-72, ef. 10-1-72; DEQ 52, f. 4-9-73, ef. 5-1-73; DEQ 83, f. 1-30-75, ef. 2-25-75; DEQ 132, f. & ef. 4-11-77; DEQ 7-1979, f. & ef. 4-20-79; DEQ 10-1985, f. & ef. 8-8-85; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0510

340-234-0520

Particleboard Manufacturing Operations

(1) Truck Dump and Storage Areas:

(a) Every person operating or intending to operate a particleboard manufacturing plant shall cause all truck dump and storage areas holding or intended to hold raw materials to be enclosed to prevent windblown particle emissions from these areas from being deposited upon property not under the ownership of said person;

(b) The temporary storage of raw materials outside the regularly used areas of the plant site is prohibited unless the person who desires to temporarily store such raw materials first notifies the Department of Environmental Quality and receives written approval for said storage:

(A) When authorized by the Department of Environment Quality, temporary storage areas shall be operated to prevent windblown particulate emissions from being deposited upon property not under the ownership of the person storing the raw materials;

(B) Any temporary storage areas authorized by the Department shall not be operated in excess of six (6) months from the date they are first authorized.

(c) Any person who proposes to control windblown particulate emissions from truck dump storage areas other than by enclosure shall apply to the Department for written authorization to utilize alternative controls. The application shall describe in detail the plan proposed to control windblown particulate emissions and indicate on a plot plan the nearest location of property not under ownership of the applicant.

(2) Other Emission Sources:

(a) No person shall cause to be emitted particulate matter. The combined particulate emissions from particleboard plant sources including, but not limited to, hogs, chippers, and other material size reduction equipment, process or space ventilation systems, particle dryers, classifiers, presses, sanding machines, and materials handling systems must not exceed a plant specific average hourly emission rate (lbs/hr) determined by multiplying the plant production capacity by in excess of a total from all sources within the plant site of three (3.0) pounds per 1000 square feet. The plant production capacity is the maximum production in terms of 1,000 square feet of particleboard produced on a 3/4 inch basis of finished product equivalent; for a typical operating shift divided by the number of hours in the operating shift.

(b) Excepted from subsection (2)(a) of this rule are truck dump and storage areas, fuel burning equipment, and refuse burning equipment.

(c) Compliance with the average hourly emission rate is determined by summing the emissions from the affected sources as determined by emission factor calculations or actual emissions data for a twenty-four hour period divided by 24.

[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 468 & ORS 468A

Stats. Implemented: ORS 468.020 & ORS 468A.025

Hist.: DEQ 26, f. 3-31-71, ef. 4-25-71; DEQ 130, f. & ef. 3-22-77; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 4-1995, f. & cert. ef. 2-17-95; DEQ 3-1996, f. & cert. ef. 1-29-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0320

340-234-0530

Hardboard Manufacturing Operations

(1) Truck Dump and Storage Areas:

(a) Every person operating or intending to operate a hardboard manufacturing plant shall cause all truck dump and storage areas holding or intended to hold raw materials to be enclosed to prevent windblown particle emissions from these areas from being deposited upon property not under the ownership of said person;

(b) The temporary storage of raw materials outside the regularly used areas of the plant site is prohibited unless the person who desires to temporarily store such raw materials first notifies the Department of Environmental Quality and receives written approval:

(A) When authorized by the Department of Environmental Quality, temporary storage areas shall be operated to prevent windblown particulate emissions from being deposited upon property not under the ownership of the person storing the raw materials;

(B) Any temporary storage areas authorized by the Department shall not be operated in excess of six (6) months from the date they are first authorized.

(c) Alternative Means of Control. Any person who desires to control windblown particulate emissions from truck dump and storage areas other than by enclosure shall first apply to the Department for written authorization to utilize alternative controls. The application shall describe in detail the plan proposed to control windblown particulate emissions and indicate on a plot plan the nearest location of property not under ownership of the applicant.

(2) Other Emission Sources:

(a) ~~For H~~hardboard plants ~~that which~~ did not exist during the baseline period, the combined particulate emissions from all emissions sources at the plant must not exceed a plant specific hourly average emission rate (lbs/hr) determined by multiplying the plant production capacity by one pound per 1,000 square feet of production. The plant production capacity is the maximum production in terms of ~~No person shall cause or permit the total emissions rate of particulate matter from a hardboard plant which did not exist during the baseline period to exceed one (1.0) pound per 1000 square feet of hardboard produced on a 1/8 inch finished basis for a typical operating shift divided by the number of hours in the operating shift of finished product equivalent.~~

(b) ~~For H~~hardboard plants ~~that which~~ existed during the baseline period, the combined particulate emissions from the plant must not exceed the lesser of: ~~No person shall cause or permit the total emissions rate of particulate matter from a hardboard plant which existed during the baseline period to exceed the lesser of:~~

(A) A plant specific hourly average emission rate (lbs/hr) determined by multiplying the plant production capacity by two pounds per 1,000 square feet of production. The plant production capacity is the maximum production in terms of 1,000 square feet on a 1/8 inch finished basis for a typical operating shift divided by the number of hours in the operating shift. Two (2.0) pounds per 1000 square feet of hardboard produced on a 1/8 inch basis of finished product equivalent; ~~or~~

(B) The sum of the baseline emissions rate (lbs/hr) of the press/cooling vent and the lesser of:

(i) The baseline emissions rate (lbs/hr) from all sources at the plant, the hardboard plant excluding the press/cooling vents; or

(ii) A plant specific hourly average emission rate (lbs/hr) determined by multiplying the plant production capacity by one pound per 1,000 square feet of production. The plant production capacity is the maximum production in terms of 1,000 square feet on a 1/8 inch finished basis for a typical operating shift divided by the number of hours in the operating shift. One (1.0) pound per 1000 square feet of hardboard produced on a 1/8 inch basis of finished product equivalent.

(c) Excepted from subsections (a) and (b) of this section are truck dump and storage areas, fuel burning equipment, and refuse burning equipment.

(d) Compliance with the average hourly emission rate is determined by summing the emissions from the affected sources as determined by emission factor calculations or actual emissions data for a twenty-four hour period divided by 24.

(3) Emissions from Hardboard Tempering Ovens:

(a) No person shall operate any hardboard tempering oven unless all gases and vapors emitted from said oven are treated in a fume incinerator capable of raising the temperature of said gases and vapors to at least 1500° F. for 0.3 seconds or longer;

(b) Specific operating temperatures lower than 1500° F. may be approved by the Department upon application, provided that information is supplied to show that operation of said temperatures provides sufficient treatment to prevent odors from being perceived on property not under the ownership of the person operating the hardboard plant;

(c) In no case shall fume incinerators installed pursuant to this section be operated at temperatures less than 1000° F.;

(d) Any person who proposes to control emissions from hardboard tempering ovens by means other than fume incineration shall apply to the Department for written authorization to utilize alternative controls. The application shall describe in detail the plan proposed to control odorous emissions and indicate on a plot plan the location of the nearest property not under ownership of the applicant.

[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 468 & ORS 468A

Stats. Implemented: ORS 468.020 & ORS 468A.025

Hist.: DEQ 26, f. 3-31-71, ef. 4-25-71; DEQ 130, f. & ef. 3-22-77; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 4-1995, f. & cert. ef. 2-17-95; DEQ 3-1996, f. & cert. ef. 1-29-96; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0325

DIVISION 236

EMISSION STANDARDS FOR SPECIFIC INDUSTRIES

[NOTE: Administrative Order DEQ 60 repealed previous OAR 340-025-0255 through 340-025-0290 (consisting of DEQ 19, filed 7-14-70 and effective 8-10-70).]

340-236-0010

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) "All Sources" means:

(a) as used in OAR 340-236-0100 through 340-236-0150 sources including, but not limited to, the reduction process, alumina plant, anode plant, anode baking plant, cast house, and collection, treatment, and recovery systems. Except for the purposes of 340-236-0120(1)(c) and (3)(d), "all sources" does not include sources of fugitive emissions;

(b) as used in OAR 340-236-0200 through 340-236-0230 all equipment, structures, processes, and procedures directly related to or involved in the production of ferronickel from laterite ore excluding open storage areas and mining activities.

~~(2) "Ambient Air" means the air that surrounds the earth, excluding the general volume of gases contained within any building or structure.~~

~~(23) "Annual Average" means the arithmetic average of the monthly averages reported to the Department during the twelve most recent consecutive months.~~

~~(34) "Anode Baking Plant" means the heating and sintering of pressed anode blocks in oven-like devices, including the loading and unloading of the oven-like devices.~~

~~(45) "Anode Plant" means all operations directly associated with the preparation of anode carbon except the anode baking operation.~~

~~(56) "Average Dry Laterite Ore Production Rate" means the average amount of dry laterite ore produced per hour based upon annual production records.~~

~~(67) "Collection Efficiency" means the overall performance of the air cleaning device in terms of ratio of material collected to total weight of input to the collector, unless specific size fractions of the contaminant are stated or required.~~

~~(78) "Commission" means Environmental Quality Commission.~~

(89) "Cured Forage" means hay, straw, ensilage that is consumed or is intended to be consumed by livestock.

(940) "Department" means Department of Environmental Quality.

(104) "Dusts" means minute solid particles released into the air by natural forces or by mechanical processes such as crushing, grinding, milling, drilling, demolishing, shoveling, conveying, covering, bagging, or sweeping.

(112) "Dry Laterite Ore" means laterite ore free of uncombined water or as it is discharged from an ore drying equipment or process.

(123) "Emission" means a release into the outdoor atmosphere of air contaminants.

(134) "Emission Standards" means the limitation on the release of contaminant or multiple contaminants to the ambient air.

(145) "Ferronickel" means a metallic alloy containing about 50 percent nickel and 50 percent iron.

(156) "Fluorides" means matter containing fluoride ion emitted to the ambient air as measured by EPA Method 13A or 13B and Method 14 in accordance with the Department's Source Sampling Manual, or an equivalent test method approved in writing by the Department.

(167) "Forage" means grasses, pasture, and other vegetation that is consumed or is intended to be consumed by livestock.

(178) "Fugitive emissions" means emissions of any air contaminant that escapes to the atmosphere from any point or area that is not identifiable as a stack, vent, duct, or equivalent opening.

(189) "Hot Mix Asphalt Plants" means those facilities and equipment which convey or batch load proportioned quantities of cold aggregate to a drier, and heat, dry, screen, classify, measure, and mix the aggregate with asphalt for purposes of paving, construction, industrial, residential, or commercial use.

(1920) "Laterite Ore" means a red residual soil containing commercially valuable amounts of nickel, about one percent to two percent by weight.

(204) "Monthly Average" means the summation of the arithmetic average of all representative test results obtained during any calendar month and the emission rates established for sources not subject to routine testing.

(22) "Opacity" means the degree to which an emission reduces transmission of light or obscures the view of an object in the background as measured by EPA Method 9 in accordance with the Department's Source Sampling Manual.

(231) "Particulate Matter" means:

(a) as used in OAR 340-236-0100 through 340-236-0150 a small discrete mass of solid or liquid matter, but not including uncombined water emitted to the ambient air as measured by EPA Method 5 in accordance with the Department's Source Sampling Manual, or an equivalent test method approved in writing by the Department;

(b) as used in OAR 340-236-0200 through 340-236-0230 and 340-236-0400 through 340-236-0440 a small, discrete mass of solid or liquid matter, but not including uncombined water.

(224) "Primary Aluminum Plant" means those plants, which will or do operate for the purpose of, or related to, producing aluminum metal from aluminum oxide (alumina).

(253) "Portable Hot Mix Asphalt Plants" means those hot mix asphalt plants which are designed to be dismantled and are transported from one job site to another job site.

(264) "Pot Line Primary Emission Control Systems" means the system which collects and removes contaminants prior to the emission point. If there is more than one such system, the primary system is that system which is most directly related to the aluminum reduction cell.

(275) "Process Weight by Hour" means the total weight of all materials introduced into any specific process which process may cause any discharge into the atmosphere. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. The "process weight per hour" will be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during which the equipment is idle.

(286) "Regularly Scheduled Monitoring" means sampling and analyses in compliance with a program and schedule approved pursuant to OAR 340-236-0140.

(297) "Source test" means a minimum of three (3) individual test runs with the pollutant emissions determined from the arithmetic average of the three tests. the average of at least three test runs conducted in accordance with the Department's Source Sampling Manual.

(3028) "Standard Dry Cubic Foot of Gas" means that amount of the gas which would occupy a cube having dimensions of one foot on each side, if the gas were free of water vapor at a pressure of 14.7 P.S.I.A. and a temperature of 68° F.

(3129) "Special Control Areas" means an area designated in OAR 340-204-0070 and:

(a) Any incorporated city or within six miles of the city limits of said incorporated city;

(b) Any area of the state within one mile of any structure or building used for a residence;

(c) Any area of the state within two miles straight line distance or air miles of any paved public road, highway, or freeway having a total of two or more traffic lanes.

[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 with the exception of fluoride requirements.]

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: [DEQ 49, f. 2-9-73, ef. 3-1-73; DEQ 4-1993, f. & cert. ef. 3-10-93]; [DEQ 60, f. 12-5-73, ef. 12-25-73; DEQ 10-1982, f. & ef. 6-18-82; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 26-1995, f. & cert. ef. 12-6-95; DEQ 18-1998, f. & cert. ef. 10-5-98]; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0105, 340-025-0260

Hot Mix Asphalt Plants

340-236-0410

Control Facilities Required

(1) No person shall operate any hot mix asphalt plant, either portable or stationary, located within any area of the state outside special control areas unless all dusts and gaseous effluents generated by the plant are subjected to air cleaning device or devices having a particulate collection efficiency of at least 80 percent by weight.

(2) No person shall operate any hot mix asphalt plant, either portable or stationary located within any special control area of the state without installing and operating systems or processes for the control of particulate emissions so as to comply with the emission limits established by the process weight table, Table 1, attached herewith and by reference made a part of this rule. ~~and Hot mix asphalt plants are subject to the emission limitations in OAR 340-208-0110(2) and (3), and 340-226-0210, and 340-238-0060, as applicable.~~

[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 Table(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 49, f. 2-9-73, ef. 3-1-73; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0110

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
Adoption of Air Quality Permit Program Streamlining and Updates

Additional Information on Proposed Rule Changes: Proposed Rule Summary

Summary of Proposed Rule Changes

1. General Definitions

Proposed changes would relocate several definitions to the General Air Quality Definitions section to make it clear that they apply to all air quality rules. Revisions to the definition of “particulate matter” would improve the cross reference to DEQ’s Air Quality Source Sampling Manual and specify test methods.

2. Delisting HFE-7300 as a VOC

The proposed changes would add HFE-7300 to the list of compounds exempt from the definition of volatile organic compounds (VOC). According to EPA research, this substance has negligible reactivity and very low potential to form ground-level ozone or smog. HFE-7300 has a variety of potential uses including as a heat-transfer fluid and in coating, cleaning, and lubricating applications. This change should benefit air quality in Oregon, because exempting HFE-7300 will allow the Department to focus VOC reduction strategies on compounds that are more responsible for forming ground-level ozone or smog. Delisting will likely have an additional environmental benefit because HFE-7300 can be used in place of substances that deplete the earth’s protective ozone layer and substances with high global warming potentials.

3. Revisions to Standards for Clackamas, Columbia, Multnomah, and Washington Counties

The proposed changes would repeal outdated and redundant requirements. The Storage and Handling of Petroleum Products section in OAR 340-208-0560 is redundant with existing New Source Performance Standards (NSPS) and vapor control requirements in OAR 340-242-0520. The Sulfur Dioxide Emission Standard in OAR 340-208-0630 is redundant with existing fuel oil sulfur content limits and Kraft Pulp Mill regulations. These changes would result in the removal of unnecessary permit conditions and are not expected to affect air quality or rule stringency.

4. Revisions to make Title V procedural rules consistent with federal Part 70 requirements, and improve administration

In 2004, EPA began a comprehensive review of DEQ’s Title V Operating Permitting Program. In June 2006, EPA identified several areas where DEQ needed to change its rules for better alignment with federal requirements. Aligning DEQ regulations with federal Part 70 requirements would maintain clarity, enforceability, and continued federal approval of the Title V Program. The revisions would improve administration of the Title V Program by ensuring a full description of the comment procedures in public notices, and clarifying the process for responding to comments prior to issuance or denial of a permit. The proposed revisions would also clarify that for facilities with Title V or Air Contaminant Discharge

Permits (ACDPs), requirements established in preceding permits remain in effect unless specifically modified or terminated. The proposed revisions would satisfy federal requirements by updating the description of which facilities are exempted from the requirement to obtain a Title V Permit. Additional rule revisions in response to federal requirements would allow reporting or source testing dates to be changed by administrative permit amendment if a facility or parts of a facility are not operating, and disallow treatment of baseline and Plant Site Emission Limit (PSEL) corrections as administrative permit amendments.

DEQ also identified several streamlining improvements for Title V Permitting. These proposed revisions would eliminate redundancy by limiting the information needed in renewal applications to new or changed information only, decreasing the number of required application copies from four to three, and directing applicants to submit a copy of monitoring reports to DEQ regional offices. The Department does not expect these changes to affect air quality or rule stringency, but they may result in minor efficiencies for permitted facilities.

5. Revisions to make Excess Emissions rules consistent with federal Part 70 requirements
In its 2006 Title V Program Review, EPA identified several deficiencies in DEQ's Excess Emissions rules. Revisions to these rules would achieve two main objectives. First, they would clarify that the affirmative defense of emergency does not take away DEQ's enforcement discretion, but is relevant when evaluating a violation to determine the level of penalty. Second, the revisions would consolidate the notification and reporting requirements and the criteria for demonstrating emergency as an affirmative defense. These changes would improve enforceability and ensure continued Title V Program and State Implementation Plan (SIP) approval. The proposed revisions would make DEQ's rules consistent with 40 CFR part 70 requirements and also EPA SIP guidance. The EPA SIP guidance is contained in a September 20, 1999 memorandum titled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" from Steven A. Herman, Assistant for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation.

6. Changes to Basic Permit Categories
The proposed changes streamline the ACDP permitting program by eliminating basic permit categories with limited potential for environmental harm. In 2001, DEQ instituted 19 Basic Permit categories to track small air emission sources. DEQ intended that basic permits function as a registration, or means to track sources with potential to grow or require a different type of permit and to trigger control requirements. The purpose was to anticipate emission increases and reduce potential for source violations. DEQ has determined that there is little to no environmental benefit from tracking the 12 basic permit categories proposed for deletion.

The existence of unused basic permit categories results in lack of clarity about whether various small facilities must obtain basic ACDPs. Deleting the unused permit categories will eliminate confusion and align the rules with current program implementation. To date, DEQ has only issued basic permits to source categories that required ACDPs before the 2001 rulemaking. Because no basic permits have been issued in the 12 categories proposed for

repeal, this action would not result in termination of any existing permits. A general provision in the ACDP rules ensures that any facility with significant emissions is regulated through a permit. OAR 340-216-0020 Table 1 (B)(75) requires permits for all sources not otherwise listed with emissions of five or more tons a year of PM10 in a PM10 non-attainment or maintenance area, or 10 or more tons of any single criteria pollutant in any part of the state.

7. Update and Renewal of General Permits for Rock Crushers, Ready Mix Concrete Plants, Asphalt Plants, Sawmills/Plywood/Veneer Plants, Boilers and Crematories

DEQ proposes to adopt by reference updates and corrections to six categories of general permits. Since these permits were originally issued in 2001, the Department has identified various errors in need of correction. These changes will clarify monitoring, reporting and compliance procedures, and are not expected to affect air quality or rule stringency.

8. SO₂ Averaging

To align with federal standards, DEQ proposes to change the averaging time in the sulfur dioxide standards for fuel-burning equipment from two to three hours. The averaging time is the period during which measurements are taken to determine compliance with a standard. Measurements of a pollutant are averaged for comparison to the standard. Currently, some facilities must demonstrate compliance with both two and three hour averaging periods. DEQ does not expect this change to affect air quality or rule stringency. It will simplify compliance determinations by eliminating duplicative standards.

9. Salt Laden Wood Exception

This proposal would add a requirement that the existing salt laden wood waste exemption is applicable only upon prior notice to DEQ. When burned, salt laden wood has higher emissions than "standard" wood. High salt content is caused by floating logs in salt water as a means of transportation. While this was a common practice 30 years ago, it is now a rare event. This proposal would allow the Department to have knowledge of this exemption so it can assure compliance with the appropriate standard.

10. Utility Mercury Rule Corrections

On December 15, 2006, the Environmental Quality Commission adopted the Utility Mercury Rule which opts Oregon into the national mercury cap-and-trade program through 2017, requires coal-fired power plants in Oregon to install mercury controls in 2012, and opts Oregon out of the national cap-and-trade program starting in 2018. As a result of opting out of the national cap-and-trade program, mercury emissions from coal-fired power plants in Oregon are capped at 60 pounds per year in 2018 and thereafter. The rule distributes the 60 pound cap among the existing Boardman plant and new plants, with the Boardman plant capped at 35 pounds of mercury per year and all new plants capped at a combined 25 pounds of mercury per year.

Since the adoption of the Utility Mercury Rule, DEQ has discovered that the method of distribution of the 25 pound mercury emission cap for new plants is flawed. Currently the Utility Mercury Rule distributes Oregon's mercury emissions cap for new plants based on relative plant size. Under this distribution system, as new plants come on line, they could

potentially take a portion of the mercury allocation away from an existing plant putting the existing plant into non-compliance due to no fault of their own. This allocation method used by the federal Clean Air Mercury Rule makes sense when associated with a trading program because a plant could just purchase extra credits, but it creates problems in the absence of trading. It could also create unexpected and unavoidable non-compliance for the existing plant.

For instance, a 500 megawatt plant might be given a 25 pound mercury cap when it starts up. Then if a new 200 megawatt plant was built the credits would be redistributed based on plant size: the 500 megawatt plant would get 18 pounds and the 200 megawatt plant would get 7 pounds. The 500 megawatt plant would be seven pounds short of what it needs to operate.

The proposed corrections to the Utility Mercury Rule would require DEQ to distribute Oregon's mercury emissions cap for new plants on a first-come-first-served basis. This would ensure more equitable distribution of the mercury emissions cap for new plants and would not affect air quality or rule stringency.

Additional revisions to the Utility Mercury Rule correct cross references.

11. Revisions to Incinerator Rules

Proposed revisions to the incinerator rules would clarify and consolidate definitions and clarify the requirements for operating crematory incinerators. These revisions would be consistent with current implementation and rule interpretation. There will be no increase in workload for permitted sources or the Department and the changes are not expected to affect air quality or rule stringency.

12. Wigwam Prohibition

Because wigwam waste burners cannot be operated in compliance with other air quality regulations, DEQ proposes to repeal outdated regulations governing wigwam burners and prohibit their use statewide. The proposed revisions would specify that wigwam waste burner emissions not be subtracted from the netting basis in rare cases where wigwam burners were actually operated at facilities during the baseline period. These changes are not expected to affect workload, air quality or rule stringency.

13. Revisions to Kraft Pulp Mill Rules

The Department adopted the Kraft Pulp Mill Rules in 1973. Since then, EPA has promulgated New Source Performance Standards (NSPS) for kraft pulp mills. Process units at some mills were modified after the NSPS applicability date, making those units subject to the NSPS. Several sections of the Kraft Pulp Mill Rules are redundant for mills with process units that are subject to the NSPS. As a result of these redundancies, Title V permits now include multiple permit conditions that set similar requirements the same emission sources and pollutants. Revisions would streamline the Kraft Pulp Mill Rules by eliminating redundancies. The revisions would also simplify permitting and compliance determinations and eliminate unnecessary reporting. There could be a minimal decrease in workload for DEQ and permitted sources. These changes are not expected to affect workload, air quality or rule stringency.

14. Simplified Emission Standards for Plywood, Particleboard and Hardboard Manufacturing Operations

The current board product standards are confusing. In one section the standards are based on square foot of product, but in another section the standards are hourly emission limits based on maximum production rates. As a result, these standards have been interpreted inconsistently for many years. Proposed revisions to these standards would clarify emission requirements for plywood, particleboard and hardboard manufacturing facilities by specifying uniform measurements and compliance methods. These revisions would facilitate permitting and are not expected to affect air quality or rule stringency.

15. Changes to Emission Standards for Specific Industries

Proposed changes to these rules would consolidate definitions and clarify them for consistency with other divisions. These changes are not expected to affect air quality or rule stringency.

Table 1: Description of Proposed Changes

Topic	Rule Citation	Description of Proposed Change
General Definitions	340-200-0020 (11)	- "Ambient Air" Relocates definition and clarifies exclusion for areas to which the general public has no access.
	(78)	- "Opacity" Relocates definitions to the general section to apply to all air quality rules in divisions 200 through 268. Deletes reference to Director's discretion to allow alternatives to emission limits, testing or monitoring methods in federal rules or the State Implementation Plan without prior EPA approval.
	(83)	- "Particulate Matter" Clarifies cross reference to Source Sampling Manual, clarifies test methods. Redundant definitions of "Particulate Matter" in other sections are deleted (340-228-0020).
	(130)	- "Source Test" Deletes reference to Director's discretion to allow alternatives to emission limits, testing or monitoring methods in federal rules or the State Implementation Plan without prior EPA approval.
Delisting HFE-7300 as a	340-200-0020 (143)	- Adds HFE-7300 to the list of volatile organic

VOC		compounds that are not subject to regulation as ozone forming compounds because of a very low tendency to react with sunlight to form ozone.
Revision to definition of "fuel burning equipment"	340-208-0010(4)	- Revises the definition of "fuel burning equipment" to ensure that the particulate standards in OAR 340-208-0610 and Divisions 226 and 228 are applied correctly. The standards in 340-208-0610 and Division 228 should not apply to equipment such as veneer dryers and particle dryers that may burn fuel but use dilution to control the temperature of the gas. These types of equipment are subject to the general particulate standards in Division 226. The same is true for internal combustion engines. Gas turbines, for example, cannot be subject to the standards in 340-208-0610 and Division 228 because the exhaust gas stream is diluted by excess air. Divisions 208 and 228 have a correction to 12 percent CO ₂ or 50 percent excess air and are intended to apply only to boilers and process heaters with controlled, near stoichiometric combustion.
Revisions to Standards for Clackamas, Columbia, Multnomah, and Washington Counties	340-208-0560	- Deletes Storage and Handling of Petroleum Products section which is redundant with existing New Source Performance Standards (NSPS) and vapor control requirements in 340-242-0520.
	340-208-0630	- Deletes Sulfur Dioxide Emission Standard because of redundancy with existing fuel oil sulfur content limits and Kraft Pulp Mill regulations.
Making Title V procedural rules consistent with federal Part 70 requirements, and improving administration.	340-209-0040	- Adds that public notices of proposed Title V Permit actions will include a description of procedures for making comments and requesting hearings.
	340-209-0080	- For added clarity, moves procedures for responding to comments and taking action on Title V Permits into the rule section on Issuance or Denial of a Permit.
	340-216-0020 and 0082	- Clarifies that facilities with Air Contaminant Discharge Permits (ACDPs) may not be

	340-216-0082 and 340-218-0010	operated if the permit expires or is terminated, unless a timely renewal application has been submitted or another type of permit has been issued.
	340-218-0020 (4)	- Clarifies that for facilities with Title V or ACDPs, requirements established in preceding permits remain in effect unless specifically modified or terminated. Previous source specific emission reduction requirements must be incorporated into Title V Permits.
	340-218-0040	- For consistency with federal regulations, updates description of which facilities are exempted from the requirement to obtain a Title V Permit.
	340-218-0050 (3)	- Eliminates redundancy by limiting information needed on renewal applications to new or changed information. Decreases number of required application copies from 4 to 3.
	340-218-0150	- Directs applicants to submit a copy of monitoring reports to DEQ regional offices. Deletes requirement to submit the excess emissions log with the annual report because revisions to the Excess Emissions rule require submission within 15 days of an excess emissions event. Changes the definition of "prompt" to 15 days after a deviation.
	340-214-0010	- Clarifies that reporting or source testing dates may be changed by administrative permit amendment if a facility or parts of a facility are not operating. Deletes baseline or Plant Site Emission Limit correction as an administrative permit amendment.
Making Excess Emissions rules consistent with federal Part 70 requirements	340-214-0010	- Clarifies that a "Large Source" is a facility required to maintain a Title V Permit, and a "Small Source" is a facility required to maintain an ACDP.
	340-214-0300	- Broadens applicability of the Excess Emissions rule to include excess emissions caused by reasons other than those enumerated

	<p>340-214-300(3) and (4) 340-214-0310(3) 340-214-0320(2) 340-214-0330(4) 340-214-0350 340-214-360</p> <p>340-214-0330</p> <p>340-214-0340</p> <p>340-214-0360</p>	<p>in the rule.</p> <ul style="list-style-type: none"> - Aligns language with federal requirements by clarifying that the affirmative defense of emergency does not take away DEQ's enforcement discretion, but is relevant when evaluating a violation to determine the level of penalty. - Consolidates notification requirements for excess emissions not addressed by planned startup and shutdown, scheduled maintenance or emergencies, in the All Other Excess Emissions section. - For clarity and ease of use, consolidates reporting requirements in one section. Many of the reporting requirements were located in the section on Enforcement Action Criteria. Clarifies that excess emission report must include whether a source followed approved procedures for startup, shutdown or maintenance activity when applicable. - Consolidates and further describes criteria for demonstrating emergency as an affirmative defense.
<p>Changes to Basic Permit Categories</p>	<p>340-216-0020 Table 1</p>	<ul style="list-style-type: none"> - To streamline permitting procedures, clarifies which facilities must obtain basic permits and update rules to current practices, deletes twelve unused Basic Permit categories: <ul style="list-style-type: none"> - Wood Furniture and Fixtures more than 5,000 but less than 25,000 board feet/maximum 8 hour input - Flour, Blended and/or Prepared and Associated Grain Elevators more than 2,000 but less than 10,000 tons per year throughput. - Grain Elevators used for intermediate storage more than 1,000 but less than 10,000 tons/yr. throughput. - Gray iron and steel foundries, malleable iron foundries, steel investment foundries, steel foundries more than one ton/yr. but less than 100

		<p>tons/yr. metal charged (not elsewhere identified).</p> <ul style="list-style-type: none"> - Millwork (including kitchen cabinets and structural wood members) more than 5,000 but less than 25,000 bd. ft./maximum 8 hour input. - Non-Ferrous Metal Foundries more than one ton/yr. but less than 100 tons/yr. of metal charged. - Pesticide Manufacturing more than 1,000 tons/yr. but less than 5,000 tons/yr. - Sawmills and/or Planing Mills more than 5,000 but less than 25,000 board feet/maximum 8 hour finished product. - Seed Cleaning and Associated Grain Elevators more than 1,000 but less than 5000 tons per year throughput. - Bakeries, Commercial baking more than 500 tons of dough per year. - Cereal Preparations and Associated Grain Elevators more than 2,000 but less than 10,000 tons per year throughput. - Coffee Roasters roasting more than 6 tons coffee beans in a year, but less than 30 tons/yr.
Update and Renewal of General Permits for Rock Crushers, Ready Mix Concrete Plants, Asphalt Plants, Sawmills/Plywood/Veneer Plants, Boilers and Crematories	340-216-0060(5)(g), (h), (i), (j), (k), and (l)	- Adopts by reference updates and corrections to six categories of general permits.
SO2 Averaging	340-228-0200	- To match federal standards, changes the averaging time for sulfur dioxide standards for fuel-burning equipment from two hours to three hours.
Salt Laden Wood Exception	340-228-0210	- Adds requirement for notice to the Department prior to using an existing exemption allowing a higher emission rate for burning salt laden wood waste.
Utility Mercury Rule Corrections	340-228-0672	- Fixes Oregon's Utility Mercury Rule to direct the Department to distribute the 25 pound mercury emissions cap to new plants on a first-

	<p>340-228-0673 340-228-0674 340-228-0676 340-228-0678</p>	<p>come-first-served basis.</p> <ul style="list-style-type: none"> - Corrects cross references.
Revisions to Incinerator Rules	<p>340-230-0030(13) (36)</p> <p>340-230-0030(32)</p> <p>340-230-0030(16), (37) and (38)</p> <p>340-230-0030(38)</p> <p>340-230-0200</p> <p>340-230-0210</p> <p>340-230-0220(2)</p> <p>340-230-0230</p>	<ul style="list-style-type: none"> - Deletes confusing “new” and “existing” definitions, places dates relating to requirements in regulations. - Deletes construction date in “Municipal waste combustor plant” definition, places dates relating to requirements in regulations. - Deletes “fugitive emissions”, “opacity” and “particulate matter” definitions because they are addressed in the General Definitions, Division 200. - Clarifies the “pyrolysis” definition by deleting references to hospital or medical waste. - Simplifies the opacity standard for crematory incinerators by changing it from an aggregate measurement of 6 minutes in 60 minutes to a 6 minute period. - Clarifies crematory operating requirements for units built before and after March 13, 1993. - For continuity of recordkeeping, increases from one to two years the requirement to maintain crematory temperature monitoring records. - Clarifies compliance demonstration requirements by describing specific source test procedures and citations.
Wigwam Prohibition	340-234-0100 through 0140	<ul style="list-style-type: none"> - Deletes outdated regulations governing the use of Wigwam Waste Burners and adds a prohibition statewide. Addresses rare historic cases in which wigwam emissions have been included in a source’s netting basis by specifying that these emissions shall not be

		subtracted from the netting basis.
Revisions to Kraft Pulp Mill Rules	340-234-0010(12)	- In definition of "Daily Arithmetic Average" deletes reference to Director's discretion to allow alternatives to emission limits, testing or monitoring methods in federal rules or the State Implementation Plan without prior EPA approval.
	340-234-0010 (26)(a)	- Adds additional exemptions to the list of "other sources" of Total Reduced Sulfur (TRS). Smelt dissolving tanks are covered by separate state limits. Sewers, drains and wastewater treatment facilities are not measurable sources of TRS. Categorically insignificant activities are very minor, difficult to evaluate and could include non-industrial sources such as restrooms.
	340-234-210(1)(c)(B)	- Deletes a section which no longer applies to existing Kraft Mills in Oregon.
	340-234-210(1)(e)(A)	- Deletes examples of "other sources" because this term is defined in the definitions section.
	340-234-220(2)	- Consistent with current practice, clarifies that the Department may require that a Kraft Pulp Mill undertake an odor emission reduction study program.
	340-234-230	- Deletes section on submission of plans for construction and modification because general permitting regulations in Division 210 address these requirements.
	340-234-0240(1)	- Deletes general monitoring section which has been superseded by specific Title V monitoring requirements.
	340-234-0240(1)(c)	- Clarifies that DEQ may require different vent sampling methods.
	340-234-0240(2)(c)	- Deletes section requiring use of obsolete sodium ion probes. Federal NSPS requirements address opacity monitoring.
	340-234-0240(5)	- For clarity, states the existing requirement

	340-234-0250	that new or modified sources subject to federal standards must conduct monitoring and source tests in accordance with these standards. Clarifies that DEQ may require relevant monitoring when it is more stringent than federal requirements.
	340-234-0260	- Clarifies that mills must follow state-specific reporting requirements if required in permit by DEQ. - Deletes Upset Conditions section because these conditions are addressed both in the federal National Emission Standards for Hazardous Air Pollutants (NESHAPs) and Division 214 (Excess Emissions Rules).
Simplified emission standards for plywood, particleboard and hardboard manufacturing operations	340-234-0510(2) 340-234-0520(2) 340-234-0530(2)	- Clarifies emission requirements for Board Products by specifying uniform measurements and compliance methods.
Changes to Emission Standards for Specific Industries	340-236-0010(6) 340-236-0010(15) 340-236-0010 (21) 340-236-0010(22) 340-236-0010(27)	- Clarification of "collection efficiency" definition. - In definition of "fluorides" deletes reference to Director's discretion to allow alternatives to emission limits, testing or monitoring methods in federal rules or the State Implementation Plan without prior EPA approval. - In definition of "particulate matter" deletes reference to Director's discretion to allow alternatives to emission limits, testing or monitoring methods in federal rules or the State Implementation Plan without prior EPA approval. - Deletes "opacity" definition because it is addressed in the General Definitions, Division 200. - Updates "source test" definition for consistency with other rules, adds reference to the Department's Source Sampling Manual. Deletes reference to Director's discretion to

		allow alternatives to emission limits, testing or monitoring methods in federal rules or the State Implementation Plan without prior EPA approval.
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Summary of Public Comment and Agency Response

Air Quality Permit Program Streamlining and Updates

Prepared by: Sarah Armitage

Date: May 1, 2007

Comment period

The public comment period opened on March 22, 2007 and closed at 5:00 p.m. on April 27, 2007. The Department of Environmental Quality (Department) held public hearings in Medford on April 23, 2007, at 6:00 p.m.; in Bend on April 24, 2007, at 6:00 p.m.; and in Portland on April 25, 2007, at 6:30 p.m. Five people attended the hearings and one person presented an oral comment. Seven other people submitted written comments.

Organization of comments and responses

Summaries of comments and the Department's responses are provided below. Comments are summarized in categories. The persons who provided each comment are referenced by number. A list of commenters and their reference numbers follows the summary of comments and responses.

Summary of Comments and Agency Responses		
From	Comment	DEQ response & proposed rule change
	<i>General Definitions</i>	
6, 7, 8	Moving the definition of "Ambient Air" from Division 236 to the General Definitions in Division 200 has the unintended consequence of including in the definition areas at a plant site to which the public has no access. This is contrary to DEQ's historic interpretation of "ambient air" and national legal precedent. DEQ should not add this definition of "Ambient Air" to Division 200.	The Department agrees that the definition of "Ambient Air" should exclude areas to which the general public has no access. The Department proposes to change the definition to be consistent with federal regulations as follows: 340-200-0020 (11) "Ambient Air" means the air that surrounds the earth, excluding the general volume of gases contained within any building or structure that portion of the atmosphere, external to buildings, to which the general public has access.
6, 7, 8	The revised definition of "Categorically insignificant activity" in 340-200-0020 (19) would require a facility to inventory all natural gas and propane fired units, and only consider as categorically exempt the subset that added up to less than 2.0 million Btu/hr as a plant site total. This change would dramatically increase paperwork requirements without environmental benefit.	The Department agrees that the additional burden could be significant with questionable environmental benefit and proposes to change the regulation as follows: 340-200-0020 (19) "Categorically insignificant activity" means any of the following listed pollutant emitting activities principally supporting the source or the major industrial group. Categorically insignificant activities must comply with all applicable requirements. (d) Natural gas and propane burning equipment rated at less than or equal to 2.0



		million Btu/hr as a plant site total;
4	DEQ should update the definition of "Criteria Pollutant" in 340-200-0020 (30) to align with the federal Clean air Act definitions. PM 2.5 should be included as a criteria pollutant and volatile organic compounds should be mentioned as precursors to ozone.	The Department agrees that this definition should be updated, and plans to address this in the PM 2.5 rulemaking scheduled for 2008.
4	The measurement requirement for "Opacity" as defined in 340-200-0020 (78) should also refer to permit requirements. This would allow for more stringent opacity monitoring where a problem has been demonstrated.	The Department will consider updating reference methods for measuring opacity when it performs the PM 2.5 rulemaking in 2008. Division 212 and Title V periodic monitoring requirements authorize more stringent monitoring within permits on a case-by-case basis, so a specific reference to permit requirements is not necessary in the definition of "opacity."
2	DEQ should remove references to the Director's discretion that allow it to approve alternatives to emission limits, testing or monitoring methods, or other requirements where the alternatives are not specifically identified in the regulation or the regulation does not contain replicable criteria for approving alternatives. EPA cannot approve such provisions because they allow revisions to the State Implementation Plan (SIP) without complying with the requirements of sections 110(i) and 110(l) of the Clean Air Act. Specifically, Director's discretion provisions should be removed from the definitions of "Source Test" in 340-200-0010(130) and 340-236-0010(27), the definition of "Daily Arithmetic Average" in 340-234-010(12), the definition of "Fluorides" in 340-236-0010(15), and the definition of "Particulate Matter" in 340-236-0010(21).	<p>The Department agrees that in some circumstances, the Director's discretion provisions could cause revisions in federal SIP rules or plan without prior EPA approval. The definitions will be changed as follows:</p> <p>340-200-0020 (78) "Opacity" means the degree to which an emission reduces transmission of light and obscures the view of an object in the background as measured in accordance with OAR 340-212-0120 and 212-0140. Unless otherwise specified by rule, opacity shall be measured in accordance with EPA Method 9, or a continuous opacity monitoring system (COMS) installed in and operated in accordance with the Department's Continuous Monitoring Manual. For all standards, the minimum observation period shall be six minutes, though longer periods may be required by a specific rule or permit condition. Aggregate times (e.g. 3 minutes in any one hour) consist of the total duration of all readings during the observation period that equal or exceed the opacity percentage in the standard, whether or not the readings are consecutive.</p> <p>Alternatives to EPA Method 9, such as a continuous opacity monitoring system (COMS), alternate Method 1 (LIDAR), or EPA Methods 22, or 203, may be used if approved in advance by the Department, in accordance with the Source Sampling Manual.</p>

		<p>340-200-0020 (130) "Source Test" means the average of at least three test runs conducted in accordance with the Department's Source Sampling Manual or other Department approved methods.</p> <p>340-236-0010(27) "Source Test" means the average of at least three test runs conducted in accordance with the Department's Source Sampling Manual or other Department approved methods.</p> <p>340-234-0010(12) "Daily Arithmetic Average" means the average concentration over the twenty-four hour period in a calendar day, or Department approved equivalent period, as determined by continuous monitoring equipment or reference method testing. Determinations based on EPA reference methods or equivalent methods in accordance with the Department Source Sampling Manual consist of three separate consecutive runs having a minimum sampling time of sixty minutes each and a maximum sampling time of eight hours each. The three values for concentration (ppm or grains/dscf) are averaged and expressed as the daily arithmetic average which is used to determine compliance with process weight limitations, grain loading or volumetric concentration limitations and to determine daily emission rate.</p> <p>340-236-0010(15), "Fluorides" means matter containing fluoride ion emitted to the ambient air as measured by EPA Method 13A or 13B and Method 14 in accordance with the Department's Source Sampling Manual or an equivalent test method approved in writing by the Department.</p> <p>340-200-0010(834) "Particulate Matter" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air, as measured by <u>When used in emission standards, particulate matter is defined by the method specified within the standard or by an applicable reference method in accordance with OAR</u></p>
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		<p>340-212-0120 and OAR 340-212-0140, the Department's Source Sampling Manual, (January, 1992). Unless otherwise specified, sources with exhaust gases at or near ambient conditions may be tested with DEQ Method 5 or DEQ Method 8, as approved by the Department. Direct heat transfer sources shall be tested with DEQ Method 7; indirect heat transfer combustion sources and all other non-fugitive emissions sources not listed above shall be tested with DEQ Method 5.</p> <p>340-236-0010(21) "Particulate Matter" means:</p> <p>(a) as used in OAR 340-236-0100 through 340-236-0150 a small discrete mass of solid or liquid matter, but not including uncombined water emitted to the ambient air as measured by EPA Method 5 in accordance with the Department's Source Sampling Manual or an equivalent test method approved in writing by the Department;</p>
5	The definition of "Source Test" in 340-200-0010(130) should not be changed to delete the requirement to conduct source testing at a time that is representative of usual emissions.	The Department proposed to delete language requiring that source tests are conducted "during operating conditions representative of the period for which emissions are to be determined" because the language is vague and redundant. The existing requirement to test in accordance with the Department's Source Sampling Manual includes operating conditions representative of a facility's emissions. Paragraph 15 (c) of section 2.2 in the Source Sampling manual requires that a source to be tested must operate at a normal production rate during testing. The Source Sampling Manual is available at http://www.deq.state.or.us/aq/forms/sourcetest.htm .
4	The definition of "Significant Air Quality Impact" in 340-200-0020(125) should be updated to incorporate PM2.5.	The Department agrees that this definition should be updated, and plans to address this in the PM 2.5 rulemaking scheduled for 2008.
<i>Delisting HFE-7300 as a VOC</i>		
3	DEQ should not de-list HFE-7300 as a VOC because the EPA statement that it "does not appear to negatively impact human health or the	Volatile organic compounds (VOC) are regulated because of their contribution to the formation of photochemical smog, which can negatively impact human health and the

	<p>environment" is speculative and not environmentally protective.</p>	<p>environment. EPA has concluded that HFE-7300 has an insignificant impact or no impact on the formation of photochemical smog.</p> <p>Individual VOCs may also be regulated by EPA as hazardous air pollutants (HAPs) or by the Department as air toxics. HAPs and air toxics are pollutants which can cause cancer and other serious health effects. HFE-7300 is not regulated as a HAP or air toxic, and EPA has concluded that it has low toxicity.</p> <p>According to EPA research, HFE-7300 has a variety of potential uses such as a heat-transfer fluid, coating, cleaner, and lubricant. The proposed de-listing should benefit air quality in Oregon, because exempting HFE-7300 will allow the Department to focus VOC reduction strategies on compounds that are more responsible for forming ground-level ozone or smog. In addition, de-listing will allow the environmental benefit of substituting HFE-7300 for other substances that deplete the earth's protective ozone layer and have high global warming potentials.</p>
	<p>Visible Emissions and Nuisance Requirements</p>	
<p>6, 7, 8</p>	<p>It is unclear why DEQ is proposing to change the definition of "Fuel Burning Equipment" in OAR 340-208-0010(4). Deleting the exclusion for marine installations and internal combustion engines could have unexpected effects and the change should be discussed before proceeding.</p>	<p>The Department is making this change to ensure that the particulate standards in OAR 340-208-0610 and Divisions 226 and 228 are applied correctly. The standards in 340-208-0610 and Division 228 should not apply to equipment such as veneer dryers and particle dryers that may burn fuel but use dilution to control the temperature of the gas. These types of equipment are subject to the general particulate standards in Division 226. The same is true for internal combustion engines. Gas turbines, for example, cannot be subject to the standards in 340-208-0610 and Division 228 because the exhaust gas stream is diluted by excess air. The standards in Divisions 208 and 228 have a correction to 12 percent CO₂ or 50 percent excess air, and are intended to apply only to boilers and process heaters with controlled, near stoichiometric combustion.</p> <p>There is no need to have a specific</p>

		exemption for marine installations because they are subject to either fuel burning equipment standards in Division 228 or the general emission standards in Division 226.
	<i>Revisions to Standards for Clackamas, Columbia, Multnomah and Washington Counties</i>	
4	The odor control measures in 340-208-0550 should not be deleted because they are more specific about odor problems, mandating that highest and best practicable treatment is employed to reduce odor bearing gases to a minimum. The Highest and Best Practicable Treatment Rule in 340-226-0100(2) does not appear to introduce any new or unique requirements, merely referring to sections in other applicable regulations. The odor control measures in 340-208-0550 should be expanded to cover all counties in the state.	The Department agrees that the odor control measures in 340-208-0550 are not precisely duplicated by Highest and Best Practicable Treatment requirements in 340-226-0100(2) or the Nuisance rules in 340-208-0300. While there is some overlap in applicability and use, all three rules could potentially be applied to odor situations. The Department proposes to retain this section.
	<i>Making Title V procedural rules consistent with federal Part 70 requirements and improving administration</i>	
1,5	To protect public health in accordance with DEQ's mission statement, language should be added to 340-209-0040 (1)(c) and (1)(o) to require additional information in public notices of permit actions for Air Contaminant Discharge Permits and Title V Permits. This additional language would require a description of expected health impacts of emissions from the facilities, using current, pertinent epidemiological data. It would apply to all sources, including major sources required to perform dispersion modeling in attainment areas.	In public notices of permit actions, the Department provides information about the identity and quantity of permitted pollutants. The Department appreciates public concerns about health impacts from permitted facilities, and has improved its public notice templates to provide more information about hazardous air pollutants. In addition, the Department plans to post health effect information for various pollutants on its website. However, the Department is neither staffed nor funded to provide toxicological and epidemiological data about possible health impacts near permitted facilities. This information is not readily available, and would require significant testing and analysis. Obtaining toxicological and epidemiological data for 1,253 facilities statewide would require program changes that are beyond the scope of this rulemaking.
4	In Hearing and Meeting Procedures, 340-209-0070(2)(b)(B), the rule should read :The Presiding Office will	The Department will make this correction.

	then provide..."	
6,7,8	<p>The proposed changes to 340-216-0082(1)(a)(A) prohibit operation of a source after expiration of its permit unless either a timely renewal application has been submitted or another type of permit has been issued. This would create a problem for sources issued ACDPs with the requirement to apply for a Title V permit within one year of commencing operation. Because these ACDPs often expire before a Title V permit is issued, such a source would have to shut down despite having submitted a timely Title V Application. DEQ should amend 340-216-0082(1)(a)(A) to allow a new source to continue to operate if it has submitted a timely and complete application for a Title V permit.</p>	<p>The Department agrees and will make this change as follows:</p> <p>340-216-0082 Expiration, Termination or Revocation of an ACDP</p> <p>(1) Expiration</p> <p>(a) A source may not be operated after the expiration date of a permit, unless any of the following occur prior to the expiration date of the permit:</p> <p>(A) a timely and complete application for <u>renewal or for an Oregon Title V Operating Permit</u> has been submitted; or</p> <p>(B) another type of permit (ACDP or Title V) has been issued authorizing operation of the source.</p>
6,7,8	<p>The proposed changes to 340-216-0082(1)(b) and 340-218-0010(3)(b) which ensure that requirements established in preceding permits remain in effect in later permits are unnecessary because this issue is already addressed in the requirements for Title V permit applications in 340-218-0040(3)(i). In addition, the proposed language creates an unnecessarily burdensome format for revising ACDP conditions by requiring sources to utilize the procedures required to establish the requirements initially.</p>	<p>The Department proposed the revisions to the ACDP and Title V Permitting procedures to address a deficiency identified in EPA's 2006 Title V Program Review. These revisions clarify and broaden the statement that Title V permits do not supersede, or otherwise eliminate the independent enforceability of terms and conditions in SIP-approved permits. They also address the need for ACDP conditions to be modified by federally approved procedures. It is important that permit requirements are revised by the same procedures used to establish them initially because the changes could affect the stringency of the standards.</p>
5	<p>Limiting information needed on Title V renewal applications to new or changed information in 340-218-0040 will make it more time consuming for the public to gather information about major sources of air pollution. This will require more time and effort in searching files for complete information.</p>	<p>The Department expects that limiting Title V renewal applications to new or changed information will highlight relevant new information and newly applicable requirements. Original Title V applications and documentation are readily available and will be provided upon request.</p>
6,7,8	<p>The proposed extension of time for reporting permit deviations in 340-218-0050(3)(c)(B) should be further</p>	<p>The Department is proposing to change the permit deviation reporting deadline from 7 to 15 days to align with the excess emissions</p>

	lengthened from 15 to 30 days. It would be sufficient for DEQ to learn about permit deviations within 30 days and result in a lesser burden to facilities.	reporting requirement and the concept that 15 days represents “prompt” reporting. As with excess emissions, prompt reporting of permit deviations is necessary because it encourages consistent and timely response from The Department when appropriate. At 30 rather than 15 days, it is more likely that a reporting requirement would be overlooked and the agency would not have the opportunity to respond to more serious deviations in a timely manner.
6,7,8	DEQ could limit but should retain the provision in 340-218-0150(1)(i) that allows a Title V facility to make corrections to its baseline emissions or Plant Site Emission Limit (PSEL) through an Administrative Amendment when the changes do not increase emissions. This provision is useful to address paperwork errors.	Because most Title V sources have established accurate baselines and PSELs, this provision is not frequently used. The Department is concerned that changes to baseline and PSEL can affect applicability of standards. Because of the potentially substantive nature of these changes, they are more appropriately made as modifications and renewals accompanied by public participation and review by affected states and EPA.
5	Would deleting baseline or PSEL correction as administrative amendments to Title V Permits result in no notification to the public of these changes?	In the original rule, which allows baseline and PSEL corrections to be made as administrative amendments, there is no notice to the public of these changes. Deleting these changes as administrative amendments would require that they occur as significant permit modifications or in Title V permit renewal; both require public notice and opportunity for public comment.
	<i>Making Excess Emissions rules consistent with federal Part 70 requirements</i>	
6,7,8	The changes to the Excess Emissions rule remove a longstanding exemption from enforcement action if a source operating under a Department approved startup/shutdown or maintenance plan has excess emissions that the Department determines are unavoidable. This is contrary to the previous federal approach and will have a significant impact on sources. The rules should not be changed to remove this exemption.	The Department proposed the revisions to the Excess Emissions Rules specifically to address deficiencies identified in EPA’s 2006 Title V Program Review. Title V regulations in 40 CFR Part 70 require that the Department maintain clear enforcement discretion. The revisions clarify that the Department retains enforcement discretion, but will consider compliance with the startup/shutdown or maintenance plan when evaluating the appropriateness of an enforcement action. This is a similar approach to considering whether the excess emissions were “avoidable” but it provides clearer criteria and remedies the apparent lack of enforcement discretion. The

Department does not expect this revision to cause any additional enforcement actions.

The proposed revisions limited the discretion to "penalty actions" instead of "enforcement actions". Because this could be interpreted to mean that the Department's enforcement discretion would be limited to penalty actions rather than the typical range of enforcement options, the Department is replacing "penalty action" with "enforcement action" in all sections of the rules except the provisions for emergency as an affirmative defense.

The Department has never interpreted the Excess Emission rules to provide an actual exemption for excess emissions that occur during planned startup, shutdown or maintenance. Instead, the rules offered, and will continue to offer an opportunity to have a pre-approved plan that, if followed, would indicate that excess emissions occurring during these events are probably unavoidable. To further clarify that compliance with a startup/shutdown or maintenance plan is relevant to the determination of enforcement actions, the Department proposes to change the reporting requirements of 340-214-0340(1)(e) as follows:

340-214-0340 Reporting Requirements

(1) For any excess emissions event at a source with a Title V permit and for any other source as required by permit, the owner or operator shall submit a written report of excess emissions for each calendar day of the event. The report must be submitted within 15 days of the date of the event and include the following:

(a) The date and time of the beginning of the excess emissions event and the duration or best estimate of the time until return to normal operation;

(b) The date and time the owner or operator notified the Department of the event;

		<p>(c) The equipment involved;</p> <p>(d) Whether the event occurred during startup, shutdown, maintenance, or as a result of a breakdown, malfunction, or emergency;</p> <p>(e) Steps taken to mitigate emissions and corrective actions taken; <u>including whether the approved procedures for a planned startup, shutdown, or maintenance activity were followed.</u></p>
4	As part of the 340-214-0340 reporting requirements, DEQ should require additional detail on excess emissions reports. Permittees should be required to provide more information on the cause of a malfunction, breakdown or emergency, and permittees should not be allowed to group together for reporting purposes those excess emissions caused by startup/shutdown events with those caused by malfunctions, breakdowns or emergencies.	This comment is addressed by the language added above requiring excess emission reports to include a description of whether the approved procedures for a planned startup, shutdown, or maintenance activity were followed. This will help distinguish startup/shutdown and maintenance events from malfunctions, breakdowns and emergencies.
4	Section 340-214-0340(1)(d) should refer to "planned" startup, "planned" shutdown and "scheduled" maintenance to be consistent with the language in 340-214-0310 and 0320.	<p>The Department agrees that this change would increase consistency and proposes to change the rule as follows:</p> <p>340-214-0340 Reporting Requirements</p> <p>(1) For any excess emissions event at a source with a Title V permit and for any other source as required by permit, the owner or operator shall submit a written report of excess emissions for each calendar day of the event. The report must be submitted within 15 days of the date of the event and include the following:</p> <p>(a) The date and time of the beginning of the excess emissions event and the duration or best estimate of the time until return to normal operation;</p> <p>(b) The date and time the owner or operator notified the Department of the event;</p> <p>(c) The equipment involved;</p>

		(d) Whether the event occurred during <u>planned startup</u> , <u>planned shutdown</u> , <u>scheduled maintenance</u> , or as a result of a <u>breakdown, malfunction, or emergency</u> ;
4	DEQ should define "malfunction" as used in 340-214-0340(d) and clarify that "malfunction" and "breakdown" are not encompassed in the provisions for planned startup and shutdown, for scheduled maintenance or for emergencies.	This definition is not necessary, as malfunctions and breakdowns are unplanned events not addressed in the provisions for startup, shutdown or maintenance.
6,7,8	DEQ should not make the change in the Excess Emissions Rules requiring an excess emissions report from all major sources within 15 days of the event. Not every excess emission is significant and warrants a follow-up report. This requirement will add workload for facilities and the Department without commensurate environmental benefit.	<p>The Department proposed the change to the Excess Emission reporting requirement to address a deficiency identified in EPA's 2006 Title V Program Review. Oregon's current Excess Emission rules do not require prompt reporting of some excess emissions events. Instead, the rules contain a provision allowing the Department to <u>request</u> a report within 15 days of the event. The Department is proposing to change this provision to <u>require</u> a 15 day report for all excess emission events. The Department needs timely information to determine whether enforcement action is warranted. Current excess emissions rules allow a full report of an excess emission event up to six months after the event, making consistent and appropriate enforcement action is less likely.</p> <p>Permittees are currently required to maintain an excess emission log that includes all of the information required by the 15 day report. The 15 day report is not a substantial increase in workload, and 15 day reports would no longer need to be included in semi-annual reports. This will allow the Department to better track and evaluate excess emission events at the state's largest facilities.</p>
	<i>Update and renewal of General Permits for Rock Crushers, Ready Mix Concrete Plants, Asphalt Plants, Sawmills, Boilers and Crematories</i>	
7	Condition 2.7.c of the proposed Wood Products General ACDP(AQGP-010), allowing the Department to require more restrictive emission limits when a facility is located in a special problem area, should only be	The Department agrees that more restrictive emission limits should be implemented in previously designated problem areas where they align with more stringent industrial rules for particulate emissions. The Department will amend the permit condition accordingly.

	implemented in the Medford-Ashland Air Quality Maintenance Area and Grants Pass Urban Growth Area. These areas currently have more restrictive veneer dryer emission limits than other areas of the state.	
7	Language should be added to condition 3.8 of the proposed Wood Products General ACDP (AQGP-010) and the Boiler General ACDP (AQGP 011) to acknowledge that EPA can grant an alternate fuel monitoring frequency.	The Department agrees and will provide for an alternate frequency as allowed by EPA in this permit condition.
7	The last sentence of condition 7.2 in the proposed Wood Products General ACDP (AQGP-010) should be removed to avoid confusion because exceeding a three minute opacity limit is only one example of excess emissions that must be recorded.	The Department agrees that this information should be provided as an example and not the only case in which excess emissions must be reported.
7	Because there is a large variability in Hazardous Air Pollutant (HAP) emission factors for wood products sources, the use of factors listed in condition 12 of the proposed Wood Products General ACDP (AQGP-010) could result in underestimation of HAP emissions. The permit should be clear that use of the referenced emission factors does not guarantee that sources will be in compliance with federal requirements for major sources of HAPs.	The Department agrees that facilities should use the best available emission factors and will include a qualification that the factors listed in condition 12 represent a starting point for estimation of HAP emissions.
<i>Salt Laden Wood Exception</i>		
6,7,8	DEQ should not be required to approve the higher particulate emission standard for utilizing salt laden wood in 340-228-0210(2). It would be more appropriate for the rule to require notice to DEQ.	The Department's goal is to have knowledge of facilities planning to utilize salt laden wood for the purpose of assuring compliance with the appropriate standard. Although this is a rarely used exemption, the Department may evaluate and seek to reduce the environmental impact of higher emissions from salt laden wood usage when it undertakes the PM2.5 rulemaking in 2008. The Department proposes to change the requirements for Salt Laden Wood as follows: (2) For sources burning salt laden wood waste on July 1, 1981, where salt in the fuel is the only reason for failure to comply with the above limits and when the salt in the fuel

		<p>results from storage or transportation of logs in salt water, the resulting salt portion of the emissions shall be exempted from subsection (1)(a) or (b) of this rule and OAR 340-208-0110. In no case shall sources burning salt laden woodwaste exceed 0.6 grains per standard cubic foot.</p> <p>(a) This exemption and the alternative emissions standard are only applicable upon approval by prior notice to the Department.</p> <p>(b) Sources which utilize this exemption, to demonstrate compliance otherwise with subsection (1)(a) or (b) of this rule, shall submit the results of a particulate emissions source test of the boiler stacks bi-annually.</p>
	<i>Revisions to Emission Standards for VOC Point Sources</i>	
6,7,8	<p>DEQ should retain sections (2) and (3) of the non-categorical RACT requirements for sources in areas that have violated ozone standards. It is possible that the Department could still identify additional RACT sources as VOC emissions continue to be better understood and sources find that they have larger emissions than previously thought. In this situation, the RACT procedures in this section would be required.</p>	<p>The Department agrees and proposes to retain the general non-categorical RACT requirements in 340-232-0040(2) and (3), and delete previously proposed language in new paragraph (2).</p>
	<i>Revisions to Kraft Pulp Mill Rules</i>	
6,7,8	<p>A blanket inclusion of all sources potentially grouped as "categorically insignificant and aggregate insignificant sources" in the definition of "other sources" has unintended consequences of pulling the entire list of categorically insignificant sources into the Kraft Mill TRS rule. Sources like "personal care" facilities would have to be included in the TRS rule, causing pulp mills to account for and possibly test TRS emissions from on-site rest rooms. DEQ should not include categorically insignificant and aggregate insignificant sources in the definition of "other sources".</p>	<p>The Department agrees that "other sources" of TRS emissions should not include categorically insignificant activities because they are very minor, difficult to evaluate and would include non-industrial sources such as personal care facilities. The Department proposes to change the rules as follows:</p> <p>340-234-0010 Definitions (26) "Other Sources:"</p> <p>(a) As used in OAR 340-234-0200 through 340-234-0270 means sources of TRS emissions in a kraft mill other than recovery furnaces, lime kilns, smelt dissolving tanks, sewers, drains, <u>categorically insignificant activities</u>, and wastewater treatment facilities</p>

		<p>including but not limited to:</p> <p>(A) Vents from knotters, brown stock washing systems, evaporators, blow tanks, blow heat accumulators, black liquor storage tanks, black liquor oxidation system, pre-steaming vessels, tall oil recovery operations;</p> <p>(B) Categorically insignificant and aggregate insignificant activities; and</p>
4	<p>When an odor or nuisance problem has been documented at any mill the section on More Restrictive Emission Limits in 340-234-220(2), should mandate reduction of TRS emissions below regulatory limits or mandate the mill to undertake an odor emission reduction study program. There should not be an implied alternative of no action.</p>	<p>The Department has existing authority to require TRS emissions below regulatory limits. The Department is proposing to expand this authority by adding that it may require the mill to undertake an odor emission reduction study program. Because of the complexity of odor problems at Kraft Pulp Mills, it is most appropriate for the Department to exercise its discretion in requiring the best option for odor reduction. In addition, the Department does not consider OAR 340-234-0220 to be a stand-alone nuisance rule for Kraft Pulp Mills; rather it is a possible adjunct to the basic nuisance rules in OAR 340-208-0300 through -0320. It is the Department's intent to use OAR 340-208-0300 through -0320 as the primary rules to determine if an odor nuisance exists and to determine if it is feasible to reduce the odor. If, after following the nuisance rules, the Department finds that OAR 340-234-0220 is necessary, justified and technically feasible, it may be applied.</p>
2	<p>The section on Chronic Upset Conditions in 340-234-0270 is duplicative of the requirements for reporting excess emissions in 340-214-0340 and should be deleted to avoid inconsistencies and confusion.</p>	<p>The Department agrees that the Kraft Pulp Mill requirements for Chronic Upset Conditions are more thoroughly addressed in the Excess Emission rules. However, the Department is not able to include this change because 340-234-0270 was not included in the public notice of proposed rulemaking. The Department will consider including this change in a future rulemaking.</p>
	<p>The Department proposes to withdraw changes to the Kraft Pulp Mill Emission Limitations.</p>	<p>When the Air Quality Permit Program Streamlining and Updates rules were placed on public notice, the Department proposed to add language to the Emission Limitations section (340-234-0210(1)) stating that the state-specific (TRS) emission limitations for recovery furnaces, lime kilns and smelt</p>

		<p>dissolving tanks would not apply to units subject to the federal regulations in 40 CFR Part 60, Subpart BB, Standards of Performance for Kraft Pulp Mills. This proposal would have streamlined requirements by eliminating what appeared to be duplicate standards. After further analysis, however, the Department now realizes that an oxygen correction factor present in the federal rule causes the existing state rule to be either more or less stringent than the federal rule, depending on where a process falls on the oxygen scale. For this reason the Department withdraws its proposal to exempt mills from the TRS limits in Oregon's Kraft Pulp Mill rules if they are subject to New Source Performance Standards (NSPS). Both sets of rules will apply if a mill is subject to NSPS, with the more stringent requirements controlling the emission limitation. The Department is proposing to retain other streamlining measures in the Kraft Pulp Mill rules, including revisions to "Plans and Specifications", "Monitoring", and "Reporting".</p>
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List of Commenters and Reference Numbers

Reference Number	Name	Organization	Address	Date on comments
1	David Gilmour	Jackson County Board of Commissioners	10 S. Oakdale Medford, OR 97501	4/23/2007
2	Debra Suzuki	U.S. Environmental Protection Agency	1200 SW 6 th Avenue Seattle, WA 98101	4/25/2007
3	Kyna Harris			4/25/2007
4	Dona Hippert	Concerned Citizens for Clean Air, Northwest Environmental Defense Center, Oregon Toxics Alliance	11723 SW 47 th Ave. Portland, OR 97219	4/27/2007
5	Gaylene Hurley		2158 Terrel Drive Medford, OR 97501	4/27/2007
6	John Ledger	Associated Oregon Industries	1149 Court Street NE Salem, OR 97301	4/27/2007

<i>List of Commenters and Reference Numbers</i>				
Reference Number	Name	Organization	Address	Date on comments
7	Russell Strader	Boise Cascade	1111 W. Jefferson St. Boise, ID 83728	4/27/2007
8	Marv Lewallyn	Weyerhaeuser		4/27/07

Presiding Officer's Report

Date: May 1, 2007

To: Environmental Quality Commission
From: Sarah Armitage
Subject: Presiding Officer's Report for Rulemaking Hearings
Title of Proposal: Air Quality Permit Program Streamlining and Updates

1. Hearing Date and Time: April 23, 2007, 6:37 p.m.
Hearing Location: Jackson County Courthouse, Medford

The Department convened the rulemaking hearing on the proposal referenced above at 6:37 p.m. and closed it at 6:42 p.m. People were asked to sign registration forms if they wished to present comments. People were also advised that the hearing was being recorded.

Four people attended the hearing; one person provided an oral comment.

Before convening the formal rulemaking hearing, Sarah Armitage and John Becker briefly explained the rulemaking proposal and procedures for the hearing.

The following is a summary of the oral comment received at the hearing. The Department will include these comments in the Summary of Comments and Agency Responses for this rulemaking.

Commenter: Dr. David Gilmour, Jackson County Commissioner
Commissioner Gilmour recommended that language should be added to 340-209-0040 to require additional information in public notices of permit actions for Air Contaminant Discharge Permits and Title V Permits. This language would require a description of expected health impacts of emissions from the facilities, using current, pertinent epidemiological data. It would apply to all sources, including major sources required to perform dispersion modeling in attainment areas.

2. Hearing Date and Time: April 24, 2007, 6:00 p.m.

Hearing Location: Department of Environmental Quality Bend Office, 300 SE Reed Market Road, Bend

The Department prepared the room for the public hearing for a 6:00 p.m. start time. No one attended. Presiding Officer Linda Hayes-Gorman closed the hearing at 6:30 p.m.

3. Hearing Date and Time: April 25, 2007, 6:30 p.m.

Hearing Location: Department of Environmental Quality Bend Office, 811 SW 6th Avenue, Portland

The Department prepared the room for the public hearing for a 6:30 p.m. start time. One person attended but did not wish to present an oral comment. Presiding Officer William Knight closed the hearing at 7:05 p.m.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements
Adoption of Air Quality Permit Program Streamlining and Updates

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).

1. Are there federal requirements that are applicable to this situation? If so, exactly what are they?

This rulemaking proposes to adopt changes to State air quality regulations to better coordinate with and meet federal requirements. These federal requirements include the National Emission Standards for Hazardous Air Pollutants (NESHAPs), New Source Performance Standards (NSPS), Title V Permitting Regulations (40 CFR Part 70) and Clean Air Mercury Rule (CAMR). The Department initiated many of the proposed rule changes to streamline the permitting program and simplify compliance requirements. Other proposed changes are in response to the Federal Clean Air Act which requires that the EQC adopt certain federal regulations by reference or develop equivalent regulations in order to maintain federal approval of Oregon's Title V Operating Permit program for major industrial sources of air pollution.

2. Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?

The applicable federal requirements are both technology and performance based.

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?

The proposed rule changes incorporate no new federal requirements. The majority of the proposed rules would streamline and update rules by better coordinating state rules and procedures with long-standing federal requirements that have been successfully adopted and implemented in Oregon's air quality permitting programs. These federal requirements are not specific to issues of concern in Oregon.

In adopting the VOC exemption for HFE 7300, there is no indication that EPA specifically considered data or information unique to Oregon.

4. Will the proposed requirement (rulemaking) improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially

Attachment E, p. 1

conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?

The primary goal of the proposed rulemaking is to streamline permitting and compliance by clarifying, simplifying and updating regulatory requirements. Clarifications will occur through consolidating and standardizing definitions, correcting general permit emission factors, aligning sulfur dioxide standards with federal requirements, updating the incinerator rules, simplifying emission standards for board product manufacturing, simplifying the Kraft Pulp Mill rules and consolidating the excess emissions requirements for notification, reporting and the emergency defense.

The proposed rulemaking could benefit kraft pulp mills and facilities located in Clackamas, Columbia, Multnomah, and Washington Counties as a result of the removal of redundant permit conditions. Reducing the number of Basic Permit categories may allow small businesses to avoid additional permitting costs. The proposal to exempt HFE-7300 from the definition of Volatile Organic Compounds may also reduce regulatory burden by lifting the requirement to track and limit use of this chemical. Businesses could benefit from the opportunity to substitute HFE-7300 for substances that deplete the earth's protective ozone layer and substances with high global warming potentials.

The proposal to correct the Utility Mercury Rule would increase certainty by establishing clear requirements for distributing the mercury cap for new plants. Revisions to make Title V and Excess Emissions rules consistent with federal requirements can bring greater certainty to facilities and the Department by eliminating discrepancies between the state and federal program. Better alignment will result in fewer compliance issues during federal oversight of the Department's permitting and inspection program.

The proposed changes to repeal outdated language should benefit all air quality stakeholders by making regulations easier to read and interpret. This effort includes deletion of Wigwam Waste Burner requirements, standards for Clackamas, Columbia, Multnomah, and Washington Counties, and RACT standards for VOC point sources.

5. Is there a timing issue which might justify changing the time frame for implementation of federal requirements?

There are no timing issues associated with clarifying federal requirements in the proposed rule revisions. To allow increased flexibility and certainty, the delisting of HFE-7300 and correction of the Utility Mercury Rule should be implemented expeditiously.

6. Will the proposed requirement (rulemaking) assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?

This question is not applicable to this rulemaking because it would not impose new standards.

7. Does the proposed requirement (rulemaking) establish or maintain reasonable equity in the requirements for various sources? (level the playing field)

The proposed rulemaking maintains equity among sources by clarifying and simplifying compliance, monitoring, notification and reporting procedures. The Department expects that these changes will improve compliance and decrease the need for sources to spend additional resources on rule interpretation.

The Department's proposal to adopt the HFE-7300 exemption and equitably distribute the mercury cap provides a level playing field within Oregon and with other states.

8. Would others face increased costs if a more stringent rule is not enacted?

The proposed rules do not increase stringency. There would be no increased costs to others in the absence of more stringent rules.

9. Does the proposed requirement (rulemaking) 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?

The proposed rules do not differ from applicable federal requirements.

10. Is demonstrated technology available to comply with the proposed requirement (rulemaking)?

The proposed rules impose no new standards or compliance requirements.

11. Will the proposed requirement (rulemaking) contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?

The proposal to exempt HFE-7300 from the definition of Volatile Organic Compounds will benefit air quality in Oregon, because exempting HFE-7300 will allow the Department to focus VOC reduction strategies on compounds that are more responsible for the formation of ground level ozone or smog. The proposal will also benefit the environment because it will allow increased use of HFE-7300 as a substitute for substances that deplete the earth's protective ozone layer and substances with high global warming potentials.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Land Use Evaluation Statement

Rulemaking Proposal
for
Adoption of Air Quality Permit Program Streamlining and Updates

1. Explain the purpose of the proposed rules.

The proposed rulemaking would improve the Air Quality permitting process and help maintain a fully delegated and federally approved permitting program. The rule changes address rules that are inadequate, redundant, unclear, or outdated. Many of the rule changes simplify, update and align permitting rules with federal requirements. Other changes include adopting a federal delisting of a volatile organic compound and a correction to Oregon's recently adopted Utility Mercury Rules. All of the proposed changes would maintain an equivalent level of environmental protection and stringency. See Attachment A for a more complete summary of the proposed revisions.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?

Yes X No

a. If yes, identify existing program/rule/activity:

The Department's issuance of air permits is an action determined to have effects on land use. The Department will implement the proposed rule revisions through its Title V Operating Permit Program and Air Contaminant Discharge Permit (ACDP) Program.

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes X No (if no, explain):

The Department will implement these rules through the ACDP and Title V permitting programs. Currently, cities and counties must provide a Land Use Compatibility Statement approval before the Department issues these permits or approves a Notice of Construction.

c. **If no, apply the following criteria to the proposed rules.**

Not applicable.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

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.

GENERAL AIR CONTAMINANT DISCHARGE PERMIT

Department of Environmental Quality
Air Quality Division
811 SW Sixth Avenue
Portland, OR 97204-1390
Telephone: (503) 229-5359

This permit is issued in accordance with the provisions of ORS 468A.040 and incorporated into OAR 340-216-0060 by the Environmental Quality Commission on August 30, 2001 for the following source category:

Asphaltic concrete paving plant, stationary or portable, and associated material handling activities such as storage piles, conveyors, and vehicle traffic. Other equipment may include electric power generators with internal combustion engines. SIC 2951

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1.0 PERMIT ASSIGNMENT

- 1.1 Qualifications All of the following conditions must be met in order to qualify for assignment to this General Air Contaminant Discharge Permit (ACDP):
- a. The permittee is performing hot-mix asphalt pavement production listed on the cover page of this permit, including supporting activities.
 - b. A Simple or Standard ACDP is not required for the source.
 - c. The source is not having ongoing, recurring or serious compliance problems.
- 1.2 Assignment The Department will assign qualifying permittees to this permit that have and maintain a good record of compliance with the Department's Air Quality regulations and that the Department determines would be appropriately regulated by a General ACDP. The Department may rescind assignment if the permittee no longer meets the requirements of OAR 340-216-0060 and the conditions of this permit.
- 1.3 Permitted Activities The permittee is allowed to discharge air contaminants from processes and activities related to the air contaminant source(s) listed on the first page of this permit until this permit expires, is modified, revoked or rescinded as long as conditions of this permit are complied with. If there are other emissions activities occurring at the site besides those listed on the cover page of this permit, the permittee may be required to obtain a Standard Permit or additional General ACDPs, if applicable.
- 1.4 Relation to local land use laws This permit is not valid in Lane County, or at any location where the operation of the permittee's processes, activities, and insignificant activities would be in violation of any local land use or zoning laws. For operation in Lane County, contact Lane Regional Air Pollution Authority for any necessary permits at (541) 736-1056. It is the permittee's sole responsibility to obtain local land use approvals as, or where, applicable before operating this facility at any location.

2.0 EMISSION STANDARDS AND LIMITS

- 2.1 Visible Emissions The permittee must comply with the following visible emission limits, as applicable:
- a. Emissions from an "existing" air contaminant source (one installed, constructed or modified on or before June 1, 1970), that is not located in a special control area must not equal or exceed 40% opacity for a period aggregating more than 3 minutes in any one hour.
 - b. Emissions from any air contaminant source installed, constructed, or modified after June 1, 1970 or an existing source located in a special control area must not equal or exceed 20% opacity for a period aggregating more than 3 minutes in any one hour.
 - c. In Clackamas, Columbia, Multnomah, or Washington Counties, emissions from any air contaminant source other than fuel burning equipment must not equal or exceed 20% opacity for a period aggregating more than 30 seconds in any one hour.
- 2.2 Particulate Matter Emissions The permittee must comply with the following particulate matter emission limits, as applicable:
- a. Particulate matter emissions from any air contaminant source, other than fugitive emission sources, installed on or before June 1, 1970, must not exceed 0.2 grains per dry standard cubic foot as measured by DEQ Method 5.
 - b. Particulate matter emissions from any air contaminant source, other than fugitive emission sources, installed after June 1, 1970, must not exceed 0.1 grains per dry standard cubic foot as measured by DEQ Method 5.
 - c. No hot-mix asphalt plant for which construction, modification, or reconstruction was commenced after June 11, 1973 (for definitions of construction, modification, reconstruction and/or commenced see 40 CFR Part 60, Subpart A), may emit particulate matter in excess of 0.04 grains per dry standard cubic foot, as measured by EPA Method 5.

- d. The permittee must not operate any hot-mix asphalt plant, either portable or stationary, located within any area of the state outside of special control areas unless all dusts and gaseous effluents generated by the plant are subjected to air cleaning device or devices having a particulate collection efficiency of at least 80% by weight.
- e. The permittee must not operate the hot-mix asphalt plant within any special control area of the state without installing and operating systems or processes for the control of particulate emissions so as to comply with the emission limits established by the process weight table for asphalt plants, Table 1 (OAR 340-236-0410), included as Attachment 1 Condition 12.0 to this permit.

Note: As used in Conditions d. and e., “special control area” means:

- Any area designated in OAR 340-204-0070;
- Any incorporated city or within six miles of the city limits of said incorporated city;
- Any area of the state within one mile of any structure or building used for a residence; and
- Any area of the state within 2 miles straight line distance or air miles of any paved public road, highway, or freeway having a total of 2 or more traffic lanes.

2.3 Fugitive Emissions

The permittee must comply with the following:

- a. Ancillary air contamination sources from the plant and its facilities which emit air contaminants into the atmosphere such as, but not limited to, the dryer openings, screening and classifying system, hot rock elevator, bins, hoppers, and pug mill mixer, must be controlled at all times so as to maintain the highest possible level of air quality and the lowest possible discharge of air contaminants.
- b. The handling of aggregate and traffic must be conducted at all times so as to minimize emissions into the atmosphere by:
 - i. Controlling vehicle speeds on unpaved roadways.
 - ii. Treating vehicular traffic areas of the plant site under the control of the permittee.
 - iii. [This is already covered in a.]
 - iv. Treating storage piles, as necessary.

- v. Prompt removal of "tracked-out" material from paved areas.
 - vi. Storing collected materials from air pollution control equipment in a covered container or other method equally effective in preventing the material from becoming airborne during storage and transfer.
- 2.4 Particulate Matter Fallout
The permittee must not cause or permit the emission of any particulate matter larger than 250 microns in size at sufficient duration or quantity, as to create an observable deposition upon the real property of another person. The Department will verify that the deposition exists and will notify the permittee that the deposition must be controlled.
- 2.5 Nuisance and Odors
The permittee must not cause or allow air contaminants from any source to cause a nuisance. Nuisance conditions will be verified by Department personnel.
- 2.6 Fuels and Fuel Sulfur Content
The permittee must not use any fuel other than natural gas, propane, butane, ASTM grade fuel oils, or on-specification used oil.
- a. Fuel oils must not contain more than:
 - i. 0.3% sulfur by weight for ASTM Grade 1 distillate oil;
 - ii. 0.5% sulfur by weight for ASTM Grade 2 distillate oil or on-specification used oil;
 - b. The permittee is allowed to use on-specification used oil that contains no more than 0.5% sulfur by weight. The permittee must obtain analyses from the marketer or, if generated on site, have the used oil analyzed, so that it can be demonstrated that each shipment or batch of the used oil does not exceed the used oil specifications contained in 40 CFR Part 279.11, Table 1.
- 2.7 Recycled Asphalt Product (RAP)
If, during the term of this permit, the permittee intends to use recycled asphalt product (RAP) as a component of hot-mix production, the permittee must first notify the Department and obtain approval. Prior to approval, the Department may require tests be performed to demonstrate compliance with the emission limits while running the maximum projected RAP percentage. The amount of RAP may not exceed the amount approved by the Department.

3.0 OPERATION AND MAINTENANCE REQUIREMENTS

- 3.1 Work practices The permittee must tune the burner of the asphalt plant using the procedures described in Attachment Condition 13.02 at the following minimum frequencies:
 - a. All asphalt burners must be tuned at least once within one year of being assigned to this General Permit; and
 - b. At least once every year when the total asphalt production exceeds 75,000 tons for the previous calendar year.
 - c. Tuning is not required during any year that a source test is performed in accordance with Condition 5.1.

- 3.2 Fugitive Emissions Control Plan While operating in the Medford-Ashland AQMA, the permittee must prepare and implement site-specific plans for the control of fugitive emissions in accordance with OAR 340-240-0180. While operating in the Lakeview Urban Growth Area (UGA), the permittee must prepare and implement site-specific plans for the control of fugitive emissions in accordance with OAR 340-240-0410.

- 3.3 O&M plan While operating in the Medford-Ashland AQMA, the permittee must prepare and implement an operation and maintenance (O&M) plan in accordance with OAR 340-240-0190. While operating in the Lakeview UGA, the permittee must prepare and implement an O&M plan in accordance with OAR 340-240-0420.

4.0 PLANT SITE EMISSION LIMITS

- 4.1 Plant Site Emission Limits (PSEL) Plant site emissions must not exceed the following:

Pollutant	Limit	Units
PM	24	tons per year
PM ₁₀	14	tons per year
SO ₂	39	tons per year
NO _x	39	tons per year
CO	99	tons per year
VOC	39	tons per year

4.2 PM₁₀ PSEL for Medford-Ashland AQMA

For sources operating in the Medford-Ashland AQMA, plant site emissions of PM₁₀ must not exceed the following:

Pollutant	Limit	Units
PM ₁₀	4.5	tons per year
	49	pounds per day

4.3 Annual Period

The annual plant site emissions limits apply to any 12-consecutive calendar month period.

5.0 COMPLIANCE DEMONSTRATION

5.1 Testing Requirements

The permittee must demonstrate that the asphalt plant is capable of operating at its normal maximum operating capacity in compliance with the applicable limit(s) in Condition 2.2 by conducting a source test for particulate matter (PM) emissions using the test procedure described in Condition 14.0 Attachment 3 at the following minimum frequencies:

- a. **New Plants or Existing Plants beginning operations in Oregon:** If the facility assigned to this permit is a new plant or an existing plant that will begin operations in Oregon for the first time, the test must be performed within 60 days of achieving the maximum production rate at which the asphalt plant will be operated, but not later than 180 days after initial startup.
- b. Existing Plants:
 - i. All plants must be tested at least once within 10 years of being assigned to this General Permit if a test was performed that demonstrated compliance with the applicable limit(s) in Condition 2.2 within 5 years prior to being assigned to this permit.
 - ii. For plants that do not meet Condition 5.1b.i, the test must be performed within 5 years after being assigned to this permit.

- iii. If, during the permit period, the permittee replaces the Asphalt Plant's primary control device or the Asphalt Plant in its entirety (per Condition 7.7), the permittee must perform a source test within 60 days of achieving the maximum production rate at which the asphalt plant will be operated, but not later than 180 days after initial startup of the modified or new plant.

5.2 Fuel Sulfur Monitoring

If fuel oil is burned, the permittee must either obtain a certificate from the vendor stating that the fuel sulfur content complies with the limits in Condition 2.6 or have a sample of the fuel analyzed in accordance with the appropriate ASTM analytical procedures. If the permittee has samples analyzed for sulfur, a sample must be collected from the holding tank just after each shipment of oil is added to the tank.

5.3 PSEL Compliance Monitoring

Compliance with the PSEL is determined for each 12-consecutive calendar month period based on the following calculation for each pollutant:

$$E = \Sigma(EF \times P)/2000$$

where,

- E = pollutant emissions (ton/yr);
- EF = pollutant emission factor (see Condition 5.4);
- P = process production (tons of hot-mix asphalt produced and 1000 gallons of fuel oil burned for the generators)

Note: ~~In all areas of the state other than~~ Except in the Medford/Ashland AQMA, emission calculations are only required if the hot-mix asphalt production during any 12-consecutive calendar month period exceeds the levels in Condition 15.1 shown in Attachment 4. For sources located in the Medford/Ashland AQMA, PM₁₀ emissions must always be calculated by the 15th of each month for the previous 12-consecutive calendar month period and other pollutant emissions calculations are only required if the hot-mix asphalt production during any 12-consecutive calendar month period exceeds levels in Condition 15.2.

5.4 Emission Factors

The permittee must use the default emission factors provided in ~~Condition 16.0~~ Attachment 5 for calculating pollutant emissions, unless alternative emission factors are approved by the Department. The permittee may request or the Department may

require using alternative emission factors provided they are based on actual test data or other documentation (e.g., AP-42 compilation of emission factors) that has been reviewed and approved by the Department.

5.5 Medford/Ashland AQMA

If the source is located in the Medford/Ashland AQMA, the permittee must also maintain records of the daily asphalt production and calculate the daily maximum emissions for the reporting period.

6.0 RECORDKEEPING REQUIREMENTS

6.1 Operation and Maintenance

The permittee must maintain the following records related to the operation and maintenance of the plant and associated air contaminant control devices:

Monitored Parameter	Frequency
Certificate of analysis for used oil fuel demonstrating that fuel is on-specification	Per shipment or batch
Type and quantity of fuels used for the asphalt plant	Monthly
Type and quantity of fuels used for the generator, if applicable	Monthly
Fuel oil sulfur content	Per shipment
Total hot-mix produced	Monthly
Total hot-mix asphalt produced within the Medford-Ashland AQMA	Daily – totaled monthly
12-calendar month rolling summation of monthly asphalt production	Monthly
12-calendar month rolling summation of monthly asphalt production that occurred within the Medford-Ashland AQMA	Monthly – as required*
All operating and production parameters to be reported to the Department annually as required in Condition 7.3	As Required
A record of any maintenance to the air contaminant control system	Each Occurrence

*Calculation to be performed at the completion of each month in which hot-mix production occurred within the Medford-Ashland AQMA

- 6.2 Excess Emissions The permittee must maintain records of excess emissions as defined in OAR 340-214-0300 through 340-214-0340 (recorded on occurrence). Typically, excess emissions are caused by process upsets, startups, shutdowns, or scheduled maintenance. In many cases, excess emissions are evident when visible emissions are greater than 20% opacity for 3 minutes or more in any 60-minute period.
- 6.3 Complaint Log The permittee must maintain a log of all written complaints and complaints received via telephone that specifically refer to air pollution concerns associated to the permitted facility. The log must include a record of the permittee's actions to investigate the validity of each complaint and a record of actions taken for complaint resolution.
- 6.4 Retention of Records Unless otherwise specified, all records must be maintained on site for a period of two (2) years and made available to the Department upon request.

7.0 REPORTING REQUIREMENTS

- 7.1 Excess Emissions The permittee must notify the Department by telephone or in person of any excess emissions which are of a nature that could endanger public health.
 - a. Such notice must be provided as soon as possible, but never more than one hour after becoming aware of the problem. Notice must be made to the regional office identified in Condition 8.3.
 - b. If the excess emissions occur during non-business hours, the permittee must notify the Department by calling the Oregon Emergency Response System (OERS). The current number is 1-800-452-0311.
 - c. The permittee must also submit follow-up reports when required by the Department.
- 7.2 Burner Tuning The permittee must report the results of any tune-ups performed during a year by July 15th.
- 7.3 Annual Report The permittee must submit to the Department by **February 15** of each year this permit is in effect, two (2) copies of the following information for the preceding calendar year:
 - a. Operating parameters:

- i. Type and quantity of fuels used for the asphalt plant.
 - ii. Type and quantity of fuels used for the generator, if applicable.
 - iii. Total hot-mix asphalt produced during the previous calendar year.
 - iv. Total hot-mix asphalt produced within the Medford-Ashland AQMA for the previous calendar year, if applicable.
 - v. Highest daily hot-mix production rate that occurred within the Medford-Ashland AQMA during the previous calendar year.
 - vi. A calculation of annual emissions to demonstrate compliance with the PSELS stated in Condition 4.0 (see compliance determination method in Condition 5.3), if the hot-mix asphalt production levels are greater than the amounts shown in Condition 15.0 Attachment 4. Sources located in the Medford/Ashland AQMA must calculate emissions during any 12-consecutive calendar month period.
 - vii. Highest RAP percentage in any hot-mix formula during the previous calendar year.
- b. Records of all planned and unplanned excess emissions events.
 - c. Summary of complaints relating to air quality received by permittee during the year.
 - d. List permanent changes made in plant process, production levels, and pollution control equipment which affected air contaminant emissions.
 - e. List major maintenance performed on pollution control equipment.

7.4 Initial Startup Notice

The permittee must notify the Department in writing of the date a new facility is started up. The notification must be submitted no later than seven (7) days after startup.

7.5 Portable Plants - Relocation Notice

If the facility is portable, the permittee must not install or operate the facility or any portion of the facility at any new site without first providing written notice to the Permit Coordinator in the appropriate regional office. The written notice must include the date of the proposed move, approximate dates of operation, a

detailed map showing access to the new site, and a description of the air pollution controls and procedures to be installed, operated, and practiced at the new site. Additional permits may be required if the permittee operates individual components of the facility at more than one site at a time.

- 7.6 Notice of Change of Ownership or Company Name The permittee must notify the Department in writing using a Departmental "Permit Application Form" within 60 days after the following:
- a. Legal change of the name of the company as registered with the Corporations Division of the State of Oregon; or
 - b. Sale or exchange of the activity or facility.
- 7.7 Construction or Modification Notices The permittee must notify the Department in writing using a Departmental "Notice of Construction Form," or "Permit Application Form," and obtain approval in accordance with OAR 340-210-0205 through 340-210-0250 before:
- a. Constructing or installing any new source of air contaminant emissions, including air pollution control equipment;
 - b. Modifying or altering an existing source that may significantly affect the emission of air contaminants;
 - c. Making any physical change which increases emissions; or
 - d. Changing the method of operation, the process, or the fuel use, or increasing the normal hours of operation that result in increased emissions; or
 - e. Relocating an existing stationary source or any portion of an existing stationary source.
- 7.8 Where to Send Reports and Notices The reports, with the permit number prominently displayed, must be sent to the Permit Coordinator for the region where the source is located as identified in Condition 8.2. For portable sources, the reports must be sent to the DEQ regional office located nearest to the company's office of record.
- 7.9 NSPS Notifications The permittee must provide the following notifications to the U.S. EPA for any new asphalt plant or any existing asphalt plant that becomes subject to 40 CFR Part 60, Subpart I, Federal Standards of Performance for Hot-mix Asphalt Plants:
- a. The actual date of initial plant startup, postmarked within 15 days after such date.
 - b. Notification of any physical or operational changes to an "existing" facility which increase the emission rate of

particulate matter, postmarked 60 days or as soon as practicable before the change is commenced.

- c. The scheduled date of the required source test and opacity observations, postmarked not less than 30 days prior to such date.
- d. A written report of the source test results.
- e. The notifications listed above must be submitted to EPA at the following address:

Director
Air and Waste Management Program
U.S. Environmental Protection Agency
Mail Stop OAQ-107
1200 Sixth Avenue
Seattle, WA 98101-3188

8.0 ADMINISTRATIVE REQUIREMENTS

- 8.1 Reassignment to the General ACDP
A complete application for reassignment to this permit is due within 60 days after the permit is reissued. The Department will notify the permittee when the permit is reissued. The application must be sent to the appropriate regional office.
 - a. If the Department is delinquent in renewing the permit, the existing permit will remain in effect and the permittee must comply with the conditions of the permit until such time that the permit is reissued and the source is reassigned to the permit.
 - b. The permittee may submit an application for either a Simple or Standard ACDP at any time, but the permittee must continue to comply with the General ACDP until the Department takes final action on the Simple or Standard ACDP application.
 - c. If a complete application for reassignment to the General ACDP or Simple or Standard ACDP is filed with the Department in a timely manner, the permit will not be deemed to expire until final action has been taken on the application.
- 8.2 Permit Coordinator Addresses
All reports, notices, and applications should be directed to the Permit Coordinator (or for portable sources, reports must be sent to the DEQ regional office located nearest to the company's office of record) for the area where the source is located. The Permit Coordinator addresses are as follows:

Counties	Permit Coordinator Address and Telephone
Clackamas, Clatsop, Columbia, Multnomah, Tillamook, and Washington	Department of Environmental Quality Northwest Region 2020 SW 4th Avenue, Suite 400 Portland, OR 97201-4987 Telephone: (503) 229-5582
Benton, Coos, Curry, Douglas, Jackson, Josephine, Lincoln, Linn, Marion, Polk, and Yamhill	Department of Environmental Quality Western Region 750 Front Street NE, Suite 120 Salem, OR 97301-1039 Telephone: (503) 378-8240 ext. 225
Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler	Department of Environmental Quality Eastern Region 300 SE Reed Market Road 2146 NE 4th Street, Suite 104 Bend, OR 97702-3647 Telephone: (541) 388-6146 ext. 223

8.3 Department
Contacts

Information about air quality permits and the Department's regulations may be obtained from the DEQ web page at www.deq.state.or.us. All inquiries about this permit should be directed to the regional office for the area where the source is located. The Department's regional offices are as follows:

Counties	Office Address and Telephone
Clackamas, Clatsop, Columbia, Multnomah, Tillamook, and Washington	Department of Environmental Quality Portland Office 2020 SW 4th Avenue, Suite 400 Portland, OR 97201-4987 Telephone: (503) 229-5582 54
Benton, Lincoln, Linn, Marion, Polk, and Yamhill	Department of Environmental Quality Salem Office 750 Front Street NE, Suite 120 Salem, OR 97301-1039 Telephone: (503) 378- 5305 8240
Coos, Curry, and Western Douglas	Department of Environmental Quality Coos Bay Office 340 N Front Street Coos Bay, OR 97420-2325 Telephone: (541) 269-2721

Counties	Office Address and Telephone
Eastern Douglas, Jackson, and Josephine	Department of Environmental Quality Medford Office 221 Stewart Ave, Suite 201 201 W Main Street, Suite 2-D Medford, OR 97501-2744 Telephone: (541) 776-6010
Crook, Deschutes, Harney, Hood River, Jefferson, <u>Klamath, Lake, Sherman, Wasco,</u> and Wheeler	Department of Environmental Quality Bend Office 2146 NE 4th Street, Suite 104 <u>300 SE Reed Market Road, Bend, OR 97702</u> 3647 Telephone: (541) 388-6146
Baker, Gilliam, Grant, Malheur, Morrow, Umatilla, Union, and Wallowa	Department of Environmental Quality Pendleton Office 700 SE Emigrant Avenue, Suite 330 Pendleton, OR 97801-2597 Telephone: (541) 276-4063
Klamath and Lake	Department of Environmental Quality Klamath Falls Office 700 Main Street, Suite 202 Klamath Falls, OR 97601-6010 Telephone: (541) 883-5603

9.0 FEES

- 9.1 Annual Compliance Fee The Annual Compliance Determination Fee specified in OAR 340-216-0090, Table 2, Part 2(c) for a Class Three General ACDP is due on **December 1** of each year this permit is in effect. An invoice indicating the amount, as determined by Department regulations, will be mailed prior to the above date.
- 9.2 Change of Ownership or Company Name Fee The non-technical permit modification fee specified in OAR 340-216-0090, Table 2, Part 3(a) is due with an application for changing the ownership or the name of the company of a source assigned to this permit.
- 9.3 Where to Submit Fees Fees must be submitted to:
Department of Environmental Quality
Business Office
811 SW Sixth Avenue
Portland, Oregon 97204-1390

10.0 GENERAL CONDITIONS AND DISCLAIMERS

- 10.1 Other Regulations In addition to the specific requirements listed in this permit, the permittee must comply with all other legal requirements enforceable by the Department.
- 10.2 Conflicting Conditions In any instance in which there is an apparent conflict relative to conditions in this permit, the most stringent conditions apply.
- 10.3 Masking of Emissions The permittee must not cause or permit the installation of any device or use any means designed to mask the emissions of an air contaminant that causes or is likely to cause detriment to health, safety, or welfare of any person or otherwise violate any other regulation or requirement.
- 10.4 Department Access The permittee must allow the Department's representatives access to the plant site and pertinent records at all reasonable times for the purposes of performing inspections, surveys, collecting samples, obtaining data, reviewing and copying air contaminant emissions discharge records and conducting all necessary functions related to this permit in accordance with ORS 468-095.
- 10.5 Permit Availability The permittee must have a copy of the permit available at the facility at all times.
- 10.6 Open Burning The permittee may not conduct any open burning except as allowed by OAR 340 Division 264.
- 10.7 Asbestos The permittee must comply with the asbestos abatement requirements in OAR 340, Division 248 for all activities involving asbestos-containing materials, including, but not limit to, demolition, renovation, repair, construction, and maintenance.
- 10.8 Property Rights The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.
- 10.9 Termination, Revocation, or Modification The Commission may modify or revoke this permit pursuant to OAR 340-216-0060(3) and (4).

11.0 ABBREVIATIONS, ACRONYMS, AND DEFINITIONS

ACDP	Air Contaminant Discharge Permit	NSR	New Source Review
ASTM	American Society for Testing and Materials	O ₂	oxygen
AQMA	Air Quality Maintenance Area	OAR	Oregon Administrative Rules
bbl	barrel (42 gal)	ORS	Oregon Revised Statutes
calendar year	The 12-month period beginning January 1st and ending December 31st	O&M	operation and maintenance
CFR	Code of Federal Regulations	Pb	lead
CO	carbon monoxide	PCD	pollution control device
date	mm/dd/yy	PM	particulate matter
DEQ	Oregon Department of Environmental Quality	PM ₁₀	particulate matter less than 10 microns in size
dscf	dry standard cubic foot	ppm	part per million
EPA	US Environmental Protection Agency	ppmv	part per million by volume
FCAA	Federal Clean Air Act	PSD	Prevention of Significant Deterioration
gal	gallon(s)	PSEL	Plant Site Emission Limit
gr/dscf	grains per dry standard cubic foot	PTE	Potential to Emit
HAP	Hazardous Air Pollutant as defined by OAR 340-244-0040	RACT	Reasonably Available Control Technology
ID	identification number	scf	standard cubic foot
I&M	inspection and maintenance	SER	Significant Emission Rate
lb	pound(s)	SERP	Source Emission Reduction Plan
MMBtu	million British thermal units	SIC	Standard Industrial Code
NA	not applicable	SIP	State Implementation Plan
NESHAP	National Emissions Standards for Hazardous Air Pollutants	SO ₂	sulfur dioxide
NO _x	nitrogen oxides	Special Control Area	as defined in OAR 204-0070
NSPS	New Source Performance Standard	VE	visible emissions
		VOC	volatile organic compound
		year	A period consisting of any 12-consecutive calendar months

12.0 ATTACHMENT 1: PROCESS WEIGHT EMISSION LIMITS

Process Weight/hr (lbs.)	Maximum Weight Discharge/hr (lbs.)
50	0.24
100	0.46
150	0.66
200	0.85
250	1.03
300	1.20
350	1.35
400	1.50
450	1.63
500	1.77
550	1.89
600	2.01
650	2.12
700	2.24
750	2.34
800	2.43
850	2.53
900	2.62
950	2.72
1,000	2.80
1,100	2.97
1,200	3.12
1,300	3.26
1,400	3.40
1,500	3.54
1,600	3.66
1,700	3.79
1,800	3.91
1,900	4.03
2,000	4.14
2,100	4.24
2,200	4.34
2,300	4.44
2,400	4.54
2,500	4.64
2,600	4.74

Process Weight/hr (lbs.)	Maximum Weight Discharge/hr (lbs.)
2,700	4.84
2,800	4.92
2,900	5.02
3,000	5.10
3,100	5.18
3,200	5.27
3,300	5.36
3,400	5.44
3,500	5.52
3,600	5.61
3,700	5.69
3,800	5.77
3,900	5.85
4,000	5.93
4,100	6.01
4,200	6.08
4,300	6.15
4,400	6.22
4,500	6.30
4,600	6.37
4,700	6.45
4,800	6.52
4,900	6.60
5,000	6.67
5,500	7.03
6,000	7.37
6,500	7.71
7,000	8.05
7,500	8.39
8,000	8.71
8,500	9.03
9,000	9.36
9,500	9.67
10,000	10.00
11,000	10.63
12,000	11.28

Process Weight/hr (lbs.)	Maximum Weight Discharge/hr (lbs.)
13,000	11.89
14,000	12.50
15,000	13.13
16,000	13.74
17,000	14.36
18,000	14.97
19,000	15.58
20,000	16.19
30,000	22.22
40,000	28.3
50,000	34.3
60,000 or more	40.0

13.0 ATTACHMENT 2: BURNER TUNING PROCEDURES

- 13.1 During any year in which burner tuning is required by Condition 3.1, the tuning must be completed and a report submitted to the Department by July 15th.
- 13.2 Burner tuning must be performed by a qualified person after the plant is sufficiently warmed up and while the plant is operating within 10% of the normal maximum operating capacity. Normal maximum operating capacity is the plant's maximum operating capacity or the maximum rate which the permittee expects to achieve within the term of the Air Contaminant Discharge Permit.
- 13.3 The permittee must maintain records that demonstrate that the burner is properly tuned. At a minimum, the following information must be recorded and reported to the Department:
- a. Exhaust gas flow rate (if available);
 - b. Carbon monoxide concentrations (ppm) – specify whether on a wet or dry basis;
 - c. Oxygen concentration (%) – specify whether on a wet or dry basis;
 - d. Stack exhaust gas temperature;
 - e. Asphalt production rate in tons/hr;
 - f. Asphalt mix temperature;
 - g. % asphalt oil in mix;
 - h. RAP content as a percent of mix production; and
 - i. Fuel usage in units of gallons per ton of asphalt produced.

Note: It is not necessary to measure the carbon monoxide and oxygen concentrations in accordance with reference test methods because the burner tuning is not an official compliance source test. Carbon monoxide and oxygen concentrations may be measured using combustion gas analyzers calibrated in accordance with the manufacturer's instructions. Sufficient data must be recorded that shows that the burner is properly tuned. Carbon monoxide and oxygen must be measured at the same location (e.g., drum outlet or stack) on either a dry or wet basis.

14.0 ATTACHMENT 3: SOURCE TEST PROCEDURES

- 14.1 Source tests must be performed while the plant is operating within 10% of its normal maximum operating capacity. Normal maximum operating capacity is the plant's maximum operating capacity or the maximum rate which the permittee expects to achieve within the term of the Air Contaminant Discharge Permit.
- 14.2 Stack emissions must be tested for particulate matter using EPA Methods 1-5 and Oregon Method 5. Unless otherwise approved in the source test plan, each test must be a minimum of 60 minutes and collect at least 31.8 dry standard cubic feet of sample.
- 14.3 The following parameters must be monitored and recorded during the source test:
- a. Stack gas oxygen concentration (% on a dry basis);
 - b. Visible emissions (VE) as measured by EPA Method 9. VE must be monitored for a period of at least six (6) minutes during or within 30 minutes before or after each test run;
 - c. NO_x emissions (ppm, dry basis) as measured by EPA Method 7E;
 - d. CO emissions (ppm, dry basis) as measured by EPA Method 10 (note: Method 10 must be modified to include improved quality assurance procedures of Method 6C - contact Department's Regional Source Test Coordinator for details);
 - e. Asphalt production rate in tons/hr;
 - f. The asphalt mix temperature;
 - g. % asphalt oil in mix;
 - h. RAP content as a percent of mix production;
 - i. Fuel usage in units of gallons per ton of asphalt produced;
 - j. The pressure drop across the control device;
 - k. Water pressure at the inlet to the scrubber (for plants controlled by a wet scrubber); and
 - l. Other parameters determined at the time of the test plan review.
- 14.4 All tests must be conducted in accordance with the Department's Source Sampling Manual and with the pretest plan submitted at least 15 days in advance and approved by the Regional Source Test Coordinator. Test data and results must be submitted for review to the Regional Source Test Coordinator within 45 days unless otherwise approved in the pretest plan.
- 14.5 Only regular operating staff may adjust the combustion system or production processes and emission control parameters during the source test and within 2 hours prior to the tests. Any operating adjustments made during the source test which are a result of consultation during the tests with source testing personnel equipment vendors or consultants may render the source test invalid.

15.0 ATTACHMENT 4: ALTERNATIVE PRODUCTION LIMITS FOR DETERMINING COMPLIANCE WITH THE PSEL

15.1 Operational limitation – Statewide, except Medford/Ashland AQMA.

15.1 The permittee does not have to do emission calculations if the production/operational limitations during any 12-consecutive month period are below the levels shown below (as applicable):

Plant Operational Description	Maximum 12-month asphalt production/generator fuel usage			
	0 gal fuel oil	25,000 gal oil	50,000 gal oil	75,000 gal oil
Batch Plant – natural gas-fired w/baghouse	800,000 tons/yr	800,000 tons/yr	800,000 tons/yr	800,000 tons/yr
Batch Plant – natural gas-fired w/scrubber	340,000 tons/yr	335,000 tons/yr	327,000 tons/yr	320,000 tons/yr
Batch Plant – oil-fired w/baghouse	650,000 tons/yr	523,000 tons/yr	398,000 tons/yr	273,000 tons/yr
Batch Plant – oil-fired w/scrubber	340,000 tons/yr	340,000 tons/yr	340,000 tons/yr	273,000 tons/yr
Drum Plant – natural gas-fired w/baghouse	800,000 tons/yr	800,000 tons/yr	800,000 tons/yr	800,000 tons/yr
Drum Plant – natural gas-fired w/scrubber	800,000 tons/yr	800,000 tons/yr	800,000 tons/yr	800,000 tons/yr
Drum Plant – oil-fired w/baghouse	800,000 tons/yr	800,000 tons/yr	800,000 tons/yr	800,000 tons/yr
Drum Plant – oil-fired w/scrubber	800,000 tons/yr	800,000 tons/yr	800,000 tons/yr	800,000 tons/yr

15.2 Operational limitation, Medford-Ashland AQMA

The permittee is not required to calculate emissions if the production/operational limitations within the Medford-Ashland AQMA during any 12-consecutive month period are below the levels shown below (as applicable):

Plant Operational Description	Maximum 12-month asphalt production/generator fuel usage			
	0 gal fuel oil	25,000 gal oil	50,000 gal oil	75,000 gal oil
Batch Plant – natural gas-fired w/baghouse	362,000 tons/yr	323,000 tons/yr	281,000 tons/yr	244,000 tons/yr
Batch Plant – natural gas-fired w/scrubber	288,000 tons/yr	257,000 tons/yr	223,000 tons/yr	194,000 tons/yr
Batch Plant – oil-fired w/baghouse	362,000 tons/yr	323,000 tons/yr	281,000 tons/yr	244,000 tons/yr
Batch Plant – oil-fired w/scrubber	288,000 tons/yr	257,000 tons/yr	223,000 tons/yr	194,000 tons/yr
Drum Plant – natural gas-fired w/baghouse	426,000 tons/yr	380,000 tons/yr	330,000 tons/yr	287,000 tons/yr
Drum Plant – natural gas-fired w/scrubber	362,000 tons/yr	323,000 tons/yr	281,000 tons/yr	244,000 tons/yr
Drum Plant – oil-fired w/baghouse	426,000 tons/yr	380,000 tons/yr	330,000 tons/yr	287,000 tons/yr
Drum Plant – oil-fired w/scrubber	362,000 tons/yr	323,000 tons/yr	281,000 tons/yr	244,000 tons/yr

16.0 ATTACHMENT 5: EMISSION FACTORS

Emissions device type or activity	Pollutant	Emission Factor (EF) ¹	Emission factor units
Batch Plant – natural gas fired	PM – w/baghouse	0.042	lb/ton of production
	PM ₁₀ – w/baghouse	0.027	lb/ton of production
	PM – w/scrubber	0.14	lb/ton of production
	PM ₁₀ – w/scrubber	0.034	lb/ton of production
	SO ₂	0.0046	lb/ton of production
	NO _x	0.025	lb/ton of production
	CO	0.14	lb/ton of production
	VOC	0.0082	lb/ton of production
Batch Plant – oil fired	PM – w/baghouse	0.042	lb/ton of production
	PM ₁₀ – w/baghouse	0.027	lb/ton of production
	PM – w/scrubber	0.14	lb/ton of production
	PM ₁₀ – w/scrubber	0.034	lb/ton of production
	SO ₂	0.088	lb/ton of production
	NO _x	0.12	lb/ton of production
	CO	0.14	lb/ton of production
	VOC	0.0082	lb/ton of production
Drum Plant – natural gas fired	PM – w/baghouse	0.033	lb/ton of production
	PM ₁₀ – w/baghouse	0.023	lb/ton of production
	PM – w/scrubber	0.045	lb/ton of production
	PM ₁₀ – w/scrubber	0.027	lb/ton of production
	SO ₂	0.0034	lb/ton of production
	NO _x	0.026	lb/ton of production
	CO	0.07	lb/ton of production
	VOC	0.032	lb/ton of production

¹ AP-42 section 11.1

Emission Factors, continued

Emissions device type or activity	Pollutant	Emission Factor (EF)	Emission factor units
Drum Plant – oil fired	PM – w/baghouse	0.033	lb/ton of production
	PM ₁₀ – w/baghouse	0.023	lb/ton of production
	PM – w/scrubber	0.045	lb/ton of production
	PM ₁₀ – w/scrubber	0.027	lb/ton of production
	SO ₂	0.011	lb/ton of production
	NO _x	0.055	lb/ton of production
	CO	0.07	lb/ton of production
	VOC	0.032	lb/ton of production
Generator(s) (oil-fired)	PM/PM ₁₀	42.5	lb/1000 gallon of fuel burned
	SO ₂	39.7	lb/1000 gallon of fuel burned
	NO _x	604	lb/1000 gallon of fuel burned
	CO	130	lb/1000 gallon of fuel burned
	VOC	49.3	lb/1000 gallon of fuel burned
Generator(s) (natural gas, propane, and butane-fired)	PM/PM ₁₀	10	lb/million cubic feet of NG burned
	SO ₂	0.6	lb/million cubic feet of NG burned
	NO _x	2840	lb/million cubic feet of NG burned
	CO	399	lb/million cubic feet of NG burned
	VOC	116	lb/million cubic feet of NG burned

msf 10/18/07
AQGP-007 asphalt plants

GENERAL
AIR CONTAMINANT DISCHARGE PERMIT

Department of Environmental Quality
Air Quality Division
811 SW Sixth Avenue
Portland, OR 97204-1390
Telephone: (503) 229-5359

This permit is issued in accordance with the provisions of ORS 468A.040 and incorporated into OAR 340-216-0060 by the Environmental Quality Commission August 30, 2001 for the following source category:

Portable and stationary rock crushers, screens, and associated material handling activities such as storage piles, conveyors, and vehicle traffic. Other equipment may include electrical generators with internal combustion engines. SIC 1442

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1.0 PERMIT ASSIGNMENT

- 1.1 Qualifications All of the following conditions must be met in order to qualify for assignment to this General Air Contaminant Discharge Permit (ACDP):
- a. The permittee is performing rock crushing activities listed on the cover page of this permit, including supporting activities.
 - b. A Simple or Standard ACDP is not required for the source.
 - c. The source is not having ongoing, recurring or serious compliance problems.
- 1.2 Assignment The Department will assign qualifying permittees to this permit that have and maintain a good record of compliance with the Department's Air Quality regulations and that the Department determines would be appropriately regulated by a General ACDP. The Department may rescind assignment if the permittee no longer meets the requirements of OAR 340-216-0060 and the conditions of this permit.
- 1.3 Permitted Activities The permittee is allowed to discharge air contaminants from processes and activities related to the air contaminant source(s) listed on the first page of this permit until this permit expires, is modified, revoked or rescinded as long as conditions of this permit are complied with. If there are other emissions activities occurring at the site besides those listed on the cover page of this permit, the permittee may be required to obtain a Standard Permit or additional General ACDPs, if applicable.
- 1.4 Relation to local land use laws This permit is not valid in Lane County, or at any location where the operation of the permittee's processes, activities, and insignificant activities would be in violation of any local land use or zoning laws. For operation in Lane County, contact Lane Regional Air Pollution Authority for any necessary permits at (541) 736-1056. It is the permittee's sole responsibility to obtain local land use approvals as, or where, applicable before operating this facility at any location.

2.0 GENERAL EMISSION STANDARDS AND LIMITS

- 2.1 Visible Emissions The permittee must comply with the following visible emission limits, as applicable:
- a. In Clackamas, Columbia, Multnomah, or Washington Counties, emissions from fuel burning equipment must not exceed an opacity equal to or greater than 20% for a period aggregating more than 3 minutes in any one hour.
 - b. In Clackamas, Columbia, Multnomah, or Washington Counties, emissions from any air contaminant source other than fuel burning equipment must not equal or exceed 20% opacity for a period aggregating more than 30 seconds in any one hour.
 - c. In all other areas of the state, emissions from any air contaminant source must not equal or exceed 20% opacity for a period aggregating more than 3 minutes in any one hour.
- 2.2 Fugitive Emissions The permittee must control fugitive dust emissions by:
- a. Controlling vehicle speeds on unpaved roadways.
 - b. Treating vehicular traffic areas of the plant site under the control of the permittee.
 - c. Operating all air contaminant-generating processes so that fugitive type dust associated with the operation will be adequately controlled at all times.
 - d. Treating storage piles, as necessary.
 - e. Prompt removal of "tracked-out" material from paved streets.
 - f. Storing collected materials from air pollution control equipment in a covered container or other method equally effective in preventing the material from becoming airborne during storage and transfer.
- 2.3 Particulate Matter Fallout The permittee must not cause or permit the emission of any particulate matter larger than 250 microns in size at sufficient duration or quantity, as to create an observable deposition upon the real property of another person. The Department will verify that the deposition exists and will notify the permittee that the deposition must be controlled.
- 2.4 Nuisance and Odors The permittee must not cause or allow air contaminants from any source to cause a nuisance. Nuisance conditions will be verified by Department personnel.

- 2.5 Fuels and Fuel Sulfur Content The permittee must not use any fuel other than natural gas, propane, butane, ASTM grade fuel oils, or on-specification used oil.
- a. Fuel oils must not contain more than:
 - i. 0.3% sulfur by weight for ASTM Grade 1 distillate oil;
 - ii. 0.5% sulfur by weight for ASTM Grade 2 distillate oil;
 - iii. 1.75% sulfur by weight for residual oil;
 - b. The permittee is allowed to use on-specification used oil that contains no more than 0.5% sulfur by weight. The permittee must obtain analyses from the marketer or, if generated on site, have the used oil analyzed, so that it can be demonstrated that ~~each shipment or batch of the used~~ oil does not exceed the used oil specifications contained in 40 CFR Part 279.11, Table 1.

3.0 OPERATION AND MAINTENANCE REQUIREMENTS

- 3.1 Work practices The use of water sprays or equivalent control is required when the source of minerals to be crushed does not contain adequate moisture to suppress dust conditions.
- 3.2 Fugitive Emissions Control Plan While operating in the Medford-Ashland AQMA, the permittee must prepare and implement site-specific plans for the control of fugitive emissions in accordance with OAR 340-240-0180. While operating in the Lakeview Urban Growth Area (UGA), the permittee must prepare and implement site-specific plans for the control of fugitive emissions in accordance with OAR 340-240-0410.
- 3.3 O&M plan While operating in the Medford-Ashland AQMA, the permittee must prepare and implement an operation and maintenance (O&M) plan in accordance with OAR 340-240-0190. While operating in the Lakeview UGA, the permittee must prepare and implement an O&M plan in accordance with OAR 340-240-0420.

4.0 PLANT SITE EMISSION LIMITS

- 4.1 Plant Site Emission Limits (PSEL) Plant site emissions must not exceed the following:

Pollutant	Limit	Units
PM	24	tons per year
PM ₁₀	14	tons per year
SO ₂	39	tons per year
NO _x	39	tons per year
CO	99	tons per year
VOC	39	tons per year

- 4.2 PM₁₀ PSEL for Medford-Ashland AQMA For sources operating in the Medford-Ashland AQMA, plant site emissions of PM₁₀ must not exceed the following:

Pollutant	Limit	Units
PM ₁₀	4.5	tons per year
	49	pounds per day

- 4.3 Annual Period The annual plant site emissions limits apply to any 12-consecutive calendar month period.

5.0 COMPLIANCE DEMONSTRATION

- 5.1 Fuel Sulfur Monitoring If fuel oil is burned, the permittee must either obtain a certificate from the vendor stating that the fuel sulfur content complies with the limits in Condition 2.5a or have a sample of the fuel analyzed in accordance with the appropriate ASTM analytical procedures. If the permittee has samples analyzed for sulfur, a sample must be collected from the holding tank just after each shipment of oil is added to the tank.
- 5.2 PSEL Compliance Monitoring Compliance with the PSEL is determined for each 12-consecutive calendar month period based on the following calculation for each pollutant:

$$E = \Sigma(EF \times P)/2000$$

where,

- E = pollutant emissions (ton/yr);
 EF = pollutant emission factor (see below);
 P = process production (tons of crushed rock for the rock crusher and gallons of fuel burned for the generators)

5.3 Emission Factors

The emission factors for determining compliance with the PSEL are as follows:

Emissions device or activity	Pollutant	Emission Factor (EF)	Emission factor units
Rock crusher	PM	0.041	lb/ton of rock crushed
	PM ₁₀	0.02	lb/ton of rock crushed
Generator(s) (oil-fired)	PM/PM ₁₀	42.5	lb/1000 gallon of fuel burned
	SO ₂	39.7	lb/1000 gallon of fuel burned
	NO _x	604	lb/1000 gallon of fuel burned
	CO	130	lb/1000 gallon of fuel burned
	VOC	49.3	lb/1000 gallon of fuel burned
Generator(s) (natural gas, propane, and butane - fired)	PM/PM ₁₀	10	lb/million cubic feet of NG burned
	SO ₂	0.6	lb/million cubic feet of NG burned
	NO _x	2840	lb/million cubic feet of NG burned
	CO	399	lb/million cubic feet of NG burned
	VOC	116	lb/million cubic feet of NG burned

5.4 Medford/Ashland AQMA

If the source operates in the Medford/Ashland AQMA, the permittee must also maintain records of the daily rock crushed and calculate the daily maximum emissions for the reporting period.

6.0 RECORDKEEPING REQUIREMENTS

- 6.1 Operation and Maintenance
- The permittee must maintain the following records related to the operation and maintenance of the plant and associated air contaminant control devices:
- Crushed rock produced in Oregon on a monthly basis for each site of operation (tons);
 - Crushed rock produced in PM₁₀ nonattainment areas in Oregon on a daily basis for each site of operation;
 - Types and quantities of fuels burned in the generator (s) in Oregon on a monthly basis for each site of operation (gallons or cubic feet);
 - Types and quantities of fuels burned in the generator (s) in PM₁₀ nonattainment areas in Oregon on a daily basis for each site of operation (gallons or cubic feet);
 - Sulfur content from vendor certification of each shipment of fuel oil, if used at the plant; and
 - If used oil is used, the permittee must obtain analyses from the marketer or, if generated on site, have the used oil analyzed, so that it can be demonstrated that each shipment or batch of oil does not exceed the used oil specifications contained in 40 CFR Part 279.11, Table 1.
- 6.2 Excess Emissions
- The permittee must maintain records of excess emissions as defined in OAR 340-214-0300 through 340-214-0340 (recorded on occurrence). Typically, excess emissions are caused by process upsets, startups, shutdowns, or scheduled maintenance. In many cases, excess emissions are evident when visible emissions are greater than 20% opacity for 3 minutes or more in any 60-minute period.
- 6.3 Complaint Log
- The permittee must maintain a log of all written complaints and complaints received via telephone that specifically refer to air pollution concerns associated to the permitted facility. The log must include a record of the permittee's actions to investigate the validity of each complaint and a record of actions taken for complaint resolution.
- 6.4 Retention of Records
- Unless otherwise specified, all records must be maintained on site for a period of two (2) years and made available to the Department upon request.

7.0 REPORTING REQUIREMENTS

- 7.1 Excess Emissions The permittee must notify the Department by telephone or in person of any excess emissions which are of a nature that could endanger public health.
- a. Such notice must be provided as soon as possible, but never more than one hour after becoming aware of the problem. Notice must be made to the regional office identified in Condition 8.3.
 - b. If the excess emissions occur during non-business hours, the permittee must notify the Department by calling the Oregon Emergency Response System (OERS). The current number is 1-800-452-0311.
 - c. The permittee must also submit follow-up reports when required by the Department.
- 7.2 Annual Report The permittee must submit to the Department by **February 15** of each year this permit is in effect, two (2) copies of the following information for the preceding calendar year:
- a. Operating parameters:
 - i. crushed rock produced in Oregon on an annual basis for each site of operation (tons).
 - ii. types and quantities of fuels burned in the generator(s) in Oregon on an annual basis for each site of operation (gallons or cubic feet).
 - iii. maximum daily amount of rock crushed in PM₁₀ nonattainment areas; and
 - iv. type and maximum daily amount of fuel burned in the generator(s) in PM₁₀ nonattainment areas.
 - b. Records of all planned and unplanned excess emissions events.
 - c. Summary of complaints relating to air quality received by permittee during the year.
 - d. List permanent changes made in plant process, production levels, and pollution control equipment which affected air contaminant emissions.
 - e. List major maintenance performed on pollution control equipment.
- 7.3 Initial Startup Notice The permittee must notify the Department in writing of the date a new facility is started up. The notification must be submitted no later than seven (7) days after startup.
- 7.4 Portable Plants - If the facility is portable, the permittee must not install or

- Relocation Notice operate the facility or any portion of the facility at any new site without first providing written notice to the Permit Coordinator in the appropriate regional office. The written notice must include the date of the proposed move, approximate dates of operation, a detailed map showing access to the new site, and a description of the air pollution controls and procedures to be installed, operated, and practiced at the new site. Additional permits may be required if the permittee operates individual components of the facility at more than one site at a time.
- 7.5 Notice of Change of Ownership or Company Name The permittee must notify the Department in writing using a Departmental "Permit Application Form" within 60 days after the following:
- a. Legal change of the name of the company as registered with the Corporations Division of the State of Oregon; or
 - b. Sale or exchange of the activity or facility.
- 7.6 Construction or Modification Notices The permittee must notify the Department in writing using a Departmental "Notice of Construction Form," or "Permit Application Form," and obtain approval in accordance with OAR 340-210-0205 through 340-210-0250 before:
- a. Constructing or installing any new source of air contaminant emissions, including air pollution control equipment;
 - b. Modifying or altering an existing source that may significantly affect the emission of air contaminants;
 - c. Making any physical change which increases emissions; or
 - d. Changing the method of operation, the process, or the fuel use, or increasing the normal hours of operation that result in increased emissions.
-
- e. Relocating an existing stationary source or any portion of an existing stationary source.
- 7.7 Where to Send Reports and Notices Reports and notices, with the permit number prominently displayed, must be sent to the Permit Coordinator for the regional office where the source is located as identified in Condition 8.2. For portables, reports and notices should be sent to the DEQ regional office nearest the company's office of record.

8.0 ADMINISTRATIVE REQUIREMENTS

- 8.1 Reassignment to the General ACDP A complete application for reassignment to this permit is due within 60 days after the permit is reissued. The Department will notify the permittee when the permit is reissued. The application must be sent to the appropriate regional office.
- a. If the Department is delinquent in renewing the permit, the existing permit will remain in effect and the permittee must comply with the conditions of the permit until such time that the permit is reissued and the source is reassigned to the permit.
 - b. The permittee may submit an application for either a Simple or Standard ACDP at any time, but the permittee must continue to comply with the General ACDP until the Department takes final action on the Simple or Standard ACDP application.
 - c. If a complete application for reassignment to the General ACDP or Simple or Standard ACDP is filed with the Department in a timely manner, the permit will not be deemed to expire until final action has been taken on the application.
- 8.2 Permit Coordinator Addresses All reports, notices, and applications should be directed to the Permit Coordinator (or for portable sources, reports must be sent to the DEQ regional office located nearest to the company's office of record) for the area where the source is located. The Permit Coordinator addresses are as follows:

Counties	Permit Coordinator Address and Telephone
Clackamas, Clatsop, Columbia, Multnomah, Tillamook, and Washington	Department of Environmental Quality Northwest Region 2020 SW 4th Avenue, Suite 400 Portland, OR 97201-4987 Telephone: (503) 229-5582
Benton, Coos, Curry, Douglas, Jackson, Josephine, Lincoln, Linn, Marion, Polk, and Yamhill	Department of Environmental Quality Western Region 750 Front Street NE, Suite 120 Salem, OR 97301-1039 Telephone: (503) 378-8240 ext. 225
Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler	Department of Environmental Quality Eastern Region 2146 NE 4th Street, Suite 104 300 SE Reed Market Road Bend, OR 97702-3647 Telephone: (541) 388-6146 ext. 223

8.3 Department
Contacts

Information about air quality permits and the Department's regulations may be obtained from the DEQ web page at www.deq.state.or.us. All inquiries about this permit should be directed to the regional office for the area where the source is located. The Department's regional offices are as follows:

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Benton, Lincoln, Linn, Marion, Polk, and Yamhill	Department of Environmental Quality Salem Office 750 Front Street NE, Suite 120 Salem, OR 97301-1039 Telephone: (503) 378-53058240
Coos, Curry, and Western Douglas	Department of Environmental Quality Coos Bay Office 340 N Front Street Coos Bay, OR 97420-2325 Telephone: (541) 269-2721
Eastern Douglas, Jackson, and Josephine	Department of Environmental Quality Medford Office 221 Stewart Ave, Suite 201 201 W Main Street, Suite 2-D Medford, OR 97501-2744 Telephone: (541) 776-6010
Crook, Deschutes, Harney, Hood River, Jefferson, Klamath, Lake, Sherman, Wasco, and Wheeler	Department of Environmental Quality Bend Office 300 SE Reed Market Road 2146 NE 4th Street, Suite 104 Bend, OR 97702-3647 Telephone: (541) 388-6146
Baker, Gilliam, Grant, Malheur, Morrow, Umatilla, Union, and Wallowa	Department of Environmental Quality Pendleton Office 700 SE Emigrant Avenue, Suite 330 Pendleton, OR 97801-2597 Telephone: (541) 276-4063
Klamath and Lake	Department of Environmental Quality Klamath Falls Office 700 Main Street, Suite 202 Klamath Falls, OR 97601-6010 Telephone: (541) 883-5603

9.0 FEES

- 9.1 Annual Compliance Fee The Annual Compliance Determination Fee specified in OAR 340-216-0090, Table 2, Part 2(c) for a Class Two General ACDP is due on **December 1** of each year this permit is in effect. An invoice indicating the amount, as determined by Department regulations, will be mailed prior to the above date.
- 9.2 Change of Ownership or Company Name Fee The non-technical permit modification fee specified in OAR 340-216-0090, Table 2, Part 3(a) is due with an application for changing the ownership or the name of the company of a source assigned to this permit.
- 9.3 Where to Submit Fees Fees must be submitted to:
Department of Environmental Quality
Business Office
811 SW Sixth Avenue
Portland, Oregon 97204-1390

10.0 GENERAL CONDITIONS AND DISCLAIMERS

- 10.1 Other Regulations In addition to the specific requirements listed in this permit, the permittee must comply with all other legal requirements enforceable by the Department.
- 10.2 Conflicting Conditions In any instance in which there is an apparent conflict relative to conditions in this permit, the most stringent conditions apply.
- 10.3 Masking of Emissions The permittee must not cause or permit the installation of any device or use any means designed to mask the emissions of an air contaminant that causes or is likely to cause detriment to health, safety, or welfare of any person or otherwise violate any other regulation or requirement.
- 10.4 Department Access The permittee must allow the Department's representatives access to the plant site and pertinent records at all reasonable times for the purposes of performing inspections, surveys, collecting samples, obtaining data, reviewing and copying air contaminant emissions discharge records and conducting all necessary functions related to this permit in accordance with ORS 468-095.
- 10.5 Permit Availability The permittee must have a copy of the permit available at the facility at all times.
- 10.6 Open Burning The permittee may not conduct any open burning except as allowed by OAR 340 Division 264.

- 10.7 Asbestos The permittee must comply with the asbestos abatement requirements in OAR 340, Division 248 for all activities involving asbestos-containing materials, including, but not limit to, demolition, renovation, repair, construction, and maintenance.
- 10.8 Property Rights The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.
- 10.9 Termination, Revocation, or Modification The Commission may modify or revoke this permit pursuant to OAR 340-216-0060(3) and (4).

11.0 ABBREVIATIONS, ACRONYMS, AND DEFINITIONS

ACDP	Air Contaminant Discharge Permit	O&M	operation and maintenance
ASTM	American Society for Testing and Materials	Pb	lead
AQMA	Air Quality Maintenance Area	PCD	pollution control device
bbl	barrel (42 gal)	PM	particulate matter
calendar year	The 12-month period beginning January 1st and ending December 31st	PM ₁₀	particulate matter less than 10 microns in size
CFR	Code of Federal Regulations	ppm	part per million
CO	carbon monoxide	ppmv	part per million by volume
date	mm/dd/yy	PSD	Prevention of Significant Deterioration
DEQ	Oregon Department of Environmental Quality	PSEL	Plant Site Emission Limit
dscf	dry standard cubic foot	PTE	Potential to Emit
EPA	US Environmental Protection Agency	RACT	Reasonably Available Control Technology
FCAA	Federal Clean Air Act	scf	standard cubic foot
gal	gallon(s)	SER	Significant Emission Rate
gr/dscf	grains per dry standard cubic foot	SERP	Source Emission Reduction Plan
HAP	Hazardous Air Pollutant as defined by OAR 340-244-0040	SIC	Standard Industrial Code
ID	identification number	SIP	State Implementation Plan
I&M	inspection and maintenance	SO ₂	sulfur dioxide
lb	pound(s)	Special Control Area	as defined in OAR 340-204-0070
MMBtu	million British thermal units	VE	visible emissions
NA	not applicable	VOC	volatile organic compound
NESHAP	National Emissions Standards for Hazardous Air Pollutants	year	A period consisting of any 12-consecutive calendar months
NO _x	nitrogen oxides		
NSPS	New Source Performance Standard		msf:10/18/07 AQGP-008, rock crushers
NSR	New Source Review		
O ₂	oxygen		
OAR	Oregon Administrative Rules		
ORS	Oregon Revised Statutes		

**GENERAL
AIR CONTAMINANT DISCHARGE PERMIT**

Department of Environmental Quality
Air Quality Division
811 SW Sixth Avenue
Portland, OR 97204-1390
Telephone: (503) 229-5359

This permit is issued in accordance with the provisions of ORS 468A.040 and incorporated into OAR 340-216-0060 by the Environmental Quality Commission on August 30, 2001 for the following source category:

Stationary and portable concrete manufacturing, including ready-mix and Cement Treated Base, and associated material handling activities such as storage piles, conveyors, and vehicle traffic. Other equipment may include electrical generators with internal combustion engines. SIC 3271, 3272, 3273

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1.0 PERMIT ASSIGNMENT

- 1.1 Qualifications All of the following conditions must be met in order to qualify for assignment to this General Air Contaminant Discharge Permit (ACDP):
- a. The permittee is performing the concrete manufacturing activities listed on the cover page of this permit, including supporting activities.
 - b. A Simple or Standard ACDP is not required for the source.
 - c. The source is not having ongoing, recurring or serious compliance problems.
- 1.2 Assignment The Department will assign qualifying permittees to this permit that have and maintain a good record of compliance with the Department's Air Quality regulations and that the Department determines would be appropriately regulated by a General ACDP. The Department may rescind assignment if the permittee no longer meets the requirements of OAR 340-216-0060 and the conditions of this permit.
- 1.3 Permitted Activities The permittee is allowed to discharge air contaminants from processes and activities related to the air contaminant source(s) listed on the first page of this permit until this permit expires, is modified, revoked or rescinded as long as conditions of this permit are complied with. If there are other emissions activities occurring at the site besides those listed on the cover page of this permit, the permittee may be required to obtain a Standard Permit or additional General ACDPs, if applicable.
- 1.4 Relation to local land use laws This permit is not valid in Lane County, or at any location where the operation of the permittee's processes, activities, and insignificant activities would be in violation of any local land use or zoning laws. For operation in Lane County, contact Lane Regional Air Pollution Authority for any necessary permits at (541) 736-1056. It is the permittee's sole responsibility to obtain local land use approvals as, or where, applicable before operating this facility at any location.

2.0 GENERAL EMISSION STANDARDS AND LIMITS

- 2.1 Visible Emissions The permittee must comply with the following visible emission limits, as applicable:
- a. In Clackamas, Columbia, Multnomah, or Washington Counties, emissions from fuel burning equipment must not exceed an opacity equal to or greater than 20% for a period aggregating more than 3 minutes in any one hour.
 - b. In Clackamas, Columbia, Multnomah, or Washington Counties, emissions from any air contaminant source other than fuel burning equipment must not equal or exceed 20% opacity for a period aggregating more than 30 seconds in any one hour.
 - c. In all other areas of the state, emissions from any air contaminant source must not equal or exceed 20% opacity for a period aggregating more than 3 minutes in any one hour.
- 2.2 Fugitive Emissions The permittee must control fugitive dust emissions by:
- a. Controlling vehicle speeds on unpaved roadways.
 - b. Treating vehicular traffic areas of the plant site under the control of the permittee.
 - c. Operating all air contaminant-generating processes so that fugitive type dust associated with the operation will be adequately controlled at all times.
 - d. Treating storage piles, as necessary.
 - e. Prompt removal of "tracked-out" material from paved areas.
 - f. Storing collected materials from air pollution control equipment in a covered container or other method equally effective in preventing the material from becoming airborne during storage and transfer.
- 2.3 Particulate Matter Fallout The permittee must not cause or permit the emission of any particulate matter larger than 250 microns in size at sufficient duration or quantity, as to create an observable deposition upon the real property of another person. The Department will verify that the deposition exists and will notify the permittee that the deposition must be controlled.
- 2.4 Nuisance and Odors The permittee must not cause or allow air contaminants from any source to cause a nuisance. Nuisance conditions will be verified by Department personnel.

- 2.5 Fuels and Fuel Sulfur Content The permittee must not use any fuel other than natural gas, propane, butane, ASTM grade fuel oils, or on-specification used oil.
- a. Fuel oils must not contain more than:
 - i. 0.3% sulfur by weight for ASTM Grade 1 distillate oil;
 - ii. 0.5% sulfur by weight for ASTM Grade 2 distillate oil;
 - iii. 1.75% sulfur by weight for residual oil;
 - b. The permittee is allowed to use on-specification used oil that contains no more than 0.5% sulfur by weight. The permittee must obtain analyses from the marketer or, if generated on site, have the used oil analyzed, so that it can be demonstrated that each shipment or batch of the used oil does not exceed the used oil specifications contained in 40 CFR Part 279.11, Table 1.

3.0 OPERATION AND MAINTENANCE REQUIREMENTS

- 3.1 Work practices The permittee must employ bag filters on the silo(s) and water sprays on the truck loader to minimize fugitive dust emissions.
- 3.2 Fugitive Emissions Control Plan While operating in the Medford-Ashland AQMA, the permittee must prepare and implement site-specific plans for the control of fugitive emissions in accordance with OAR 340-240-0180. While operating in the Lakeview Urban Growth Area (UGA), the permittee must prepare and implement site-specific plans for the control of fugitive emissions in accordance with OAR 340-240-0410.
- 3.3 O&M plan While operating in the Medford-Ashland AQMA, the permittee must prepare and implement an operation and maintenance (O&M) plan in accordance with OAR 340-240-0190. While operating in the Lakeview UGA, the permittee must prepare and implement an O&M plan in accordance with OAR 340-240-0420.

4.0 PLANT SITE EMISSION LIMITS

- 4.1 Plant Site Emission Limits (PSEL) Plant site emissions must not exceed the following:

Pollutant	Limit	Units
PM	24	tons per year
PM ₁₀	14	tons per year
SO ₂	39	tons per year
NO _x	39	tons per year
CO	99	tons per year
VOC	39	tons per year

- 4.2 PM₁₀ PSEL for Medford-Ashland AQMA For sources operating in the Medford-Ashland AQMA, plant site emissions of PM₁₀ must not exceed the following:

Pollutant	Limit	Units
PM ₁₀	4.5	tons per year
	49	pounds per day

- 4.3 Annual Period The annual plant site emissions limits apply to any 12-consecutive calendar month period.

5.0 COMPLIANCE DEMONSTRATION

- 5.1 Fuel Sulfur Monitoring If fuel oil is burned, the permittee must either obtain a certificate from the vendor stating that the fuel sulfur content complies with the limits in Condition 2.5, or have a sample of the fuel analyzed in accordance with the appropriate ASTM analytical procedures. If the permittee has samples analyzed for sulfur, a sample must be collected from the holding tank just after each shipment of oil is added to the tank.

- 5.2 PSEL Compliance Monitoring Compliance with the PSEL is determined for each 12-consecutive calendar month period based on the following calculation for each pollutant:

$$E = \Sigma(EF \times P)/2000$$

where,

$$E = \text{pollutant emissions (ton/yr);}$$

EF = pollutant emission factor (see below);
P = process production (cubic yards of concrete and gallons of fuel burned for the generators)

5.3 Emission Factors

The emission factors for determining compliance with the PSEL are as follows:

Emissions device or activity	Pollutant	Emission Factor (EF)	Emission factor units
Concrete Production	PM/PM ₁₀	0.02	lb/cubic yard of concrete
Generator(s) (oil-fired)	PM/PM ₁₀	42.5	lb/1000 gallon of fuel burned
	SO ₂	39.7	lb/1000 gallon of fuel burned
	NO _x	604	lb/1000 gallon of fuel burned
	CO	130	lb/1000 gallon of fuel burned
	VOC	49.3	lb/1000 gallon of fuel burned
Generator(s) (natural gas, propane, and butane -fired)	PM/PM ₁₀	10	lb/million cubic feet of NG burned
	SO ₂	0.6	lb/million cubic feet of NG burned
	NO _x	2840	lb/million cubic feet of NG burned
	CO	399	lb/million cubic feet of NG burned
	VOC	116	lb/million cubic feet of NG burned

5.4 Medford/Ashland AQMA

If the source operates in the Medford/Ashland AQMA, the permittee must also maintain records of daily concrete production and calculate the daily maximum emissions for the reporting period.

6.0 RECORDKEEPING REQUIREMENTS

- 6.1 Operation and Maintenance
- The permittee must maintain the following records related to the operation and maintenance of the plant and associated air contaminant control devices:
- a. Concrete produced in Oregon on a monthly basis for each site of operation;
 - b. Concrete produced in PM₁₀ Nonattainment Areas in Oregon on a daily basis for each site of operation;
 - c. Types and quantities of fuels burned in the generator(s) in Oregon on a monthly basis for each site of operation;
 - d. Types and quantities of fuel burned in the generator(s) in PM₁₀ Nonattainment Areas in Oregon on a daily basis for each site of operation;
 - e. Sulfur content from vendor certification of each shipment of fuel oil, if used at the plant; and
 - f. If used oil is used, the permittee must obtain analyses from the marketer or, if generated on site, have the used oil analyzed, so that it can be demonstrated that each shipment or batch of oil does not exceed the used oil specifications contained in 40 CFR Part 279.11, Table 1.
- 6.2 Excess Emissions
- The permittee must maintain records of excess emissions as defined in OAR 340-214-0300 through 340-214-0340 (recorded on occurrence). Typically, excess emissions are caused by process upsets, startups, shutdowns, or scheduled maintenance. In many cases, excess emissions are evident when visible emissions are greater than 20% opacity for 3 minutes or more in any 60-minute period.
- 6.3 Complaint Log
- The permittee must maintain a log of all written complaints and complaints received via telephone that specifically refer to air pollution concerns associated to the permitted facility. The log must include a record of the permittee's actions to investigate the validity of each complaint and a record of actions taken for complaint resolution.
- 6.4 Retention of Records
- Unless otherwise specified, all records must be maintained on site for a period of two (2) years and made available to the Department upon request.

7.0 REPORTING REQUIREMENTS

- 7.1 Excess Emissions The permittee must notify the Department by telephone or in person of any excess emissions which are of a nature that could endanger public health.
- a. Such notice must be provided as soon as possible, but never more than one hour after becoming aware of the problem. Notice must be made to the regional office identified in Condition 8.3.
 - b. If the excess emissions occur during non-business hours, the permittee must notify the Department by calling the Oregon Emergency Response System (OERS). The current number is 1-800-452-0311.
 - c. The permittee must also submit follow-up reports when required by the Department.
- 7.2 Annual Report The permittee must submit to the Department by **February 15** of each year this permit is in effect, two (2) copies of the following information for the preceding calendar year:
- a. Operating parameters:
 - i. Amount of concrete produced in Oregon on an annual basis (cubic yards).
 - ii. Types and quantities of fuels burned in the generator in Oregon on an annual basis.
 - iii. A list of and dates and times of operation in all PM₁₀ nonattainment areas; including annual and maximum daily concrete production and annual and maximum daily fuel usage in the generator(s) in these areas.
 - b. Records of all planned and unplanned excess emissions events.
 - c. Summary of complaints related to air quality received by permittee.
 - d. List permanent changes made in plant process, production levels, and pollution control equipment which affected air contaminant emissions.
 - e. List major maintenance performed on pollution control equipment.

- 7.3 Initial Startup Notice
The permittee must notify the Department in writing of the date a new facility is started up. The notification must be submitted no later than seven (7) days after startup.
- 7.4 Portable Plants - Relocation Notice
If the facility is portable, ~~the~~ permittee must not install or operate the facility or any portion of the facility at any new site without first providing written notice to the Permit Coordinator in the appropriate regional office. The written notice must include the date of the proposed move, approximate dates of operation, a detailed map showing access to the new site, and a description of the air pollution controls and procedures to be installed, operated, and practiced at the new site. Additional permits may be required if the permittee operates individual components of the facility at more than one site at a time.
- 7.5 Notice of Change of Ownership or Company Name
The permittee must notify the Department in writing using a Departmental "Permit Application Form" within 60 days of the following:
- a. Legal change of the name of the company as registered with the Corporations Division of the State of Oregon; or
 - b. Sale or exchange of the activity or facility.
- 7.6 Construction or Modification Notices
The permittee must notify the Department in writing using a Departmental "Notice of Construction Form," or "Permit Application Form," and obtain approval in accordance with OAR 340-210-0205 through 340-210-0250 before:
- a. Constructing or installing any new source of air contaminant emissions, including air pollution control equipment;
 - b. Modifying or altering an existing source that may significantly affect the emission of air contaminants;
 - c. Making any physical change which increases emissions; or
 - d. Changing the method of operation, the process, or the fuel use, or increasing the normal hours of operation that result in increased emissions.
 - e. Relocating an existing stationary source or any portion of an existing stationary source.
- 7.7 Where to Send Reports and Notices
Reports and notices, with the permit number prominently displayed, must be sent to the Permit Coordinator for the regional office where the source is located as identified in Condition 8.2. For portables, reports and notices should be sent to the DEQ regional office nearest the company's office of record.

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- 8.1 Reassignment to the General ACDP A complete application for reassignment to this permit is due within 60 days after the permit is reissued. The Department will notify the permittee when the permit is reissued. The application must be sent to the appropriate regional office.
- a. If the Department is delinquent in renewing the permit, the existing permit will remain in effect and the permittee must comply with the conditions of the permit until such time that the permit is reissued and the source is reassigned to the permit.
 - b. The permittee may submit an application for either a Simple or Standard ACDP at any time, but the permittee must continue to comply with the General ACDP until the Department takes final action on the permit application.
 - c. If a complete application for reassignment to the General ACDP or Simple or Standard ACDP is filed with the Department in a timely manner, the permit will not be deemed to expire until final action has been taken on the application.
- 8.2 Permit Coordinator Addresses All reports, notices, and applications should be directed to the Permit Coordinator for the area where the source is located. The Permit Coordinator addresses are as follows:

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Benton, Lincoln, Linn, Marion, Polk, and Yamhill	Department of Environmental Quality Salem Office 750 Front Street NE, Suite 120 Salem, OR 97301-1039 Telephone: (503) 378-53058240
Coos, Curry, Western Douglas	Department of Environmental Quality Coos Bay Office 340 N Front Street Coos Bay, OR 97420-2325 Telephone: (541) 269-2721
Eastern Douglas, Jackson, and Josephine	Department of Environmental Quality Medford Office 201 W Main Street, Suite 2-D 221 Stewart Ave. Suite 201 Medford, OR 97501-2744 Telephone: (541) 776-6010
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Klamath and Lake	Department of Environmental Quality Klamath Falls Office 700 Main Street, Suite 202 Klamath Falls, OR 97601-6010 Telephone: (541) 883-5603

9.0 FEES

- 9.1 Annual Compliance Fee The Annual Compliance Determination Fee specified in OAR 340-216-0090, Table 2, Part 2(c) for a Class One General ACDP is due on **December 1** of each year this permit is in effect. An invoice indicating the amount, as determined by Department regulations, will be mailed prior to the above date.
- 9.2 Change of Ownership or Company Name Fee The non-technical permit modification fee specified in OAR 340-216-0090, Table 2, Part 3(a) is due with an application for changing the ownership or the name of the company of a source assigned to this permit.
- 9.3 Where to Submit Fees Fees must be submitted to:
Department of Environmental Quality
Business Office
811 SW Sixth Avenue
Portland, Oregon 97204-1390

10.0 GENERAL CONDITIONS AND DISCLAIMERS

- 10.1 Other Regulations In addition to the specific requirements listed in this permit, the permittee must comply with all other legal requirements enforceable by the Department.
- 10.2 Conflicting Conditions In any instance in which there is an apparent conflict relative to conditions in this permit, the most stringent conditions apply.
- 10.3 Masking of Emissions The permittee must not cause or permit the installation of any device or use any means designed to mask the emissions of an air contaminant that causes or is likely to cause detriment to health, safety, or welfare of any person or otherwise violate any other regulation or requirement.
- 10.4 Department Access The permittee must allow the Department's representatives access to the plant site and pertinent records at all reasonable times for the purposes of performing inspections, surveys, collecting samples, obtaining data, reviewing and copying air contaminant emissions discharge records and conducting all necessary functions related to this permit in accordance with ORS 468-095.
- 10.5 Permit Availability The permittee must have a copy of the permit available at the facility at all times.

- 10.6 Open Burning The permittee may not conduct any open burning except as allowed by OAR 340 Division 264.
- 10.7 Asbestos The permittee must comply with the asbestos abatement requirements in OAR 340, Division 248 for all activities involving asbestos-containing materials, including, but not limit to, demolition, renovation, repair, construction, and maintenance.
- 10.8 Property Rights The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.
- 10.9 Termination, Revocation, or Modification The Commission may modify or revoke this permit pursuant to OAR 340-216-0060(3) and (4).

11.0 ABBREVIATIONS, ACRONYMS, AND DEFINITIONS

ACDP	Air Contaminant Discharge Permit	O ₂	oxygen
ASTM	American Society for Testing and Materials	OAR	Oregon Administrative Rules
AQMA	Air Quality Maintenance Area	ORS	Oregon Revised Statutes
bbbl	barrel (42 gal)	O&M	operation and maintenance
calendar year	The 12-month period beginning January 1 st and ending December 31 st	Pb	lead
CFR	Code of Federal Regulations	PCD	pollution control device
CO	carbon monoxide	PM	particulate matter
date	mm/dd/yy	PM ₁₀	particulate matter less than 10 microns in size
DEQ	Oregon Department of Environmental Quality	ppm	part per million
dscf	dry standard cubic foot	ppmv	part per million by volume
EPA	US Environmental Protection Agency	PSD	Prevention of Significant Deterioration
FCAA	Federal Clean Air Act	PSEL	Plant Site Emission Limit
gal	gallon(s)	PTE	Potential to Emit
gr/dscf	grains per dry standard cubic foot	RACT	Reasonably Available Control Technology
HAP	Hazardous Air Pollutant as defined by OAR 340-244-0040	scf	standard cubic foot
ID	identification number	SER	Significant Emission Rate
I&M	inspection and maintenance	SERP	Source Emission Reduction Plan
lb	pound(s)	SIC	Standard Industrial Code
MMBtu	million British thermal units	SIP	State Implementation Plan
NA	not applicable	SO ₂	sulfur dioxide
NESHAP	National Emissions Standards for Hazardous Air Pollutants	Special Control Area	as defined in OAR 340-204-0070
NO _x	nitrogen oxides	VE	visible emissions
NSPS	New Source Performance Standard	VOC	volatile organic compound
NSR	New Source Review	year	A period consisting of any 12 consecutive calendar months
		msf:10/18/07	
		AQGP-009, ready-mix plants	

**GENERAL
AIR CONTAMINANT DISCHARGE PERMIT**

Department of Environmental Quality
Air Quality Division
811 SW Sixth Avenue
Portland, OR 97204-1390
Telephone: (503) 229-5359

This permit is issued in accordance with the provisions of ORS 468A.040 and incorporated into OAR 340-216-0060 by the Environmental Quality Commission on August 30, 2001 for the following source category:

Sawmill, planing mill, or millwork (including kitchen cabinets and structural members), 25,000 or more bd.ft./shift finished product and plywood manufacturing and/or veneer drying. SIC 2421, 2426, 2431, 2434, 2435, 2436, ~~or~~ 2439, or 4961

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1.0 PERMIT ASSIGNMENT

1.1 Qualifications All of the following conditions must be met in order to qualify for assignment to this General Air Contaminant Discharge Permit (ACDP):

- a. The permittee is performing activities listed on the cover page, including sawing, planing, sanding, chipping, kiln drying, plywood pressing and surface coating along with supporting activities such as material conveyors (mechanical and pneumatic), veneer dryers, and boilers.
- b. A Simple or Standard ACDP is not required for the source.
- c. The source is not having ongoing, recurring or serious compliance problems.

1.2 Assignment The Department will assign qualifying permittees to this permit that have and maintain a good record of compliance with the Department’s Air Quality regulations and that the Department determines would be appropriately regulated by a General ACDP. The Department may rescind assignment if the permittee no longer meets the requirements of OAR 340-216-0060 and the conditions of this permit.

1.3 Permitted Activities The permittee is allowed to discharge air contaminants from processes and activities related to the air contaminant source(s) listed on the first page of this permit until this permit expires, is modified, revoked or rescinded as long as conditions of this permit are complied with. If there are other emissions activities occurring at the site besides those listed on the cover page of this permit, the permittee may be required to obtain a Standard Permit or additional General Permits, if applicable.

2.0 EMISSION STANDARDS AND LIMITS

2.1 Visible Emissions

The permittee must comply with the following visible emission limits, as applicable:

- a. Emissions from any air contaminant source installed on or before June 1, 1970 and not located in a special control area must not equal or exceed 40% opacity for a period aggregating more than 3 minutes in any one hour.
- b. Emissions from any air contaminant source installed, constructed, or modified after June 1, 1970 or located in a special control area must not equal or exceed 20% opacity for a period aggregating more than 3 minutes in any one hour.
- c. In Clackamas, Columbia, Multnomah, or Washington Counties, emissions from any air contaminant source other than fuel burning equipment must not equal or exceed 20% opacity for a period aggregating more than 30 seconds in any one hour.
- d. In all areas of the state except the Medford-Ashland Air Quality Maintenance Area (AQMA) and Grants Pass Urban Growth Area (UGA), visible emissions from veneer dryers must not exceed:
 - i. An average operating opacity of 10 percent; and
 - ii. A maximum opacity of 20 percent.
- e. In the Medford-Ashland AQMA and Grants Pass UGA, visible emissions from veneer dryers must not exceed:
 - i. An average operating opacity of five percent; and
 - ii. A maximum opacity of ten percent.

2.2 Particulate Matter Emissions

The permittee must comply with the following particulate matter emission limits, as applicable:

- a. Particulate matter emissions from any fuel burning equipment installed on or before June 1, 1970 must not exceed 0.2 grains per dry standard cubic foot, corrected to 12% CO₂ or 50% excess air.
- b. Particulate matter emissions from any fuel burning equipment installed, constructed, or modified after June 1, 1970 must not exceed 0.1 grains per dry standard cubic foot, corrected to 12% CO₂ or 50% excess air.
- c. Particulate matter emissions from any air contaminant source, other than fuel burning equipment and fugitive emission

sources, installed on or before June 1, 1970, must not exceed 0.2 grains per dry standard cubic foot.

- d. Particulate matter emissions from any air contaminant source, other than fuel burning equipment and fugitive emission sources, installed after June 1, 1970, must not exceed 0.1 grains per dry standard cubic foot.
- e. The combined total particulate matter emissions from all veneer and plywood mill sources within the plant site, including, but not limited to, sanding machines, saws, presses, barkers, hogs, chippers, and other material size reduction equipment, process and space ventilation systems, and truck loading and unloading facilities, excluding veneer dryers, fuel burning equipment and refuse burning equipment, must not exceed a plant specific average hourly emission rate (lbs/hr) determined by multiplying the plant production capacity by one pound per 1,000 square feet on a 3/8 inch basis of finished product for a typical operating shift divided by the number of hours in the operating shift. ~~1 pound per 1,000 square feet of plywood or veneer production on a 3/8" basis of finished product equivalent.~~
- f. In all areas of the state, except the Medford-Ashland AQMA and Grants Pass UGA, particulate emissions from veneer dryers must not exceed:
 - i. 0.75 lb/1000 square feet (MSF) on a 3/8" basis for direct wood-fired dryers when using fuel with less than or equal to 20% moisture;
 - ii. 1.50 lb/MSF on a 3/8" basis for direct wood-fired dryers when using fuel with greater than 20% moisture;
 - iii. In addition to i and ii, 0.40 lb/1000 pounds of steam generated in boilers that exhaust combustion gases to the veneer dryer;
 - iv. Exhaust gases from fuel-burning equipment vented to the veneer dryer are exempt from Conditions 2.2.a. and 2.2.b.
- g. In the Medford-Ashland AQMA and Grants Pass UGA, particulate emissions from veneer dryers must not exceed:
 - i. 0.30 lb/MSR on a 3/8" basis for direct natural gas

or propane-fired veneer dryers;

- ii. 0.30 lb/MSR on a 3/8" basis for steam heated veneer dryers;
- iii. 0.40 lb/1000 square feet (MSF) on a 3/8" basis for direct wood-fired dryers when using fuel with less than or equal to 20% moisture;
- iv. 0.45 lb/MSF on a 3/8" basis for direct wood-fired dryers when using fuel with greater than 20% moisture;
- v. In addition to iii and iv, 0.20 lb/1000 pounds of steam generated in boilers that exhaust combustion gases to the veneer dryer;
- vi. Exhaust gases from fuel-burning equipment vented to the veneer dryer are exempt from Conditions 2.2.a. and 2.2.b.

2.3 Fugitive Emissions The permittee must take reasonable precautions for preventing fugitive dust emissions from becoming a nuisance, such as but not limited to:

- a. Treating vehicular traffic areas of the plant site under the control of the permittee.
- b. Operating all air contaminant-generating processes so that fugitive type dust associated with the operation will be adequately controlled at all times.
- c. Storing collected materials from air pollution control equipment in a covered container or other method equally effective in preventing the material from becoming airborne during storage and transfer.

2.4 Particulate Matter Fallout The permittee must not cause or permit the emission of any particulate matter larger than 250 microns in size at sufficient duration or quantity, as to create an observable deposition upon the real property of another person. The Department will verify that the deposition exists and will notify the permittee that the deposition must be controlled.

2.5 Nuisance and The permittee must not cause or allow air contaminants from any

Odors

source to cause a nuisance. Nuisance conditions will be verified by Department personnel.

2.6 Fuels and Fuel Sulfur Content

The permittee must not use any fuel other than wood, natural gas, propane, butane, ASTM grade fuel oils, or on-specification used oil.

- a. Fuel oils must not contain more than:
 - i. 0.3% sulfur by weight for ASTM Grade 1 distillate oil;
 - ii. 0.5% sulfur by weight for ASTM Grade 2 distillate oil;
 - iii. 1.75% sulfur by weight for residual oil (ASTM Grades 3 through 6);
- b. The permittee is allowed to use on-specification used oil that contains no more than 0.5% sulfur by weight. The permittee must obtain analyses from the marketer or, if generated on site, have the used oil analyzed, so that it can be demonstrated that the used each shipment or batch of oil does not exceed the used oil specifications contained in 40 CFR Part 279.11, Table 1.

2.7 Vencer Dryers

- a. No person shall willfully cause or permit the installation or use of any means, such as dilution, which, without resulting in a reduction in the total amount of air contaminants emitted, conceals an emission which would otherwise violate this rule;
- b. Where effective measures are not taken to minimize fugitive emissions, the Department may require that the equipment or structures in which processing handling, and storage are done, be tightly closed, modified, or operated in such a way that air contaminants are minimized, controlled, or removed before discharge to the open air;

- c. The Department may require more restrictive emission limits than provided in Conditions 2.1d and 2.2 f for an individual plant upon a finding by the Commission that the individual plant is located in or is proposed to be located in the Medford-Ashland Air Quality Maintenance Area or the Grants Pass Urban Growth Area. The more restrictive emission limits may be established on the basis of allowable emissions expressed in opacity, pounds per hour, or total maximum daily emissions to the atmosphere, or a combination thereof.

3.0 NEW SOURCE PERFORMANCE STANDARDS

- 3.1 **Applicability** Federal requirements apply to boilers for which construction, modification, or reconstruction is commenced after June 9, 1989 and that have a maximum design heat input capacity of 100 million Btu per hour (Btu/hr) or less, but greater than or equal to 10 million Btu/hr. These requirements are in addition to requirements listed elsewhere in the permit. The full text of the federal standards are found in 40 CFR 60, Subpart Dc.
- 3.2 **Definitions**
- a. **Construction** means fabrication, erection, or installation of an affected facility.
- b. **Modification** means any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted.
- 3.3 **Visible emissions limit** If oil is burned in the boiler and the heat input is greater than 30 million Btu/hr, visible emissions must not exceed 20% opacity as a 6-minute average, except for one 6-minute period per hour of not more than 27% opacity.
- 3.4 **Visible emissions monitoring** If residual oil is burned in the boiler and the heat input is greater than 30 million Btu/hr, visible emissions must be monitored with a continuous opacity monitoring system (COMS) installed, operated, and maintained in accordance with 40 CFR §60.13.

3.5 Sulfur Limits

The sulfur content of fuel oil burned in the boiler must not exceed 0.5% by weight.

3.6 Fuel sulfur monitoring

Unless an approved alternate monitoring frequency is obtained from the EPA Administrator, the permittee must record and maintain records of the amounts of each fuel combusted during each day in each subject boiler.

- a. If oil is burned, the permittee must maintain records of the sulfur content of the fuel oil either by obtaining fuel supplier certifications or sampling and analyzing the fuel oil in accordance with ASTM procedures.
- b. If relying on fuel samples for demonstrating compliance with the fuel sulfur content limits, a sample must be collected and analyzed after each shipment of fuel is added to the storage tank.

3.7 NSPS boiler Reporting Requirement

Unless an approved alternate monitoring frequency is obtained from the EPA Administrator, the permittee must submit semi-annual reports for periods during which oil was burned that include the following information:

- a. The calendar dates covered in the reporting period;
- b. Each 30-day average sulfur content (weight percent), calculated during the reporting period, ending with the last 30-day period in the quarter; including:
 - i. reasons for any noncompliance with the emission standards; and
 - ii. a description of corrective actions taken.
- c. If fuel supplier certifications are used to demonstrate compliance, records of fuel supplier certifications that include:
 - i. For distillate oil:
 - The name of the oil supplier; and
 - A statement from the oil supplier that the oil complies with the specifications under the definition of distillate oil in 40 CFR §61.41c.
 - ii. For residual oil:
 - The name of the oil supplier;

- The location of the oil when the sample was drawn for analysis to determine the sulfur content of the oil, specifically including whether the oil was sampled as delivered to the facility, or whether the sample was drawn from oil in storage at the oil supplier's or oil refiner's facility, or other location;
- The sulfur content of the oil from which the shipment came (or of the shipment itself); and
- The method used to determine the sulfur content of the oil.

Note: If using ASTM grade 3, include the most relevant information depending on whether the blend exhibits the characteristics of a distillate or residual oil

- d. If residual oil is burned in the boiler and the heat input is greater than 30 million Btu/hr, the semi-annual report must include a summary of any excess visible emissions recorded by the COMS.
- e. The initial semi-annual report must be postmarked by the 30th day of the third month following the actual date of startup. Each subsequent semi-annual report must be postmarked by the 30th day following the end of the reporting period.

3.8 Recordkeeping

The permittee must maintain on-site, records of the amount and type of fuels burned each day, unless an alternate frequency is obtained from EPA for a period of at least two (2) years.

3.9 Construction or Modification

In addition to the Notice of Intent to Construct (NIC) requirement in Condition 8.6, the permittee must notify the Department and the EPA when equipment becomes subject to NSPS as summarized below:

If	Notification of	Due Date
Constructing or installing a new affected NSPS boiler	The date construction began	Within 30 days of commencing construction
	Actual start-up date	Within 15 days after start-up
Modifying existing equipment	The nature of the change, present and future emissions, productive capacity differences, expected completion date of change	60 days prior to expected completion date

3.10 EPA Submittal Address

All submittals to the EPA must be sent to the following address:

Director
 Air and Waste Management Division
 EPA Region X
 Mail Stop OAQ-107
 1200 Sixth Avenue
 SEATTLE, WA 98101-3123

4.0 OPERATION AND MAINTENANCE REQUIREMENTS

- 4.1 Work practices** The permittee must perform a maintenance service on each boiler at least once in every 2-year period. As a minimum, the service must include an inspection of the burners and refractory chamber; cleaning, adjustment, and repair as necessary. For water tube boilers, the service must include flushing the tubes.
- 4.2 Fugitive Emissions Control Plan** While operating in the Medford-Ashland AQMA, the permittee must prepare and implement site-specific plans for the control of fugitive emissions in accordance with OAR 340-240-0180. While operating in the Lakeview Urban Growth Area (UGA), the permittee must prepare and implement site-specific plans for the

control of fugitive emissions in accordance with OAR 340-240-0410.

4.3 O&M plan

While operating in the Medford-Ashland AQMA, the permittee must prepare and implement an operation and maintenance (O&M) plan in accordance with OAR 340-240-0190. While operating in the Lakeview UGA, the permittee must prepare and implement an O&M plan in accordance with OAR 340-240-0420.

4.4 Veneer Dryers

Each veneer dryer and associated pollution control equipment must be maintained and operated at full efficiency and effectiveness so that the emissions of air contaminants is kept at the lowest practicable levels.

5.0 PLANT SITE EMISSION LIMITS

5.1 Plant Site

**Emission Limits
(PSEL)**

Plant site emissions must not exceed the following:

Pollutant	Limit	Units
PM	24	tons per year
PM ₁₀	14	tons per year
SO ₂	39	tons per year
NO _x	39	tons per year
CO	99	tons per year
VOC	39	tons per year
Single HAP	9	tons per year
Combined HAPs	24	tons per year

**5.2 PM₁₀ PSEL for
Medford-Ashland
AQMA**

For sources operating in the Medford-Ashland AQMA, plant site emissions of PM₁₀ must not exceed the following:

Pollutant	Limit	Units
PM ₁₀	4.5	tons per year
	49	pounds per day

- 5.3 **Annual Period** The annual plant site emissions limits apply to any 12-consecutive calendar month period.

6.0 COMPLIANCE DEMONSTRATION

- 6.1 **PSEL Compliance Monitoring for PM, PM₁₀, SO₂, NO_x, CO, VOC and HAP** Compliance with the PSEL is determined for each 12-consecutive calendar month period based on the following calculation for each pollutant for all processes other than surface coating operations:

$$E = \frac{\sum(EF \times F)}{2000}$$

where,

- E = pollutant emissions (tons/yr);
 EF = pollutant emission factor (see Condition 6.3);
 F = fuel combustion or material throughput (see Condition 7.1.d)

- 6.2 **VOC and HAP PSEL Compliance Monitoring for Surface Coating Operations** Compliance with the VOC or HAP PSEL is determined for each 12-consecutive calendar month period based on the following calculation plus the emissions calculated in Condition 6.1:

$$E_{\text{VOC or HAP}} = [\sum(C_X * D_X * K_X) - W] \times 1 \text{ ton}/2000 \text{ lb.}$$

where,

- E_{VOC} = VOC or HAP emissions (tons/yr);
 C = Material usage for the period in gallons;
 D = Material density in pounds per gallon;
 if K is in units of lb/lb, otherwise D = 1.
 K = VOC or HAP content of the material (lb/lb);
 X = Subscript X represents a specific material;
 W = Weight of VOC or HAP shipped offsite (lbs).

- 6.3 **Emission Factors** The permittee must use the default emission factors provided in Section 12 for calculating pollutant emissions, unless alternative emission factors are approved by the Department. The permittee may request or the Department may require using alternative emission factors provided they are based on actual test data or

other documentation (e.g., AP-42 compilation of emission factors) that has been reviewed and approved by the Department.

6.4 Medford/Ashland AQMA

If the source is located in the Medford/Ashland AQMA, the permittee must also maintain daily records and calculate the daily maximum emissions for the reporting period.

6.5 Source Test requirement

~~Within 2 years of being assigned to this permit~~ During the permit term, the permittee must demonstrate that each wood fired boiler is capable of operating at its maximum operating capacity in compliance with Condition 2.2 by conducting a source test for particulate matter emissions using EPA Methods 1-4 and DEQ Method 5.

a. The following parameters must be monitored and recorded during the source test:

- i. visible emissions as measured by EPA Method 9 for a minimum period of 6 minutes during or within 30 minutes before or after each DEQ Method 5 test run;
- ii. boiler steam rate (pounds per hour);
- iii. O₂ and CO₂ concentration in the stack gas as measured by EPA Method 3 or 3A, (% dry basis);
- iv. pollution control device operating parameters;
- v. fuel characteristics (e.g., species, ratio of bark and white wood, moisture content, and percent less than 1/8"); and
- vi. and other information requested in the source test plan approval.

b. All tests must be conducted in accordance with the Department's Source Sampling Manual and with the pretest plan submitted at least 15 days in advance and approved by the Regional Source Test Coordinator. Test data and results must be submitted for review to the Regional Source Test Coordinator within ~~45~~30 days unless otherwise approved in the pretest plan.

c. Only regular operating staff may adjust the combustion system

or production processes and emission control parameters during the source test and within 2 hours prior to the tests. Any operating adjustments made during the source test, which are a result of consultation during the tests with source testing personnel, equipment vendors or consultants, may render the source test invalid.

6.6 Veneer Dryers

a. The Department may require any veneer dryer facility to establish an effective program for monitoring the visible air contaminant emissions from each veneer dryer emission point.

6.7

b. The program shall be subject to review and approval by the Department and must consist of a specified minimum frequency for performing visual opacity determinations on each veneer dryer emission point and a specified period during which all records shall be maintained at the mill site for inspection by authorized representatives of the Department.

6.8

c. All data obtained must be recorded on copies of a "Veneer Dryer Visible Emissions Monitoring Form" which shall be provided by the Department or on an alternative form which is approved by the Department.

7.0 RECORDKEEPING REQUIREMENTS

7.1 Operation and Maintenance

The permittee must maintain the following records related to the operation and maintenance of the plant and associated air contaminant control devices:

- a. Maintenance log and operation and maintenance plan as required in Section 4.3; and
- b. Sulfur content from vendor certification of each shipment of fuel oil, if used at the plant.
- c. ~~If used oil is used, the permittee must obtain analyses from the marketer or, if generated on site, have the used oil analyzed, so that it can be demonstrated that each shipment or batch of oil does not exceed the used oil specifications contained in 40 CFR Part 279.11, Table 1.~~
- d. Daily (Medford/Ashland AQMA only), monthly and annual operating parameters as shown in the table below:

Emissions Unit	Process Parameter	Units
Natural gas-fired boilers or heaters	fuel combusted	cubic feet (ft ³)
Propane, butane, or oil-fired boilers or heaters	fuel combusted	gallons
Wood-fired boilers	steam production	pounds of steam
Cyclones	material throughput by type of material	bone dry ton (BDT)
Kiln	material throughput	thousand board feet (MBF)
Veneer Dryer	material throughput	thousand square feet (MSF)
Surface Coating VOCs	material usage	gallons or pounds
	VOC content	pounds per gallon or weight %
	HAP content (single and combined)	pounds per gallon or weight %

7.2 Excess Emissions

The permittee must maintain records of excess emissions as defined in OAR 340-214-0300 through 340-214-0340 (recorded on occurrence). Typically, excess emissions are caused by process upsets, startups, shutdowns, or scheduled maintenance. One example of ~~In many cases,~~ excess emissions are evident is when visible emissions are greater than 20% opacity for 3 minutes or more in any 60-minute period.

7.3 Complaint Log

The permittee must maintain a log of all written complaints and complaints received via telephone that specifically refer to air pollution concerns associated to the permitted facility. The log must include a record of the permittee's actions to investigate the validity of each complaint and a record of actions taken for complaint resolution.

- 7.4 **Retention of Records** Unless otherwise specified, all records must be maintained on site for a period of two (2) years and made available to the Department upon request.

8.0 REPORTING REQUIREMENTS

- 8.1 **Excess Emissions** The permittee must notify the Department by telephone or in person of any excess emissions which are of a nature that could endanger public health.
- a. Such notice must be provided as soon as possible, but never more than one hour after becoming aware of the problem. Notice must be made to the regional office identified in Condition 9.3.
 - b. If the excess emissions occur during non-business hours, the permittee must notify the Department by calling the Oregon Emergency Response System (OERS). The current number is 1-800-452-0311.
 - c. The permittee must also submit follow-up reports when required by the Department.
- 8.2 **Complaint log** The permittee must maintain a log of all written complaints and complaints received via telephone that specifically refer to air pollution concerns associated to the permitted facility. The log must include a record of the permittee's actions to investigate the validity of each complaint and a record of actions taken for complaint resolution.
- 8.3 **Annual Report** The permittee must submit to the Department by **February 15** of each year this permit is in effect, two (2) copies of the following information for the preceding calendar year:
- a. Annual emissions as calculated according to Conditions 6.1 and 6.2, including the supporting process parameter and emission factor information.
 - b. Records of all planned and unplanned excess emissions events.
 - c. Summary of complaints relating to air quality received by permittee during the year.
 - d. List permanent changes made in plant process, production

levels, and pollution control equipment which affected air contaminant emissions.

- e. List major maintenance performed on pollution control equipment.

8.4 Initial Startup Notice

The permittee must notify the Department in writing of the date a new facility is started up. The notification must be submitted no later than seven (7) days after startup.

8.5 Notice of Change of Ownership or Company Name

The permittee must notify the Department in writing using a Departmental "Permit Application Form" within 60 days after the following:

- a. Legal change of the name of the company as registered with the Corporations Division of the State of Oregon; or
- b. Sale or exchange of the activity or facility.

8.6 Construction or Modification Notices

The permittee must notify the Department in writing using a Departmental "Notice of Construction Form," or "Permit Application Form," and obtain approval in accordance with OAR 340-210-0205 through 340-210-0250 before:

- a. Constructing or installing any new source of air contaminant emissions, including air pollution control equipment;
- b. Modifying or altering an existing source that may significantly affect the emission of air contaminants;
- c. Making any physical change which increases emissions;
- d. Changing the method of operation, the process, or the fuel use, or increasing the normal hours of operation that result in increased emissions.

8.7 Where to Send Reports and Notices

The reports, with the permit number prominently displayed, must be sent to the Permit Coordinator for the region where the source is located as identified in Condition 9.2.

9.0 ADMINISTRATIVE REQUIREMENTS

9.1 Reassignment to the General Permit

A complete application for reassignment to this permit is due within 60 days after the permit is reissued. The Department will notify the permittee when the permit is reissued. The application must be sent to the appropriate regional office.

- a. If the Department is delinquent in renewing the permit, the existing permit will remain in effect and the permittee must comply with the conditions of the permit until such time that the permit is reissued and the source is reassigned to the permit.
- b. The permittee may submit an application for either a Simple or Standard ACDP at any time, but the permittee must continue to comply with the General ACDP until the Department takes final action on the Simple or Standard ACDP application.
- c. If a complete application for reassignment to the general permit or Simple or Standard ACDP is filed with the Department in a timely manner, the permit will not be deemed to expire until final action has been taken on the application.

9.2 Permit Coordinator Addresses

All reports, notices, and applications should be directed to the Permit Coordinator for the area where the source is located. The Permit Coordinator addresses are as follows:

Counties	Permit Coordinator Address and Telephone
Clackamas, Clatsop, Columbia, Multnomah, Tillamook, and Washington	Department of Environmental Quality Northwest Region 2020 SW 4th Avenue, Suite 400 Portland, OR 97201-4987 Telephone: (503) 229-5582
Benton, Coos, Curry, Douglas, Jackson, Josephine, Lincoln, Linn, Marion, Polk, and Yamhill	Department of Environmental Quality Western Region 750 Front Street NE, Suite 120 Salem, OR 97301-1039 Telephone: (503) 378-8240 ext. 225
Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler	Department of Environmental Quality Eastern Region <u>300 SE Reed Market Road</u> 2146 NE 4th Street, Suite 104 Bend, OR 97702-3647 Telephone: (541) 388-6146 ext. 223

**9.3 Department
Contacts**

Information about air quality permits and the Department's regulations may be obtained from the DEQ web page at www.deq.state.or.us. All inquiries about this permit should be directed to the regional office for the area where the source is located. The Department's regional offices are as follows:

Counties	Office Address and Telephone
Clackamas, Clatsop, Columbia, Multnomah, Tillamook, and Washington	Department of Environmental Quality Portland Office 2020 SW 4th Avenue, Suite 400 Portland, OR 97201-4987 Telephone: (503) 229-558254
Benton, Lincoln, Linn, Marion, Polk, and Yamhill	Department of Environmental Quality Salem Office 750 Front Street NE, Suite 120 Salem, OR 97301-1039 Telephone: (503) 378-53058240
Coos, Curry, and Western Douglas	Department of Environmental Quality Coos Bay Office 381 N Second Street Coos Bay, OR 97420-2325 Telephone: (541) 269-2721
Eastern Douglas, Jackson, and Josephine	Department of Environmental Quality Medford Office 221 Stewart Ave., Suite 201 Medford, OR 97501-2744 Telephone: (541) 776-6010
Crook, Deschutes, Harney, Hood River, Jefferson, <u>Klamath</u> , <u>Lake</u> , Sherman, Wasco, and Wheeler	Department of Environmental Quality Bend Office <u>300 SE Reed Market Road</u> 2146 NE 4th Street, Suite 104 Bend, OR 97702-3647 Telephone: (541) 388-6146

Counties	Office Address and Telephone
Baker, Gilliam, Grant, Malheur, Morrow, Umatilla, Union, and Wallowa	Department of Environmental Quality Pendleton Office 700 SE Emigrant Avenue, Suite 330 Pendleton, OR 97801-2597 Telephone: (541) 276-4063
Klamath and Lake	Department of Environmental Quality Klamath Falls Office 700 Main Street, Suite 202 Klamath Falls, OR 97601-6010 Telephone: (541) 883-5603

10.0 FEES

- 10.1 Annual Compliance Fee** The Annual Compliance Determination Fee specified in OAR 340-216-0090, Table 2, Part 2(c) for a Class Three General ACDP is due on **December 1** of each year this permit is in effect. An invoice indicating the amount, as determined by Department regulations, will be mailed prior to the above date.
- 10.2 Change of Ownership or Company Name Fee** The non-technical permit modification fee specified in OAR 340-216-0090, Table 2, Part 3(a) is due with an application for changing the ownership or the name of the company of a source assigned to this permit.
- 10.3 Where to Submit Fees** Fees must be submitted to:
Department of Environmental Quality
Business Office
811 SW Sixth Avenue
Portland, Oregon 97204-1390

11.0 GENERAL CONDITIONS AND DISCLAIMERS

- 11.1 Other Regulations** In addition to the specific requirements listed in this permit, the permittee must comply with all other legal requirements enforceable by the Department.

- | | |
|--|---|
| 11.2 Conflicting Conditions | In any instance in which there is an apparent conflict relative to conditions in this permit, the most stringent conditions apply. |
| 11.3 Masking of Emissions | The permittee must not cause or permit the installation of any device or use any means designed to mask the emissions of an air contaminant that causes or is likely to cause detriment to health, safety, or welfare of any person or otherwise violate any other regulation or requirement. |
| 11.4 Department Access | The permittee must allow the Department's representatives access to the plant site and pertinent records at all reasonable times for the purposes of performing inspections, surveys, collecting samples, obtaining data, reviewing and copying air contaminant emissions discharge records and conducting all necessary functions related to this permit in accordance with ORS 468-095. |
| 11.5 Permit Availability | The permittee must have a copy of the permit available at the facility at all times. |
| 11.6 Open Burning | The permittee may not conduct any open burning except as allowed by OAR 340 Division 264. |
| 11.7 Asbestos | The permittee must comply with the asbestos abatement requirements in OAR 340, Division 248 for all activities involving asbestos-containing materials, including, but not limit to, demolition, renovation, repair, construction, and maintenance. |
| 11.8 Property Rights | The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations. |
| 11.9 Termination, Revocation, or Modification | The Commission may modify or revoke this permit pursuant to OAR 340-216-0060(3) and (4). |

12.0 EMISSION FACTORS

a. This section contains emission factors for both criteria pollutants and hazardous air pollutants (HAPs). Because many HAP emission factors remain under development,

the emission factors provided in Condition 12 represent the best available data at the time of permit renewal. The use of HAP emission factors in Condition 12 do not guarantee that facilities will be in compliance with federal requirements for major sources of HAPs. Facilities should use the most reliable emission factors as they become available in the future, or provide emission source test results that demonstrate actual emissions for their specific emission unit.

12.1 Emission Factors (EF) for Boilers

a. PM, PM10, SO2, NOX, CO and VOC

Fuel type	Boiler type or controls	EF units	PM	PM ₁₀	SO ₂	NO _x	CO	VOC
Natural Gas	Uncontrolled	lb/million cubic feet	2.5	2.5	1.7	100	84	5.5
	“Low NO _x ” burners	lb/million cubic feet	2.5	2.5	1.7	50	84	5.5
	Flue gas recirculation	lb/million cubic feet	2.5	2.5	1.7	32	84	5.5
Propane	All	lb/1000 gallons	0.6	0.6	0.10S ⁽¹⁾	19	3.2	0.5
Butane	All	lb/1000 gallons	0.6	0.6	0.09S ⁽¹⁾	21	3.6	0.6
#1 distillate oil	All	lb/1000 gallons	3.3	1.7 ⁽²⁾	142S ⁽¹⁾	18	5	0.2 ⁽³⁾
#2 distillate oil	All	lb/1000 gallons	3.3	1.7 ⁽²⁾	142S ⁽¹⁾	20	5	0.2 ⁽³⁾
#4 residual oil	All	lb/1000 gallons	8.5	7.3 ⁽⁴⁾	150S ⁽¹⁾	20	5	0.2 ⁽³⁾
#5 & #6 residual oil	All	lb/1000 gallons	11.5	9.9 ⁽⁴⁾	157S ⁽¹⁾	55	5	0.28 ⁽³⁾
Wood	Dutch oven – uncontrolled	lb/1000 lb of steam	0.4 ⁽⁵⁾	0.2 ⁽⁵⁾	0.014	0.31	3.0	0.13

Fuel type	Boiler type or controls	EF units	PM	PM ₁₀	SO ₂	NO _x	CO	VOC
	Spreader/stoker - uncontrolled	lb/1000 lb of steam	0.4 ⁽⁵⁾	0.2 ⁽⁵⁾	0.014	0.31	2.0	0.13
	Fuel cell - uncontrolled	lb/1000 lb of steam	0.4 ⁽⁵⁾	0.2 ⁽⁵⁾	0.014	0.31	1.0	0.13

(1) The sulfur dioxide emission factor is based on the sulfur content of the fuel expressed as a percent by weight.

For example, if the sulfur content of #1 distillate oil is 0.3%, the emission factor is $142 \times 0.3 = 42.6$ lb/1000 gallons of oil burned.

(2) PM₁₀ is 50% of total PM. Total PM is the sum of filterable PM and condensible PM. [AP-42 tables 1.3-1, 1.3-2, and 1.3-6]

(3) VOC reported as non-methane total organic carbon (NMTOC).

(4) PM₁₀ is 86% of total PM. Total PM is the sum of filterable PM and condensible PM. [AP-42 tables 1.3-1, 1.3-2, and 1.3-5]

(5) Emission factors for boilers with PM control devices can be determined using the procedures in Condition 12.2.

b. HAPS

<u>Pollutant</u>	<u>Emission Factor</u> <u>lb/MMlbSteam⁽¹⁾</u>	<u>Reference</u>
<u>Acrolein</u>	4.40	<u>AP-42; 9/03</u>
<u>Formaldehyde</u>	1.43	<u>NCASI TB 858; 2/03</u>
<u>Acetaldehyde</u>	0.91	<u>AP-42; 9/03</u>
<u>Benzene</u>	3.63	<u>NCASI TB 858; 2/03</u>
<u>Styrene</u>	2.09	<u>AP-42; 9/03</u>
<u>Toluene</u>	1.01	<u>AP-42; 9/03</u>
<u>Methanol</u>	0.91	<u>NCASI TB 858; 2/03</u>

⁽¹⁾ Assumes 1100 Btu per pound of steam

12.2 Wood fired boiler PM control efficiencies and PM₁₀ fractions:

Use the following information to make adjustments to the PM emission factors given in Condition **Error! Reference source not found.** for wood-fired boilers. For example, the PM and PM₁₀ emission factors for a Dutch Oven boiler with a high pressure multiclone would be:

$$EF_{PM} = 0.40 \times (1 - 70\%/100) = 0.12 \text{ lb/1000 lb of steam}$$

$$EF_{PM10} = 0.12 \times 95\%/100 = 0.11 \text{ lb/1000 lb of steam}$$

Control Device	Estimated Efficiency (%)	PM ₁₀ Fraction (%)
Uncontrolled	NA	50
Multiclone (low pressure)	50	50
Multiclone (high pressure)	70	95
Wet scrubber (low pressure)	70	80
Wet scrubber (medium to high pressure)	80	95
Electrostatic precipitator (wet or dry)	95	100

12.3 Emission Factors for Cyclones and Target Boxes

Process Equipment	Type	Description	Units	PM (lb/BDT)	PM ₁₀ (lb/BDT)
Cyclone	Medium Efficiency	Dry & Green Chips, Shavings, Hogged Fuel/Bark, Green Sawdust	Bone Dry Tons (BDT)	0.5	0.25
	High Efficiency			0.2	0.16
	Baghouse Control			0.001	0.001

	Medium Efficiency	Sanderdust		NA	NA
	High Efficiency			2.0	1.6
	Baghouse Control			0.04	0.04
Target Box	Medium Efficiency	Sanderdust	Bone Dry Tons (BDT)	0.1	0.05

12.4 Emission Factors for Steam and Electric Heated Kilns (lb/1000 board feet)¹

Wood species	PM/PM ₁₀	VOC ⁽²⁾	Methanol	Formaldehyde	Acetaldehyde
Ponderosa Pine	0.02 ⁽³⁾	1.7 ⁽⁴⁾	0.07 ⁽⁴⁾	0.003 ⁽⁴⁾	<u>0.113⁽¹⁰⁾</u>
Lodgepole Pine	0.02 ⁽³⁾	1.3 ⁽⁴⁾	0.06 ⁽⁴⁾	0.004 ⁽⁴⁾	<u>0.113⁽¹⁰⁾</u>
Douglas Fir	0.02 ⁽⁵⁾	0.6 ⁽⁶⁾	0.02 ⁽⁴⁾	0.001 ⁽⁴⁾	<u>0.057</u>
White Fir	0.05 ⁽⁷⁾	0.33 ⁽⁴⁾	0.12 ⁽⁴⁾	0.003 ⁽⁴⁾	<u>0.113⁽¹⁰⁾</u>
Hemlock	0.05 ⁽⁵⁾	0.39 ⁽⁸⁾	0.128 ⁽⁸⁾	0.003 ⁽⁹⁾	<u>0.113⁽¹¹⁾</u>

(1) Use source specific data, if available

(2) VOC emissions factors are based on propane, using the carbon based results from the cited studies and multiplying by 44/36.

(3) No data, use Douglas Fir

(4) Oregon State University (OSU) kiln study, 2000 (NCASI)

(5) OSU kiln study, 1998 (WI)

(6) University of Idaho kiln study, 1996 (NCASI), average of heart and sap results

(7) No data, use Hemlock

(8) Emissions from Western Hemlock lumber during drying, Milota & Mosher (2006)

(9) No data, use White Fir

(10) No data, use Hemlock

(11) Average of Rosboro and Hampton tests at OSU

12.5 Emission Factors for Veneer Dryers (lb/1000 square feet, 3/8" basis)

a. PM/PM₁₀, NO_x, and CO:

Process Equipment	Description	PM/PM ₁₀	NO _x	CO
Veneer Dryer - Gas heat	Douglas Fir (uncontrolled)	0.52	0.12	0.02
	(Burley or 45% control)	0.29		
	Hemlock, White Fir (uncontrolled)	0.15		
	(Burley or 45% control)	0.10		
Veneer Dryer - Steam heat	Douglas Fir (uncontrolled)	1.01	none	
	(Burley or 45% control)	0.56		
	Hemlock, White Fir (uncontrolled)	0.25		
	(Burley or 45% control)	0.15		

b. VOC and Hazardous Air Pollutants: These factors are based on recent studies performed on **softwoods** by NCASI. EPA incorporated NCASI's data into AP-42, but did not distinguish between southern and northwest softwood species. Therefore, the highest average test result is included in this permit as a conservative estimate of emissions. The VOC emission factors have been adjusted to a propane basis by the multiplying the carbon basis by a factor of 44/36. All emission factors are in units of pounds per 1000 square feet on a 3/8" basis (lb/MSF).

Dryer type/activity	Pollutant	Steam heated	Direct Wood-Fired	Direct Natural Gas-Fired
Veneer Dryers	VOC	1.8	1.0	3.1
	Acetaldehyde	0.022	ND ⁽¹⁾	0.062
	Acrolein	0.001	ND	0.0009
	Formaldehyde	0.03	0.045	0.064
	Methanol	0.04	ND	0.036
	Phenol	0.003	ND	0.006

Dryer type/activity	Pollutant	Steam heated	Direct Wood-Fired	Direct Natural Gas-Fired
	Propionaldehyde	0.0044	ND	0.0016
	Benzene	0.0012		
	Toluene	0.0032	ND	ND
	m, p-xylene	0.0012	ND	ND

(1) ND = No Data

Dryer type/activity	Pollutant	Steam heated	Direct Wood-Fired	Direct Natural Gas-Fired
Cooling Section	VOC	0.08	ND ⁽¹⁾	0.05
	Acetaldehyde	0.004	ND	0.003
	Acrolein	0.008	ND	BDL
	Formaldehyde	0.002	ND	0.002
	Methanol	0.005	ND	0.006
	Phenol	0.0003	ND	BDL
	Propionaldehyde	0.002	ND	0.002
Fugitives	VOC	0.06	ND	0.046
	Acetaldehyde	0.005	ND	0.003
	Formaldehyde	0.001	ND	0.002
	Methanol	0.01	ND	0.006
	Phenol	0.006	ND	0.01

(1) ND = No Data

12.6 Plywood Presses (lb/MSF⁽¹⁾)

Pollutant	Softwood Emission Factor
VOC	0.07
Acetaldehyde	0.007
Formaldehyde	0.002
Methanol	0.04
Phenol	0.006
Propionaldehyde	0.003

(1) MSF = 1000 ft²

12.7 Miscellaneous Plywood Activities

Pollutant	I-J CC ⁽¹⁾ (lbs/MLF)	I-J Saw ⁽²⁾ (lbs/MLF)	Log Vats (lbs/MSF 3/8")	Trim Chip (lbs/MLF 3/8")	Sander (lbs/MSF)	Skin Saw (lbs/MSF)
VOC	0.003	0.11	ND ⁽³⁾	0.068	0.18	0.088
Acetaldehyde	BDL ⁽⁴⁾	BDL	0.005	BDL	0.003	0.0009
Formaldehyde	0.0002	BDL	BDL	BDL	0.002	0.0003
Methanol	0.0006	0.016	0.007	0.008	0.012	0.012

(1) I-Joist Conditioning Chamber

(2) I-Joist Saw

(3) ND=No Data

(4) BDL=Below Detection Limits

12.8 Emission Factors for Surface Coating Operations

Consult manufacturer or Material Safety Data Sheet for required information needed to calculate emissions.

13.0 ABBREVIATIONS, ACRONYMS, AND DEFINITIONS

ACDP Air Contaminant Discharge
Permit

ASTM American Society for Testing
and Materials

AQMA Air Quality Maintenance Area
calendar The 12-month period
year beginning January 1st and
 ending December 31st

CFR Code of Federal Regulations

CO	carbon monoxide
DEQ	Oregon Department of Environmental Quality
dscf	dry standard cubic foot
EPA	US Environmental Protection Agency
FCAA	Federal Clean Air Act
gal	gallon(s)
gr/dscf	grains per dry standard cubic foot
HAP	Hazardous Air Pollutant as defined by OAR 340-244-0040
ID	identification number
I&M	inspection and maintenance
lb	pound(s)
MBF	1000 board feet
MLF	1000 linear feet
MMBtu	million British thermal units
MSF	1000 square feet
NA	not applicable
NESHAP	National Emissions Standards for Hazardous Air Pollutants
NO _x	nitrogen oxides
NSPS	New Source Performance Standard
NSR	New Source Review
O ₂	oxygen
OAR	Oregon Administrative Rules
ORS	Oregon Revised Statutes

O&M	operation and maintenance
Pb	lead
PCD	pollution control device
PM	particulate matter
PM ₁₀	particulate matter less than 10 microns in size
ppm	part per million
PSD	Prevention of Significant Deterioration
PSEL	Plant Site Emission Limit
PTE	Potential to Emit
RACT	Reasonably Available Control Technology
scf	standard cubic foot
SER	Significant Emission Rate
SIC	Standard Industrial Code
SIP	State Implementation Plan
SO ₂	sulfur dioxide
Special Control Area	as defined in OAR 340-204-0070
VE	visible emissions
VOC	volatile organic compound
year	A period consisting of any 12 consecutive calendar months

msf:5/25/07

AQGP-010, sawmills&millwork

**GENERAL
AIR CONTAMINANT DISCHARGE PERMIT**

Department of Environmental Quality
Air Quality Division
811 SW Sixth Avenue
Portland, OR 97204-1390
Telephone: (503) 229-5359

This permit is issued in accordance with the provisions of ORS 468A.040 and incorporated into OAR 340-216-0060 by the Environmental Quality Commission on August 30, 2001 for the following source category:

Oil-fired boilers greater than 10 million Btu/hour heat input and natural gas, propane, or butane-fired boilers (with or without distillate oil backup) 30 million Btu/hour or more heat input. SIC 4961

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1.0 PERMIT ASSIGNMENT

1.1 Qualifications

All of the following conditions must be met in order to qualify for assignment to this General Air Contaminant Discharge Permit (ACDP):

a. The permittee is operating oil, natural gas, propane, and/or butane-fired boiler(s) as listed on the cover of this permit, including supporting activities. This permit is not applicable to fuel burning equipment used to support other activities or sources required to have a permit under OAR 340-216-0090, Table 1.

b. Notwithstanding 0., this permit is applicable to space heating and process boilers described in the table below:

Size	Heat energy input capacity
single boiler	oil-fired boiler, greater than 10 MM Btu/hour;
	natural gas, propane, or butane-fired boiler, 30 MM Btu/hr or more
aggregate on site	between 10 and 250 MM BTU/hour

c. More than one boiler on site may be permitted with this General Permit provided that aggregate emissions from all boilers do not exceed the generic PSEL.

d. A Simple or Standard ACDP is not required for the source.

e. The source is not having ongoing, recurring or serious compliance problems.

1.2 Assignment

The Department will assign qualifying permittees to this permit that have and maintain a good record of compliance with the Department's Air Quality regulations and that the Department determines would be appropriately regulated by a General ACDP. The Department may rescind assignment if the permittee no longer meets the requirements of OAR 340-216-0060 and the conditions of this permit.

1.3 Permitted Activities

This permit allows the permittee to discharge air contaminants from processes and activities related to the air contaminant source(s) listed on the first page of this permit until this permit expires, is modified, revoked or rescinded. If there are other emissions activities occurring at the site besides those listed on the cover page of this permit, the permittee may be required to obtain a Standard Permit or additional General ACDPs, if applicable.

2.0 GENERAL EMISSION STANDARDS AND LIMITS

2.1 Visible Emissions

The permittee must comply with the following visible emission limits, as applicable:

- a. Emissions from any air contaminant source must not equal or exceed 20% opacity for a period aggregating more than 3 minutes in any one hour.
- b. In Clackamas, Columbia, Multnomah, or Washington Counties, emissions from any air contaminant source other than fuel burning equipment must not equal or exceed 20% opacity for a period aggregating more than 30 seconds in any one hour.

2.2 Particulate Matter Emissions

The permittee must comply with the following particulate matter emission limits, as applicable:

- a. Particulate matter emissions from any fuel burning equipment installed on or before June 1, 1970 must not exceed 0.2 grains per dry standard cubic foot, corrected to 12% CO₂ or 50% excess air.
- b. Particulate matter emissions from any fuel burning equipment installed, constructed, or modified after June 1, 1970 must not exceed 0.1 grains per dry standard cubic foot, corrected to 12% CO₂ or 50% excess air.
- c. In Clackamas, Columbia, Multnomah, or Washington Counties, particulate matter emissions from fuel burning equipment must not exceed the emission rate shown in Figure 1 of OAR 340-208-0610 as a function of the maximum heat input when using all other fuels, except natural gas and LPG.

2.3 Fugitive Emissions

The permittee must take reasonable precautions for preventing fugitive dust emissions from becoming a nuisance, such as but not limited to:

- a. Treating vehicular traffic areas of the plant site under the control of the permittee.
- b. Operating all air contaminant-generating processes so that fugitive type dust associated with the operation will be adequately controlled at all times.
- c. Storing collected materials from air pollution control equipment in a covered container or other method equally effective in preventing the material from becoming airborne during storage and transfer.

2.4 Particulate Matter Fallout

The permittee must not cause or permit the emission of any particulate matter larger than 250 microns in size at sufficient duration or quantity, as to create an observable deposition upon the real property of another person. The Department will verify that the deposition exists and will notify the permittee that the deposition must be controlled.

2.5 Nuisance and Odors

The permittee must not cause or allow air contaminants from any source to cause a nuisance. Nuisance conditions will be verified by Department personnel.

2.6 Fuels and Fuel Sulfur Content

The permittee must not use any fuel other than natural gas, propane, butane, ASTM grade fuel oils, or on-specification used oil.

- a. Fuel oils must not contain more than:
 - i. 0.3% sulfur by weight for ASTM Grade 1 distillate oil;
 - ii. 0.5% sulfur by weight for ASTM Grade 2 distillate oil;
 - iii. 1.75% sulfur by weight for residual oil;
- b. The permittee is allowed to use on-specification used oil that contains no more than 0.5% sulfur by weight. The permittee must obtain analyses from the marketer or, if generated on site, have the used oil analyzed, so that it can be demonstrated that the used oil does not exceed the used oil specifications contained in 40 CFR Part 279.11, Table 1.

3.0 NEW SOURCE PERFORMANCE STANDARDS

3.1 Applicability

Federal requirements apply to boilers for which construction, modification, or reconstruction is commenced after June 9, 1989 and that have a maximum design heat input capacity of 100 million Btu per hour (Btu/hr) or less, but greater than or equal to 10 million Btu/hr. These requirements are in addition to requirements listed elsewhere in the permit. The full text of the federal standards are found in 40 CFR 60, Subpart Dc.

3.2 Definitions

a. **Construction** means fabrication, erection, or installation of an affected facility.

b. **Modification** means any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted.

3.3 Visible Emissions Limit

If oil is burned in the boiler and the heat input is greater than 30 million Btu/hr, visible emissions must not exceed 20% opacity as a 6-minute average, except for one 6-minute period per hour of not more than 27% opacity.

3.4 Particulate Matter Emission Limits

The following particulate matter emission standards apply to each boiler that commences construction, reconstruction, or modification after February 28, 2005, and that has a heat input capacity greater than or equal to 30 million Btu/hr.

a. If oil, gas, or a mixture of these fuels is burned in the boiler, particulate matter emissions must not exceed 0.030 lbs/MMBtu heat input, except as provided in condition 3.4b.

b. As an alternative to meeting the requirements of condition 3.4a for a boiler that commenced modification after February 28, 2005, particulate matter emissions must not exceed 0.051 lbs/MMBtu heat input and particulate matter emissions must be reduced by 99.8 percent from uncontrolled.

3.4-3.5 Visible Emissions Monitoring

If residual oil is burned in the boiler and the heat input is greater than 30 million Btu/hr, visible emissions must be monitored with a continuous opacity monitoring system (COMS) installed, operated, and maintained in accordance with 40 CFR 60.13.

3.6 Particulate Matter

For each boiler subject to the PM and/or opacity standards under

Emission Testing

Conditions 3.3 and/or 3.4 must conduct an initial performance test in accordance with 40 CFR 60.45e(a), and must conduct subsequent performance tests as requested by the Department, to determine compliance with the standards, except as specified in Condition 3.7.

3.7 Emissions testing and monitoring exemption

Boilers that burn only oil that contains no more than 0.5 weight percent sulfur or gaseous fuels with potential sulfur emission rates of 0.54 lbs/MMBtu heat input or less are not required to conduct emissions testing or monitoring if they maintain fuel supply certifications of the sulfur content of the fuels burned.

3.5-3.8 Sulfur Limits

The sulfur content of fuel oil burned in the boiler must not exceed 0.5% by weight.

3.6-3.9 Fuel Sulfur Monitoring

Unless an approved alternate monitoring frequency is obtained from the EPA Administrator, the permittee must record and maintain records of the amounts of each fuel combusted during each day in each subject boiler.

- a. If oil is burned, the permittee must maintain records of the sulfur content of the fuel oil by either obtaining fuel supplier certifications or sampling and analyzing the fuel oil in accordance with ASTM procedures.
- b. If relying on fuel samples for demonstrating compliance with the fuel sulfur content limits, a sample must be collected and analyzed after each shipment of fuel is added to the storage tank.

3.7-3.10 NSPS bBoiler Reporting Requirement

Unless an approved alternate monitoring frequency is obtained from the EPA Administrator, the permittee must submit semi-annual reports for periods during which oil was burned that include the following information:

- a. The calendar dates covered in the reporting period;
- b. Each 30-day average sulfur content (weight percent), calculated during the reporting period, ending with the last 30-day period in the quarter; including:
 - i. reasons for any noncompliance with the emission standards; and
 - ii. a description of corrective actions taken.
- c. Each 30-day average percent of potential SO2 emission rate calculated during the reporting period in accordance with Condition 3.7, ending with the last 30-day period, including:
 - i. reasons for any noncompliance with the emission standards; and
 - ii. a description of corrective actions taken.

e.d. If fuel supplier certifications are used to demonstrate compliance, records of fuel supplier certifications that include:

i. For distillate oil:

- The name of the oil supplier; and
- A statement from the oil supplier that the oil complies with the specifications under the definition of distillate oil in 40 CFR 61.41c.

ii. For residual oil:

- The name of the oil supplier;
- The location of the oil when the sample was drawn for analysis to determine the sulfur content of the oil, specifically including whether the oil was sampled as delivered to the facility, or whether the sample was drawn from oil in storage at the oil supplier's or oil refiner's facility, or other location;
- The sulfur content of the oil from which the shipment came (or of the shipment itself); and
- The method used to determine the sulfur content of the oil.

Note: If using ASTM grade 3, include the most relevant information depending on whether the blend exhibits the characteristics of a distillate or residual oil

d.e. If residual oil is burned in the boiler and the heat input is greater than 30 million Btu/hr, the semi-annual report must include a summary of any excess visible emissions recorded by the COMS.

e. f. The initial semi-annual report must be postmarked by the 30th day of the third month following the actual date of startup. Each subsequent semi-annual report must be postmarked by the 30th day following the end of the reporting period.

g. If fuel supplier certification is used to demonstrate compliance, records of fuel supplier certification is used to demonstrate compliance, records of fuel supplier certification as described under paragraph (f)(1), (2), or (3) of this section, as applicable. In addition to records of fuel supplier certifications, the report shall include a certified statement signed by the owner or operator of the affected facility that the records of fuel supplier certifications submitted represent all of the fuel combusted during the reporting period.

3.11 Performance testing and reporting

The permittee must submit to the Department the performance test data from the initial and any subsequent performance tests.

3.8-3.12 Recordkeeping

The permittee must maintain on-site for a period of at least two (2) years, records of the amount and type of fuels burned each day and calendar month, unless an alternate frequency is obtained from EPA, and the information in Conditions 3.9 3-10 through 3.11 3-12 for a period of at least two (2) years.

3.9-3.13

Construction or Modification

In addition to the Notice of Intent to Construct (NC) requirement in Condition 8.5a., the permittee must notify the Department and the EPA when equipment becomes subject to NSPS as summarized below:

If	Notification of	Due Date
Constructing or installing a new affected NSPS boiler	The date construction began	Within 30 days of commencing construction
	Actual start-up date	Within 15 days after start-up
Modifying existing equipment	The nature of the change, present and future emissions, productive capacity differences, expected completion date of change	60 days prior to expected completion date

3.10-3.14 EPA Submittal Address

All submittals to the EPA must be sent to the following address:

Director
Air and Waste Management Division
EPA Region X
Mail Stop OAQ-107
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3123

4.0 OPERATION AND MAINTENANCE REQUIREMENTS

4.1 Work practices

The permittee must perform a maintenance service on each boiler at least once in every 2-year period. As a minimum, the service must include an inspection of the burners and refractory chamber; cleaning, adjustment, and repair as necessary. For water tube

boilers, the service must include flushing the tubes.

4.2 Fugitive Emissions Control Plan

While operating in the Medford-Ashland AQMA, the permittee must prepare and implement site-specific plans for the control of fugitive emissions in accordance with OAR 340-240-0180. While operating in the Lakeview Urban Growth Area (UGA), the permittee must prepare and implement site-specific plans for the control of fugitive emissions in accordance with OAR 340-240-0410.

4.3 O&M plan

While operating in the Medford-Ashland AQMA, the permittee must prepare and implement an operation and maintenance (O&M) plan in accordance with OAR 340-240-0190. While operating in the Lakeview UGA, the permittee must prepare and implement an O&M plan in accordance with OAR 340-240-0420.

5.0 PLANT SITE EMISSION LIMITS

5.1 Plant Site Emission Limits (PSEL)

Plant site emissions must not exceed the following:

Pollutant	Limit	Units
PM	24	tons per year
PM ₁₀	14	tons per year
SO ₂	39	tons per year
NO _x	39	tons per year
CO	99	tons per year
VOC	39	tons per year

5.2 PM₁₀ PSEL for Medford-Ashland AQMA

For sources operating in the Medford-Ashland AQMA, plant site emissions of PM₁₀ must not exceed the following:

Pollutant	Limit	Units
PM ₁₀	4.5	tons per year
	49	pounds per day

5.3 Annual Period

The annual plant site emissions limits apply to any 12-consecutive calendar month period.

6.0 COMPLIANCE DEMONSTRATION

6.1 PSEL Compliance Monitoring

Compliance with the PSEL is determined for each 12-consecutive calendar month period based on the following calculation for each pollutant:

$$E = \Sigma(EF \times F)/2000 \text{ lbs}$$

where,

- E = pollutant emissions (ton/yr);
EF = pollutant emission factor (see Condition 6.2);
F = quantity of fuel burned (million cubic feet of natural gas or 1000 gallons of oil, propane, or butane)

6.2 Emission Factors

The permittee must use the default emission factors provided in Appendix A of this permit for calculating pollutant emissions, unless alternative emission factors are approved by the Department. The permittee may request or the Department may require using alternative emission factors provided they are based on actual test data or other documentation (e.g., AP-42 compilation of emission factors) that has been reviewed and approved by the Department.

7.0 RECORDKEEPING REQUIREMENTS

7.1 Operation and Maintenance

The permittee must maintain the following records related to the operation and maintenance of the plant and associated air contaminant control devices:

Maintenance log and operation and maintenance plan as required in Section 4.0; and

Sulfur content from vendor certification of each shipment of fuel oil used at the plant.

Sulfur content and analysis of used oil, as required by condition 2.6b; and If used oil is used, the permittee must obtain analyses from the marketer or, if generated on site, have the used oil analyzed, so that it can be demonstrated that each shipment or batch of oil does not exceed the used oil specifications contained in 40 CFR Part 279.11, Table 1.

Daily (Medford/Ashland AQMA only), monthly and annual usage of fuels by type and quantity.

7.2 Excess Emissions

The permittee must maintain records of excess emissions as defined in OAR 340-214-0300 through 340-214-0340 (recorded on occurrence). Typically, excess emissions are caused by process upsets, startups, shutdowns, or scheduled maintenance. In many cases, excess emissions are evident when visible emissions are greater than 20% opacity for 3 minutes or more in any 60-minute period.

7.3 Complaint Log

The permittee must maintain a log of all written complaints and complaints received via telephone that specifically refer to air pollution concerns associated to the permitted facility. The log must include a record of the permittee's actions to investigate the validity of each complaint and a record of actions taken for complaint resolution.

7.4 Retention of Records

Unless otherwise specified, all records must be maintained on site for a period of two (2) years and made available to the Department upon request.

8.0 REPORTING REQUIREMENTS

8.1 Excess Emissions

The permittee must notify the Department by telephone or in person of any excess emissions which are of a nature that could endanger public health.

a. Such notice must be provided as soon as possible, but never more than one hour after becoming aware of the problem. Notice must be made to the regional office identified in Condition 9.3.

b. If the excess emissions occur during non-business hours, the permittee must notify the Department by calling the Oregon Emergency Response System (OERS). The current number is 1-800-452-0311.

c. The permittee must also submit follow-up reports when required by the Department.

8.2 Annual Report

The permittee must submit to the Department by **February 15** of each year this permit is in effect, two (2) copies of the following information for the preceding calendar year:

- a. Operating parameters:
 - i. For sources operating in the Medford/Ashland AQMA, the maximum daily amount of each type of fuel burned;
 - ii. Type and quantity of fuels burned on an annual basis; and
 - iii. Annual emissions as calculated according to Condition 6.1.
- b. Records of all planned and unplanned excess emissions events.
- c. Summary of complaints relating to air quality received by permittee during the year.
- d. List permanent changes made in plant process, production levels, and pollution control equipment which affected air contaminant emissions.
- e. List major maintenance performed on pollution control equipment.

8.3 Initial Startup Notice

The permittee must notify the Department in writing of the date a new facility is started up. The notification must be submitted no later than seven (7) days after startup.

8.4 Notice of Change of Ownership or Company Name

The permittee must notify the Department in writing using a Departmental "Permit Application Form" within 60 days after the following:

- a. Legal change of the name of the company as registered with the Corporations Division of the State of Oregon; or
- b. Sale or exchange of the activity or facility.

8.5 Construction or Modification Notices

The permittee must notify the Department in writing using a Departmental "Notice of Construction Form," or "Permit Application Form," and obtain approval in accordance with OAR 340-210-0205 through 340-210-0250 before:

- a. Constructing or installing any new source of air contaminant emissions, including air pollution control equipment;
- b. Modifying or altering an existing source that may significantly affect the emission of air contaminants;
- c. Making any physical change which increases emissions; or

d. Changing the method of operation, the process, or the fuel use, or increasing the normal hours of operation that result in increased emissions.

8.6 Where to Send Reports and Notices

The reports, with the permit number prominently displayed, must be sent to the Permit Coordinator for the region where the source is located as identified in Condition 9.2.

9.0 ADMINISTRATIVE REQUIREMENTS

9.1 Reassignment to the General ACDP

A complete application for reassignment to this permit is due within 60 days after the permit is reissued. The Department will notify the permittee when the permit is reissued. The application must be sent to the appropriate regional office.

a. If the Department is delinquent in renewing the permit, the existing permit will remain in effect and the permittee must comply with the conditions of the permit until such time that the permit is reissued and the source is reassigned to the permit.

b. The permittee may submit an application for either a Simple or Standard ACDP at any time, but the permittee must continue to comply with the General ACDP until the Department takes final action on the Simple or Standard ACDP application.

c. If a complete application for reassignment to the General ACDP or Simple or Standard ACDP is filed with the Department in a timely manner, the permit will not be deemed to expire until final action has been taken on the application.

9.2 Permit Coordinator Addresses

All reports, notices, and applications should be directed to the Permit Coordinator for the area where the source is located. The Permit Coordinator addresses are as follows:

Counties	Permit Coordinator Address and Telephone
Clackamas, Clatsop, Columbia, Multnomah, Tillamook, and Washington	Department of Environmental Quality Northwest Region 2020 SW 4th Avenue, Suite 400 Portland, OR 97201-4987 Telephone: (503) 229-5582

Benton, Coos, Curry, Douglas, Jackson, Josephine, Lincoln, Linn, Marion, Polk, and Yamhill	Department of Environmental Quality Western Region 750 Front Street NE, Suite 120 Salem, OR 97301-1039 Telephone: (503) 378-8240 ext. 225
Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler	Department of Environmental Quality Eastern Region 300 SE Reed Market Road 2146 NE 4th Street, Suite 104 Bend, OR 97702-3647 Telephone: (541) 388-6146 ext. 223

9.3 Department Contacts Information about air quality permits and the Department's regulations may be obtained from the DEQ web page at www.deq.state.or.us. All inquiries about this permit should be directed to the regional office for the area where the source is located. The Department's regional offices are as follows:

Counties	Office Address and Telephone
Clackamas, Clatsop, Columbia, Multnomah, Tillamook, and Washington	Department of Environmental Quality Portland Office 2020 SW 4th Avenue, Suite 400 Portland, OR 97201-4987 Telephone: (503) 229-558254
Benton, Lincoln, Linn, Marion, Polk, and Yamhill	Department of Environmental Quality Salem Office 750 Front Street NE, Suite 120 Salem, OR 97301-1039 Telephone: (503) 378-53058240
Coos, Curry, and Western Douglas	Department of Environmental Quality Coos Bay Office 340 N Front Street Coos Bay, OR 97420-2325 Telephone: (541) 269-2721
Eastern Douglas, Jackson, and Josephine	Department of Environmental Quality Medford Office 221 Stewart Ave, Suite 201 201 W Main Street, Suite 2-D Medford, OR 97501-2744 Telephone: (541) 776-6010

Counties	Office Address and Telephone
Crook, Deschutes, Harney, Hood River, Jefferson, Klamath, Lake, Sherman, Wasco, and Wheeler	Department of Environmental Quality Bend Office 300 SE Reed Market Road 2146 NE 4th Street, Suite 104 Bend, OR 97702-3647 Telephone: (541) 388-6146
Baker, Gilliam, Grant, Malheur, Morrow, Umatilla, Union, and Wallowa	Department of Environmental Quality Pendleton Office 700 SE Emigrant Avenue, Suite 330 Pendleton, OR 97801-2597 Telephone: (541) 276-4063
Klamath and Lake	Department of Environmental Quality Klamath Falls Office 700 Main Street, Suite 202 Klamath Falls, OR 97601-6010 Telephone: (541) 883-5603

10.0 FEES

10.1 Annual Compliance Fee

The Annual Compliance Determination Fee specified in OAR 340-216-0090, Table 2, Part 2(c) for a Class Two General ACDP is due on **December 1** of each year this permit is in effect. An invoice indicating the amount, as determined by Department regulations, will be mailed prior to the above date.

10.2 Change of Ownership or Company Name Fee

The non-technical permit modification fee specified in OAR 340-216-0090, Table 2, Part 3(a) is due with an application for changing the ownership or the name of the company of a source assigned to this permit.

10.3 Where to Submit Fees

Fees must be submitted to:
Department of Environmental Quality
Business Office
811 SW Sixth Avenue
Portland, Oregon 97204-1390

11.0 GENERAL CONDITIONS AND DISCLAIMERS

11.1 Other Regulations

In addition to the specific requirements listed in this permit, the permittee must comply with all other legal requirements enforceable by the Department.

11.2 Conflicting Conditions

In any instance in which there is an apparent conflict relative to conditions in this permit, the most stringent conditions apply.

11.3 Masking of

The permittee must not cause or permit the installation of any

- Emissions** device or use any means designed to mask the emissions of an air contaminant that causes or is likely to cause detriment to health, safety, or welfare of any person or otherwise violate any other regulation or requirement.
- 11.4 Department Access** The permittee must allow the Department's representatives access to the plant site and pertinent records at all reasonable times for the purposes of performing inspections, surveys, collecting samples, obtaining data, reviewing and copying air contaminant emissions discharge records and conducting all necessary functions related to this permit in accordance with ORS 468-095.
- 11.5 Permit Availability** The permittee must have a copy of the permit available at the facility at all times.
- 11.6 Open Burning** The permittee may not conduct any open burning except as allowed by OAR 340 Division 264.
- 11.7 Asbestos** The permittee must comply with the asbestos abatement requirements in OAR 340, Division 248 for all activities involving asbestos-containing materials, including, but not limit to, demolition, renovation, repair, construction, and maintenance.
- 11.8 Property Rights** The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.
- 11.9 Termination, Revocation, or Modification** The Commission may modify or revoke this permit pursuant to OAR 340-216-0060(3) and (4).

ABBREVIATIONS, ACRONYMS, AND DEFINITIONS

ACDP	Air Contaminant Discharge Permit	ORS	Oregon Revised Statutes
ASTM	American Society for Testing and Materials	O&M	operation and maintenance
AQMA	Air Quality Maintenance Area	Pb	lead
bb1	barrel (42 gal)	PCD	pollution control device
calendar year	The 12-month period beginning January 1st and ending December 31st	PM	particulate matter
CFR	Code of Federal Regulations	PM ₁₀	particulate matter less than 10 microns in size
CO	carbon monoxide	ppm	part per million
date	mm/dd/yy	ppmv	part per million by volume
DEQ	Oregon Department of Environmental Quality	PSD	Prevention of Significant Deterioration
dscf	dry standard cubic foot	PSEL	Plant Site Emission Limit
EPA	US Environmental Protection Agency	PTE	Potential to Emit
FCAA	Federal Clean Air Act	RACT	Reasonably Available Control Technology
gal	gallon(s)	scf	standard cubic foot
gr/dscf	grains per dry standard cubic foot	SER	Significant Emission Rate
HAP	Hazardous Air Pollutant as defined by OAR 340-244-0040	SERP	Source Emission Reduction Plan
ID	identification number	SIC	Standard Industrial Code
I&M	inspection and maintenance	SIP	State Implementation Plan
lb	pound(s)	SO ₂	sulfur dioxide
MMBtu	million British thermal units	Special Control Area	as defined in OAR 340-204-0070
NA	not applicable	VE	visible emissions
NESHAP	National Emissions Standards for Hazardous Air Pollutants	VOC	volatile organic compound
NO _x	nitrogen oxides	year	A period consisting of any 12-consecutive calendar months
NSPS	New Source Performance Standard		
NSR	New Source Review		
O ₂	oxygen		
OAR	Oregon Administrative Rules		

APPENDIX A: EMISSION FACTORS

Emission Factors (EF) for Boilers

Fuel type	Boiler type or controls	EF units	PM	PM ₁₀	SO ₂	NO _x	CO	VOC
Natural Gas	Uncontrolled	lb/million cubic feet	2.5	2.5	1.7	100	84	5.5
	Low NO _x burners	lb/million cubic feet	2.5	2.5	1.7	50	84	5.5
	Flue gas recirculation	lb/million cubic feet	2.5	2.5	1.7	32	84	5.5
Propane	All	lb/1000 gallons	0.6	0.6	0.10S ¹	19	3.2	0.5
Butane	All	lb/1000 gallons	0.6	0.6	0.09S ¹	21	3.6	0.6
#1 distillate oil	All	lb/1000 gallons	3.3	1.7 ²	142S ¹	18	5	0.2 ³
#2 distillate oil	All	lb/1000 gallons	3.3	1.7 ²	142S ¹	20	5	0.2 ³
#4 residual oil	All	lb/1000 gallons	8.5	7.3 ⁴	150S ¹	20	5	0.2 ³
#5 & #6 residual oil	All	lb/1000 gallons	11.5	9.9 ⁴	157S ¹	55	5	0.28 ³

¹The sulfur dioxide emission factor is based on the sulfur content of the fuel expressed as a percent by weight. For example, if the sulfur content of #1 distillate oil is 0.3%, the emission factor is 142 x 0.3 = 42.6 lb/1000 gallons of oil burned.

²PM₁₀ is 50% of total PM. Total PM is the sum of filterable PM and condensible PM. [AP-42 tables 1.3-1, 1.3-2, and 1.3-6]

³VOC reported as non-methane total organic carbon (NMTOC).

maa/tjj/msf:10/18/07
AQGP-011, boilers

**GENERAL
AIR CONTAMINANT DISCHARGE PERMIT**

Department of Environmental Quality
Air Quality Division
811 SW Sixth Avenue
Portland, OR 97204-1390
Telephone: (503) 229-5359

This permit is issued in accordance with the provisions of ORS 468A.040 and incorporated into OAR 340-216-0060 by the Environmental Quality Commission on August 30, 2001 for the following source category:

Incinerators, human and/or animal crematories. SIC 4953

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1.0 PERMIT ASSIGNMENT

- 1.1 Qualifications All of the following conditions must be met in order to qualify for assignment to this General Air Contaminant Discharge Permit (ACDP):
- a. The permittee is performing the cremation activities listed on the cover page of this permit, including supporting activities.
 - b. A Simple or Standard ACDP is not required for the source.
 - c. The source is not having ongoing, recurring or serious compliance problems.
- 1.2 Assignment The Department will assign qualifying permittees to this permit that have and maintain a good record of compliance with the Department's Air Quality regulations and that the Department determines would be appropriately regulated by a General ACDP. The Department may rescind assignment if the permittee no longer meets the requirements of OAR 340-216-0060 and the conditions of this permit.
- 1.3 Permitted Activities The permittee is allowed to discharge air contaminants from processes and activities related to the air contaminant source(s) listed on the first page of this permit until this permit expires, is modified, revoked or rescinded as long as conditions of this permit are complied with. If there are other emissions activities occurring at the site besides those listed on the cover page of this permit, the permittee may be required to obtain a Standard Permit or additional General ACDPs, if applicable.

2.0 EMISSION STANDARDS AND LIMITS

- 2.1 Visible Emissions No visible emissions may be present except for a one 6 minute period aggregating no more than six (6) minutes in any 60 minute period, per hour and not exceeding of not more than 20% opacity as measured by EPA Method 9.
- 2.2 Particulate Matter Emissions Particulate matter must not exceed 0.080 grains per dry standard cubic foot of exhaust gases corrected to 7% O₂ at standard conditions.

- 2.3 Fugitive Emissions The permittee must take reasonable precautions for preventing fugitive dust emissions from becoming a nuisance, such as but not limited to:
- a. Treating vehicular traffic areas of the plant site under the control of the permittee.
 - b. Operating all air contaminant-generating processes so that fugitive type dust associated with the operation will be adequately controlled at all times.
 - c. Storing collected materials from air pollution control equipment in a covered container or other method equally effective in preventing the material from becoming airborne during storage and transfer.
- 2.4 Particulate Matter Fallout The permittee must not cause or permit the emission of any particulate matter larger than 250 microns in size at sufficient duration or quantity, as to create an observable deposition upon the real property of another person. The Department will verify that the deposition exists and will notify the permittee that the deposition must be controlled.
- 2.5 Nuisance and Odors The permittee must not cause or allow air contaminants from any source to cause a nuisance. Nuisance conditions will be verified by Department personnel.

3.0 OPERATION AND MAINTENANCE REQUIREMENTS

- 3.1 Work practices The permittee may not burn any material other than human and/or animal bodies and materials normally used in cremations in the incinerator(s). No other waste, including infectious waste as defined in OAR 340-230-0030, may be incinerated.
- 3.2 Temperature and Residence Time Requirements The permittee must comply with the following standards, as applicable:
- a. For incinerators installed prior to March 13, 1993, the ~~exit~~ temperature at the final chamber must be ~~at equal to or above~~ greater than 1600°F with a residence time of at least 0.5 seconds. The temperature in the final chamber must be equal to or greater than 1200°F prior to igniting the primary burner.
 - b. For incinerators installed ~~or modified on~~ or after March 13, 1993, the ~~exit~~ temperature at the final chamber must be ~~at equal to or above~~ greater than 1800°F with a residence

time of at least 0.5 seconds. The temperature in the final chamber must be equal to or greater than 1400°F prior to igniting the primary burner.

e. The temperature in the final chamber must be 1400°F prior to igniting the primary burner.

- 3.3 Operator Training The incinerator(s) shall be operated at all times under the direction of individuals who have received training necessary for proper operation. The following shall be available on-site at all times for Department inspection:
 - a. A description of a Department-approved training program. New facilities must submit a description of the operator training program to the Department for approval within 60 days after the permit is assigned.
 - b. A written statement signed by each operator stating that the operator has undergone and understood the training program.

- 3.4 Fugitive Emissions Control Plan While operating in the Medford-Ashland AQMA, the permittee must prepare and implement site-specific plans for the control of fugitive emissions in accordance with OAR 340-240-0180. While operating in the Lakeview Urban Growth Area (UGA), the permittee must prepare and implement site-specific plans for the control of fugitive emissions in accordance with OAR 340-240-0410.

- 3.5 O&M plan While operating in the Medford-Ashland AQMA, the permittee must prepare and implement an operation and maintenance (O&M) plan in accordance with OAR 340-240-0190. While operating in the Lakeview UGA, the permittee must prepare and implement an O&M plan in accordance with OAR 340-240-0420.

4.0 PLANT SITE EMISSION LIMITS

- 4.1 Plant Site Emission Limits (PSEL) Plant site emissions must not exceed the following:

Pollutant	Limit	Units
PM	24	tons per year
PM ₁₀	14	tons per year
SO ₂	39	tons per year
NO _x	39	tons per year
CO	99	tons per year

	VOC	39	tons per year
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4.2 PM₁₀ PSEL for Medford-Ashland AQMA

For sources operating in the Medford-Ashland AQMA, plant site emissions of PM₁₀ must not exceed the following:

Pollutant	Limit	Units
PM ₁₀	4.5	tons per year
	49	pounds per day

4.3 Annual Period

The annual plant site emissions limits apply to any 12-consecutive calendar month period.

5.0 COMPLIANCE DEMONSTRATION

5.1 Visible Emissions and Particulate Matter Emissions

The permittee must demonstrate compliance with the visible emissions and particulate matter emission standards contained in Conditions 2.1 and 2.2:

- a. If the source is a new crematory incinerator;
- b. If the source violates the requirements of Conditions 2.1 or 2.2; or
- c. At the Department's request.

5.2 Compliance Demonstration Procedures

As proof of compliance, the permittee may submit to the Department:

- a. A source test conducted for particulate matter emissions in accordance with OAR 340-212-0120 through 340-212-0140; or,
- b. The results of testing performed on a crematory incinerator that the Department agrees is comparable to the incinerator in question.

5.3 Temperature Monitoring Requirement

All crematory incinerators must operate and maintain continuous monitoring for final combustion chamber exit temperature. The monitoring device must be installed and operated in accordance with the manufacturer's instructions, and must be located in an area of the secondary combustion chamber that will allow evaluation of compliance with temperature requirements in Condition 3.2.

5.4 PSEL Compliance Monitoring Compliance with the PSEL is determined for each 12-consecutive calendar month period based on the following calculation for each pollutant:

$$E = \Sigma(EF \times P)/2000$$

where,

- E = pollutant emissions (ton/yr);
- EF = pollutant emission factor (see Condition 5.5);
- P = process production (number of hours operated or number of batches incinerated for PM/PM₁₀; million cubic feet of natural gas combusted for SO₂, CO, NO_x and VOC)

5.5 Emission Factors The permittee must use the default emission factors provided below for calculating pollutant emissions, unless alternative emission factors are approved by the Department. The permittee may request or the Department may require using alternative emission factors provided they are based on actual test data or other documentation (e.g., AP-42 compilation of emission factors) that has been reviewed and approved by the Department.

Emissions device or activity	Pollutant	Emission Factor (EF)	Emission factor units
Crematory	PM/ PM ₁₀	source test result	lbs/hr, lbs/ton of material, or lbs/batch
	SO ₂	1.7	lb/million cubic feet of natural gas combusted
	NO _x	100	lb/million cubic feet of natural gas combusted
	CO	84	lb/million cubic feet of natural gas combusted
	VOC	5.5	lb/million cubic feet of natural gas combusted

6.0 RECORDKEEPING REQUIREMENTS

6.1 Operation and Maintenance The permittee must maintain the following records related to the operation and maintenance of the plant and associated air contaminant control devices:

- a. All records associated with continuous monitoring data including, but not limited to, original data sheets, charts,

calculations, calibration data, production records and final reports.

- b. The amount of natural gas combusted in the incinerator(s) on a 12-consecutive calendar month basis.
- c. The number of hours the incinerator(s) are operated or the tons of material incinerated or the number of batches incinerated on a 12-consecutive calendar month basis, consistent with the emission factor.

- 6.2 Excess Emissions The permittee must maintain records of excess emissions as defined in OAR 340-214-0300 through 340-214-0340 (recorded on occurrence). Typically, excess emissions are caused by process upsets, startups, shutdowns, or scheduled maintenance. In many cases, excess emissions are evident when visible emissions are greater than 20% opacity for 3 minutes or more in any 60 minute period.
- 6.3 Complaints The permittee must maintain a log of all air quality related complaints received. The log must contain the date and time the complaint was received, a description of the complaint, and a description of the corrective action taken.
- 6.4 Retention of Records Unless otherwise specified, all records must be maintained on site for a period of two (2) years and made available to the Department upon request.

7.0 REPORTING REQUIREMENTS

- 7.1 Excess Emissions The permittee must notify the Department by telephone or in person of any excess emissions which are of a nature that could endanger public health.
- a. Such notice must be provided as soon as possible, but never more than one hour after becoming aware of the problem. Notice must be made to the regional office identified in Condition 8.3.
 - b. If the excess emissions occur during non-business hours, the permittee must notify the Department by calling the Oregon Emergency Response System (OERS). The current number is 1-800-452-0311.
 - c. The permittee must also submit follow-up reports when required by the Department.

- 7.2 Annual Report The permittee must submit to the Department by **February 15** of each year this permit is in effect, two (2) copies of the following information for the preceding calendar year:
- a. Operating parameters (report the parameter(s) used in the emission factor):
 - i. hours of operation; or
 - ii. tons of material incinerated; or
 - iii. number of batches; and
 - iv. cubic feet of natural gas burned.
 - b. Records of all planned and unplanned excess emissions events.
 - c. Summary of complaints relating to air quality received by permittee during the year.
 - d. List permanent changes made in plant process, production levels, and pollution control equipment which affected air contaminant emissions.
 - e. List major maintenance performed on pollution control equipment.
- 7.3 Initial Startup Notice The permittee must notify the Department in writing of the date a new facility is started up. The notification must be submitted no later than seven (7) days after startup.
- 7.4 Notice of Change of Ownership or Company Name The permittee must notify the Department in writing using a Departmental "Permit Application Form" within 60 days after the following:
- a. Legal change of the name of the company as registered with the Corporations Division of the State of Oregon; or
 - b. Sale or exchange of the activity or facility.
- 7.5 Construction or Modification Notices The permittee must notify the Department in writing using a Departmental "Notice of Construction Form," or "Permit Application Form," and obtain approval in accordance with OAR 340-210-0205 through 340-210-0250 before:
- a. Constructing or installing any new source of air contaminant emissions, including air pollution control equipment;
 - b. Modifying or altering an existing source that may significantly affect the emission of air contaminants;

- c. Making any physical change which increases emissions; or
- d. Changing the method of operation, the process, or the fuel use, or increasing the normal hours of operation that result in increased emissions.

7.6 Where to Send Reports and Notices The reports, with the permit number prominently displayed, must be sent to the Permit Coordinator for the region where the source is located as identified in Condition 8.2.

8.0 ADMINISTRATIVE REQUIREMENTS

8.1 Reassignment to the General ACDP A complete application for reassignment to this permit is due within 60 days after the permit is reissued. The Department will notify the permittee when the permit is reissued. The application must be sent to the appropriate regional office.

- a. If the Department is delinquent in renewing the permit, the existing permit will remain in effect and the permittee must comply with the conditions of the permit until such time that the permit is reissued and the source is reassigned to the permit.
- b. The permittee may submit an application for either a Simple or Standard ACDP at any time, but the permittee must continue to comply with the General ACDP until the Department takes final action on the Simple or Standard ACDP application.
- c. If a complete application for reassignment to the General ACDP or Simple or Standard ACDP is filed with the Department in a timely manner, the permit will not be deemed to expire until final action has been taken on the application.

8.2 Permit Coordinator Addresses All reports, notices, and applications should be directed to the Permit Coordinator for the area where the source is located. The Permit Coordinator addresses are as follows:

Counties	Permit Coordinator Address and Telephone
Clackamas, Clatsop, Columbia, Multnomah, Tillamook, and Washington	Department of Environmental Quality Northwest Region 2020 SW 4th Avenue, Suite 400 Portland, OR 97201-4987 Telephone: (503) 229-5582

Counties	Permit Coordinator Address and Telephone
Benton, Coos, Curry, Douglas, Jackson, Josephine, Lincoln, Linn, Marion, Polk, and Yamhill	Department of Environmental Quality Western Region 750 Front Street NE, Suite 120 Salem, OR 97301-1039 Telephone: (503) 378-8240 ext. 225
Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler	Department of Environmental Quality Eastern Region 300 SE Reed Market Road 2146 NE 4th Street, Suite 104 Bend, OR 97702-3647 Telephone: (541) 388-6146 ext. 223

8.3 Department
Contacts

Information about air quality permits and the Department's regulations may be obtained from the DEQ web page at www.deq.state.or.us. All inquiries about this permit should be directed to the regional office for the area where the source is located. The Department's regional offices are as follows:

Counties	Office Address and Telephone
Clackamas, Clatsop, Columbia, Multnomah, Tillamook, and Washington	Department of Environmental Quality Portland Office 2020 SW 4th Avenue, Suite 400 Portland, OR 97201-4987 Telephone: (503) 229-558254
Benton, Lincoln, Linn, Marion, Polk, and Yamhill	Department of Environmental Quality Salem Office 750 Front Street NE, Suite 120 Salem, OR 97301-1039 Telephone: (503) 378-82405305
Coos, Curry, and Western Douglas	Department of Environmental Quality Coos Bay Office 340 N Front Street Coos Bay, OR 97420-2325 Telephone: (541) 269-2721
Eastern Douglas, Jackson, and Josephine	Department of Environmental Quality Medford Office 201 W Main Street, Suite 2-D 221 Stewart Ave, Suite 201 Medford, OR 97501-2744 Telephone: (541) 776-6010

Counties	Office Address and Telephone
Crook, Deschutes, Harney, Hood River, Jefferson, Klamath, Lake, Sherman, Wasco, and Wheeler	Department of Environmental Quality Bend Office 300 SE Reed Market Road 2146 NE 4th Street, Suite 104 Bend, OR 97702-3647 Telephone: (541) 388-6146
Baker, Gilliam, Grant, Malheur, Morrow, Umatilla, Union, and Wallowa	Department of Environmental Quality Pendleton Office 700 SE Emigrant Avenue, Suite 330 Pendleton, OR 97801-2597 Telephone: (541) 276-4063
Klamath and Lake	Department of Environmental Quality Klamath Falls Office 700 Main Street, Suite 202 Klamath Falls, OR 97601-6010 Telephone: (541) 883-5603

9.0 FEES

- 9.1 Annual Compliance Fee The Annual Compliance Determination Fee specified in OAR 340-216-0090, Table 2, Part 2(c) for a Class One General ACDP is due on **December 1** of each year this permit is in effect. An invoice indicating the amount, as determined by Department regulations, will be mailed prior to the above date.
- 9.2 Change of Ownership or Company Name Fee The non-technical permit modification fee specified in OAR 340-216-0090, Table 2, Part 3(a) is due with an application for changing the ownership or the name of the company of a source assigned to this permit.
- 9.3 Where to Submit Fees Fees must be submitted to:
Department of Environmental Quality
Business Office
811 SW Sixth Avenue
Portland, Oregon 97204-1390

10.0 GENERAL CONDITIONS AND DISCLAIMERS

- 10.1 Other Regulations In addition to the specific requirements listed in this permit, the permittee must comply with all other legal requirements enforceable by the Department.
- 10.2 Conflicting Conditions In any instance in which there is an apparent conflict relative to conditions in this permit, the most stringent conditions apply.
- 10.3 Masking of Emissions The permittee must not cause or permit the installation of any device or use any means designed to mask the emissions of an air contaminant that causes or is likely to cause detriment to health, safety, or welfare of any person or otherwise violate any other regulation or requirement.
- 10.4 Department Access The permittee must allow the Department's representatives access to the plant site and pertinent records at all reasonable times for the purposes of performing inspections, surveys, collecting samples, obtaining data, reviewing and copying air contaminant emissions discharge records and conducting all necessary functions related to this permit in accordance with ORS 468-095.
- 10.5 Permit Availability The permittee must have a copy of the permit available at the facility at all times.
- 10.6 Open Burning The permittee may not conduct any open burning except as allowed by OAR 340 Division 264.
- 10.7 Asbestos The permittee must comply with the asbestos abatement requirements in OAR 340, Division 248 for all activities involving asbestos-containing materials, including, but not limit to, demolition, renovation, repair, construction, and maintenance.
- 10.8 Property Rights The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.
- 10.9 Termination, Revocation, or Modification The Commission may modify or revoke this permit pursuant to OAR 340-216-0060(3) and (4).

11.0 ABBREVIATIONS, ACRONYMS, DEFINITIONS

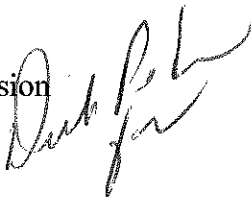
ACDP	Air Contaminant Discharge Permit	NSR	New Source Review
ASTM	American Society for Testing and Materials	O ₂	oxygen
AQMA	Air Quality Maintenance Area	OAR	Oregon Administrative Rules
bbbl	barrel (42 gal)	ORS	Oregon Revised Statutes
calendar year	The 12-month period beginning January 1st and ending December 31st	O&M	operation and maintenance
CFR	Code of Federal Regulations	Pb	lead
CO	carbon monoxide	PCD	pollution control device
date	mm/dd/yy	PM	particulate matter
DEQ	Oregon Department of Environmental Quality	PM ₁₀	particulate matter less than 10 microns in size
dscf	dry standard cubic foot	ppm	part per million
EPA	US Environmental Protection Agency	ppmv	part per million by volume
FCAA	Federal Clean Air Act	PSD	Prevention of Significant Deterioration
gal	gallon(s)	PSEL	Plant Site Emission Limit
gr/dscf	grains per dry standard cubic foot	PTE	Potential to Emit
HAP	Hazardous Air Pollutant as defined by OAR 340-244-0040	RACT	Reasonably Available Control Technology
ID	identification number	scf	standard cubic foot
I&M	inspection and maintenance	SER	Significant Emission Rate
lb	pound(s)	SERP	Source Emission Reduction Plan
MMBtu	million British thermal units	SIC	Standard Industrial Code
NA	not applicable	SIP	State Implementation Plan
NESHAP	National Emissions Standards for Hazardous Air Pollutants	SO ₂	sulfur dioxide
NO _x	nitrogen oxides	Special Control Area	as defined in OAR 340-204-0070
NSPS	New Source Performance Standard	VE	visible emissions
		VOC	volatile organic compound
		year	A period consisting of any 12-consecutive calendar months

cac/cd/msf: 10/18/07
AQGP-012, crematories

State of Oregon

Department of Environmental Quality

Memorandum

Date: October 1, 2007
To: Environmental Quality Commission
From: Stephanie Hallock, Director 
Subject: Agenda Item E, Rule Adoption: Asbestos Abatement Notification Filing Fee Increase
October 17, 2007 EQC Meeting

Why this is Important

Asbestos is a hazardous air pollutant, a known carcinogen. There is no known safe level of exposure. DEQ regulates the abatement and disposal of asbestos-containing materials from any public or private building involving demolition, renovation, repair, construction and maintenance activities. The DEQ's asbestos program protects public health and the environment by reducing the amount of asbestos in the air.

The 2007 Oregon Legislature approved an increase in the Asbestos Abatement Notification Filing Fees. The fee increase will allow DEQ to maintain existing staff levels in the program and add one position to provide additional technical assistance and public education about the dangers posed by improper asbestos removal. These rules implement the legislatively adopted budget.

Department Recommendation

The Department recommends that the Environmental Quality Commission (EQC, Commission) amend Oregon Administrative Rule 340-248-0260(1)(a) as presented in Attachment A with an effective date of December 1, 2007.

Background and Need for Rulemaking

The Department of Environmental Quality's (DEQ) asbestos program is supported by asbestos contractor license fees and asbestos abatement notification fees. The asbestos abatement notification fees are no longer sufficient to cover program costs for two reasons. First, the fees have not been increased since 1995 whereas costs for existing staff have increased. Second, there has been a significant shift from large to smaller asbestos abatement projects over the past few years. The smaller projects generate less fee income but cost as much as the larger projects to administer. The shift to smaller projects has resulted in a need for more assistance and community outreach for homeowners and small businesses to avoid adverse health effects and penalties for mishandling asbestos material.

Effect of Rule

By amending the fee structure, the Department's asbestos program will be able to

keep the existing staff and add one additional position to provide technical assistance and public education.

Commission Authority

The Commission has authority to take this action under ORS 468A.750(1)(d). These rules implement ORS 468A.707.

Stakeholder Involvement

In the summer and fall of 2006 asbestos staff contacted a representative sample of the DEQ licensed asbestos abatement contractors to gather their input on the proposed fee increase. In December 2006, the Department posted on its website a fact sheet describing the proposed fee increase. As part of the 2007 legislative budget process, the Department submitted detailed information about asbestos program funding and the proposed fee increase.

Of the asbestos abatement contractors contacted by department staff, there was nearly unanimous support for raising the fees to maintain the existing staff level and enhance the program by 1.0 FTE

Public Comment

A public comment period extended from July 16, 2007 to August 20, 2007 and included a public hearing in Portland on August 16, 2007. No public comment was received. The Department did respond to questions from a number of abatement contractors who requested information outside of the formal public comment process.

Key Issues

The key issue was: Would the increase in fees result in asbestos removal without a licensed contractor and therefore lead to a greater likelihood of improper removal and potential human exposure to asbestos?

The Department, based upon its conversations with asbestos abatement contractors, determined that the likelihood of that happening was extremely low. The proposed increase is scaled to the size of the asbestos abatement project. The fee for residential projects of any size would increase by \$65. The fee for small commercial and industrial projects would also increase by \$65. The fee for the largest commercial and industrial projects would increase by \$1,000. The fees the Department collects would continue to be a small portion of the total project costs.

The Department also believes that, with additional program resources dedicated to technical assistance and public education, there will be fewer individuals who would knowingly put their health at significant risk by improperly removing asbestos.

Next Steps

Once adopted, these rules will be filed with the Secretary of State with an effective date of December 1, 2007. A delayed effective date was chosen by the Department to allow for adequate notice to the licensed asbestos abatement companies doing business in Oregon.

Attachments

- A. Proposed Rule Revisions
- B. Summary of Public Comments and Agency Responses

- C. Presiding Officer's Report on Public Hearings
- D. Relationship to Federal Requirements Questions
- E. Statement of Need and Fiscal and Economic Impact
- F. Land Use Evaluation Statement

**Available Upon
Request**

- 1. Legal Notice of Hearing
- 2. Cover Memorandum from Public Notice
- 3. Rule Implementation Plan

Approved:

Section: _____

Division: _____

*Margaret O'Leary for
Andy Ginsburg*

Report Prepared By: Ed Druback
Phone: 503-667-8414 ext 55014

Attachment A

Oregon Administrative Rules Chapter 340, Division 248 - Department of Environmental Quality

Asbestos Abatement Notification Fee Increase

Proposed Rule Changes

340-248-0260

Asbestos Abatement Notification Requirements

Except as provided for in OAR 340-248-0250, written notification of any asbestos abatement project must be provided to the Department on a form prepared by and available from the Department, accompanied by the appropriate fee. The notification must be submitted by the facility owner or operator or by the contractor in accordance with one of the procedures specified in sections (1), (2), or (3) of this rule except as provided in sections (5), (6), or (7).

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

(a) The project notification fee is:

- (A) ~~\$35100~~ for each project less than 40 linear feet or 80 square feet of asbestos-containing material, a residential building, or a non-friable asbestos abatement project.
- (B) ~~\$70200~~ for each project greater than or equal to 40 linear feet or 80 square feet but less than 260 linear feet or 160 square feet of asbestos-containing material.
- (C) ~~\$275400~~ for each project greater than or equal to 260 linear feet or 160 square feet, and less than 1300 linear feet or 800 square feet of asbestos-containing material.
- (D) ~~\$375525~~ for each project greater than or equal to 1300 linear feet or 800 square feet, and less than 2600 linear feet or 1600 square feet of asbestos-containing material.
- (E) ~~\$650900~~ for each project greater than or equal to 2600 linear feet or 1600 square feet, and less than 5000 linear feet or 3500 square feet of asbestos-containing material.
- (F) ~~\$7501,050~~ for each project greater than or equal to 5000 linear feet or 3500 square feet, and less than 10,000 linear feet or 6000 square feet of asbestos-containing material.

- | (G) ~~\$1,200~~1,700 for each project greater than or equal to 10,000 linear feet or 6000 square feet, and less than 26,000 linear feet or 16,000 square feet of asbestos-containing material.
- | (H) ~~\$2,000~~2,800 for each project greater than or equal to 26,000 linear feet or 16,000 square feet, and less than 260,000 linear feet or 160,000 square feet of asbestos-containing material.
- | (I) ~~\$2,500~~3,500 for each project greater than 260,000 linear feet or 160,000 square feet of asbestos-containing material.
- | (J) ~~\$260~~750 for annual notifications for friable asbestos abatement projects involving removal of 40 linear feet or 80 square feet or less of asbestos-containing material.
- | (K) ~~\$350~~500 for annual notifications for non-friable asbestos abatement projects performed at schools, colleges, and facilities.

Attachment B

Asbestos Abatement Notification Fee Increase

Summary of Public Comment and Agency Response

Title of Rulemaking: Asbestos Notification Filing Fee Increase

Prepared by: Ed Druback

Date: August 21, 2007

***Comment
period***

The public comment period opened on July 16, 2007 and closed at 5:00 p.m. on August 20, 2007. DEQ held a public hearing on August 16, 2007 at 7:30 p.m. on August 16, 2007 in Portland. Two people attended who asked a few questions before the start of the public hearing. Neither attendee decided to make a public comment once the hearing opened.

The Department did not receive any written comment during the public comment period.

Presiding Officer's Report

Date: August 17, 2007

To: Environmental Quality Commission
From: Sarah Armitage
Subject: Presiding Officer's Report for Rulemaking Hearings
Proposed Asbestos Notification Fee Increase

Hearing Date and Time: August 16, 2007, 7:30 p.m.
Hearing Location: DEQ Conference Room EQC A, Portland

The Department convened the rulemaking hearing on the proposal referenced above at 7:30 p.m. and closed it at 8:30 p.m. People were asked to sign the attendance sheet and registration forms if they wished to present comments. People were also advised that the hearing was being recorded.

Two people attended the hearing. Neither wished to provide an oral comment.

Attachment D

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

RULE CAPTION Asbestos Abatement Notification Fee Increase

The Department of Environmental Quality proposes to increase Asbestos Abatement Notification Fees

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).

1. Are there federal requirements that are applicable to this situation? If so, exactly what are they?

There are no direct federal requirements for adequate funding of the Asbestos Program. However, the asbestos program is one of Oregon's federally delegated programs to implement the National Emission Standards for Hazardous Air Pollutants (NESHAP). The proposed asbestos abatement notification fee increases would fully fund the asbestos program for the next two biennia, or four years. The proposed fee increase would be scaled to the size the asbestos abatement project (from \$65 for small projects to \$1,000 for the largest projects). A fully funded asbestos program would ensure effective compliance with asbestos requirements and continuing delegation of federal asbestos standards.

2. Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?

There are no directly applicable federal requirements for asbestos program funding.

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?

The proposed rule changes incorporate no new federal requirements.

4. Will the proposed requirement (rulemaking) 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?

By providing adequate resources to implement the asbestos program, the proposed rule change would allow the Department to restore funding for asbestos education, inspection, complaint response, enforcement, and outreach to homeowners and small businesses. More timely complaint response, stronger enforcement presence and further outreach would increase certainty for abatement contractors and prevent exposure, violations and penalty actions for the regulated community and the public.

5. Is there a timing issue which might justify changing the time frame for implementation of federal requirements?

There are no timing issues associated with clarifying federal requirements in the proposed rule revisions.

6. Will the proposed requirement (rulemaking) assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?

This question is not applicable to this rulemaking because it would not impose new standards.

7. Does the proposed requirement (rulemaking) establish or maintain reasonable equity in the requirements for various sources? (level the playing field)

The proposed rulemaking maintains equity by scaling the proposed fee increase to the size of the asbestos abatement project. The fees would remain a small portion of the total project costs and, in most instances, would be passed on from the asbestos abatement contractor to the building owner. By increasing resources for compliance and technical assistance, the Department expects that contractors and homeowners will spend less money meeting regulatory requirements.

8. Would others face increased costs if a more stringent rule is not enacted?

The proposed rules do not increase stringency. There would be no increased costs to others in the absence of more stringent rules.

9. Does the proposed requirement (rulemaking) 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?

The proposed rules do not differ from applicable federal requirements.

10. Is demonstrated technology available to comply with the proposed requirement (rulemaking)?

The proposed rules impose no new standards or compliance requirements.

11. Will the proposed requirement (rulemaking) contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?

The proposed rule could prevent pollution by providing adequate asbestos program resources for technical assistance and cross media assistance.

Attachment E

DEPARTMENT OF ENVIRONMENTAL QUALITY Chapter 340 Proposed Rulemaking

Asbestos Abatement Notification Fee Increase

STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT

Rule Caption	Asbestos Abatement Notification Fee Increase
Title of Proposed Rulemaking:	Asbestos Abatement Notification Fee Increase
Stat. Authority or other Legal Authority:	ORS 468A.750(1)(d).
Stat. Implemented:	ORS 468A.707
Need for the Rule(s)	<p>The Department of Environmental Quality's asbestos program has been supported by asbestos contractor license fees and asbestos abatement notification fees. However, the asbestos abatement notification fees are no longer sufficient to cover the cost of the program for two reasons. First, the fees have not been increased since 1995 whereas costs for existing staff have increased. Second, there has been a significant shift from large to smaller asbestos abatement projects over the past few years. The smaller projects generate less fee income but cost almost as much as the larger projects to administer. In addition, the shift to smaller projects has resulted in a need for more assistance and community outreach for homeowners and small businesses to avoid adverse health effects and enforcement for mishandling asbestos.</p> <p>The Department proposed increasing the asbestos abatement notification fees as part of its legislatively approved budget. This proposed rule implements that budget proposal.</p>
Documents Relied Upon for Rulemaking	<p>Documents relied upon to provide the basis for this proposal include:</p> <ol style="list-style-type: none"> 1. 2007-2009 Legislatively Approved Budget 2. Fiscal Year 2008 Projected Asbestos Program Revenue <p>Copies of these documents may be reviewed at the Department of Environmental Quality's office at 811 SW 6th Avenue, Portland, Oregon 97204.</p>
Requests for Other Options	Pursuant to ORS 183.335(2)(b)(G), DEQ requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.
Fiscal and Economic Impact, Statement of Cost Compliance	
Overview	Asbestos abatement projects are specifically defined by OAR 340-248-0010(6), and generally include work on buildings or other structures containing asbestos that may

cause a release of asbestos fibers into the air. Before beginning an asbestos abatement project that is not exempt under OAR 340-248-0250, the owner or operator of the facility, or a licensed contractor, must provide written notice to DEQ and pay the required asbestos notification fee.

Asbestos notification fees pay for numerous activities including: complaint response, inspection of abatement sites, inspection of disposal facilities, enforcement, technical assistance and educational outreach, program administration and laboratory analysis. The notification fees have not been increased since late 1995 and the costs of the program have increased dramatically since that time.

The proposed fee increase would continue to fund the existing level of activities in the asbestos program and increase our technical assistance and educational program by 1.0 FTE. The main purpose of this additional FTE is to provide assistance to local communities regarding the direct link between demolition and remodeling projects in their communities and the potential asbestos related health impacts to their citizens if proper precautions are not taken.

The proposed fee structure is summarized below:

Asbestos Notification Fee Type	Current Fee	Proposed Fee	Difference	Yearly Average*
Abatement <40', <80sq' or non-friable abatement	\$35.00	\$100.00	\$65	1425
Abatement >=40' or 80sq', <260' or 160sq'	\$70.00	\$200.00	\$130	217
Abatement >260' or 160sq'' <1,300' or 800sq'	\$275.00	\$400.00	\$125	332
Abatement >1300' or 800sq' <2,600' or 1,600sq'	\$375.00	\$525.00	\$150	162
Abatement >2600' or 1600sq' <5,000' or 3,500sq'	\$650.00	\$900.00	\$250	104
Abatement >5,000' or 3,500sq' <10,000' or 6,000sq'	\$750.00	\$1,050.00	\$300	57
Abatement >10,000' or 6,000sq' <26,000' or 16,000sq'	\$1,200.00	\$1,700.00	\$500	55
Abatement >26,000' or 16,000sq' <260,000' or 160,000sq' -	\$2,000.00	\$2,800.00	\$800	30
Abatement >260,000'/160,000sq'	\$2,500.00	\$3,500.00	\$1,000	4
Annual Abatement - friable <40' or 80 sq'	\$260.00	\$750.00	\$490	27
Annual Abatement Non friable/schools, facilities	\$350.00	\$500.00	\$150	25

*Yearly Average is calculated over the previous 4 fiscal years.

Impacts to General public

Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under

	<p>OAR 340-248-0250. Any member of the general public who has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. The Department has no way to determine the number of members of the general public that may desire to abate asbestos in buildings owned or operated by them. Residential abatement projects however pay the lowest fee, and because the Department assumes that members of the general public are most likely to undertake residential abatement projects, the impact on the general public is therefore likely to be lower than for other sectors.</p>	
<p>Impacts to Small Business (50 or fewer employees – ORS183.310(10))</p>	<p>Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under OAR 340-248-0250. Any small business that has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. Typically however, small businesses will have smaller asbestos abatement projects and the impact will be less as the fee schedule is graduated with smaller projects costing less.</p>	
<p>Cost of Compliance to Small Business (50 or fewer employees – ORS183.310(10))</p>	<p>a) Estimated number of small businesses subject to the proposed rule</p>	<p>Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project that is not exempt under OAR 340-248-0250. All small businesses having a nonexempt asbestos abatement project are subject to the proposed rule. However, the Department has no way to determine the number of small businesses that may desire to abate asbestos in buildings owned or operated by them.</p>
	<p>b) Types of businesses and industries with small businesses subject to the proposed rule</p>	<p>All small businesses that have an asbestos abatement project performed on a building or other facility, and that is not exempt under OAR 340-248-0250, are subject to the proposed rule amendments. A broad array of small businesses own and operate buildings and have nonexempt asbestos abatement projects performed.</p>
	<p>c) Projected reporting, recordkeeping and other administrative activities required by small businesses for compliance with the proposed rule, including costs of professional services</p>	<p>The proposed rule amendments do not establish any additional reporting, recordkeeping or other administrative activities.</p>
	<p>d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the proposed rule</p>	<p>The proposed rule amendments do not require any additional equipment, supplies, labor or increased administration. The proposed rule would increase the costs of asbestos abatement projects, but would not change the existing requirements for the equipment, supplies, labor and administration to perform asbestos abatement projects.</p>
	<p>e) A description of the manner in which DEQ involved small businesses were involved in the development of this rulemaking</p>	<p>In the summer and fall of 2006 asbestos staff contacted 20% of the DEQ licensed asbestos abatement contractors to gather their input on the proposed fee increase to gather their input and support for the measure. In December 2006, the Department posted on its website a fact sheet describing the proposed fee increase. As part of its 2007 legislative budget process, the Department submitted to the legislature detailed information about asbestos program funding and the proposed fee increase.</p>

	On July 17, 2007, the Notice of Proposed Rulemaking will be sent by mail or electronically to asbestos abatement contractors and interested parties. The August 16, 2007 public hearing will provide a forum for interested parties to comment on the rule.
Impacts to Large Business (all businesses that are not "small businesses" under ORS183.310(10))	Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under OAR 340-248-0250. Any large business that has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. The Department has no way to determine the number of large businesses that may desire to abate asbestos in buildings owned or operated by them.
Impacts to Local Government	Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under OAR 340-248-0250. Any local government that has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. The Department has no way to determine the number of local governments that may desire to abate asbestos in buildings owned or operated by them.
Impacts to State Agencies	Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under OAR 340-248-0250. Any state agency that has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. The Department has no way to determine the number of state agencies that may desire to abate asbestos in buildings owned or operated by them.
Impacts to DEQ	The Department of Environmental Quality would not incur any additional costs to implement the proposed fee increases. Instead, DEQ would gain additional resources needed to operate its asbestos program.
Impact to Other agencies	Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under OAR 340-248-0250. Any other agency that has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. The Department has no way to determine the number of other agencies that may desire to abate asbestos in buildings owned or operated by them.
Assumptions	Estimated revenue forecasts and expenditures are based on the assumption that the number of asbestos abatement notifications will remain approximately the same as in 2006. The Department projects approximately 2,400 notifications will be subject to these higher fees in the 2007-09 biennium.
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 rule amendments, because no policy issues were identified and the additional funding is needed to adequately administer the asbestos program.

Attachment F

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Land Use Evaluation Statement

The Department of Environmental Quality proposes to increase Asbestos Abatement Notification Fees

1. Explain the purpose of the proposed rules.

The Department of Environmental Quality's asbestos program has been supported by asbestos contractor license fees and asbestos abatement notification fees. However, the asbestos abatement notification fees are no longer sufficient to cover the cost of the program for two reasons. First, the fees have not been increased since 1995 whereas costs for existing staff have increased. Second, there has been a significant shift from large to smaller asbestos abatement projects over the past few years. The smaller projects generate less fee income but cost as much as the larger projects to administer. In addition, the shift to smaller projects has resulted in a need for more assistance and community outreach for homeowners and small businesses to avoid adverse health effects and civil penalties for mishandling asbestos material.

The Department proposed increasing the asbestos abatement notification fees as part of its legislatively approved budget. This proposed rule implements that budget proposal.

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:

The Department has determined that the asbestos program is not a program that significantly affects land use.

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Not applicable as the Department has determined that neither the asbestos program rules nor the proposed fee increase significantly affect land use.

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.

The Department has determined that neither the asbestos program rules nor the proposed fee increase significantly affect land use. This determination was made based on the fact that the asbestos program charges a notification fee on all asbestos projects performed by licensed abatement contractors irrespective of past, current or future land use(s) of the structure being abated.

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 as the Department has determined that neither the asbestos program rules nor the proposed increase significantly affect land use.

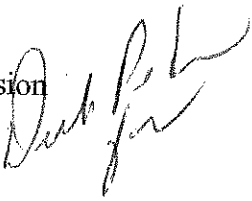
State of Oregon

Department of Environmental Quality

Memorandum

Date: October 1, 2007

To: Environmental Quality Commission

From: Stephanie Hallock, Director 

Subject: Agenda Item E, Rule Adoption: Asbestos Abatement Notification Filing Fee Increase
October 17, 2007 EQC Meeting

Why this is Important

Asbestos is a hazardous air pollutant, a known carcinogen. There is no known safe level of exposure. DEQ regulates the abatement and disposal of asbestos-containing materials from any public or private building involving demolition, renovation, repair, construction and maintenance activities. The DEQ's asbestos program protects public health and the environment by reducing the amount of asbestos in the air.

The 2007 Oregon Legislature approved an increase in the Asbestos Abatement Notification Filing Fees. The fee increase will allow DEQ to maintain existing staff levels in the program and add one position to provide additional technical assistance and public education about the dangers posed by improper asbestos removal. These rules implement the legislatively adopted budget.

Department Recommendation

The Department recommends that the Environmental Quality Commission (EQC, Commission) amend Oregon Administrative Rule 340-248-0260(1)(a) as presented in Attachment A with an effective date of December 1, 2007.

Background and Need for Rulemaking

The Department of Environmental Quality's (DEQ) asbestos program is supported by asbestos contractor license fees and asbestos abatement notification fees. The asbestos abatement notification fees are no longer sufficient to cover program costs for two reasons. First, the fees have not been increased since 1995 whereas costs for existing staff have increased. Second, there has been a significant shift from large to smaller asbestos abatement projects over the past few years. The smaller projects generate less fee income but cost as much as the larger projects to administer. The shift to smaller projects has resulted in a need for more assistance and community outreach for homeowners and small businesses to avoid adverse health effects and penalties for mishandling asbestos material.

Effect of Rule

By amending the fee structure, the Department's asbestos program will be able to

keep the existing staff and add one additional position to provide technical assistance and public education.

Commission Authority

The Commission has authority to take this action under ORS 468A.750(1)(d). These rules implement ORS 468A.707.

Stakeholder Involvement

In the summer and fall of 2006 asbestos staff contacted a representative sample of the DEQ licensed asbestos abatement contractors to gather their input on the proposed fee increase. In December 2006, the Department posted on its website a fact sheet describing the proposed fee increase. As part of the 2007 legislative budget process, the Department submitted detailed information about asbestos program funding and the proposed fee increase.

Of the asbestos abatement contractors contacted by department staff, there was nearly unanimous support for raising the fees to maintain the existing staff level and enhance the program by 1.0 FTE

Public Comment

A public comment period extended from July 16, 2007 to August 20, 2007 and included a public hearing in Portland on August 16, 2007. No public comment was received. The Department did respond to questions from a number of abatement contractors who requested information outside of the formal public comment process.

Key Issues

The key issue was: Would the increase in fees result in asbestos removal without a licensed contractor and therefore lead to a greater likelihood of improper removal and potential human exposure to asbestos?

The Department, based upon its conversations with asbestos abatement contractors, determined that the likelihood of that happening was extremely low. The proposed increase is scaled to the size of the asbestos abatement project. The fee for residential projects of any size would increase by \$65. The fee for small commercial and industrial projects would also increase by \$65. The fee for the largest commercial and industrial projects would increase by \$1,000. The fees the Department collects would continue to be a small portion of the total project costs.

The Department also believes that, with additional program resources dedicated to technical assistance and public education, there will be fewer individuals who would knowingly put their health at significant risk by improperly removing asbestos.

Next Steps

Once adopted, these rules will be filed with the Secretary of State with an effective date of December 1, 2007. A delayed effective date was chosen by the Department to allow for adequate notice to the licensed asbestos abatement companies doing business in Oregon.

Attachments

- A. Proposed Rule Revisions
- B. Summary of Public Comments and Agency Responses

- C. Presiding Officer's Report on Public Hearings
- D. Relationship to Federal Requirements Questions
- E. Statement of Need and Fiscal and Economic Impact
- F. Land Use Evaluation Statement

Available Upon Request

- 1. Legal Notice of Hearing
- 2. Cover Memorandum from Public Notice
- 3. Rule Implementation Plan

Approved:

Section:

Division:

Margaret Olickant for Andy Ginsburg

Report Prepared By: Ed Druback
Phone: 503-667-8414 ext 55014

Attachment A

Oregon Administrative Rules Chapter 340, Division 248 - Department of Environmental Quality

Asbestos Abatement Notification Fee Increase

Proposed Rule Changes

340-248-0260

Asbestos Abatement Notification Requirements

Except as provided for in OAR 340-248-0250, written notification of any asbestos abatement project must be provided to the Department on a form prepared by and available from the Department, accompanied by the appropriate fee. The notification must be submitted by the facility owner or operator or by the contractor in accordance with one of the procedures specified in sections (1), (2), or (3) of this rule except as provided in sections (5), (6), or (7).

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

(a) The project notification fee is:

- | (A) ~~\$35100~~ for each project less than 40 linear feet or 80 square feet of asbestos-containing material, a residential building, or a non-friable asbestos abatement project.
- | (B) ~~\$70200~~ for each project greater than or equal to 40 linear feet or 80 square feet but less than 260 linear feet or 160 square feet of asbestos-containing material.
- | (C) ~~\$275400~~ for each project greater than or equal to 260 linear feet or 160 square feet, and less than 1300 linear feet or 800 square feet of asbestos-containing material.
- | (D) ~~\$375525~~ for each project greater than or equal to 1300 linear feet or 800 square feet, and less than 2600 linear feet or 1600 square feet of asbestos-containing material.
- | (E) ~~\$650900~~ for each project greater than or equal to 2600 linear feet or 1600 square feet, and less than 5000 linear feet or 3500 square feet of asbestos-containing material.
- | (F) ~~\$7501,050~~ for each project greater than or equal to 5000 linear feet or 3500 square feet, and less than 10,000 linear feet or 6000 square feet of asbestos-containing material.

- | (G) ~~\$1,200~~1,700 for each project greater than or equal to 10,000 linear feet or 6000 square feet, and less than 26,000 linear feet or 16,000 square feet of asbestos-containing material.
- | (H) ~~\$2,000~~2,800 for each project greater than or equal to 26,000 linear feet or 16,000 square feet, and less than 260,000 linear feet or 160,000 square feet of asbestos-containing material.
- | (I) ~~\$2,500~~3,500 for each project greater than 260,000 linear feet or 160,000 square feet of asbestos-containing material.
- | (J) ~~\$260~~750 for annual notifications for friable asbestos abatement projects involving removal of 40 linear feet or 80 square feet or less of asbestos-containing material.
- | (K) ~~\$350~~500 for annual notifications for non-friable asbestos abatement projects performed at schools, colleges, and facilities.

Attachment B

Asbestos Abatement Notification Fee Increase

Summary of Public Comment and Agency Response

Title of Rulemaking: Asbestos Notification Filing Fee Increase

Prepared by: Ed Druback

Date: August 21, 2007

***Comment
period***

The public comment period opened on July 16, 2007 and closed at 5:00 p.m. on August 20, 2007. DEQ held a public hearing on August 16, 2007 at 7:30 p.m. on August 16, 2007 in Portland. Two people attended who asked a few questions before the start of the public hearing. Neither attendee decided to make a public comment once the hearing opened.

The Department did not receive any written comment during the public comment period.

Presiding Officer's Report

Date: August 17, 2007

To: Environmental Quality Commission
From: Sarah Armitage
Subject: Presiding Officer's Report for Rulemaking Hearings
Proposed Asbestos Notification Fee Increase

Hearing Date and Time: August 16, 2007, 7:30 p.m.
Hearing Location: DEQ Conference Room EQC A, Portland

The Department convened the rulemaking hearing on the proposal referenced above at 7:30 p.m. and closed it at 8:30 p.m. People were asked to sign the attendance sheet and registration forms if they wished to present comments. People were also advised that the hearing was being recorded.

Two people attended the hearing. Neither wished to provide an oral comment.

Attachment D

State of Oregon DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

RULE CAPTION Asbestos Abatement Notification Fee Increase

The Department of Environmental Quality proposes to increase Asbestos Abatement Notification Fees

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).

1. Are there federal requirements that are applicable to this situation? If so, exactly what are they?

There are no direct federal requirements for adequate funding of the Asbestos Program. However, the asbestos program is one of Oregon's federally delegated programs to implement the National Emission Standards for Hazardous Air Pollutants (NESHAP). The proposed asbestos abatement notification fee increases would fully fund the asbestos program for the next two biennia, or four years. The proposed fee increase would be scaled to the size the asbestos abatement project (from \$65 for small projects to \$1,000 for the largest projects). A fully funded asbestos program would ensure effective compliance with asbestos requirements and continuing delegation of federal asbestos standards.

2. Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?

There are no directly applicable federal requirements for asbestos program funding.

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?

The proposed rule changes incorporate no new federal requirements.

4. Will the proposed requirement (rulemaking) 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?

By providing adequate resources to implement the asbestos program, the proposed rule change would allow the Department to restore funding for asbestos education, inspection, complaint response, enforcement, and outreach to homeowners and small businesses. More timely complaint response, stronger enforcement presence and further outreach would increase certainty for abatement contractors and prevent exposure, violations and penalty actions for the regulated community and the public.

5. Is there a timing issue which might justify changing the time frame for implementation of federal requirements?

There are no timing issues associated with clarifying federal requirements in the proposed rule revisions.

6. Will the proposed requirement (rulemaking) assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?

This question is not applicable to this rulemaking because it would not impose new standards.

7. Does the proposed requirement (rulemaking) establish or maintain reasonable equity in the requirements for various sources? (level the playing field)

The proposed rulemaking maintains equity by scaling the proposed fee increase to the size the asbestos abatement project. The fees would remain a small portion of the total project costs and, in most instances, would be passed on from the asbestos abatement contractor to the building owner. By increasing resources for compliance and technical assistance, the Department expects that contractors and homeowners will spend less money meeting regulatory requirements.

8. Would others face increased costs if a more stringent rule is not enacted?

The proposed rules do not increase stringency. There would be no increased costs to others in the absence of more stringent rules.

9. Does the proposed requirement (rulemaking) 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?

The proposed rules do not differ from applicable federal requirements.

10. Is demonstrated technology available to comply with the proposed requirement (rulemaking)?

The proposed rules impose no new standards or compliance requirements.

11. Will the proposed requirement (rulemaking) contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?

The proposed rule could prevent pollution by providing adequate asbestos program resources for technical assistance and cross media assistance.

Attachment E

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking

Asbestos Abatement Notification Fee Increase

STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT

Rule Caption	Asbestos Abatement Notification Fee Increase
Title of Proposed Rulemaking:	Asbestos Abatement Notification Fee Increase
Stat. Authority or other Legal Authority:	ORS 468A.750(1)(d).
Stat. Implemented:	ORS 468A.707
Need for the Rule(s)	<p>The Department of Environmental Quality's asbestos program has been supported by asbestos contractor license fees and asbestos abatement notification fees. However, the asbestos abatement notification fees are no longer sufficient to cover the cost of the program for two reasons. First, the fees have not been increased since 1995 whereas costs for existing staff have increased. Second, there has been a significant shift from large to smaller asbestos abatement projects over the past few years. The smaller projects generate less fee income but cost almost as much as the larger projects to administer. In addition, the shift to smaller projects has resulted in a need for more assistance and community outreach for homeowners and small businesses to avoid adverse health effects and enforcement for mishandling asbestos.</p> <p>The Department proposed increasing the asbestos abatement notification fees as part of its legislatively approved budget. This proposed rule implements that budget proposal.</p>
Documents Relied Upon for Rulemaking	<p>Documents relied upon to provide the basis for this proposal include:</p> <ol style="list-style-type: none"> 1. 2007-2009 Legislatively Approved Budget 2. Fiscal Year 2008 Projected Asbestos Program Revenue <p>Copies of these documents may be reviewed at the Department of Environmental Quality's office at 811 SW 6th Avenue, Portland, Oregon 97204.</p>
Requests for Other Options	Pursuant to ORS 183.335(2)(b)(G), DEQ requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.
Fiscal and Economic Impact, Statement of Cost Compliance	
Overview	Asbestos abatement projects are specifically defined by OAR 340-248-0010(6), and generally include work on buildings or other structures containing asbestos that may

cause a release of asbestos fibers into the air. Before beginning an asbestos abatement project that is not exempt under OAR 340-248-0250, the owner or operator of the facility, or a licensed contractor, must provide written notice to DEQ and pay the required asbestos notification fee.

Asbestos notification fees pay for numerous activities including: complaint response, inspection of abatement sites, inspection of disposal facilities, enforcement, technical assistance and educational outreach, program administration and laboratory analysis. The notification fees have not been increased since late 1995 and the costs of the program have increased dramatically since that time.

The proposed fee increase would continue to fund the existing level of activities in the asbestos program and increase our technical assistance and educational program by 1.0 FTE. The main purpose of this additional FTE is to provide assistance to local communities regarding the direct link between demolition and remodeling projects in their communities and the potential asbestos related health impacts to their citizens if proper precautions are not taken.

The proposed fee structure is summarized below:

Asbestos Notification Fee Type	Current Fee	Proposed Fee	Difference	Yearly Average*
Abatement <40' <80sq' or non-friable abatement	\$35.00	\$100.00	\$65	1425
Abatement >=40' or 80sq', <260' or 160sq'	\$70.00	\$200.00	\$130	217
Abatement >260' or 160sq'' <1,300' or 800sq'	\$275.00	\$400.00	\$125	332
Abatement >1300' or 800sq' <2,600' or 1,600sq'	\$375.00	\$525.00	\$150	162
Abatement >2600' or 1600sq' <5,000' or 3,500sq'	\$650.00	\$900.00	\$250	104
Abatement >5,000' or 3,500sq' <10,000' or 6,000sq'	\$750.00	\$1,050.00	\$300	57
Abatement >10,000' or 6,000sq' <26,000' or 16,000sq'	\$1,200.00	\$1,700.00	\$500	55
Abatement >26,000' or 16,000sq' <260,000' or 160,000sq' -	\$2,000.00	\$2,800.00	\$800	30
Abatement >260,000'/160,000sq'	\$2,500.00	\$3,500.00	\$1,000	4
Annual Abatement - friable <40' or 80 sq'	\$260.00	\$750.00	\$490	27
Annual Abatement Non friable/schools, facilities	\$350.00	\$500.00	\$150	25

*Yearly Average is calculated over the previous 4 fiscal years.

Impacts to General public

Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under

	<p>OAR 340-248-0250. Any member of the general public who has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. The Department has no way to determine the number of members of the general public that may desire to abate asbestos in buildings owned or operated by them. Residential abatement projects however pay the lowest fee, and because the Department assumes that members of the general public are most likely to undertake residential abatement projects, the impact on the general public is therefore likely to be lower than for other sectors.</p>	
<p>Impacts to Small Business (50 or fewer employees – ORS183.310(10))</p>	<p>Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under OAR 340-248-0250. Any small business that has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. Typically however, small businesses will have smaller asbestos abatement projects and the impact will be less as the fee schedule is graduated with smaller projects costing less.</p>	
<p>Cost of Compliance to Small Business (50 or fewer employees – ORS183.310(10))</p>	<p>a) Estimated number of small businesses subject to the proposed rule</p>	<p>Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project that is not exempt under OAR 340-248-0250. All small businesses having a nonexempt asbestos abatement project are subject to the proposed rule. However, the Department has no way to determine the number of small businesses that may desire to abate asbestos in buildings owned or operated by them.</p>
	<p>b) Types of businesses and industries with small businesses subject to the proposed rule</p>	<p>All small businesses that have an asbestos abatement project performed on a building or other facility, and that is not exempt under OAR 340-248-0250, are subject to the proposed rule amendments. A broad array of small businesses own and operate buildings and have nonexempt asbestos abatement projects performed.</p>
	<p>c) Projected reporting, recordkeeping and other administrative activities required by small businesses for compliance with the proposed rule, including costs of professional services</p>	<p>The proposed rule amendments do not establish any additional reporting, recordkeeping or other administrative activities.</p>
	<p>d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the proposed rule</p>	<p>The proposed rule amendments do not require any additional equipment, supplies, labor or increased administration. The proposed rule would increase the costs of asbestos abatement projects, but would not change the existing requirements for the equipment, supplies, labor and administration to perform asbestos abatement projects.</p>
	<p>e) A description of the manner in which DEQ involved small businesses were involved in the development of this rulemaking</p>	<p>In the summer and fall of 2006 asbestos staff contacted 20% of the DEQ licensed asbestos abatement contractors to gather their input on the proposed fee increase to gather their input and support for the measure. In December 2006, the Department posted on its website a fact sheet describing the proposed fee increase. As part of its 2007 legislative budget process, the Department submitted to the legislature detailed information about asbestos program funding and the proposed fee increase.</p>

		On July 17, 2007, the Notice of Proposed Rulemaking will be sent by mail or electronically to asbestos abatement contractors and interested parties. The August 16, 2007 public hearing will provide a forum for interested parties to comment on the rule.
Impacts to Large Business (all businesses that are not "small businesses" under ORS183.310(10))		Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under OAR 340-248-0250. Any large business that has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. The Department has no way to determine the number of large businesses that may desire to abate asbestos in buildings owned or operated by them.
Impacts to Local Government		Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under OAR 340-248-0250. Any local government that has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. The Department has no way to determine the number of local governments that may desire to abate asbestos in buildings owned or operated by them.
Impacts to State Agencies		Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under OAR 340-248-0250. Any state agency that has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. The Department has no way to determine the number of state agencies that may desire to abate asbestos in buildings owned or operated by them.
Impacts to DEQ		The Department of Environmental Quality would not incur any additional costs to implement the proposed fee increases. Instead, DEQ would gain additional resources needed to operate its asbestos program.
Impact to Other agencies		Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under OAR 340-248-0250. Any other agency that has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. The Department has no way to determine the number of other agencies that may desire to abate asbestos in buildings owned or operated by them.
Assumptions		Estimated revenue forecasts and expenditures are based on the assumption that the number of asbestos abatement notifications will remain approximately the same as in 2006. The Department projects approximately 2,400 notifications will be subject to these higher fees in the 2007-09 biennium.
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 rule amendments, because no policy issues were identified and the additional funding is needed to adequately administer the asbestos program.

Attachment F

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Land Use Evaluation Statement

The Department of Environmental Quality proposes to increase Asbestos Abatement Notification Fees

1. Explain the purpose of the proposed rules.

The Department of Environmental Quality's asbestos program has been supported by asbestos contractor license fees and asbestos abatement notification fees. However, the asbestos abatement notification fees are no longer sufficient to cover the cost of the program for two reasons. First, the fees have not been increased since 1995 whereas costs for existing staff have increased. Second, there has been a significant shift from large to smaller asbestos abatement projects over the past few years. The smaller projects generate less fee income but cost as much as the larger projects to administer. In addition, the shift to smaller projects has resulted in a need for more assistance and community outreach for homeowners and small businesses to avoid adverse health effects and civil penalties for mishandling asbestos material.

The Department proposed increasing the asbestos abatement notification fees as part of its legislatively approved budget. This proposed rule implements that budget proposal.

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:

The Department has determined that the asbestos program is not a program that significantly affects land use.

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Not applicable as the Department has determined that neither the asbestos program rules nor the proposed fee increase significantly affect land use.

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.

The Department has determined that neither the asbestos program rules nor the proposed fee increase significantly affect land use. This determination was made based on the fact that the asbestos program charges a notification fee on all asbestos projects performed by licensed abatement contractors irrespective of past, current or future land use(s) of the structure being abated.

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.

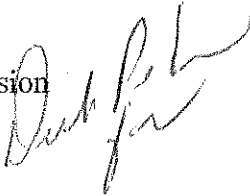
Not applicable as the Department has determined that neither the asbestos program rules nor the proposed increase significantly affect land use.

State of Oregon

Department of Environmental Quality

Memorandum

Date: October 1, 2007

To: Environmental Quality Commission 

From: Stephanie Hallock, Director

Subject: Agenda Item E, Rule Adoption: Asbestos Abatement Notification Filing Fee Increase
October 17, 2007 EQC Meeting

Why this is Important

Asbestos is a hazardous air pollutant, a known carcinogen. There is no known safe level of exposure. DEQ regulates the abatement and disposal of asbestos-containing materials from any public or private building involving demolition, renovation, repair, construction and maintenance activities. The DEQ's asbestos program protects public health and the environment by reducing the amount of asbestos in the air.

The 2007 Oregon Legislature approved an increase in the Asbestos Abatement Notification Filing Fees. The fee increase will allow DEQ to maintain existing staff levels in the program and add one position to provide additional technical assistance and public education about the dangers posed by improper asbestos removal. These rules implement the legislatively adopted budget.

Department Recommendation

The Department recommends that the Environmental Quality Commission (EQC, Commission) amend Oregon Administrative Rule 340-248-0260(1)(a) as presented in Attachment A with an effective date of December 1, 2007.

Background and Need for Rulemaking

The Department of Environmental Quality's (DEQ) asbestos program is supported by asbestos contractor license fees and asbestos abatement notification fees. The asbestos abatement notification fees are no longer sufficient to cover program costs for two reasons. First, the fees have not been increased since 1995 whereas costs for existing staff have increased. Second, there has been a significant shift from large to smaller asbestos abatement projects over the past few years. The smaller projects generate less fee income but cost as much as the larger projects to administer. The shift to smaller projects has resulted in a need for more assistance and community outreach for homeowners and small businesses to avoid adverse health effects and penalties for mishandling asbestos material.

Effect of Rule

By amending the fee structure, the Department's asbestos program will be able to

keep the existing staff and add one additional position to provide technical assistance and public education.

Commission Authority

The Commission has authority to take this action under ORS 468A.750(1)(d). These rules implement ORS 468A.707.

Stakeholder Involvement

In the summer and fall of 2006 asbestos staff contacted a representative sample of the DEQ licensed asbestos abatement contractors to gather their input on the proposed fee increase. In December 2006, the Department posted on its website a fact sheet describing the proposed fee increase. As part of the 2007 legislative budget process, the Department submitted detailed information about asbestos program funding and the proposed fee increase.

Of the asbestos abatement contractors contacted by department staff, there was nearly unanimous support for raising the fees to maintain the existing staff level and enhance the program by 1.0 FTE

Public Comment

A public comment period extended from July 16, 2007 to August 20, 2007 and included a public hearing in Portland on August 16, 2007. No public comment was received. The Department did respond to questions from a number of abatement contractors who requested information outside of the formal public comment process.

Key Issues

The key issue was: Would the increase in fees result in asbestos removal without a licensed contractor and therefore lead to a greater likelihood of improper removal and potential human exposure to asbestos?

The Department, based upon its conversations with asbestos abatement contractors, determined that the likelihood of that happening was extremely low. The proposed increase is scaled to the size of the asbestos abatement project. The fee for residential projects of any size would increase by \$65. The fee for small commercial and industrial projects would also increase by \$65. The fee for the largest commercial and industrial projects would increase by \$1,000. The fees the Department collects would continue to be a small portion of the total project costs.

The Department also believes that, with additional program resources dedicated to technical assistance and public education, there will be fewer individuals who would knowingly put their health at significant risk by improperly removing asbestos.

Next Steps

Once adopted, these rules will be filed with the Secretary of State with an effective date of December 1, 2007. A delayed effective date was chosen by the Department to allow for adequate notice to the licensed asbestos abatement companies doing business in Oregon.

Attachments

- A. Proposed Rule Revisions
- B. Summary of Public Comments and Agency Responses

- C. Presiding Officer's Report on Public Hearings
- D. Relationship to Federal Requirements Questions
- E. Statement of Need and Fiscal and Economic Impact
- F. Land Use Evaluation Statement

Available Upon Request

- 1. Legal Notice of Hearing
- 2. Cover Memorandum from Public Notice
- 3. Rule Implementation Plan

Approved:

Section: _____

Division: _____

Margaret Michael for Andy Ginsburg

Report Prepared By: Ed Druback
Phone: 503-667-8414 ext 55014



Attachment A

Oregon Administrative Rules Chapter 340, Division 248 - Department of Environmental Quality

Asbestos Abatement Notification Fee Increase

Proposed Rule Changes

340-248-0260

Asbestos Abatement Notification Requirements

Except as provided for in OAR 340-248-0250, written notification of any asbestos abatement project must be provided to the Department on a form prepared by and available from the Department, accompanied by the appropriate fee. The notification must be submitted by the facility owner or operator or by the contractor in accordance with one of the procedures specified in sections (1), (2), or (3) of this rule except as provided in sections (5), (6), or (7).

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

(a) The project notification fee is:

- | (A) ~~\$35100~~ for each project less than 40 linear feet or 80 square feet of asbestos-containing material, a residential building, or a non-friable asbestos abatement project.
- | (B) ~~\$70200~~ for each project greater than or equal to 40 linear feet or 80 square feet but less than 260 linear feet or 160 square feet of asbestos-containing material.
- | (C) ~~\$275400~~ for each project greater than or equal to 260 linear feet or 160 square feet, and less than 1300 linear feet or 800 square feet of asbestos-containing material.
- | (D) ~~\$375525~~ for each project greater than or equal to 1300 linear feet or 800 square feet, and less than 2600 linear feet or 1600 square feet of asbestos-containing material.
- | (E) ~~\$650900~~ for each project greater than or equal to 2600 linear feet or 1600 square feet, and less than 5000 linear feet or 3500 square feet of asbestos-containing material.
- | (F) ~~\$7501050~~ for each project greater than or equal to 5000 linear feet or 3500 square feet, and less than 10,000 linear feet or 6000 square feet of asbestos-containing material.

- | (G) ~~\$1,200~~1,700 for each project greater than or equal to 10,000 linear feet or 6000 square feet, and less than 26,000 linear feet or 16,000 square feet of asbestos-containing material.
- | (H) ~~\$2,000~~2,800 for each project greater than or equal to 26,000 linear feet or 16,000 square feet, and less than 260,000 linear feet or 160,000 square feet of asbestos-containing material.
- | (I) ~~\$2,500~~3,500 for each project greater than 260,000 linear feet or 160,000 square feet of asbestos-containing material.
- | (J) ~~\$260~~750 for annual notifications for friable asbestos abatement projects involving removal of 40 linear feet or 80 square feet or less of asbestos-containing material.
- | (K) ~~\$350~~500 for annual notifications for non-friable asbestos abatement projects performed at schools, colleges, and facilities.

Attachment B

Asbestos Abatement Notification Fee Increase

Summary of Public Comment and Agency Response

Title of Rulemaking: Asbestos Notification Filing Fee Increase

Prepared by: Ed Druback

Date: August 21, 2007

***Comment
period***

The public comment period opened on July 16, 2007 and closed at 5:00 p.m. on August 20, 2007. DEQ held a public hearing on August 16, 2007 at 7:30 p.m. on August 16, 2007 in Portland. Two people attended who asked a few questions before the start of the public hearing. Neither attendee decided to make a public comment once the hearing opened.

The Department did not receive any written comment during the public comment period.

Presiding Officer's Report

Date: August 17, 2007

To: Environmental Quality Commission
From: Sarah Armitage
Subject: Presiding Officer's Report for Rulemaking Hearings
Proposed Asbestos Notification Fee Increase

Hearing Date and Time: August 16, 2007, 7:30 p.m.
Hearing Location: DEQ Conference Room EQC A, Portland

The Department convened the rulemaking hearing on the proposal referenced above at 7:30 p.m. and closed it at 8:30 p.m. People were asked to sign the attendance sheet and registration forms if they wished to present comments. People were also advised that the hearing was being recorded.

Two people attended the hearing. Neither wished to provide an oral comment.

Attachment D

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

RULE CAPTION Asbestos Abatement Notification Fee Increase

The Department of Environmental Quality proposes to increase Asbestos Abatement Notification Fees

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).

1. Are there federal requirements that are applicable to this situation? If so, exactly what are they?

There are no direct federal requirements for adequate funding of the Asbestos Program. However, the asbestos program is one of Oregon's federally delegated programs to implement the National Emission Standards for Hazardous Air Pollutants (NESHAP). The proposed asbestos abatement notification fee increases would fully fund the asbestos program for the next two biennia, or four years. The proposed fee increase would be scaled to the size the asbestos abatement project (from \$65 for small projects to \$1,000 for the largest projects). A fully funded asbestos program would ensure effective compliance with asbestos requirements and continuing delegation of federal asbestos standards.

2. Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?

There are no directly applicable federal requirements for asbestos program funding.

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?

The proposed rule changes incorporate no new federal requirements.

4. Will the proposed requirement (rulemaking) 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?

By providing adequate resources to implement the asbestos program, the proposed rule change would allow the Department to restore funding for asbestos education, inspection, complaint response, enforcement, and outreach to homeowners and small businesses. More timely complaint response, stronger enforcement presence and further outreach would increase certainty for abatement contractors and prevent exposure, violations and penalty actions for the regulated community and the public.

5. Is there a timing issue which might justify changing the time frame for implementation of federal requirements?

There are no timing issues associated with clarifying federal requirements in the proposed rule revisions.

6. Will the proposed requirement (rulemaking) assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?

This question is not applicable to this rulemaking because it would not impose new standards.

7. Does the proposed requirement (rulemaking) establish or maintain reasonable equity in the requirements for various sources? (level the playing field)

The proposed rulemaking maintains equity by scaling the proposed fee increase to the size the asbestos abatement project. The fees would remain a small portion of the total project costs and, in most instances, would be passed on from the asbestos abatement contractor to the building owner. By increasing resources for compliance and technical assistance, the Department expects that contractors and homeowners will spend less money meeting regulatory requirements.

8. Would others face increased costs if a more stringent rule is not enacted?

The proposed rules do not increase stringency. There would be no increased costs to others in the absence of more stringent rules.

9. Does the proposed requirement (rulemaking) 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?

The proposed rules do not differ from applicable federal requirements.

10. Is demonstrated technology available to comply with the proposed requirement (rulemaking)?

The proposed rules impose no new standards or compliance requirements.

11. Will the proposed requirement (rulemaking) contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?

The proposed rule could prevent pollution by providing adequate asbestos program resources for technical assistance and cross media assistance.

Attachment E

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking

Asbestos Abatement Notification Fee Increase

STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT

Rule Caption	Asbestos Abatement Notification Fee Increase
Title of Proposed Rulemaking:	Asbestos Abatement Notification Fee Increase
Stat. Authority or other Legal Authority:	ORS 468A.750(1)(d).
Stat. Implemented:	ORS 468A.707
Need for the Rule(s)	<p>The Department of Environmental Quality's asbestos program has been supported by asbestos contractor license fees and asbestos abatement notification fees. However, the asbestos abatement notification fees are no longer sufficient to cover the cost of the program for two reasons. First, the fees have not been increased since 1995 whereas costs for existing staff have increased. Second, there has been a significant shift from large to smaller asbestos abatement projects over the past few years. The smaller projects generate less fee income but cost almost as much as the larger projects to administer. In addition, the shift to smaller projects has resulted in a need for more assistance and community outreach for homeowners and small businesses to avoid adverse health effects and enforcement for mishandling asbestos.</p> <p>The Department proposed increasing the asbestos abatement notification fees as part of its legislatively approved budget. This proposed rule implements that budget proposal.</p>
Documents Relied Upon for Rulemaking	<p>Documents relied upon to provide the basis for this proposal include:</p> <ol style="list-style-type: none"> 1. 2007-2009 Legislatively Approved Budget 2. Fiscal Year 2008 Projected Asbestos Program Revenue <p>Copies of these documents may be reviewed at the Department of Environmental Quality's office at 811 SW 6th Avenue, Portland, Oregon 97204.</p>
Requests for Other Options	Pursuant to ORS 183.335(2)(b)(G), DEQ requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.
Fiscal and Economic Impact, Statement of Cost Compliance	
Overview	Asbestos abatement projects are specifically defined by OAR 340-248-0010(6), and generally include work on buildings or other structures containing asbestos that may

cause a release of asbestos fibers into the air. Before beginning an asbestos abatement project that is not exempt under OAR 340-248-0250, the owner or operator of the facility, or a licensed contractor, must provide written notice to DEQ and pay the required asbestos notification fee.

Asbestos notification fees pay for numerous activities including: complaint response, inspection of abatement sites, inspection of disposal facilities, enforcement, technical assistance and educational outreach, program administration and laboratory analysis. The notification fees have not been increased since late 1995 and the costs of the program have increased dramatically since that time.

The proposed fee increase would continue to fund the existing level of activities in the asbestos program and increase our technical assistance and educational program by 1.0 FTE. The main purpose of this additional FTE is to provide assistance to local communities regarding the direct link between demolition and remodeling projects in their communities and the potential asbestos related health impacts to their citizens if proper precautions are not taken.

The proposed fee structure is summarized below:

Asbestos Notification Fee Type	Current Fee	Proposed Fee	Difference	Yearly Average*
Abatement <40' or <80sq' or non-friable abatement	\$35.00	\$100.00	\$65	1425
Abatement >=40' or 80sq', <260' or 160sq'	\$70.00	\$200.00	\$130	217
Abatement >260' or 160sq'' <1,300' or 800sq'	\$275.00	\$400.00	\$125	332
Abatement >1300' or 800sq' <2,600' or 1,600sq'	\$375.00	\$525.00	\$150	162
Abatement >2600' or 1600sq' <5,000' or 3,500sq'	\$650.00	\$900.00	\$250	104
Abatement >5,000' or 3,500sq' <10,000' or 6,000sq'	\$750.00	\$1,050.00	\$300	57
Abatement >10,000' or 6,000sq' <26,000' or 16,000sq'	\$1,200.00	\$1,700.00	\$500	55
Abatement >26,000' or 16,000sq' <260,000' or 160,000sq' -	\$2,000.00	\$2,800.00	\$800	30
Abatement >260,000'/160,000sq'	\$2,500.00	\$3,500.00	\$1,000	4
Annual Abatement - friable <40' or 80 sq'	\$260.00	\$750.00	\$490	27
Annual Abatement Non friable/schools, facilities	\$350.00	\$500.00	\$150	25

*Yearly Average is calculated over the previous 4 fiscal years.

Impacts to General public

Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under

	<p>OAR 340-248-0250. Any member of the general public who has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. The Department has no way to determine the number of members of the general public that may desire to abate asbestos in buildings owned or operated by them. Residential abatement projects however pay the lowest fee, and because the Department assumes that members of the general public are most likely to undertake residential abatement projects, the impact on the general public is therefore likely to be lower than for other sectors.</p>	
<p>Impacts to Small Business (50 or fewer employees – ORS183.310(10))</p>	<p>Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under OAR 340-248-0250. Any small business that has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. Typically however, small businesses will have smaller asbestos abatement projects and the impact will be less as the fee schedule is graduated with smaller projects costing less.</p>	
<p>Cost of Compliance to Small Business (50 or fewer employees – ORS183.310(10))</p>	<p>a) Estimated number of small businesses subject to the proposed rule</p>	<p>Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project that is not exempt under OAR 340-248-0250. All small businesses having a nonexempt asbestos abatement project are subject to the proposed rule. However, the Department has no way to determine the number of small businesses that may desire to abate asbestos in buildings owned or operated by them.</p>
	<p>b) Types of businesses and industries with small businesses subject to the proposed rule</p>	<p>All small businesses that have an asbestos abatement project performed on a building or other facility, and that is not exempt under OAR 340-248-0250, are subject to the proposed rule amendments. A broad array of small businesses own and operate buildings and have nonexempt asbestos abatement projects performed.</p>
	<p>c) Projected reporting, recordkeeping and other administrative activities required by small businesses for compliance with the proposed rule, including costs of professional services</p>	<p>The proposed rule amendments do not establish any additional reporting, recordkeeping or other administrative activities.</p>
	<p>d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the proposed rule</p>	<p>The proposed rule amendments do not require any additional equipment, supplies, labor or increased administration. The proposed rule would increase the costs of asbestos abatement projects, but would not change the existing requirements for the equipment, supplies, labor and administration to perform asbestos abatement projects.</p>
	<p>e) A description of the manner in which DEQ involved small businesses were involved in the development of this rulemaking</p>	<p>In the summer and fall of 2006 asbestos staff contacted 20% of the DEQ licensed asbestos abatement contractors to gather their input on the proposed fee increase to gather their input and support for the measure. In December 2006, the Department posted on its website a fact sheet describing the proposed fee increase. As part of its 2007 legislative budget process, the Department submitted to the legislature detailed information about asbestos program funding and the proposed fee increase.</p>

	<p>On July 17, 2007, the Notice of Proposed Rulemaking will be sent by mail or electronically to asbestos abatement contractors and interested parties. The August 16, 2007 public hearing will provide a forum for interested parties to comment on the rule.</p>
<p>Impacts to Large Business (all businesses that are not "small businesses" under ORS183.310(10))</p>	<p>Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under OAR 340-248-0250. Any large business that has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. The Department has no way to determine the number of large businesses that may desire to abate asbestos in buildings owned or operated by them.</p>
<p>Impacts to Local Government</p>	<p>Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under OAR 340-248-0250. Any local government that has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. The Department has no way to determine the number of local governments that may desire to abate asbestos in buildings owned or operated by them.</p>
<p>Impacts to State Agencies</p>	<p>Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under OAR 340-248-0250. Any state agency that has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. The Department has no way to determine the number of state agencies that may desire to abate asbestos in buildings owned or operated by them.</p>
<p>Impacts to DEQ</p>	<p>The Department of Environmental Quality would not incur any additional costs to implement the proposed fee increases. Instead, DEQ would gain additional resources needed to operate its asbestos program.</p>
<p>Impact to Other agencies</p>	<p>Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under OAR 340-248-0250. Any other agency that has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. The Department has no way to determine the number of other agencies that may desire to abate asbestos in buildings owned or operated by them.</p>
<p>Assumptions</p>	<p>Estimated revenue forecasts and expenditures are based on the assumption that the number of asbestos abatement notifications will remain approximately the same as in 2006. The Department projects approximately 2,400 notifications will be subject to these higher fees in the 2007-09 biennium.</p>
<p>Housing Costs</p>	<p>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.</p>
<p>Administrative Rule Advisory Committee</p>	<p>An advisory committee was not convened to develop the proposed rule amendments, because no policy issues were identified and the additional funding is needed to adequately administer the asbestos program.</p>

Attachment F

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Land Use Evaluation Statement

The Department of Environmental Quality proposes to increase Asbestos Abatement Notification Fees

1. Explain the purpose of the proposed rules.

The Department of Environmental Quality's asbestos program has been supported by asbestos contractor license fees and asbestos abatement notification fees. However, the asbestos abatement notification fees are no longer sufficient to cover the cost of the program for two reasons. First, the fees have not been increased since 1995 whereas costs for existing staff have increased. Second, there has been a significant shift from large to smaller asbestos abatement projects over the past few years. The smaller projects generate less fee income but cost as much as the larger projects to administer. In addition, the shift to smaller projects has resulted in a need for more assistance and community outreach for homeowners and small businesses to avoid adverse health effects and civil penalties for mishandling asbestos material.

The Department proposed increasing the asbestos abatement notification fees as part of its legislatively approved budget. This proposed rule implements that budget proposal.

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:

The Department has determined that the asbestos program is not a program that significantly affects land use.

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Not applicable as the Department has determined that neither the asbestos program rules nor the proposed fee increase significantly affect land use.

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.

The Department has determined that neither the asbestos program rules nor the proposed fee increase significantly affect land use. This determination was made based on the fact that the asbestos program charges a notification fee on all asbestos projects performed by licensed abatement contractors irrespective of past, current or future land use(s) of the structure being abated.

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.

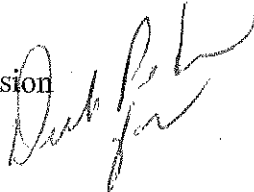
Not applicable as the Department has determined that neither the asbestos program rules nor the proposed increase significantly affect land use.

State of Oregon

Department of Environmental Quality

Memorandum

Date: October 1, 2007

To: Environmental Quality Commission 

From: Stephanie Hallock, Director

Subject: Agenda Item E, Rule Adoption: Asbestos Abatement Notification Filing Fee Increase
October 17, 2007 EQC Meeting

Why this is Important

Asbestos is a hazardous air pollutant, a known carcinogen. There is no known safe level of exposure. DEQ regulates the abatement and disposal of asbestos-containing materials from any public or private building involving demolition, renovation, repair, construction and maintenance activities. The DEQ's asbestos program protects public health and the environment by reducing the amount of asbestos in the air.

The 2007 Oregon Legislature approved an increase in the Asbestos Abatement Notification Filing Fees. The fee increase will allow DEQ to maintain existing staff levels in the program and add one position to provide additional technical assistance and public education about the dangers posed by improper asbestos removal. These rules implement the legislatively adopted budget.

Department Recommendation

The Department recommends that the Environmental Quality Commission (EQC, Commission) amend Oregon Administrative Rule 340-248-0260(1)(a) as presented in Attachment A with an effective date of December 1, 2007.

Background and Need for Rulemaking

The Department of Environmental Quality's (DEQ) asbestos program is supported by asbestos contractor license fees and asbestos abatement notification fees. The asbestos abatement notification fees are no longer sufficient to cover program costs for two reasons. First, the fees have not been increased since 1995 whereas costs for existing staff have increased. Second, there has been a significant shift from large to smaller asbestos abatement projects over the past few years. The smaller projects generate less fee income but cost as much as the larger projects to administer. The shift to smaller projects has resulted in a need for more assistance and community outreach for homeowners and small businesses to avoid adverse health effects and penalties for mishandling asbestos material.

Effect of Rule

By amending the fee structure, the Department's asbestos program will be able to

keep the existing staff and add one additional position to provide technical assistance and public education.

Commission Authority

The Commission has authority to take this action under ORS 468A.750(1)(d). These rules implement ORS 468A.707.

Stakeholder Involvement

In the summer and fall of 2006 asbestos staff contacted a representative sample of the DEQ licensed asbestos abatement contractors to gather their input on the proposed fee increase. In December 2006, the Department posted on its website a fact sheet describing the proposed fee increase. As part of the 2007 legislative budget process, the Department submitted detailed information about asbestos program funding and the proposed fee increase.

Of the asbestos abatement contractors contacted by department staff, there was nearly unanimous support for raising the fees to maintain the existing staff level and enhance the program by 1.0 FTE

Public Comment

A public comment period extended from July 16, 2007 to August 20, 2007 and included a public hearing in Portland on August 16, 2007. No public comment was received. The Department did respond to questions from a number of abatement contractors who requested information outside of the formal public comment process.

Key Issues

The key issue was: Would the increase in fees result in asbestos removal without a licensed contractor and therefore lead to a greater likelihood of improper removal and potential human exposure to asbestos?

The Department, based upon its conversations with asbestos abatement contractors, determined that the likelihood of that happening was extremely low. The proposed increase is scaled to the size of the asbestos abatement project. The fee for residential projects of any size would increase by \$65. The fee for small commercial and industrial projects would also increase by \$65. The fee for the largest commercial and industrial projects would increase by \$1,000. The fees the Department collects would continue to be a small portion of the total project costs.

The Department also believes that, with additional program resources dedicated to technical assistance and public education, there will be fewer individuals who would knowingly put their health at significant risk by improperly removing asbestos.

Next Steps

Once adopted, these rules will be filed with the Secretary of State with an effective date of December 1, 2007. A delayed effective date was chosen by the Department to allow for adequate notice to the licensed asbestos abatement companies doing business in Oregon.

Attachments

- A. Proposed Rule Revisions
- B. Summary of Public Comments and Agency Responses

- C. Presiding Officer's Report on Public Hearings
- D. Relationship to Federal Requirements Questions
- E. Statement of Need and Fiscal and Economic Impact
- F. Land Use Evaluation Statement

**Available Upon
Request**

- 1. Legal Notice of Hearing
- 2. Cover Memorandum from Public Notice
- 3. Rule Implementation Plan

Approved:

Section: _____

Division: _____

*Margaret O'Shane for
Andy Ginsburg*

Report Prepared By: Ed Druback
Phone: 503-667-8414 ext 55014

Attachment A

Oregon Administrative Rules Chapter 340, Division 248 - Department of Environmental Quality

Asbestos Abatement Notification Fee Increase

Proposed Rule Changes

340-248-0260

Asbestos Abatement Notification Requirements

Except as provided for in OAR 340-248-0250, written notification of any asbestos abatement project must be provided to the Department on a form prepared by and available from the Department, accompanied by the appropriate fee. The notification must be submitted by the facility owner or operator or by the contractor in accordance with one of the procedures specified in sections (1), (2), or (3) of this rule except as provided in sections (5), (6), or (7).

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

(a) The project notification fee is:

- (A) ~~\$35~~100 for each project less than 40 linear feet or 80 square feet of asbestos-containing material, a residential building, or a non-friable asbestos abatement project.
- (B) ~~\$70~~200 for each project greater than or equal to 40 linear feet or 80 square feet but less than 260 linear feet or 160 square feet of asbestos-containing material.
- (C) ~~\$275~~400 for each project greater than or equal to 260 linear feet or 160 square feet, and less than 1300 linear feet or 800 square feet of asbestos-containing material.
- (D) ~~\$375~~525 for each project greater than or equal to 1300 linear feet or 800 square feet, and less than 2600 linear feet or 1600 square feet of asbestos-containing material.
- (E) ~~\$650~~900 for each project greater than or equal to 2600 linear feet or 1600 square feet, and less than 5000 linear feet or 3500 square feet of asbestos-containing material.
- (F) ~~\$750~~1,050 for each project greater than or equal to 5000 linear feet or 3500 square feet, and less than 10,000 linear feet or 6000 square feet of asbestos-containing material.

- | (G) ~~\$1,200~~1,700 for each project greater than or equal to 10,000 linear feet or 6000 square feet, and less than 26,000 linear feet or 16,000 square feet of asbestos-containing material.
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- | (K) ~~\$350~~500 for annual notifications for non-friable asbestos abatement projects performed at schools, colleges, and facilities.

Attachment B

Asbestos Abatement Notification Fee Increase

Summary of Public Comment and Agency Response

Title of Rulemaking: Asbestos Notification Filing Fee Increase

Prepared by: Ed Druback

Date: August 21, 2007

***Comment
period***

The public comment period opened on July 16, 2007 and closed at 5:00 p.m. on August 20, 2007. DEQ held a public hearing on August 16, 2007 at 7:30 p.m. on August 16, 2007 in Portland. Two people attended who asked a few questions before the start of the public hearing. Neither attendee decided to make a public comment once the hearing opened.

The Department did not receive any written comment during the public comment period.



Presiding Officer's Report

Date: August 17, 2007

To: Environmental Quality Commission
From: Sarah Armitage
Subject: Presiding Officer's Report for Rulemaking Hearings
Proposed Asbestos Notification Fee Increase

Hearing Date and Time: August 16, 2007, 7:30 p.m.
Hearing Location: DEQ Conference Room EQC A, Portland

The Department convened the rulemaking hearing on the proposal referenced above at 7:30 p.m. and closed it at 8:30 p.m. People were asked to sign the attendance sheet and registration forms if they wished to present comments. People were also advised that the hearing was being recorded.

Two people attended the hearing. Neither wished to provide an oral comment.

Attachment D

State of Oregon DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

RULE CAPTION Asbestos Abatement Notification Fee Increase

The Department of Environmental Quality proposes to increase Asbestos Abatement Notification Fees

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).

1. Are there federal requirements that are applicable to this situation? If so, exactly what are they?

There are no direct federal requirements for adequate funding of the Asbestos Program. However, the asbestos program is one of Oregon's federally delegated programs to implement the National Emission Standards for Hazardous Air Pollutants (NESHAP). The proposed asbestos abatement notification fee increases would fully fund the asbestos program for the next two biennia, or four years. The proposed fee increase would be scaled to the size the asbestos abatement project (from \$65 for small projects to \$1,000 for the largest projects). A fully funded asbestos program would ensure effective compliance with asbestos requirements and continuing delegation of federal asbestos standards.

2. Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?

There are no directly applicable federal requirements for asbestos program funding.

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?

The proposed rule changes incorporate no new federal requirements.

4. Will the proposed requirement (rulemaking) 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?

By providing adequate resources to implement the asbestos program, the proposed rule change would allow the Department to restore funding for asbestos education, inspection, complaint response, enforcement, and outreach to homeowners and small businesses. More timely complaint response, stronger enforcement presence and further outreach would increase certainty for abatement contractors and prevent exposure, violations and penalty actions for the regulated community and the public.

5. Is there a timing issue which might justify changing the time frame for implementation of federal requirements?

There are no timing issues associated with clarifying federal requirements in the proposed rule revisions.

6. Will the proposed requirement (rulemaking) assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?

This question is not applicable to this rulemaking because it would not impose new standards.

7. Does the proposed requirement (rulemaking) establish or maintain reasonable equity in the requirements for various sources? (level the playing field)

The proposed rulemaking maintains equity by scaling the proposed fee increase to the size the asbestos abatement project. The fees would remain a small portion of the total project costs and, in most instances, would be passed on from the asbestos abatement contractor to the building owner. By increasing resources for compliance and technical assistance, the Department expects that contractors and homeowners will spend less money meeting regulatory requirements.

8. Would others face increased costs if a more stringent rule is not enacted?

The proposed rules do not increase stringency. There would be no increased costs to others in the absence of more stringent rules.

9. Does the proposed requirement (rulemaking) 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?

The proposed rules do not differ from applicable federal requirements.

10. Is demonstrated technology available to comply with the proposed requirement (rulemaking)?

The proposed rules impose no new standards or compliance requirements.

11. Will the proposed requirement (rulemaking) contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?

The proposed rule could prevent pollution by providing adequate asbestos program resources for technical assistance and cross media assistance.

Attachment E

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking

Asbestos Abatement Notification Fee Increase

STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT

Rule Caption	Asbestos Abatement Notification Fee Increase
Title of Proposed Rulemaking:	Asbestos Abatement Notification Fee Increase
Stat. Authority or other Legal Authority:	ORS 468A.750(1)(d).
Stat. Implemented:	ORS 468A.707
Need for the Rule(s)	<p>The Department of Environmental Quality's asbestos program has been supported by asbestos contractor license fees and asbestos abatement notification fees. However, the asbestos abatement notification fees are no longer sufficient to cover the cost of the program for two reasons. First, the fees have not been increased since 1995 whereas costs for existing staff have increased. Second, there has been a significant shift from large to smaller asbestos abatement projects over the past few years. The smaller projects generate less fee income but cost almost as much as the larger projects to administer. In addition, the shift to smaller projects has resulted in a need for more assistance and community outreach for homeowners and small businesses to avoid adverse health effects and enforcement for mishandling asbestos.</p> <p>The Department proposed increasing the asbestos abatement notification fees as part of its legislatively approved budget. This proposed rule implements that budget proposal.</p>
Documents Relied Upon for Rulemaking	<p>Documents relied upon to provide the basis for this proposal include:</p> <ol style="list-style-type: none"> 1. 2007-2009 Legislatively Approved Budget 2. Fiscal Year 2008 Projected Asbestos Program Revenue <p>Copies of these documents may be reviewed at the Department of Environmental Quality's office at 811 SW 6th Avenue, Portland, Oregon 97204.</p>
Requests for Other Options	Pursuant to ORS 183.335(2)(b)(G), DEQ requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.
Fiscal and Economic Impact, Statement of Cost Compliance	
Overview	Asbestos abatement projects are specifically defined by OAR 340-248-0010(6), and generally include work on buildings or other structures containing asbestos that may

cause a release of asbestos fibers into the air. Before beginning an asbestos abatement project that is not exempt under OAR 340-248-0250, the owner or operator of the facility, or a licensed contractor, must provide written notice to DEQ and pay the required asbestos notification fee.

Asbestos notification fees pay for numerous activities including: complaint response, inspection of abatement sites, inspection of disposal facilities, enforcement, technical assistance and educational outreach, program administration and laboratory analysis. The notification fees have not been increased since late 1995 and the costs of the program have increased dramatically since that time.

The proposed fee increase would continue to fund the existing level of activities in the asbestos program and increase our technical assistance and educational program by 1.0 FTE. The main purpose of this additional FTE is to provide assistance to local communities regarding the direct link between demolition and remodeling projects in their communities and the potential asbestos related health impacts to their citizens if proper precautions are not taken.

The proposed fee structure is summarized below:

Asbestos Notification Fee Type	Current Fee	Proposed Fee	Difference	Yearly Average*
Abatement <40', <80sq' or non-friable abatement	\$35.00	\$100.00	\$65	1425
Abatement >=40' or 80sq', <260' or 160sq'	\$70.00	\$200.00	\$130	217
Abatement >260' or 160sq'' <1,300' or 800sq'	\$275.00	\$400.00	\$125	332
Abatement >1300' or 800sq' <2,600' or 1,600sq'	\$375.00	\$525.00	\$150	162
Abatement >2600' or 1600sq' <5,000' or 3,500sq'	\$650.00	\$900.00	\$250	104
Abatement >5,000' or 3,500sq' <10,000' or 6,000sq'	\$750.00	\$1,050.00	\$300	57
Abatement >10,000' or 6,000sq' <26,000' or 16,000sq'	\$1,200.00	\$1,700.00	\$500	55
Abatement >26,000' or 16,000sq' <260,000' or 160,000sq' -	\$2,000.00	\$2,800.00	\$800	30
Abatement >260,000'/160,000sq'	\$2,500.00	\$3,500.00	\$1,000	4
Annual Abatement - friable <40' or 80 sq'	\$260.00	\$750.00	\$490	27
Annual Abatement Non friable/schools, facilities	\$350.00	\$500.00	\$150	25

*Yearly Average is calculated over the previous 4 fiscal years.

Impacts to General public

Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under

	<p>OAR 340-248-0250. Any member of the general public who has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. The Department has no way to determine the number of members of the general public that may desire to abate asbestos in buildings owned or operated by them. Residential abatement projects however pay the lowest fee, and because the Department assumes that members of the general public are most likely to undertake residential abatement projects, the impact on the general public is therefore likely to be lower than for other sectors.</p>	
<p>Impacts to Small Business (50 or fewer employees – ORS183.310(10))</p>	<p>Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under OAR 340-248-0250. Any small business that has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. Typically however, small businesses will have smaller asbestos abatement projects and the impact will be less as the fee schedule is graduated with smaller projects costing less.</p>	
<p>Cost of Compliance to Small Business (50 or fewer employees – ORS183.310(10))</p>	<p>a) Estimated number of small businesses subject to the proposed rule</p>	<p>Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project that is not exempt under OAR 340-248-0250. All small businesses having a nonexempt asbestos abatement project are subject to the proposed rule. However, the Department has no way to determine the number of small businesses that may desire to abate asbestos in buildings owned or operated by them.</p>
	<p>b) Types of businesses and industries with small businesses subject to the proposed rule</p>	<p>All small businesses that have an asbestos abatement project performed on a building or other facility, and that is not exempt under OAR 340-248-0250, are subject to the proposed rule amendments. A broad array of small businesses own and operate buildings and have nonexempt asbestos abatement projects performed.</p>
	<p>c) Projected reporting, recordkeeping and other administrative activities required by small businesses for compliance with the proposed rule, including costs of professional services</p>	<p>The proposed rule amendments do not establish any additional reporting, recordkeeping or other administrative activities.</p>
	<p>d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the proposed rule</p>	<p>The proposed rule amendments do not require any additional equipment, supplies, labor or increased administration. The proposed rule would increase the costs of asbestos abatement projects, but would not change the existing requirements for the equipment, supplies, labor and administration to perform asbestos abatement projects.</p>
	<p>e) A description of the manner in which DEQ involved small businesses were involved in the development of this rulemaking</p>	<p>In the summer and fall of 2006 asbestos staff contacted 20% of the DEQ licensed asbestos abatement contractors to gather their input on the proposed fee increase to gather their input and support for the measure. In December 2006, the Department posted on its website a fact sheet describing the proposed fee increase. As part of its 2007 legislative budget process, the Department submitted to the legislature detailed information about asbestos program funding and the proposed fee increase.</p>

		On July 17, 2007, the Notice of Proposed Rulemaking will be sent by mail or electronically to asbestos abatement contractors and interested parties. The August 16, 2007 public hearing will provide a forum for interested parties to comment on the rule.
Impacts to Large Business (all businesses that are not "small businesses" under ORS183.310(10))		Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under OAR 340-248-0250. Any large business that has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. The Department has no way to determine the number of large businesses that may desire to abate asbestos in buildings owned or operated by them.
Impacts to Local Government		Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under OAR 340-248-0250. Any local government that has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. The Department has no way to determine the number of local governments that may desire to abate asbestos in buildings owned or operated by them.
Impacts to State Agencies		Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under OAR 340-248-0250. Any state agency that has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. The Department has no way to determine the number of state agencies that may desire to abate asbestos in buildings owned or operated by them.
Impacts to DEQ		The Department of Environmental Quality would not incur any additional costs to implement the proposed fee increases. Instead, DEQ would gain additional resources needed to operate its asbestos program.
Impact to Other agencies		Asbestos abatement notification fees are charged by the Department when an existing building is having an asbestos abatement project performed that is not exempt under OAR 340-248-0250. Any other agency that has asbestos abated will incur increased costs as shown in the chart above, as determined by the size of the abatement project. The Department has no way to determine the number of other agencies that may desire to abate asbestos in buildings owned or operated by them.
Assumptions		Estimated revenue forecasts and expenditures are based on the assumption that the number of asbestos abatement notifications will remain approximately the same as in 2006. The Department projects approximately 2,400 notifications will be subject to these higher fees in the 2007-09 biennium.
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 rule amendments, because no policy issues were identified and the additional funding is needed to adequately administer the asbestos program.

Attachment F

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Land Use Evaluation Statement

The Department of Environmental Quality proposes to increase Asbestos Abatement Notification Fees

1. Explain the purpose of the proposed rules.

The Department of Environmental Quality's asbestos program has been supported by asbestos contractor license fees and asbestos abatement notification fees. However, the asbestos abatement notification fees are no longer sufficient to cover the cost of the program for two reasons. First, the fees have not been increased since 1995 whereas costs for existing staff have increased. Second, there has been a significant shift from large to smaller asbestos abatement projects over the past few years. The smaller projects generate less fee income but cost as much as the larger projects to administer. In addition, the shift to smaller projects has resulted in a need for more assistance and community outreach for homeowners and small businesses to avoid adverse health effects and civil penalties for mishandling asbestos material.

The Department proposed increasing the asbestos abatement notification fees as part of its legislatively approved budget. This proposed rule implements that budget proposal.

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:

The Department has determined that the asbestos program is not a program that significantly affects land use.

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Not applicable as the Department has determined that neither the asbestos program rules nor the proposed fee increase significantly affect land use.

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.

The Department has determined that neither the asbestos program rules nor the proposed fee increase significantly affect land use. This determination was made based on the fact that the asbestos program charges a notification fee on all asbestos projects performed by licensed abatement contractors irrespective of past, current or future land use(s) of the structure being abated.

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 as the Department has determined that neither the asbestos program rules nor the proposed increase significantly affect land use.



Oregon

Theodore Kulongoski, Governor

Department of Environmental Quality

Headquarters

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October 23, 2007

Mary Cullinan
Office of the President
Churchill 125
1250 Siskiyou Boulevard
Ashland, OR 97520

Dear President Cullinan,

Congratulations to Southern Oregon University's Sustainability Council and to Students for a Sustainable Future for the landmark "Green Energy Fee" program. Judy Uherbelau, who is an Environmental Quality Commissioner, briefed me and others on SOU's efforts to reduce global warming and protect the environment with the innovative Green Energy Fee program at Southern Oregon University, and your work with the university Sustainability Council to promote conservation of natural resources and the creation of sustainable practices and programs on campus.

Your Web site notes that SOU's student body is committed to civic engagement, and your motivated, action-oriented, and environmentally astute students who led the "Green Tag" program illustrate this attribute admirably. Like you, I hope that other universities will follow your lead.

Thank you and your students for all you are doing for Oregon's—and the global—environment. Oregon is seen as the nation's leader in environmental protection, and your efforts contribute to the state's environmental leadership.

Sincerely,

Stephanie Hallock
Director
Department of Environmental Quality

cc: Members of the Environmental Quality Commission
Helen Lottridge
Laura Rost, Students for a Sustainable Future

SOU SUSTAINABILITY COUNCIL ANNUAL REPORT

In response to growing interest worldwide and the many environmental enhancement activities in our region as well as on campus, this past fall President Mary Cullinan established the SOU Sustainability Council. Her appointments to the Council included:

Jonathan Eldridge, Vice President for Student Affairs
Eric Dittmer, Environmental Studies Faculty, Emeritus
Larry Blake, Associate Vice President for Facilities Management and Planning
Jared Fuhrman, Utility Plant Supervisor
Dee Perez, Director of Community Based Learning
Steve Schein, Assistant Professor, School of Business
Tom Marvin, Physics Faculty, Emeritus
Alex Golden, Student
Laura Rost, Student

Eric Dittmer was appointed Council Chair. Recently Bill Smith VP for Residential Housing was added.

A Quote from the President's memo establishing the Council states:

"I am pleased to appoint you to the new SOU Sustainability Council for 2007-08. This appointment is effective March 12, 2007, through June 2008. The Sustainability Council will be a University-wide group appointed to (1) advise me and the Executive Council in matters relating to sustainability and environmental impact; (2) promote environmental stewardship; (3) coordinate efforts of individuals and groups on campus; and (4) educate the campus community about sustainable practices.

*The charge of the Council is to: Lead through example by promoting the incorporation of environmental concerns in University decisions
Promote conservation of natural resources to the best of our ability and the creation of sustainable practices and programs on campus
Educate our community about the necessity of sustainable environmental practices and ecologically friendly economics
Identify and support research areas and topics for faculty and students
Build relationships with local governments, businesses, and local citizens in order to promote environmentally sound practices within the region
Know and understand local, national and international programs to ensure that our environmental practices and policies adhere to or exceed the global vision for a sustainable future."*

Council Activities 07-08

Sustainability Council activities began with an assessment of conservation, environmental enhancement and sustainable activities currently underway at SOU. For example,

- Jared Fuhriman has been very successful in assessing and finding ways to conserve our energy usage. Savings to date compared with previous years have exceeded \$200,000, a remarkable achievement!
- Student environmental enhancement projects on campus were reviewed. These include organic garden and xeroscaping projects. Bicycle clinics and availability, water and energy conservation promotion as well as recycling activities.

In order to promote sustainability at SOU, the Council has been working with the city of Ashland Conservation Division on water and energy conservation, Bonneville Environmental Foundation on promoting "Green Tags" offsets and Ashland Sanitary on recycling opportunities.

The Council is currently facilitating the implementation of the student initiated "Green Tag" project. Following an intensive campaign this spring the SOU student body voted to add about \$10/term/student to student activity fees to offset both electricity and natural gas energy usage. The Council is also working to coordinate recycling activities on campus. While recycling activities are extensive, student involvement, for example, lacks consistency due to annual turnover and graduations one of the Council's first priorities.

For the coming year the Council will be establishing policies regarding recycling, purchasing, transportation, energy & water conservation. There will a "Kick-off" event in September to declare sustainability as an integral part of SOU's philosophy and operations. The President will be signing on to the American College and University Presidents Climate Commitment joining 284 other colleges and universities which promise to address activities the will reduce our green house gas emissions.

It is clear the SOU is taking a proactive stance on sustainability, both in its ongoing practices and by establishing short and long term goals to enhance the effort in the future.

Press Release

SOU Students for Sustainable Future

Laura Rost
Students for a Sustainable Future
541.292.2581
rostl@students.sou.edu



April 27, 2007

Southern Oregon University Student Body Votes to Instate Green Energy Fee

SOU in Ashland, Ore. becomes first campus in the state to offset 100% of its electricity use and natural gas emissions with renewable energy

This week during a campus wide vote the Southern Oregon University (SOU) student body approved of a Green Energy Fee to offset 100% of SOU's energy consumption, including electricity and natural gas used to power all university facilities. The majority vote was 85% percent in favor of the Green Energy Fee. With this vote, SOU will become the first Oregon campus to offset all of its electricity and natural gas with renewable energy added to the grid.

Led by Students for a Sustainable Future (SSF), a student coalition dedicated to encouraging green energy use on campus, the Green Energy Fee referendum is the result of several months of research and work. In November 2006, the group of students began meeting to explore how SOU could join universities nationwide that are taking steps to offset their energy consumption through various green power programs.

Building on the models used by other regional universities purchasing clean energy, such as Western Washington University and Evergreen State College, SSF agreed that the democratic process would be the best way to push a Green Energy Fee forward. With a majority vote of the student body, SOU students would themselves decide if their campus will offset its energy consumption with renewable energy.

A question that SSF discussed early on was exactly what should be offset, deliberating whether to pursue offsetting 100% of the electricity, or to go smaller, maybe 25% or 50%. Another idea considered was going beyond just offsetting electricity and offsetting the carbon dioxide emitted by the natural gas used to heat and cool the school. **SSF members decided to "go big," to pursue what no other school in Oregon is yet doing: offsetting 100% of electricity and natural gas.**

Working with SOU Facilities Management, SSF determined the amount of energy used at SOU in 2006. Jared Fuhriman, Utility Plant Supervisor, acquired electricity and natural gas data for the entire campus over the past year: 13,764,855 kilowatt-hours of electricity and 969,464 therms of natural gas.

Next, SSF worked with the Bonneville Environmental Foundation to calculate that 21,872 Green Tags, or renewable energy certificates (RECs), would be needed to offset SOU's kilowatt hour usage, plus the carbon dioxide emitted by natural gas consumption. One Green Tag represents 1,000 kilowatt-hours of electricity produced by a renewable energy facility, like a wind farm or solar project.

Once the energy data and amount to offset were calculated, SSF created a petition statement and a formal proposal in order to have the Green Energy Fee referendum added to the ballot during annual Spring elections for student government. The petition statement reads:

"We the students of Southern Oregon University (SOU) resolve to assess all students a 'Green Energy' fee not to exceed \$15 per term. This fee will purchase 100% renewable energy credits (RECs) to offset all natural gas and electricity consumed at SOU starting in Fall 2007. This fee will expire unless renewed at the end of the 2011-2012 academic year. The RECs are to be Green-e certified and purchased through a 501(c)(3) nonprofit."

Over the course of four weeks, SSF members far exceeded the minimum number of 500 signatures needed create a campus wide Green Energy Fee vote, acquiring over 650 signatures. The signatures were certified by the University, and the Green Energy Fee Referendum was added to the ballot.

By passing the Green Energy Fee with a majority of the voting student body, SOU demonstrates its commitment to curb the advance of climate change, build a clean energy infrastructure and encourage regional economic development. It also establishes SOU as leader in sustainability for our community and for other universities.

SSF will continue working on this project during summer session in an effort to begin the Green Energy Fee by the Fall 2007 term.

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SOU Green Tags
The Process

The process for the purchase of renewable e
100% of the natural gas and electricity consumed at
November of 2006. Eric Dittmer, the Chair of the F
was informed that Paige Prewett of Bonneville Env.
willing to dedicate time to helping SOU offset all o
Green Tags. Eric spoke to Laura Rost, an Environn
they gathered together interested students. The students formed the organization Students
for a Sustainable Future (SSF). Jared Fuhrman, Utility Plant Supervisor for SOU
Facilities Management and Planning, gathered data on electricity and natural gas
consumption. Paige processed the data to determine how many Green Tags would offset
the consumption rate and how much it would cost per student.

Item F

offset
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After reviewing the cost per student, SSF determined to offset 100% of both gas
and electricity. SSF reviewed Senate bylaws and chose to petition the students to put
Green Tags on the annual ballot. SSF went to classrooms, clubs and tabled at the
Stevenson Union and Library to educate students about Green Tags. After less than one
month of petitioning, SSF gathered well over the 5% of student signatures required to get
Green Tags on the ballot. SSF gave out hundreds of stickers to students to show support
for the ballot initiative. At the end of April the vote was held and the Green Tag ballot
passed by 85%. Currently, BEF is working with the administration to SOU is now the
first school in Oregon to offset 100% of both natural gas and electricity, and one of the
first schools in the nation to do so.

Students for a Sustainable Future (SSF)
Go Green! Fee
2007

Here are some of the main ways we presented green tags to students:

-We want SOU to be the FIRST state university in Oregon to be 100% offset (gas and electricity). This is great for publicity and recruitment. As enrollment goes up, the cost to buy green tags per student drops.

-It shows that we support the economic and health benefits of "green" energy sources. Solar and wind create jobs in rural regions of our state and region. They are two of the cleanest power sources available.

-We will be "greening" the power grid. Our electricity is part of a huge system called the Western Grid. Think of it like a big pool of electrons. Electricity producers are paid to dump their electricity into that pool. By investing in green tags, more "green" electricity can be dumped in, thus greening the overall system. In other words, we do not get the green power directly, we share those electrons with the rest of the grid.

-By buying Green Tags in bulk, we save a lot of money. With our purchase, distributors of green power know they have a steady demand and buyers can offer longer-term contract to buy green energy, creating a growing, stable market.

-It is cheaper to invest in regional green power setups rather than putting solar panels, etc. on buildings at SOU. Industrial-sized solar and wind farms are cheaper per kilowatt hour than if we were to buy, install, and maintain our own system at SOU.

-We are creating a large demand for green energy. A population our size is a significant investment in green power for our region. Investing in green power lowers the cost for everyone and encourages more green energy development.

EQC

10/03/06

To: Audrey OBrian

Tim Spencer

From: John Frederick

Subject: Grabhorn Landfill

Neighborhood issues and concerns

I mentioned a couple of months ago at our meeting with DEQ that I would send you some documentation of why our neighborhood is so upset and concerned about this situation. I have left out many documented exhibits because they were more directed toward county issues. I am available to discuss any of our concerns with you at your convenience.

Neighbors are having a very difficult time trying to understand how two government agencies established to protect our rights as citizens could allow the Grabhorn landfill to get so far out of control. There are several areas that are particularly hard for us to deal with.

Neighbors cannot understand how a one acre dump site, established by Mr. Grabhorn for his personal use, (to dispose of debris from his demolition business) could change to a full blown commercial business located on exclusive farm use land without approval of either DEQ or Washington County. Mr. Grabhorn claims he has grandfather rights because the dump site started before the 1962 landuse laws became effective. Mr. Grabhorn relinquished any grandfather rights he may have had when he let commercial haulers illegally use his private dump site in the 1974-76 era, twelve years after the 1962 landuse law was established.

DEQ permit #214 did not allow for this to take place but DEQ chose to ignore it and did not even contact Washington County about the change to a for-profit commercial business.

Many time^s we were told by Washington County that the landfill was about to close. Documents obtained from DEQ also misled the neighborhood into thinking closure was imminent

We were assured by both DEQ and the county that the landfill would be closed by 1997 but instead we inherited the largest expansion in the history of the landfill when DEQ allowed Mr. Grabhorn to open his permit #214 at midterm. DEQ rubber stamped a footprint that allowed the landfill to rise 50 to 80 feet above surrounding farms, thus creating a public nuisance beyond imagination. *NOTE: DEQ ALSO ALLOWED THE DUMP TO EXPAND 280' TO THE NORTH WITHOUT CONSULTING WITH THE COUNTY*

All of this was done by DEQ behind closed doors without public notice, hearings or even input from the county and to top it all DEQ did it to us again in 1998 by issuing a compost facility permit without county or public input. To make things even worse, DEQ called the 1997 fiasco a ten year permit renewal. The 1992 DEQ permit #214 was to expire in 2002. This would have allowed us to be heard at the 2002 renewal. The results could have effected the outcome of hearings being held at the county level.

Neighbors cannot figure out how DEQ and the county can jointly make so many mistakes. Your lack of attention to your own rules, laws and regulations has damaged our community severely and maybe beyond repair.

It is time for DEQ and the county to form a working relationship to address all issues concerning our community and to revisit the mistakes made and find acceptable solutions.

“DO IT NOW, NOT LATER” .

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMO

cc: Solid Waste Mgmt. Div.

~~REG~~ Gilbert, TRBISpham, CHeney

Date: 11/13/75

DMBush *DMB*

Subject: Lakeside Reclamation - SW - Washington County - Permit No. 214

On 11/10/75 I made an inspection of Lakeside Reclamation. Mr. Grabhorn, the permittee, was present and accompanied me on this inspection. The following observations were made:

The wastes being deposited consisted mostly of land clearing debris (soil, rock, stumps, etc.) and some building demolition materials. However, a few tires were found present. This matter was brought to the operator's attention with a request for removal. Mr. Grabhorn explained that this probably occurred as a result of building demolition operations in which the presence of tires in a load can easily be overlooked. It was recommended to survey building demolition materials for the presence of tires and other "unapproved" materials before compacting, etc. This was acknowledged.

It was noted that some independent haulers were utilizing this landfill. The wastes they were observed to be depositing consisted mostly of land clearing materials (soil and rock). To this Mr. Grabhorn explained that in most instances these "independents" are under contract with Grabhorn, Inc. He did explain that occasionally a private contractor does utilize the facility but that he limits such activity. In this regard, according to the permit, the materials to be deposited in this modified landfill are to be solely those from Grabhorn, Inc. It appears this may not always be the case. In any event, at present no problem in operation appears to exist as a result.

On the left side of the access road in the area labeled B, some "hot spots" were found developing as evidenced by steam emitting from openings in the sidewall. It was found that to date the sidewall has not been fully covered with fill, leaving a few areas with stumps present exposed. This portion of the landfill is nearly complete and at the present time clean soil cover material is being stockpiled upon it awaiting an improvement in the weather in order that the final cover can be completed. It was explained that the soft, muddy conditions make it near impossible for heavy equipment to be operated properly. The expressed intentions are to final this portion of the landfill as soon as weather permits.

In general, this modified landfill appears to be operating according to plan and in a satisfactory manner. The matter of independents utilizing this facility should be investigated further to see if a conflict with the provisions of the permit exists.

/mmw

DEQ
PLEASE READ
PAGE 2

Mike Sandberg - See Bill WASHINGTON COUNTY EXHIBIT

Inter-Department Correspondence

Date Oct. 30, 1987

To : Bruce Warner, Director of Land Use and Transportation
From : Brent Curtis, Acting Land Development Manager
Subject : GRABHORN LANDFILL: CURRENT STATUS

As you are aware, this is the third memo on this subject this past month (see Attachments A and B).

Several weeks ago, Bill Avery visited the site and spent at least half an hour with Howard Grabhorn. Since then he has talked to Mr. Grabhorn, DeMar Batchelor, and Dick Ponzi (twice) on the phone and has met with Mike Sandberg. It is pretty well understood at this time that the status of the Grabhorn Landfill depends on the date that Tax Lot 2302 on Tax Map 2S2 12 was first utilized as a landfill by Grabhorn, Inc.

Based on these conversations and meetings and additional research, staff believes the following:

1. Tax Lot 2302 was zoned F-1 on December 31, 1962.
2. If landfill-type activity occurred before that date, the current operation is non-conforming and it has not expanded illegally.
3. If landfill-type activity first occurred after December 31, 1962, Grabhorn, Inc. should obtain approval from the Land Development Section for some type of approval for an expansion of their original landfill activity (which took place on Tax Lot 900 on Tax Map 2S1 7).
4. Because the original dike was constructed many years prior to any landfill activity (although enhanced by Mr. Grabhorn), the site is not subject to County flood plain regulations.
5. The current landfill operation was started at least ^{thirty}~~twenty~~ years ago.
6. Tax Lot 2302 was purchased by Grabhorn, Inc. in 1974.

Before the department can proceed any further, we will need some sort of documentation as to the original date of landfill activity on Tax Lot 2302. Mr. Grabhorn told Bill Avery that it was in the early 1960s and Mr. Ponzi claims there was no activity prior to 1970 (at the time he purchased Tax Lot 800 on Tax Map 2S1 7). However, Mike Sandberg is positive that there was

Age 2 - Bruce Warner
GRABHORN LANDFILL: CURRENT STATUS
October 30, 1987

considerable activity on Tax Lot 2302 in 1968 or 1969 (subsequent to his employment by Washington County in 1967). He personally visited the site and it is apparent the Grabhorn Landfill has been in operation for at least ~~twenty~~ ^{thirty} years.

Whether or not any land use approval is required will require more research and documentation. It would seem to be a moot point since Grabhorn, Inc. is in the process of receiving its final closing plan (it is expected to be completed within seven years or less) from DEQ and the County Health Department.

grbhrnba/ja

attachments

MR. SANDBERG'S
OBSERVATION & THE
PONZI LETTER CLEARLY
PROVES TAX 2302
WAS NOT USED FOR

LANDFILLING
BEFORE 12/31/1962.
MR. GRABHORN NEEDED
PERMITS AND LANDUSE
APPROVALS - HE HAD
NONE.

CH2M HILL REPORT
AUGUST 1989

Table 2-1
LAKESIDE RECLAMATION
HISTORICAL VOLUME OF WASTE RECEIVED

<u>Year</u>	<u>Number of Loads</u>	<u>Cubic Yards Loose</u>	<u>Cubic Yards Compacted</u>	<u>Total Tonnage</u>
1986	14,037	291,108	20,040	40,400
1987	14,521	295,205	25,379	42,000
1988	15,641	316,788	34,985	46,600

Source: Solid waste reports filed with Metro and CH2M HILL calculations. The tonnage estimates differ from the amounts shown on pages 1-2, 1-3 and 2-1 because different density estimates are used by Metro to compute tonnages.

Based on expected volumes of waste, the remaining life of the landfill is approximately 8 years. The accuracy of this estimate depends on the actual amount of waste received, which may change significantly based on future Metro solid waste management goals and policies.

Table 2-2 shows the expected waste volumes at the Lakeside landfill in the 1989-1995 period. The landfill is expected to close in 8 years if an average 64,500 tons of material are deposited annually. Lakeside Reclamation and CH2M HILL estimate that approximately 15 percent of the waste material received at the landfill could be recycled, as calculated in Table 2-2. Lakeside Reclamation is actively pursuing recycling of brush and stumps to order to extend the life of the landfill and is in the process of investing approximately \$500,000 in recycling equipment. Recycling operations at Lakeside Reclamation would aid in meeting Metro area solid waste management goals, which include recycling of materials that cannot be reused.

LATER RECORDS INDICATE THAT VOLUMES OF WASTE DEPOSITED WERE MORE THAN EXPECTED SO THE LANDFILL SHOULD HAVE CLOSED IN LESS THAN 8 YEARS. (BEFOR 1997)

WASHINGTON COUNTY'S POSITION

THIRD ASSIGNMENT OF ERROR

THIS ASSIGNMENT OF ERROR MUST BE DENIED BECAUSE:

- (a) The county is not bound by general compatibility findings in an unnoticed LUCS from 1991;
- (b) Under OAR 340-018-0050(2)(b)(B)(i) a new LUCS was required for the 1998 DEQ Renewal Permit;
- (c) The Hearings Officer is not bound by a prior LUCS determination;
- (d) State law does not pre-empt local land use regulations; and
- (e) The LUCS does not apply because it was submitted for purposes of approving a DEQ permit that is now expired.

Petitioner-Grabhorn alleges under this assignment of error that the County is bound by the Solid Waste Disposal Site Permit issued by DEQ on June 16, 1993 ("1993 DEQ Permit Renewal") and the associated 1991 LUCS. Therefore it is precluded from reviewing whether the current use of the property based on a subsequent application is a nonconforming use.

- (a) The county is not bound by general compatibility findings in an unnoticed LUCS from 1991.

The coordination of Solid Waste Disposal Permits and land use compatibility is specifically addressed under the State Agency Coordination Program. OAR Chapter 340, Division 18. Issuance of Solid Waste Disposal Permits is listed under OAR 340-018-0030 as an action that has a significant impact on land use. Under OAR 340-018-0050(1) a Solid Waste Disposal Permit "shall be compatible with local government acknowledged comprehensive plans to the extent required by law." Consequently it is the local land use regulations that trump the DEQ permit rather than vice versa.

The 1991 LUCS was issued without any permit defining the nature and extent of the use as required by ORS 215.130(5) *et seq.* and Chapter 440 of the Community Development

1 Code. The 1991 LUCS improperly checked the section permitting the landfill operation as a
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3 conditional use or review requirements which require public notice." Record-2004, p.4347.
4 Consequently although the 1991 LUCS was a "permit" because it involved a discretionary
5 decision regarding the use and development of property under ORS 215.402(4), it was not a
6 substitution for a nonconforming use determination as required by Chapter 440 of the
7 Washington County Community Development Code.

8 This is consistent with OAR 660-031-0026(2)(b)(B)—where a permit is required in
9 addition to a LUCS the county is required to notify DEQ and DEQ is in turn required to notify
10 the applicant. Neither the issuance of the 1993 DEQ Permit nor its reliance on the 1991 LUCS
11 is a substitute for a nonconforming use permit. As such the county is not bound by either in a
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20 of the landfill.
21
22

1 The 1998 DEQ Permit Renewal expressly requires compliance with the 1997
2 Development and Closure Plan Update. Supplemental Record-2004, p.113 and 125. The 1997
3 Development and Closure Plan Update revises the prior development plan to:

4 " * * * re-grade the north area by extending the existing
5 final grading approximately 280 feet to the north."

6 Record-2004, p.3969. Consequently, the 1998 DEQ Permit Renewal included a physical
7 expansion of the operations. Compare also the 1993 final grading plan issued with the 1993
8 DEQ Permit (Record-2004, p.3961) with the 1997 final grading plan issued with the 1998
9 DEQ Permit Renewal (Record-2004, p.3999). OAR 340-018-0050(2)(b)(B)(i) states that a
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11 "The permitted source or activity relates to the use of
12 additional property or a physical expansion on the
13 existing property."

14 As such a new LUCS was required; DEQ was in error in relying on the 1991 LUCS.

15 Where a Solid Waste Disposal Permit is based on improper reliance on an outdated
16 LUCS, DEQ may revoke or suspend a permit, initiate meetings with the county, apply for the
17 necessary land use permits, or appeal the county's decision denying the use. OAR 340-018-
18 0050(2)(H) or OAR 340-018-0060. DEQ is also expressly permitted to initiate a modification
19 of a Solid Waste Disposal Permit OAR 340-093-0113 to address compliance with land use
20 laws. As a result neither DEQ nor the county are bound by the initial LUCS; the state agency
21 coordination rules are flexible enough to permit adjustments to existing permits to assure
22 ongoing compliance with the acknowledged comprehensive plan.

Oregon DEQ

[Home](#) > [Programs](#) > [Cleanup & Spills](#) > [ECSI Query](#) > [ECSI Site Details](#)



Environmental Cleanup Site Information (ECSI) Database Site Summary Report - Details for Site ID 4413

This report shows data entered as of July 19, 2005 at 2:48:17 PM

This report contains site details, organized into the following sections: 1) Site Photos (appears only if the site has photos); 2) General Site Information; 3) Site Characteristics; 4) Substance Contamination Information; 5) Investigative, Remedial and Administrative Actions; and 6) Site Environmental Controls (i.e., institutional or engineering controls; appears only if DEQ has applied one or more such controls to the site). A key to certain acronyms and terms used in the report appears at the bottom of the page.

Go to [DEQ's Facility Profiler](#) to see a site map as well is information on what other DEQ programs may be active at this site.

Site Photos

Click to View Photo	Picture Date	Caption	Size
View Photo	06/01/2005	Lakeside Reclamation Landfill located on ODOT Highway Map of Washington County	144 Kb
View Photo	06/01/2005	Lakeside Reclamation Landfill located on USGS 7.5-minute Topo Map	115 Kb
View Photo	06/02/2005	Lakeside Reclamation Landfill depicted in 2000 air photo.	82 Kb

General Site Information

Site ID: 4413	Site Name: Lakeside Reclamation Landfill	CERCLIS No:
Address:	14930 SW Vandermost Rd Beaverton 97007	Region: Northwest
	County: Washington	
Other location information:	Township 2 S, Range 2 W, Section 12 A and D. Tax lots 100 (reference parcel 2S212 00100) and 2302 (reference parcel 2S21200 02302) of T2S/R2W-S12, and tax lot 900 (reference parcel 2S10700 00900) of T2S/R1W-S7. Located near Kinton, on the northern bank of the Tualatin River, and on the western foothills of Bull Mountain. The peak of Bull Mountain lies 2.1 miles east-northeast of the site; King City lies about 0.75 to the east; Beaverton lies about 1.5 miles to the northeast; Sherwood lies about 2.5 miles south-southeast. Ponzi Vineyards borders the site on the east and northeast. SW Scholls Ferry Road (Hwy 210) lies about 0.5 mile north of the site. Clark Hill lies 1.15 miles to the west-northwest. The site is 126.2 acres, overall; the actual landfill area as of 2004 is claimed to be 32.6 acres.	
Investigation Status:	Suspect site requiring further investigation	NPL Site: No
Property:	Twtnshp/Range/Sept: 2S , 2W , 12	Orphan Site: Study Area: No
	Latitude: 45.4113 deg.	Tax Lots: 100, 2302, 900
	Longitude: -122.8681 deg.	Site Size: 126.2 acres
Other Site Names:	Grabhorn Landfill	

Site Characteristics

General Site Description:	A DEQ Solid Waste permitted, limited purpose, <u>unlined demolition and land clearing debris landfill and composting facility</u> that has operated since 1957. The operation was not permitted by DEQ until 1972.
Site History:	The landfill has been active since 1957, operating unpermitted through 1972. Even after a Solid Waste Disposal Permit was issued for the site, periodic compliance inspections noted frequent disposals of unpermitted materials.
Contamination	(5/17/05 SMF/SAP) Site groundwater contamination could represent a significant

Information: threat to local well water users and to aquatic life in the Tualatin River.

Groundwater has been contaminated with concentrations of nitrates, antimony, arsenic, cadmium, chromium, lead, silver, zinc, and bis-(2-ethylhexyl)phthalate that have periodically exceeded Drinking Water Maximum Contaminant Levels (MCLs).

Groundwater concentrations of iron, manganese, nitrate, antimony, arsenic, chromium, vanadium, zinc, benzene, bis-(2-ethylhexyl) phthalate, 1,1-dichloroethane, tetrahydrofuran, and vinyl chloride have periodically exceeded EPA Region IX Tap Water PRGs.

Groundwater concentrations of aluminum, cadmium, chromium, copper, and zinc have periodically exceeded the federal recommended CMC (acute toxicity) for freshwater aquatic life.

Groundwater concentrations of alkalinity, ammonia, chloride, pH, boron, iron, manganese, lithium, aluminum, barium, cadmium, chromium, cobalt, copper, lead, nickel, selenium, silver, vanadium, zinc, bis-(2-ethylhexyl)phthalate, carbon disulfide, 1,1-dichloroethane, and toluene have periodically exceeded either DEQ's Level II Ecological Risk Assessment Screening Values for freshwater aquatic life or the federal recommended CCCs (chronic toxicity) for freshwater aquatic life.

In addition to construction and land clearing debris, the landfill is also known to have received non-hazardous industrial waste sludge from the Tektronix wastewater treatment plant (1980), aluminum oxide grit used to polish Tektronix fiberglass circuit boards, copper-contaminated pre-filters from the Tektronix chelate fluoride ion exchange system, and copper-contaminated dust collector material from the Tektronix fiberglass circuit board drilling operations (1983). DEQ Solid Waste permit compliance inspections have also noted a variety of other prohibited materials in the fill, including auto tires, a smashed auto body, cafeteria wastes, household garbage, a substance used for heat-treating metals, cardboard, plastic, glass, metal, closed paint cans, oil filters and jugs of used motor oil, clothing, electric fans, mattresses, casting sands, baghouse dust, and slag from Western Foundry (ECSI #185), and chromium-containing sludge ash from the USA Durham STP. Casting sands from Western Foundry are known to have contained zirconium which has low level nuclear radiation. Dusts associated with Western Foundry operations have contained elevated concentrations of arsenic, cadmium, chromium, copper, lead, and zinc.

*

DEQ issued the site a Notice of Non-Compliance (NON) in 2002 for unauthorized disposal of 630 tons of contaminated soils and chromium-treated animal hide splits originating at the Frontier Leather site (ECSI #116). The soils and hide splits were subsequently removed and sent to Hillsboro Landfill for disposal.

Because of large volumes of land clearing debris, including tree stumps, multiple historic reports of small quantities of wet garbage (1978-85 compliance inspections; 1992 NON; 2002 NON), as well as a historic report of smoke venting from the landfill subsurface (1976 compliance inspection), it seems very plausible that the landfill may be generating methane gas.

Manner and Time of Release:

Groundwater contamination may be attributable to unpermitted disposals of hazardous substances. Static water level measurements at the site's monitoring wells indicate that contaminated groundwater is probably discharging to the Tualatin River. Methane could be generated by organic matter disposals at the site (tree stumps, land clearing debris, lumber, food wastes, and wet garbage).

Hazardous Substances/Waste Types:

Groundwater contaminants of concern at the site include metals (Ag, Al, As, B, Ba, Cd, Co, Cr, Cu, Fe, Hg, Mn, Ni, Pb, Sb, Ti, V, and Zn), VOCs (benzene, carbon disulfide, 1,1-DCA, THF, toluene, vinyl chloride, and xylenes), SVOCs (bis(2-

ethylhexyl)phthalate, and 1,2,3-trichlorobenzene), cyanide, ammonia, nitrates, pH, and chlorides. It is also very likely that elevated concentrations of methane are present in the site's subsurface.

Pathways:

Contaminant exposure pathways of greatest concern include human consumption of contaminated groundwater, exposure of birds, mammals, and aquatic life (including Threatened and Endangered salmonid species) in Tualatin River to contaminated groundwater which probably discharges to the river. Contaminated groundwater discharging to the river could contaminate both surface water and surface water sediments. Methane may be present in the site's subsurface at concentrations that could represent a potential fire or explosion hazard for nearby confined spaces such as residences, workshops, garages, or other outbuildings.

Environmental/Health Threats:

Contaminated groundwater represents a potential health threat to nearby consumers of well water. Discharges of contaminated groundwater to the nearby Tualatin River represent a potential threat to the river's bird, mammal, and aquatic life populations (including Threatened and Endangered salmonids). Subsurface methane, if present in sufficient concentrations, could represent a fire or explosion threat in nearby confined spaces such as residences, workshops, garages, or other outbuildings.

Status of Investigative or Remedial Action:

(5/17/05 SMF/SAP) The landfill is believed to have opened in about 1957, prior to the time that the state's Conforming Land Use law took effect in 1962. Operations originally involved parts of five different tax lots. DEQ notified the operator in July 1972 that a Solid Waste Disposal Site permit would be needed. It was converted from a private demolition debris landfill to a commercial facility in 1976, without county knowledge or a land use permit.

Data Sources:

DEQ Solid Waste Permit files for Lakeside Reclamation Landfill.

Substance Contamination Information

Substance	Media Contaminated	Concentration Level	Date Recorded
ACETONE	Groundwater	27.4 ppb in groundwater at well MW-4	4/21/1997 9:33:53 AM
ALUMINUM	Groundwater	34900 ppb in groundwater at well MW-8	11/24/1997 1:54:51 PM
AMMONIA NITROGEN	Groundwater	4.01 ppm in groundwater at well MW-7	5/10/2001 1:42:43 PM
ANTIMONY	Groundwater	28 ppb in groundwater at well MW-4	11/24/1997
ARSENIC	Groundwater	87 ppb in groundwater at well MW-8	4/24/2002 1:56:56 PM
BARIUM	Groundwater	729 ppb in groundwater at well MW-9	4/24/2003 1:58:02 PM
BENZENE	Groundwater	2.7 ppb in groundwater at well MW-9	11/25/1997 2:18:15 PM
BERYLLIUM	Groundwater	1.68 ppb in groundwater at well MW-8	11/24/1997 1:59:25 PM
BIS(2-ETHYLHEXYL) PHTHALATE	Groundwater	71 ppb in groundwater at well MW-7	6/5/1995
BORON	Groundwater	3130 ppb in groundwater at well MW-4	4/21/2004 2:00:32 PM
BUTYL ALCOHOL, tert-	Groundwater	226 ppb in groundwater at well MW-10	11/11/2004 2:24:06 PM
CADMIUM	Groundwater	15 ppb in groundwater at well MW-7	11/14/2001 2:01:50 PM
CADMIUM	Other	4 ppb in standing water at dumping area	10/6/1983 3:39:53 PM
CARBON DISULFIDE	Groundwater	22 ppb in groundwater at well MW-10 635 ppm in groundwater at well MW-	4/24/2002 2:25:25 PM 4/21/2004

TO: THE ENVIRONMENTAL QUALITY COMMISSIONERS
October 17, 2007

My name is Richard Ponzi. Along with my family, I own and operate Ponzi Vineyards which has been in operation for 37 years. The winery is in Washington County, located directly adjacent to Lakeside Landfill. The landfill has applied for renewal of an Operating Permit with the Department of Environmental Quality. I ask that the application be denied.

The landfill has operated in the past, and continues to operate, without an approved Washington County Land Use Permit. In 1991, the landfill obtained a DEQ permit based on a Land Use Compatibility Statement (LUCS) from Washington County that was invalid.

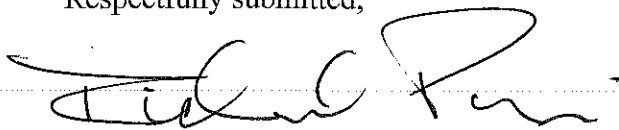
In 1997, the *same* LUCS was accepted by DEQ when an application was filed in a major expansion of the landfill. The *same* 1991 LUCS, though invalid, is very specific in that it does not allow expansion.

The landfill has repeatedly used the *same* 1991 LUCS in its renewal permits in spite of the fact that Washington County is on record stating the 1991 LUCS is invalid as a Land Use Permit.

The attachment is Washington County's legal position as stated in a brief presented before LUBA in 2005.

DEQ must demand that Lakeside Landfill obtain an Approved Land Use Permit from Washington County in renewing its Operating Permit Application.

Respectfully submitted,



Richard Ponzi
22230 Jaquith Road
Newberg, OR 97132
503.341.4521

THIRD ASSIGNMENT OF ERROR

THIS ASSIGNMENT OF ERROR MUST BE DENIED BECAUSE:

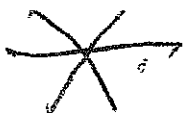
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- (c) The Hearings Officer is not bound by a prior LUCS determination;
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Petitioner-Grabhorn alleges under this assignment of error that the County is bound by the Solid Waste Disposal Site Permit issued by DEQ on June 16, 1993 ("1993 DEQ Permit Renewal") and the associated 1991 LUCS. Therefore it is precluded from reviewing whether the current use of the property based on a subsequent application is a nonconforming use.

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The coordination of Solid Waste Disposal Permits and land use compatibility is specifically addressed under the State Agency Coordination Program. OAR Chapter 340, Division 18. Issuance of Solid Waste Disposal Permits is listed under OAR 340-018-0030 as an action that has a significant impact on land use. Under OAR 340-018-0050(1) a Solid Waste Disposal Permit "shall be compatible with local government acknowledged comprehensive plans to the extent required by law." Consequently it is the local land use regulations that trump the DEQ permit rather than vice versa.

The 1991 LUCS was issued without any permit defining the nature and extent of the use as required by ORS 215.130(5) *et seq.* and Chapter 440 of the Community Development



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“* * * re-grade the north area by extending the existing final grading approximately 280 feet to the north.”

Record-2004, p.3969. Consequently, the 1998 DEQ Permit Renewal included a physical expansion of the operations. Compare also the 1993 final grading plan issued with the 1993 DEQ Permit (Record-2004, p.3961) with the 1997 final grading plan issued with the 1998 DEQ Permit Renewal (Record-2004, p.3999). OAR 340-018-0050(2)(b)(E)(i) states that a LUCS is required for a renewal permit if:

“The permitted source or activity relates to the use of additional property or a physical expansion on the existing property.”

As such a new LUCS was required; DEQ was in error in relying on the 1991 LUCS.

Where a Solid Waste Disposal Permit is based on improper reliance on an outdated LUCS, DEQ may revoke or suspend a permit, initiate meetings with the county, apply for the necessary land use permits, or appeal the county's decision denying the use. OAR 340-018-0050(2)(H) or OAR 340-018-0060. DEQ is also expressly permitted to initiate a modification of a Solid Waste Disposal Permit OAR 340-093-0113 to address compliance with land use laws. As a result neither DEQ nor the county are bound by the initial LUCS; the state agency coordination rules are flexible enough to permit adjustments to existing permits to assure ongoing compliance with the acknowledged comprehensive plan.

Testimony to the Environmental Quality Commission
October 17, 2007

My Name is Art Kamp. I live on Pleasant Valley Rd. in Beaverton, immediately to the west of Lakeside Dump. I am trained as a chemist and worked for 30 years in the chemical industry in research & development. My comments relate to the Lakeside permit renewals currently in process with DEQ.

Lakeside Reclamation is an antiquated dump using inadequate pollution control technology. It is unlined and it has a failing experimental cover. It has no groundwater treatment system or methane control system. The dump is located on the banks of the Tualatin River and is a direct threat to the river as well as the adjacent National Wildlife Refuge. To make matters worse, the operator has a history of accepting unpermitted toxic chemicals. All test wells between the landfill and the river are contaminated. The dump is generating substantial quantities of methane but has no methane control system.

We are asking DEQ to take six steps during the permit renewal process to get this facility under control.

1. Restrict allowed materials to non-toxics only.
2. Require best available technology for a landfill cover for the entire landfill.
3. Require a groundwater treatment system to capture and treat all water before it reaches the Tualatin River as well as a methane treatment system.
4. Require a fully funded, conservative Financial Assurance Plan.
5. Stop improper use of Exclusive Farm Use land by requiring new Land Use Compatibility Statements for the facility.
6. Mitigate nuisances by requiring setbacks from property lines with substantial screening, best available technology for dust and noise control and limiting hours of operation.

I will focus my comments on three of these six steps. The first relates to the dump's cover. The record clearly establishes that Lakeside contains large quantities of toxic chemicals, both permitted and unpermitted. The dump is also

AJK
10/17/07

unlined. Short of taking everything out, there is nothing that can be done about the toxics and the lack of a liner. However, it is not too late to require a state of the art cover that can help limit the release of toxics into the groundwater. The current cover is an experimental system of poplar trees that was designed for use in arid climates. In the local climate, with heavy rains at the times the trees are not growing, the cover is ineffective. In addition, almost all of the older trees are dead or dying. We urge DEQ to require a state-of-the art cover. Research clearly shows that such a cover would substantially reduce hydraulic flow through the landfill and thereby reduce groundwater contamination.

My second set of comments relates to groundwater and methane treatment. We ask that the dump be required to install active collection and treatment systems for contaminated groundwater and landfill gas. A system of wells along the river coupled with a water treatment system is the right solution for removing groundwater contaminants before they have a chance to pollute the Tualatin. Groundwater between the dump and the river is contaminated. Testing is in process to determine whether the contamination is killing river dwellers today, but whether it is or not, the toxic chemicals in the groundwater must not be permitted to go untreated. Along with that, an active gas collection and treatment system can mitigate the methane hazards and also remove the cancer producing chemicals that are found in landfill gases. We ask that the DEQ move to have these systems installed now.

Finally, the DEQ has already found Lakeside's Financial Assurance Plan to be more than a million dollars underfunded. Installation of adequate pollution control systems will substantially increase the shortage in the Financial Assurance Plan. This body should understand that the dump has made its owner a rich man. The money is available-it is only a matter of assuring that it is added to the Financial Assurance Plan.

During these permit renewal processes, DEQ has the opportunity to substantially mitigate a significant pollution threat. We urge you to do so. The six points we ask are all imminently reasonable-please make them happen!

AJK
10/17/07

Friends of the Refuge Testimony for the
Environmental Quality Commission

October 17, 2007

Thank you for this opportunity to address this committee.

My name is Paul Jaussi and I am Vice President of the Friends of the Tualatin River National Wildlife Refuge. The Board of Directors approves my comments and I will be speaking on behalf of the entire organization.

The Friends of the Refuge is a community based, non-profit organization whose over 220 members are dedicated to the development, restoration, and preservation of the Tualatin River National Wildlife Refuge. This refuge is located along the Tualatin River's historical floodplain and consists of seasonal wetlands and riparian uplands and has headquarters in Sherwood, Oregon.

I am here to express our concern regarding a serious threat to the health and safety of Refuge habitat. That threat comes from the Lakeside Reclamation Landfill, which is located on the north bank of the Tualatin River, upstream from the largest units of the Refuge, including the flagship unit that is open year-round to the public.

The Tualatin River National Wildlife Refuge is unique for many reasons and I would briefly like to highlight two of these reasons. First, the concept of creating the refuge originated from local citizens, cities, and governments. It was an initial donation of 12 acres from a private citizen in 1993 that established the Refuge and from that initial donation the Refuge has grown to over 1,200 acres currently under U.S. Fish and Wildlife management. The city of Sherwood is proud to call itself the home of the Tualatin River National Wildlife Refuge.

The second reason why the Tualatin River National Wildlife Refuge is unique is that it has special designation from the U.S Fish and Wildlife as an urban refuge. While there

are at present 548 refuges under the umbrella of the National Wildlife Refuge system, only 12 have the designation of an urban refuge. As such it has the charter to educate the public, particularly the urban youth, on the importance of protecting wildlife. Even in its infancy, the Tualatin River National Wildlife Refuge has shown to be success in educating the public as it was visited by more than 100,000 people last year and that number is expected to double with the public opening of the Wildlife Center in the Spring of 2008.

I have emphasized the importance of the Refuge to both the local community and the National Wildlife Refuge system in order to contrast that with the poor operational practices and lack of environmental control at the Lakeside Reclamation Landfill. The landfill borders the Tualatin River, is partially within its floodplain, and is adjacent to several Refuge units. Because of this lack of control, the landfill has a high potential for polluting groundwater as well as the Tualatin River itself.

I would like to quote from the DEQ report on Site 4413 (Lakeside Reclamation Landfill) which data is current as of yesterday, October 16, 2007. The very first sentence in the section entitled "Contamination Information", states "Site groundwater contamination potentially threatens aquatic life in the Tualatin River".

Additional comments from this same report concludes that :

Quote "Undiluted, groundwater concentrations of aluminum, copper, mercury, zinc, and possibly chromium (depending on oxidation state) have periodically exceeded the federal recommended CMC (acute toxicity) for freshwater aquatic life.

"Groundwater concentrations of alkalinity, ammonia, chloride, pH, boron, iron, manganese, lithium, aluminum, barium, nickel, silver, vanadium, zinc, carbon disulfide...and xylenes have periodically exceeded either DEQ's Level II Ecological Risk Assessment Screening Values for freshwater aquatic life or the federal recommended CCCs (chronic toxicity) for freshwater aquatic life." Unquote

Water is the lifeblood of the Tualatin River National Wildlife Refuge and its wetlands are dependent on water from the Tualatin River and its tributaries. Once contaminants have entered into the riparian or aquatic systems, all species in the relevant food webs may be impacted. Currently, the Refuge harbors some 200 species of birds, over 50 species of mammals, 25 species of reptiles and amphibians, and a wide variety of insects and plants. During winter, refuge wetlands can support 20,000 to 50,000 migratory waterfowl at any given time. A wide variety of fish also inhabit the Tualatin River.

Although the Tualatin River National Wildlife Refuge was created specifically to provide shelter and habitat for these numerous species at significant cost, the Friends believe DEQ and Clean Water Services have not given and are not now giving serious consideration to the threat the Lakeside Landfill is to the Refuge in their deliberations as to its continued operation.

The Lakeside Landfill is an unlined landfill without any type of leachate recovery system. The topography of the site is such that the natural discharge course of all contaminated groundwater from this landfill is directly to the river.

In fact, the DEQ Site 4413 (Lakeside Reclamation Landfill) admits this when it states, "The exposure pathway of greatest concern is the discharge of contaminated groundwater to the Tualatin River and its impact on aquatic organisms."

The report continues, Quote "An examination of groundwater data and information collected over the last fifteen years indicates groundwater flows predominantly to the south directly discharging to the Tualatin River. As you near the river, groundwater flow paths are deflected to the southwest, likely the result of leakage from holding ponds located in the southeast portion of the facility. Groundwater quality data indicates that groundwater beneath the landfill has been impacted by leachate seeping from the unlined waste disposal areas." Unquote.

According to well reports filed with the State of Oregon, the soil above and below the landfill is primarily silt and sand. Thus there is no natural barrier to stop the contaminating leachate originating in the landfill. There are also flow paths of leachate from the landfill to the river visible on the riverbank.

Also unknown is the mix of pollutants that have been dumped into this landfill over the years as apparently no one has kept records. It has, in fact, a history of accepting hazardous waste. For example, in 2002, 630 tons of contaminated soils and chromium-treated animal hide splits were dumped at the site. If "business as usual" is allowed to continue at this landfill, who knows what hazardous materials will end up in the River?

While the DEQ Site 4413 report does not specify an imminent threat, we believe it gives a pattern for what we can expect if action is not taken now. A case in point, the report states, "Because of large volumes of land clearing debris, including tree stumps, multiple historic reports of small quantities of wet garbage...it seems very plausible that the landfill may be generating methane gas." Unquote. Unfortunately, this assessment is all too true as recent test results just completed days ago show methane samples from recently dug wells show concentrations of 60-75%. The obvious question to ask is what other surprises are waiting under the surface of this landfill?

The Friends do not want to wait for such a disaster before something is done. Steps should be taken now to ensure that contaminated groundwater and leachate produced by this landfill do not enter the Tualatin River. Once the damage has been done, cleanup and recovery will be a long and costly process.

The Friends of the Refuge strongly agree that prevention is the only course of action in this situation. The record indicates that past efforts to monitor the performance of this landfill by Washington County has been lax at best. Currently no agency is routinely monitoring the river near this landfill for levels of contamination. Existing laws and regulations should be rigorously enforced. And the landfill owner should be required to

install a leachate recovery system and divert contaminated groundwater away from the river immediately!

Thank you,

Paul Jaussi, Vice President

Friends of the Tualatin River National Wildlife Refuge

19255 SW Pacific Hiway

Sherwood, OR 97140

(503) 625-5944

Thank-you for your time and allowing us to present testimony today.

My name is Elizabeth Thoresen and I live on Aten Rd. in Beaverton, west of Lakeside dump.

I am here to ask for your assistance in helping protect our community, the Tualatin River and the Federal Wildlife Refuge. The subject of our neighbor, Lakeside Dump, has been a contentious issue for half a century. There are many problems associated with this landfill but there are some steps that we believe can be taken to bring the operator into compliance and help safeguard our health and well-being.

The first thing we are asking is that Lakeside dump's allowable waste be restricted to only non-toxic materials. The list of contaminants found at the site has been mounting for the last 50 years. In 2005, DEQ noted steadily increasing contamination of test wells at the landfill. The list of pollutants leaching from the landfill into the ground water will continue to leach out of the landfill for decades. Given the fact the landfill is unlined, borders the Tualatin River and the Federal Wildlife Refuge and has a faulty cap, it does not make sense to allow toxic materials to be added to the already hazardous stew. For example: currently, TV's, small appliances and electronics are permitted. All of which are known to contain toxic materials and are prohibited in many solid waste systems.

Also, Metro recently voted not to allow Lakeside dump or any landfill exemptions to their recycling regulations in their attempt to meet the 2009 state-mandated goal of 64%. Again, this goal is state-mandated. Therefore, I would ask DEQ to implement restrictions of accepted materials to strictly non-recyclables. Please consider putting this into action immediately.

Drivers traveling down Scholls Ferry and Vandermost Road are also subjected to dangerous truck traffic. There have been numerous accidents due to these large trucks on these country roads. We have also been exposed to odors, noise and dust at all hours of the day. These problems can be remedied by a gas collection system and keeping the waste covered. The noise can be controlled by adding noise suppression on the equipment, by using berms and buffers within the footprint of the landfill. The noise, dust, odors and dangerous truck traffic can also be controlled by restricting hours of operation. I have heard that other facilities have been able to control

these problems. I would ask you to require Mr. Grabhorn hire an engineer who knows what they are doing if he can not figure out how to control these problems that have created constant and dangerous irritants for our community.

Lastly, unannounced inspections and unexpected water testing should be executed to demonstrate DEQ is making an effort to enforce compliance of their own regulations. Metro employees discovered 630 tons of chromium-tainted animal hides and just last year, 60 bags containing friable asbestos. In DEQ's own words, the operator has a history of accepting illegal waste. Clearly, self-regulation has not worked. I would ask you to please send a clear message to the community and Mr. Grabhorn that DEQ is serious about overseeing the activities at this dump.

Thank-you
Elizabeth Thoresen
19885 SW Aten Rd.
Beaverton, OR 97007

DEPARTMENT OF ENVIRONMENTAL QUALITY



State of Oregon
Department of
Environmental
Quality

Public Hearing Attendance Sheet

Date: 10-18-07 Location: OCC, PORTLAND

Hearing Topic: STRATEGIC PLANNING

PLEASE PRINT

NAME	AFFILIATION	E-MAIL OR MAILING ADDRESS	Copy of Final EQC Report (yes/no)?
1. Christine Caurant	Sierra Club	christie.caurant@sierraclub.org	Y
2. Cheyenne Chapman	OCEH	Cheyenne@oregon-health.org	Y
3. Paul Jewell		sandyjewells@netzco.net	Y
4. Mark Skedgell	WEDC	msr@wedc.org	Y
5. JANE GILLASPIE	ACWA	gillaspie@oregona.org	Y
6. Andrea Durbin	OSE	andrea@occonline.org	Y
7. Fawn McNeely	Legislative Advocates	Fmcneely@legadv.com	Y
8. Lisa Ankin	OREGON TOXICS ALLIANCE	lankin@oregontoxics.org	Y
9. MARIAN PELLEGRINO	CITY OF PDY-LW-REL.	mpellegrino@portland.or.us	Y
10. SARA WRIGHT	Oregon PSR	sarawright@oregonpsr.org	Y
11. Kevin Parrett	DEQ		

**Statement of Emily Bartha of the Sierra Club
to the Environmental Quality Commission**
October 17, 2007

Hello Members of the Environmental Quality Commission:

Good afternoon and thank you for inviting the public to comment on our environmental priorities at this meeting. My name is Emily Bartha, and I am a Conservation Organizer for the Sierra Club. Our organization has over 23,000 members in Oregon, and cleaning up the Willamette River is one of our top community goals.

We are very happy to see some recent action toward this goal with increased funding for the Department of Environmental Quality, a new toxics monitoring program and state law SB 737 which will begin to address the hot spots of persistent bio-accumulative toxins on our waterways, including the Willamette.

We are hopeful that there will be meaningful stakeholder involvement associated with these new developments and that the Sierra Club and others in the conservation community will be invited to play a role in how they play out on the ground. For SB 737 to be effective it is important that the process is as open, inclusive and transparent as possible. We recommend monthly or bi-monthly stakeholder meetings and frequent updates to the general public. Since SB 737 starts with the Willamette, the Sierra Club wants to ensure that the priority list of pollutants that will be monitored for is a robust list and that the results of the studies are adequately disseminated to the public, especially those who use the river regularly.

Of particular concern to our members and the public are toxic mixing zones, where high levels of dangerous pollutants are discharged into the river. The public wants to know the location, contents and associated health risks of these mixing zones so they can make informed decisions about where and when they wish to recreate on the river. Anglers fishing for prized spring Chinook don't know if they are safe to eat and parents aren't sure if the river is safe for their kids to swim in.

The Regulatory Mixing Zones page on the DEQ website is a great first step in making the public aware of this issue. However, we would like to see the website go further to become more user friendly, include links to information about the health implications of persistent bio-accumulative toxins and include up to date permit discharge data. We would also like to see the outreach efforts on the part of the DEQ extend beyond the internet. It is our hope that a portion of the newly created 41 positions and new funding in the water quality program be dedicated to public outreach in the form of hosting public forums, providing information to recreation groups and subsistence fishermen, attending community events, posting signs to warn anglers and recreationists at popular parks and docks and/or putting up some type of signage to demarcate mixing zones.

Another concern is the discharge permit process. As technology improves and a facility's economic situation changes, it only makes sense for the DEQ to reevaluate permits and

work with permit holders to reduce toxic discharge if feasible. The current solution to the permitting backlog seems to be to grant “administrative extensions” or write new permits that closely match the old ones so that the levels of discharge remain static. We would like to see some of the new funding and staff time be dedicated to making sure that permits are reviewed on time and thoroughly so that facilities can move forward with new technology and reduce their discharges.

Lastly, we are hopeful that the new fish consumption rate will more accurately reflect the need for stricter water quality standards on our state waterways. However it is important to note, that even if this occurs, mixing zone permits will still allow the toxic discharges to exceed the new water quality standards, even in water quality limited waters. To fully protect the health of Oregonians that eat resident and migratory species of fish, the DEQ needs to begin to work more aggressively with industry and municipalities to find ways to reduce the levels of toxics discharged instead of allowing the status quo to continue.

Thank you once again for the opportunity to comment. We are excited about the new opportunities created by the new funding levels and we look forward to working with the DEQ and other stakeholders in the future to continue Oregon’s leadership in environmental protections.

Land Use apln filed for renewal landfill - WA Co. → 2005 → LUBA appeal. Went DEA deny
apln for renewal but invalid LUCS since 1991. There was never a

land use decision on the 1991 LUCS. ^(Case dismissed on technicality) Oregon Environmental Quality Commission
a substitute for a land use decision. ^{1993 DEA permit no 1991 LUCS is not}
^{1997 another DEA permit w/ large} expansion. 1991 LUCS req no expansion. ^{Request to Present Information}

Agenda Item G or
Topic of Presentation LAKESIDE LANDFILL

alias Lakeside Landfill

~~***~~ DICK PONZI / PONZI VINEYARDS
Name (Please print clearly)

22230 JAQUITH, NEWBERG, OR 97132
Address

OWNER 503-628-1227
Affiliation Email (optional) Phone (optional)

We intend propose a rule chg to BDC to req LUCS w/ every permit.
Dump is old + inadequate. Contaminating river. Lobbying DEA take

6 steps: 1) Non-toxic 2) BAO cover 3) Water impervious 4) fully funded plan
5) req LUCS 6) require setbacks for prop, lines, dust + noise ctrl
Oregon Environmental Quality Commission
Public Forum

Request to Present Information

Poplar trees are not effective.

See handout

Agenda Item G or
Topic of Presentation PUBLIC COMMENTS

Art Kamp
Name (Please print clearly)

14520 SW Pleasant Valley Rd Beaverton 97007
Address

SELF art@yesteryear.net 503 307 3889
Affiliation Email (optional) Phone (optional)

See heading

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

Agenda Item 6 or

Topic of Presentation Water Quality + Strategic planning.

Emily Bartha

Name (Please print clearly)

5037 NE 116th Avenue, Portland OR 97211

Address

Sierra Club

emily.bartha@sierraclub.org

(503) 243-6656

Affiliation

Email (optional)

Phone (optional)

See written remarks

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

Agenda Item 9 or

Topic of Presentation Lakeside dump

Elizabeth Thoresen

Name (Please print clearly)

19885 SW Aten Rd Beaverton

Address

Neighbor of Lakeside dump

Affiliation

Email (optional)

Phone (optional)

See written comments

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

Agenda Item 6 or
Topic of Presentation Lakeside Reclamation Landfill

Paul Jausssi
Name (Please print clearly)

17630 S.W. Cedarview Way Sherwood, OR 97140
Address

Friends of the Refuge
Affiliation

Paul.jausssi@gmail.com
Email (optional)

Phone (optional)

DEQ Strategic Priorities

EQC Discussion, October 2007

DEQ Strategic Priorities

- Promoting sustainable practices
- Improving Oregon's air and water
- Protecting people and the environment from toxics
- Involving Oregonians in solving problems

What we heard-themes

- Issues:
 - Toxics
 - Water
 - Global warming

What we heard-themes

- Toxics
 - Air
 - Water
 - Land
 - Cross program, cross agency, cross borders
 - Partnership

What we heard-themes

- Water
 - Quality
 - Supply
 - Conservation
 - Cross program, cross agency, cross borders

What we heard-themes

- Global warming
 - Sustainability
 - Emissions
 - Carbon footprint
 - Energy alternatives
 - Cross program, cross agency, cross borders

What we heard-strategies

- Partnership
- Prevention
- Compliance
- Innovation in regulation, incentives
- Data gathering, analysis, sharing

What we heard-strategies

- Partnership
 - We all want the same thing (perhaps served in different manner)
 - Willingness of stakeholders to participate
 - Commitment of stakeholders to work together
 - Public expectation

What we heard-strategies

- Prevention
 - Outreach
 - Education
 - Data accessibility
 - Presence in the community

What we heard-strategies

- Compliance
 - Work with industry to protect the environment
 - Strictly enforce permit requirements

What we heard-realities

- Staff commitment to mission
- Resources sometimes stretched too thinly
- Public thinks the agency can do more than it can do
- We need more data/more science/more analysis to meet present and future challenges
- Managing expectations is a challenge.

What we heard-strategies

- Data gathering, analysis, sharing
 - Need data to inform decisions
 - DEQ as science leader
 - New problems demand new science, new analysis, and new solutions.

STRATEGIC PLANNING - LEGISLATIVE CONSIDERATIONS

2007 Session Overview

DEQ was very successful in the 2007 Session. This success could be attributed to three main factors:

- The change in the House majority party which resulted in more favorable outcomes for environmental activities,
- There were General Fund monies that could be used to fund activities and programs. This is a significant shift from the budget reduction mode that had been prevalent between 2002 and 2005, and
- A strong and positive reputation of DEQ.

Three distinct outcomes have appeared from the 2007 Session:

- There was strong support to restore lost state funding for DEQ and to allow fee increases to support core programs and even to support several new initiatives. Most of the original DEQ Agency Request Budget was funded, including all of the fee bills.
- Toxics emerged as a driving theme and can be traced to several significant bills and budget policy packages – WQ toxics monitoring, WQ toxics/PBT (persistent bioaccumulative toxic pollutants) reductions (SB 737), Clean Diesel, air toxics and electronic waste. There were a number of other bills that were not successful that focused on pesticides. These bills typically would involve DHS-Public Health, ODA, DEQ and sometimes ODF and ODFW.
- Funding for monitoring and science was given a high priority. Funding was restored for monitoring in the air and water programs and new funding was provided for the new water quality toxics monitoring program. There was continued support to provide needed funding for the new joint DHS/DEQ laboratory in Hillsboro.

Looking Forward - Activities Continuing from the 2007 Session

Agriculture Air Quality – Senate Bill 235, which was introduced jointly with the Oregon Department of Agriculture (ODA), allows regulation of agriculture to the extent necessary to comply with the federal Clean Air Act. This bill creates a task force during the interim that will focus on the dairy industry. DEQ and ODA are currently working with the Governor's Natural Resource Office to create the interim task force, which will likely start meeting in November.

Environmental Justice - Senator Gordly's SB 420 resulted in the creation of an Environmental Justice Task Force and will require natural resource agencies to better incorporate environmental justice concerns into daily work activities. DEQ as well as the other natural resource agencies will need to focus on implementing this new process. Implementation details have yet to be worked out; the Governor's Natural Resources Office is leading this effort.

Title V - Senate Bill 107 increases fees for major industrial permittees to equal the cost of the permitting program as required by federal law. Negotiations between stakeholders and DEQ resulted in a fee table that spreads the increase over three years (approximately 8% per year) and increased disclosure requirements when adopting a rule that affects Title V sources and is more stringent than federal requirements. The increased disclosure includes a description of alternatives considered and the reasons the alternatives were rejected, and groups affected by the rule can request a hearing directly in front of the EQC. Rulemaking has started to implement the changes for disclosure requirements and is anticipated to come before you in February 2008.

Bottle Bill Changes – SB 707 was the successful bill that includes adding water bottles and sets up an interim committee to consider future increases to the bottle deposit, expanding to other types of beverage containers and consideration of redemption alternatives such as special redemption centers. As noted in the Director's Report, the task force was recently appointed and DEQ will be serving as a resource.

WQ Toxics Reduction – This is a non-DEQ sponsored bill. Senate Bill 737 is an agreement by municipalities to start reducing persistent bioaccumulative toxic pollutants (PBTs) through pollution prevention and toxics reduction, by 2011, statewide for the 52 large wastewater treatment plants. It requires DEQ to develop a list of priority PBTs that pose a threat to waters, human health, wildlife and aquatic life by June 2009. By June 2010, DEQ must submit a report to the Legislature on the priority list of PBTs that includes identification of point, nonpoint and legacy sources of priority PBTs "from existing data" and source reduction and control methods that can reduce PBT discharges. By June 2011, the largest wastewater treatment plants statewide must submit to DEQ a plan for reducing their discharges of priority listed PBTs. Their plans can include but not be limited to collection of legacy pesticides; reducing mercury amalgam in dental offices; working with businesses to reduce PBT use and discharge; recycling fluorescent lamps; etc. This work will be funded by a municipal surcharge to fund the first two years of the program begins in July 2008; we would hire as soon as possible after that, but program would probably not start until fall of 2008. There is ongoing work associated with this bill including the review of the reduction plans for the priority PBTs and incorporating those plans into permits.

Greenhouse Gas Reporting – this DEQ rulemaking has begun at the request of the Governor. It will be brought to you for action in June 2008.

Looking Forward - 2008 Special Session

Details for this Session are still being worked out. At this time, the House and Senate appear to have different strategies on proceeding. The Senate is looking at it as a regular session where each member could introduce one bill. The House is looking at it as a special session with a few specific topics and a quick in and out. In the House, it appears that only bills sponsored by committees will be considered. Much of what frames the session will depend on the December revenue forecast. From the Governor's perspective, agencies are being asked to keep a low profile and instead focus on 2009. He expects that the 2008 focus will be mainly on unresolved issues that may come out of the November ballot measures such as the Healthy Children/Tobacco Tax (Measure 50) and Measure 49 (fix for Measure 37). Possibly the US County Payments will become another issue depending on what Congress does or does not do between now and the end of this year when the current payments end. If Congress does not extend the County Payments, this issue could consume the 2008 Session.

Other big issues could be the Real ID for driver's licenses, restoring funding for state troopers, funding for the Big Look Task Force and funding for OMSI. At this time, DEQ is not planning to work on any legislative concepts for 2008. However at the request of the EQC, we are seeking funding for field burning resources to address issues related to further regulation of field burning.

Environmental Enhancement Tax Credits – HB 3500 would have established the Environmental Enhancement Tax Credit Program to replace the existing Pollution Control Tax Credit program that sunsets at the end of 2007. The Oregon Business Association and Associated Oregon Industries drafted HB 3500 to include two classes of tax credits. One class would be very similar to the existing program where qualified businesses can receive tax credits to meet existing federal, state or local pollution requirements. A second class of tax credits would be for pollution control equipment that exceeds existing federal, state or local pollution requirements. A higher percent of credit would be offered to business that exceeded requirements. This bill died in

committee but we understand that the Oregon Business Association will attempt to have this bill before the February 2008 Special Session.

Looking Forward - 2009 Session

The Governor has announced his desire to work on major topics relating to transportation, health care and education. To date, no formal environmental agenda has been identified. However, several major environmental issues will likely be in the forefront in 2009. The Governor's Natural Resources Office in conjunction with various state agencies is working on toxics issues during the interim which will likely result in one or more legislative concepts.

Pesticides - There were a number of unsuccessful pesticide bills in 2007. Sen. Avakian, Chair of the Senate Environment and Natural Resources Committee, has established a task force to consider issues surrounding pesticides and related health issues for 2009. Rep. Suzanne Bonamici will chair the task force and Greg Pettit is the DEQ representative.

Field burning and smoke management - Rep Holvey (D-Eugene) sponsored a field burning ban bill during 2007 which was not successful. Depending on how the EQC addresses field burning within the next year, it may return as a legislative issue for 2009.

Water quality toxics - it is likely that this topic will return in 2009. A number of people saw SB 737, water quality reductions of PBTs, as the first step towards reducing certain types of discharges into the waters of the state. Expansion of this bill, which currently focuses on the 48 largest municipalities, could add smaller cities and/or industry. Other changes could add other toxic compounds or question whether there should be mixing zones. We will need to request General Funds for this position and for associated Attorney General costs in the 2009 Legislative Session.

Heat Smart For Clean Air - The Senate Environment and Natural Resources Committee Bill (SB 338) would have provided funding to help homeowners replace old uncertified woodstoves with cleaner options and includes a requirement for removal of uncertified wood stoves upon sale of the home. The bill would have funded the grant program by redirecting Asbestos and Open Burning penalties from the General Fund to the grant fund. Even though there was considerable support for this bill from numerous lobbyists, legislators and the Governor's Office, it was never allowed to go forward by the Ways and Means Co-Chairs. Thus the bill died but is likely to come back in 2009.

Clean Diesel - House Bill 2172 provides grants, loans and tax credits to retrofit, rebuild or replace older diesel engines and to reduce diesel idling. Incentives will be available for operators of all types of diesel engines, including trucking and construction companies, agricultural operations, municipalities, school districts, marine operators and railroads. This bill had broad support. It will provide \$1,150,000 in General Fund, \$1,500,000 in Federal Funds and \$500,000 federal transportation funds. This bill may return in 2009 if supporters seek additional General Fund support to expand the scope of the program.

Other issues will include Water Storage and Conservation, which will likely appear in both 2008 and 2009, and more bills relating to climate change.

Emerging Factors

Environmental Agenda – 2006 shift in House majority party caught most people by surprise:

- DEQ's (and state) budget request and leg concepts were already developed
- Environmentalists' agendas were pretty much set;
 - SB 235 – Agricultural air emissions is an example where the environmental community pressed for more after the election
- We can anticipate a more aggressive environmental agenda:
 - May put DEQ & EQC in an uncomfortable position – could be seen as
 - unwilling to change or
 - pro-industry
 - We are already feeling pressures to do more environmental work than what has been budgeted. This also creates the perception that DEQ does not want to change. It sets up the need for discussions on what work will be given up to take on new work. This is already being discussed for field burning if additional funds are not provided in 2008
- Some legislators may be more aggressive, particularly if House majority margin expands in 2008
 - Stronger environmental regulations – SB 737 including adding industry or more toxic compounds
 - Desire to have environmental protection in DEQ rather than other NR agencies (WQ/AQ)
- At this time, we have no explicit guidance from the State regarding budget and legislative development. Such guidance may not be available until after the February 2008 Session.

101707

RECORD

Presentation to Oregon Environmental Quality Commission

October 18, 2007



**By
Elin D. Miller
Regional Administrator,
USEPA Region 10**



Sustainability & Strategic Partnerships

Enhancing Tribal Environments

Support the Core Programs

A stronger EPA

Protecting & Restoring Watersheds

Clean Affordable Energy & Climate Change

To protect and restore the environment of the Pacific Northwest and Alaska for present and future generations

Making a difference through People and Teamwork

Expect Excellence

**Professionalism and Respect
Honesty and Integrity**

Communication and Dialogue

Willing to Take Risks

**Environmental Quality Commission
Strategic Direction Discussion
October 18, 2007**

Oregon Association of Clean Water Agencies

Chairwoman Hampton and Members of the Commission:

I'm Jim Hill, Water Reclamation Administrator with the City of Medford and vice -chair of the Oregon Association of Clean Water Agencies (ACWA). ACWA is a private, not-for-profit association of 114 wastewater treatment and stormwater management utilities in Oregon, along with associated professionals. We are currently celebrating our 20th year of protecting and enhancing Oregon's water quality.

We appreciate the opportunity to share our thoughts about the strategic direction for the EQC and the Oregon Department of Environmental Quality. Our focus is of course on cleaner water as we share several suggested priorities with you including:

1. Toxic Reduction, and
2. Expanding Oregon's Water Resources.

Toxic Reduction

ACWA advocates that the Department's approach to toxic reduction be strengthened by improving the cross-media integration of toxic reduction programs at DEQ.

Mercury is a great example of a toxic that gets emitted into the air, falls on the ground, ends up in waterways, and impacts fish. Mercury is also reaching Oregon waterways through the use of household products.

A focused toxic reduction program as outlined in SB 737 develops priorities and a coordinated response to PBTs (Persistent Bioaccumulative Toxic). Resulting reduction programs for Oregon are needed and should begin now. Development of such a policy framework and implementation program could draw on the many successful programs that have been undertaken across the US, replicating and improving those reduction programs to targeted reductions in the toxics of greatest concern in Oregon.

A coordinated toxic reduction program should be instituted across all DEQ regulatory programs targeting improvements in air pollution control requirements, and increased inspection and compliance with construction and industrial stormwater permits. This regulatory approach should be in partnership with integrated ambient monitoring strategies, public education and outreach strategies, and targeted grant programs through the Clean Water Act 319 and solid waste planning grants, or other funding opportunities.

Also, attempting to control toxics after they have been introduced into the environment is short sighted. We would urge the Commission to continue to find partnerships for toxics reductions at the source through consumer product restrictions, such as banning mercury-containing devices, restricting certain flame retardant chemicals, and advocating effective product stewardship programs. We appreciate DEQ partnering with ACWA and the Oregon Water Utilities Council to consider the issue of unwanted drug disposal in Oregon, and would welcome the Commission's endorsement of the Oregon Drug Take Back Stakeholder's recommendation that a product stewardship system be instituted in Oregon for unused and unwanted drugs.

Expanding Oregon's Water Resources

Meeting Oregon's water resources needs will be very difficult as our population continues to increase and we see the affects of global climate change. Expanding Oregon's the base of water resources by improving the recycling of environmentally-sound cleaned wastewater is an important way to meet Oregon's water needs.

We can increase water available in Oregon streams by substituting cleaned wastewater for a variety of industrial, commercial, domestic, and agricultural uses including industrial cooling, rock cleaning, commercial car washing, landscape irrigation, and expanded agricultural irrigation. DEQ staff have lead a task force over the past year to review and improve the rules for use of recycled water, and we are pleased with the improvements incorporated in the draft rules that will be before you in early in 2008.

Stormwater is an additional opportunity to expand our thinking regarding Oregon's water resources. Effective pollution prevention programs and using "green" infrastructure to replace steel-and -concrete solutions allows stormwater to be naturally treated and infiltrated back into the natural water cycle. ACWA continues to partner with national groups to promote and evaluate "green infrastructure" and hope that you will incorporate elements of green infrastructure in your strategic planning metrics. Retaining the Underground Injection Control (UIC) program in Oregon is an important element in continuing to improve Oregon's green infrastructure, and we appreciate the Commission's support for the UIC program.

At this time I would be glad to answer any questions.

Oregon Pharmaceutical Take Back Stakeholder Group

Executive Summary

Complete report available at www.oracwa.org

In Clackamas County, a 40-year old mother of two died from an accidental overdose of Methadone. She was having difficulty sleeping and decided to try a family member's unused prescription drug left in her medicine cabinet.

Teenagers age 12 to 17 are the fastest-growing group of prescription drug abusers. They arrange "pharming parties" where they swap drugs found in their homes.

Drugs are being found in waterways nationwide; some of them reach the environment by being flushed down the toilet. One study showed male chinook salmon to be very susceptible to sex reversal.

Unused drugs kept in medicine cabinets, tossed in the garbage, or flushed down the toilet or drain can be serious threats to human and environmental health. Drugs of concern include controlled and non-controlled prescription drugs, as well as over-the-counter medications. Drug take back programs -- government or industry programs where unused drugs are returned to designated sources -- reduce avoidable poisoning of both children and adults; prevent intentional misuse of unwanted prescription drugs, especially by teenagers; and protect water quality, fish and other aquatic species.

Why Oregon Needs a Drug Take Back Program

Based on industry estimates, 3% of the prescriptions written in the US are unused. In Oregon, that translates to a possible 1,004,200 prescriptions unused annually in Oregon - 663,000 from residents and another 341,000 from long-term care facilities. Some of these unwanted and unused prescription drugs reach Oregon's environment. How do they get there? The majority is from people taking medicine and excreting it. However, studies show that because of inadequate disposal options, most people throw unused or unwanted drugs away -- either flushing them down the toilet, or disposing of them in the household trash. Adult care facilities in Oregon serve about 35,000 people, and they typically flush unwanted or leftover medications down the drain.

Reduce Avoidable Poisonings

Leftover drugs can result in the unintentional use of wrong or expired prescriptions by people of all ages, poisoning of children

who get access to drugs, and poisoning of children and pets who find discarded medication in the trash. In 2004, the Oregon Poison Center received 28,734 calls for accidental poisonings of children under six years old, which represented 77% of the pediatric hospital visits in Oregon that year. Overall, drugs represent the most common poisoning hazard, resulting in 50% of all avoidable poisoning calls.

Prevent Intentional Misuse of Drugs, Especially by Teenagers

Misuse of unwanted prescription drugs is the nation's second prevalent drug problem, after marijuana use. From 2002 to 2004, Oregon had the third highest rate in the nation (10%) among youths for non-medical use of pain relievers. Oregon also ranks in the top five states with the highest prevalence of stimulant misuse for ages 12 years and older. Estimates show that the state of Oregon may have nearly 15,000 Emergency Room visits per year from the nonmedical use of drugs. These are often severe. In a national study, 33% of such

emergencies resulted in the patient being sent to a critical care unit. Misuse can also result in dependence or abuse of a drug, and those at greatest risk are between the ages of 12 and 25. The Pacific Northwest ranks third in the nation for drug dependence and abuse.

Protect Water Quality

In one national study of 139 streams in 30 states, drugs were found in 80% of the samples. The two biggest concerns of aquatic impacts are hormone disruption in fish and effects of antibiotics. In the Potomac River, male fish were discovered producing eggs. In Colorado, native fish populations in Boulder Creek showed significant endocrine disruption.

Drugs from households and care facilities reach waterways from excretion, flushing drugs down the toilet into sewers and septic systems, and trash disposal resulting in landfill leachate that reaches surface water or infiltrates groundwater. Some drugs can be treated at traditional wastewater treatment plants, but others cannot. While the

majority of drugs enter the water through human excretion, a drug take back program is still an important step in reducing chemicals in the environment.

The Work of the Drug Take Back Stakeholder Group

A select group of Stakeholders, along with interested parties, formed the working group in October, 2006 to study the disposal of unwanted and unused drugs in Oregon. Stakeholders included a breadth of expertise ranging from law and drug enforcement; public water agencies; pharmaceutical groups; environmental organizations; medical, health care, recycling and poison center representatives; and city and county governments. The group focused on unwanted drug disposal from households and care facilities.

The Stakeholders researched and analyzed existing and proposed drug take back programs in other places including British Columbia, the states of Maine and Iowa, and efforts in other U.S. counties and areas. Methods of drug return range from prepaid mail-in envelopes to drop boxes at pharmacies or law enforcement agencies; the benefits and drawbacks of each were explored.

The Stakeholders' task was to create a proposed program for Oregon that is effective, fair, and economical, and includes both controlled and routine drugs. The program should also include education and outreach elements, needs to work in both urban and rural areas of the state, and must have a long-term funding base.

Oregon Program and Funding Recommendations

The Stakeholders' recommendation, endorsed by the majority of the group, is based on the successful, British Columbia Medications Return Program that has been in operation since 1996. There, an organization of pharmaceutical manufacturers known as the Post Consumer Stewardship Association organizes and finances the program. This is known as a Product Stewardship program.

Based on the success of the British Columbia program, estimates for Oregon indicate that approximately 60,000 pounds of unwanted drugs would be returned annually, including about 5,300 pounds of controlled drugs such as narcotics, Vicodin, Demerol, Ritalin, or Xanax.

The majority of the group believes that this approach, which has been used by other industries in the U.S. and Canada, has the best potential for success. The Pharmaceutical Research and Manufacturers of America (PhRMA), opposes the recommendations.

Program Proposal: Product Stewardship Program

In a Product Stewardship Program, pharmaceutical manufacturers and over-the-counter drug companies would be requested to devise and implement a convenient and effective program for consumers to dispose of unwanted medicine. The industry can select the format – mail-back, drop box, a combination of the two, or another concept that the industry may choose to pursue. In addition, the program for Oregon should seek federal Drug Enforcement Administration waivers (as Washington, California and Maine have already requested) to allow controlled drugs to be included.

Action by the 2007 Oregon Legislature included pharmaceutical take back programs as one program to examine to reduce toxics in Oregon's water. If the industry is unable to move forward with such a program, the Stakeholders propose that legislation requiring it be introduced in the 2009 Oregon Legislature.

Funding Proposal: Industry Funding

The Stakeholders do not believe that the burden of this program should fall directly on consumers, nor be added as an additional cost to the routine responsibilities of Oregon's law enforcement agencies. In 2005, the BC program collected 39,710 pounds of unwanted drugs at a total cost of \$190,935 (U.S. dollars). The group recommends that the industry fund the program, although the Pharmaceutical Research and Manufacturers of America, does not support this option.

The funding method proposed is similar to that in British Columbia and in the recycling of used batteries, mercury-containing thermostats, and electronic equipment in some states including Oregon. This option keeps the program financing directly related to the producers, users, and disposers of medications, instead of spreading the costs across the general public. A private sector system can be designed to be efficient and flexible.

Drug Take Back -- A Simple, Safe Routine

Take-back programs have become common, simple routines throughout Europe and Canada for a wide range of hazardous products including pharmaceuticals, automotive fluids, batteries, electronics, paint, solvents, tires and other products. They are becoming more commonplace in the U.S. Oregon already has a program in place for battery recycling and the Legislature recently passed an electronics recycling program. Take back programs for drugs are of even greater consequence. A proactive approach will help avoid poisonings and drug addiction, and is more cost-effective than treatment in both public health and pollution control.

A safe and secure program can make the collection and disposal of unused and unwanted drugs as easy and convenient as buying a bottle of aspirin or filling a doctor's prescription, while bringing benefits for the health of Oregonians and the environment.

July, 2007

Complete Report Available at:

www.oracwa.org

DEQ: A Statewide Snapshot of Our Work

DEQ works collaboratively with all Oregonians across the state for a healthy, sustainable environment. Our work is diverse and reflects state and federal regulatory authorities, environmental needs and opportunities, statewide priorities, community interests and economic drivers.



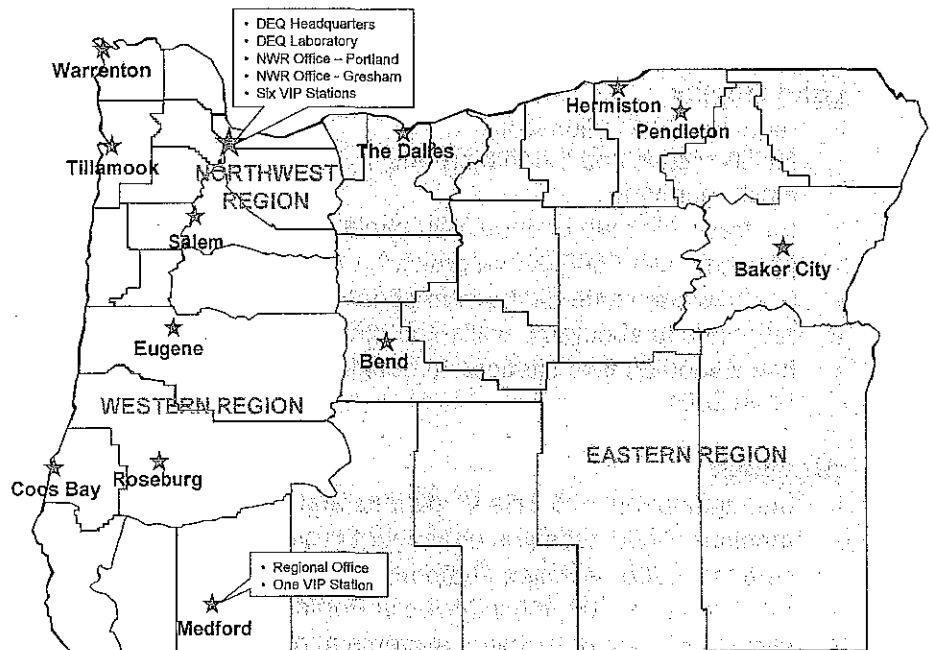
State of Oregon
Department of
Environmental
Quality

Where we work, who we are

In the early 1990s DEQ decentralized. We created regional offices around the state to better connect our employees with local citizens and organizations affected by our regulations. We currently have fifteen offices and seven vehicle inspection stations statewide.

DEQ has nearly 800 employees who issue permits, monitor environmental conditions, provide funding and technical assistance, develop policy, inspect permitted facilities and help Oregonians solve environmental problems every day. Employees include scientists, engineers, technicians, administrators, support staff and environmental specialists.

Science and environmental information are cornerstones of DEQ's credibility. We monitor the quality of Oregon's air and water at over 1,500 sites around the state and use this information to target our pollution reduction work, set permit limits, reach out to new partners, and inform citizens and policy makers about what we all can do to protect Oregon's environment today and in the future.



The people we serve

Oregon's population has been growing at a rate of about 1.2 % in recent years, with over 60% of the growth due to people moving in from other states and countries. Trends over the last decade, indicate that more

Population: 3.7 million
Growth since 2000: 8%
Minority population: 17%
Language other than English: 12%
High school graduates: 85%
Bachelor's degree or higher: 25%
Homeownership: 65%
Median household income: \$43,000
Minority owned businesses: 7%
Small businesses: nearly 90% of Oregon businesses employ less than 20 people

Oregonians are going to college and earning graduate degrees, median household income levels are increasing, our population is growing more ethnically diverse, and more families are speaking a language other than English at home. At the same time, more Oregonians live in poverty compared to 2000.

DEQ is committed to the principles of environmental justice to protect the health of all Oregonians, including traditionally underrepresented groups. DEQ is also committed to building and maintaining a diverse workforce that reflects Oregon's changing population.

Our core regulatory work

DEQ's regulatory responsibilities come from programs delegated to the state by the EPA, including the federal Clean Water Act, Clean Air Act and Resource Conservation and Recovery Act. In addition, state laws give DEQ responsibilities for protecting Oregon's air, water and land. DEQ also receives direction and guidance from the EQC, the Governor, the state legislature and the communities we serve. Our knowledge of local environmental conditions and problems drives our work as well. DEQ's *Strategic Directions* captures and reflects all of these drivers and evolves over time as environmental needs change.

Land Quality

- regulates 530 solid waste facilities/sites and 520 hazardous waste generator
- oversees cleanup of about 400 contaminated sites, and 300 UST¹ facilities/sites statewide per year
- provides over \$500,000 in grants for solid and hazardous waste reduction, recovery and reuse
- has overseen safe destruction of nearly 95,000 nerve agent weapons at UMCDF
- responds to about 920 spills and other environmental emergencies each year
- has issued 60 field citations for leaking underground tanks in 2007 so far, 88 in 2006, 118 in 2005 and 68 in 2004

Air Quality

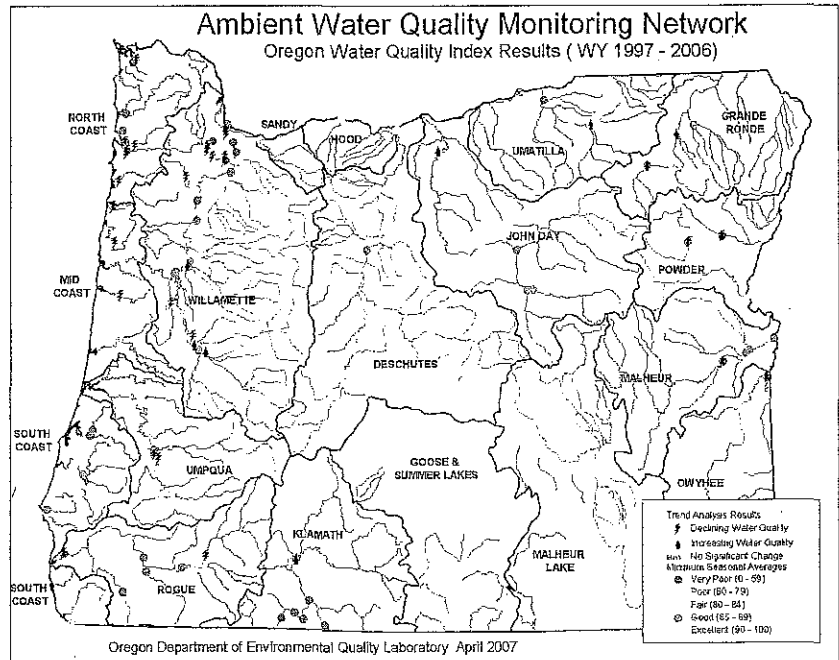
- manages about 125 Title V² permits and 1,100 ACDP³ permits
- monitors 2,500 asbestos abatement projects each year
- certifies 1,000 asbestos abatement contractors
- VIP tests over 500,000 vehicles in Portland and Medford each year
- permits 625 vapor recovery systems at gas stations
- issues about 1500 tanker truck vapor certifications
- assists over 700 large Portland area employers to meet commute trip reduction goals.

Water Quality

- manages about 4,200 NPDES⁴ permits and 450 WPCF⁵ permits
- working on over 800 TMDLs in 33 sub-basins
- provides \$4.8 million in state revolving fund loans to leverage \$24 million
- monitors Oregon's 114,000 miles of rivers, 400,000 acres of lakes, 56,000 acres of tidal wetlands, 360 miles of coastal ocean, and 206 square miles of estuaries, harbors and bays

DEQ's Laboratory

- conducts assessments to determine status and trends, measure compliance with standards, determine sources of pollution, determine stressor/response relationships, and identify new problems
- monitors the quality of Oregon's air and water at over 1,500 stations each year, collects over 20,000 samples each year, and performs approximately 300,000 analyses each year



¹ Underground Storage Tank

² Clean Air Act Title V permits regulate large industrial sources of air pollution

³ Air Contaminant Discharge Permits regulated medium sized sources of air pollution

⁴ Clean Water Act National Pollution Disposal Elimination System permits regulate wastewater discharges from sewage treatment plants, pulp and paper mills and other businesses, as well as stormwater discharges

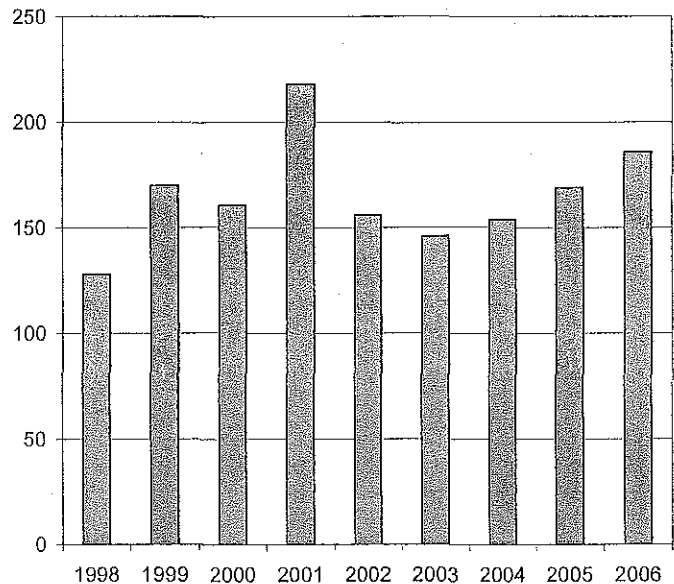
⁵ Water Pollution Control Facility permits regulate wastewater discharges to the ground, including irrigation, wastewater lagoons, onsite sewage disposal systems and underground injection control systems

Compliance and enforcement

In 2005 and 2006, DEQ revised its enforcement rules to better encourage compliance with environmental regulations, to make enforcement actions easier to understand, and to ensure that penalties are equitable and appropriately reflect the severity of each violation.

DEQ uses a combination of tools to ensure compliance including technical assistance, compliance inspections, complaint investigation, civil penalty assessment and compliance orders and public education.

Number of Formal Enforcement Actions



Agency infrastructure



DEQ's infrastructure advances the agency's environmental work and helps employees deliver outstanding customer service. Our infrastructure is essential to help us understand and communicate changes in Oregon's environment, demonstrate the results of public funding, respond quickly to needs and opportunities, and support an effective and diverse workforce. Maintaining DEQ's infrastructure requires ongoing investments, and limited funding has often constrained our ability to optimize these critical agency functions.

Business systems development: designing, developing, implementing and maintaining computer systems

Information services: data exchange services, geographic information systems coordination, web site content management, web server administration

Employee and organization advancement: employee recruitment and hiring, internships, mentorships, performance management, health and safety, labor union relations, benefits, strategic and operational planning, process improvement activities, meeting planning and facilitation

Accounting: purchasing, contracting, invoicing, spending oversight, cost reimbursement, payroll, employee time accounting, inventory control

Budget: budget planning and implementation, program guidance, purchasing, grant management, staffing requests, position reclassification

Environmental data management: collecting and managing information, sample tracking and analysis, scientific and public reporting, interpreting technical data, quality assurance and control

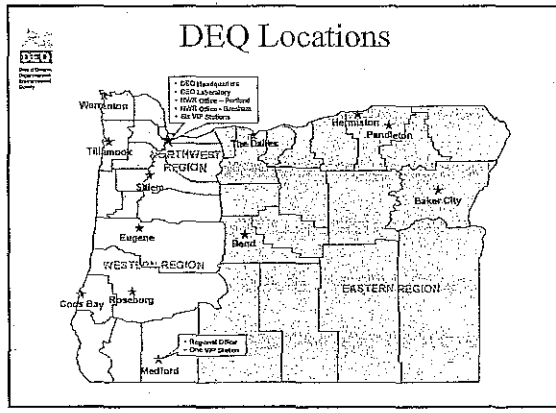


DEQ
 Oregon Department of Environmental Quality
 800 NE Oregon Street, Salem, OR 97331
 503-325-4333

Four perspectives on DEQ

EQC strategic planning discussion, October 18, 2007

- Snapshot of DEQ's "core work" and what drives it – Dick Pedersen
- What the environment is telling us – Greg Pettit
- How community interests drive DEQ's work at headquarters and in the regions – Division Administrators
- Direction DEQ received from the legislature – Greg Aldrich
- Wrap up – Dick Pedersen



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The People We Serve

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- Growth since 2000: 8%
- Minority population: 17%
- Language other than English spoken at home: 12%
- High school graduates: 85%
- Bachelor's degree or higher: 25%
- Homeownership: 65%
- Median household income: \$43,000
- Minority owned businesses: 7%
- Small businesses: nearly 90% of Oregon businesses employ less than 20 people



Agency Infrastructure

- Business systems development
- Information services
- Employee and organization advancement
- Accounting
- Budget
- Environmental data management





Our core regulatory work

Water Quality

- Permits
- TMDLs
- SRF Loans

Land Quality

- Solid Waste
- Hazardous Waste
- Cleanup
- Spills

Air Quality

- Permits
- Asbestos
- VIP

Laboratory

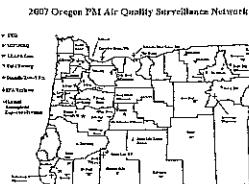
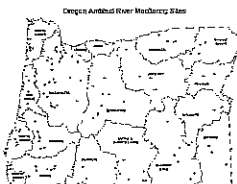
- Monitoring
- Analysis

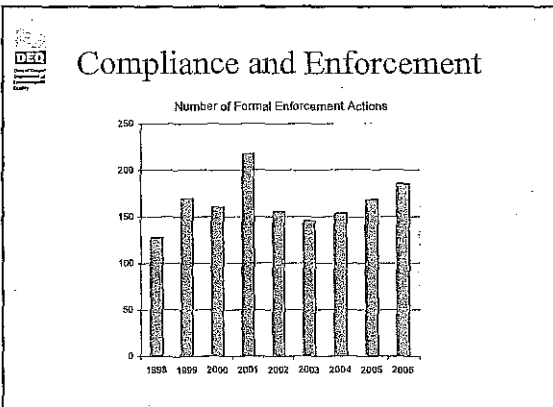


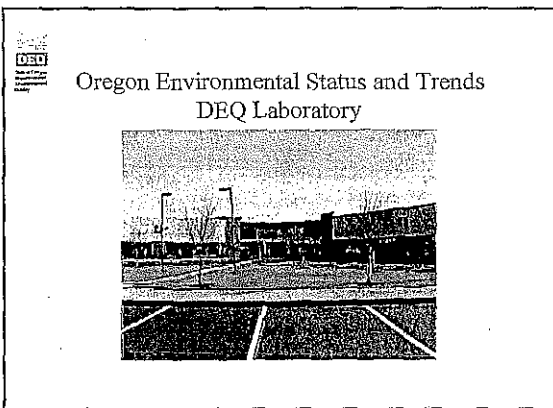
Monitoring

Water

Air







DEQ

DEQ Laboratory

- Information generated by DEQ Laboratory provides the foundation for identifying and solving environmental problems



DEQ Laboratory

- 83 FTE, support staff, management, information specialists, scientists
- \$10.75 million annual budget
- Collect approximately 20,000 air and water samples per year, generate 300,000 laboratory analytical results.
- Conduct continuous air and water monitoring including 35-40 air monitoring sites
- Conduct integrated aquatic health surveys including macro-invertebrates, fish community, habitat and water quality
- Maintain the agency's environmental data base (LASAR)



Basic Story

- Initially targeted relatively limited list of air and water pollutants
- Significant reductions in ambient concentrations of those pollutants
- As our technology and knowledge of harmful effects of pollutants has increased, criteria (targets) are being lowered and we are becoming aware of new concerns, primarily toxics



Air Pollutants we measure

- Federal Clean Air Act Requirements
 - Criteria Pollutants with National Ambient Air Quality Standards (NAAQS)
 - Carbon Monoxide
 - Ozone (new standard in 2008)
 - Sulfur Dioxide
 - Oxides of Nitrogen
 - Fine Particulate
 - PM10
 - PM2.5 (new standard 2006)
 - Lead

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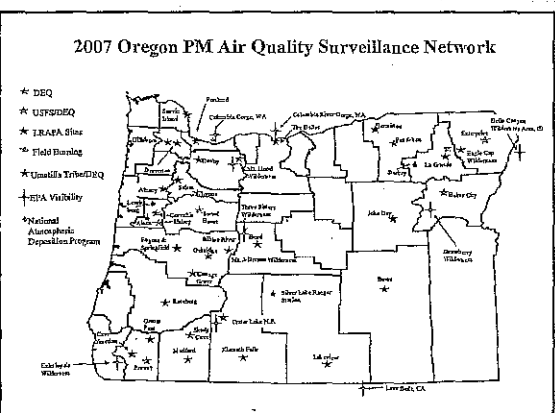
Air Pollutants we measure

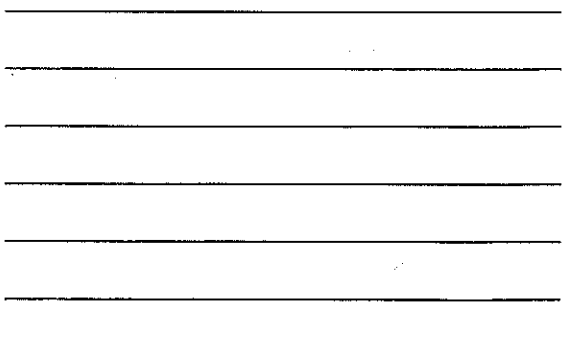
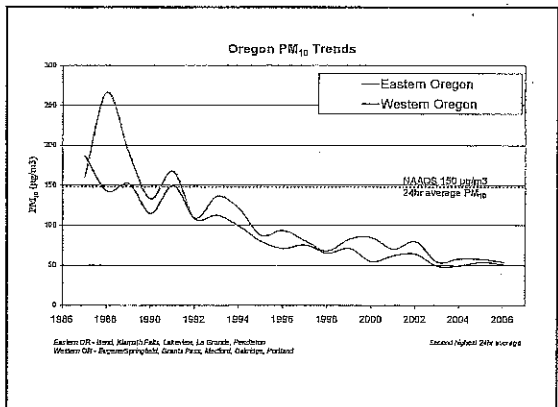
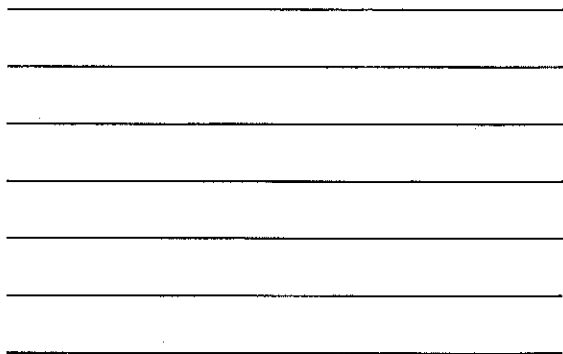
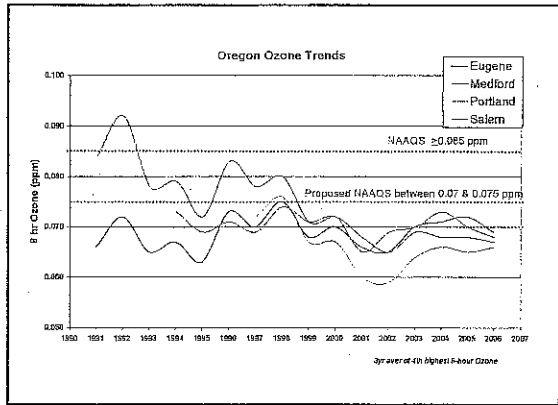
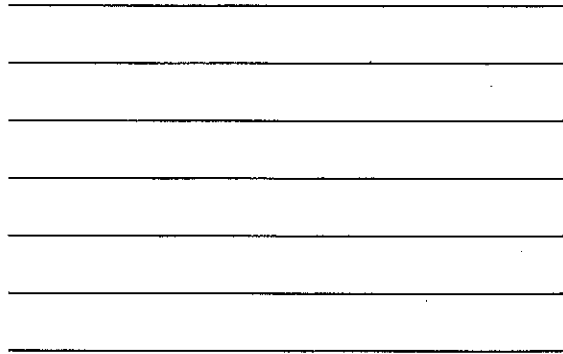
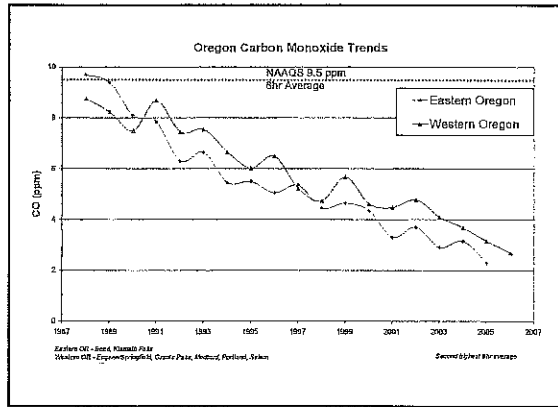
- Air Toxics (CAA lists 188 compounds)
 - Health Benchmarks, but no federal standards
 - Air toxics of concern (>10 times health benchmarks)
 - Acetaldehyde, acrolein, arsenic,
 - Benzene, 1, 3-butadiene, beryllium,
 - carbon tetrachloride, chloroform, chromium,
 - Diesel PM, polycyclic aromatic hydrocarbons (PAH),
 - Nickel
 - Mercury

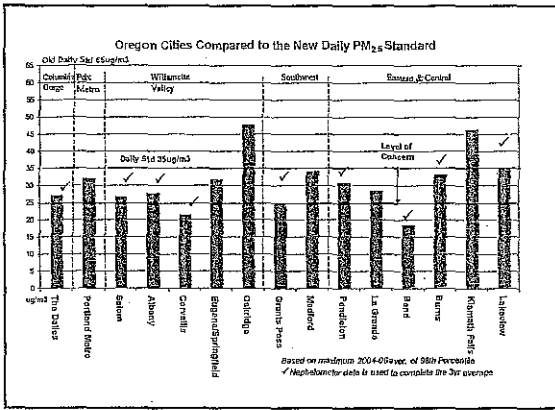
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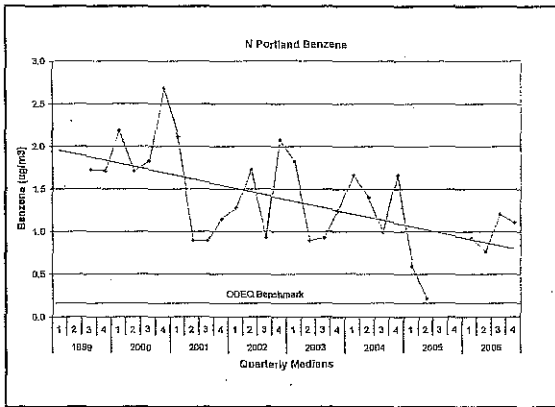
Air Pollutants we measure

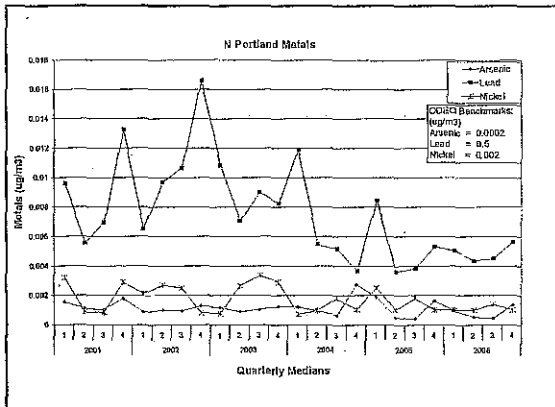
- Support Monitoring
 - Continuous Fine Particulate measurements using nephelometers
 - Air Quality Index, Wood stove advisories
 - Meteorological Stations
 - Wind speed and direction, Temperature, barometric pressure, relative humidity, solar radiation













Emerging AQ Issues

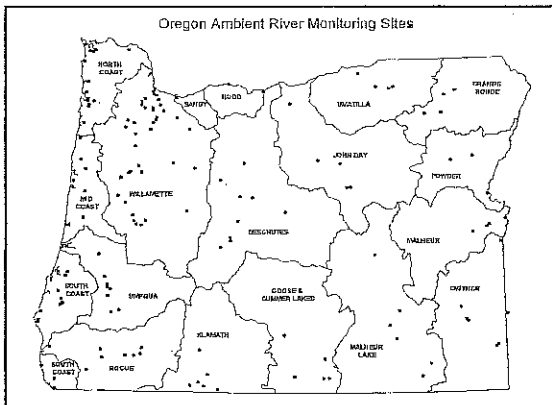
Air Toxics

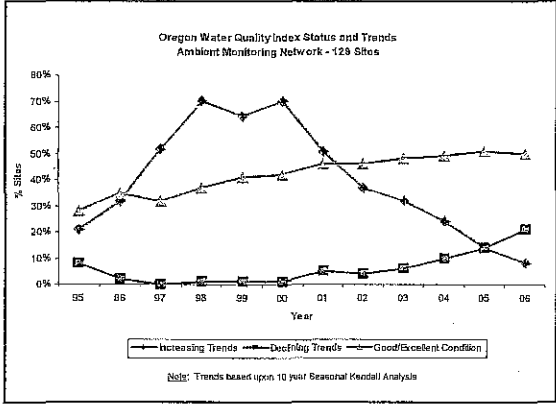
- Every county with at least one compound above health benchmarks.
- Better measurement technology, better understanding of health effects.

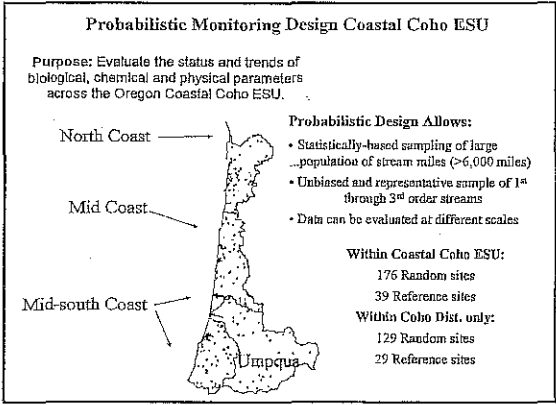


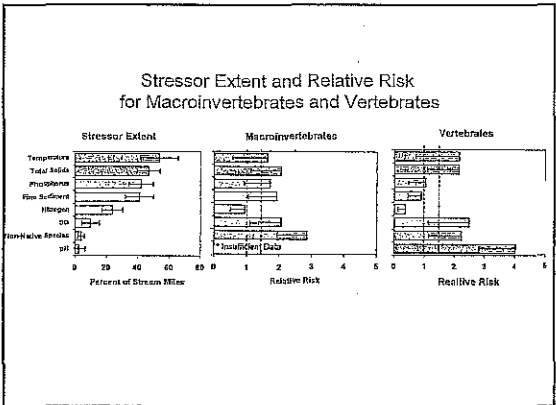
Water quality indicators we measure

- Conventional water quality indicators: dissolved oxygen, biological oxygen demand (BOD), nutrients, solids, fecal bacteria, temperature, pH
- Toxics: metals (mercury, Arsenic, etc), pesticides (legacy and current use), PCBs, solvents, PAHs
- Habitat, aquatic macro-invertebrates, aquatic vertebrates











Toxics in Surface Water

Most common surface water toxic contaminants based on number of stream miles documented as not meeting water quality standards:

- Mercury
- PCBs
- Arsenic
- DDT and Metabolites



Groundwater Quality

- 70% of Oregonians rely on groundwater for drinking water
- 90% of public water supplies get their drinking water from groundwater
- Over 600,000 Oregonians get their water from individual private wells not regulated or tested under the Safe Drinking Water Act
- 95% of all available freshwater is groundwater
- As surface water supplies are fully allocated increasing demand is being placed on groundwater



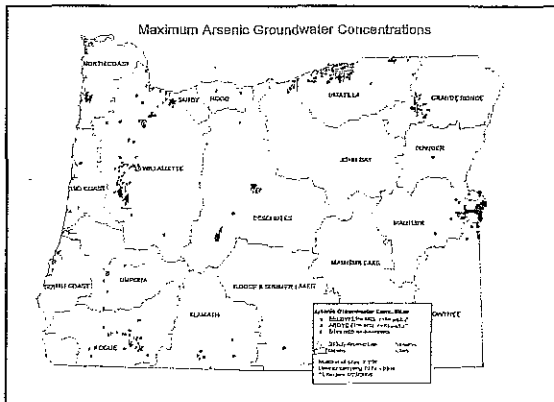
Groundwater Contamination

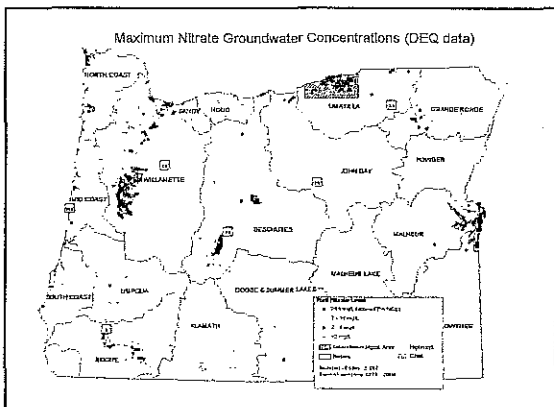
- Groundwater contamination revealed in 35 out of 45 regional assessments DEQ did between 1986 and 2000
- 24% of 1156 wells sampled for arsenic exceed the MCL of 10 parts per billion
- 16% of 2187 wells sampled for nitrates exceed the MCL of 10 parts per million




Groundwater Contamination

- USGS study indicates 33% of rural wells in Willamette Valley contain pesticide contamination with up to 15 different pesticides detected in private drinking water wells
- 67% of wells (200+) sampled in Malheur County contained the pesticide Dacthal with concentrations up to 32 times the Health Advisory Level
- Primary drinking water contaminants of concern are arsenic, nitrates, pesticides, and VOCs






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Emerging Issues

- Population growth/Land use changes
- Climate change
- Pharmaceuticals, flame retardants, endocrine disrupters
- Global Impacts (atmospheric mercury)

 **DEQ**
Department of Environmental Quality

Final Comments

- Valid data on environmental status and trends is essential for measuring management program success and targeting for results
- We have only found what we have looked for – Lack of data does not prove lack of problems
- More monitoring will identify more problems, this should not be interpreted as a trend

 **DEQ**
Department of Environmental Quality

Final Comments

- Compliance with standards should not be interpreted as a trend since this is affected by monitoring effort and changes in standards
- Trends are determined by evaluating environmental data consistently collected over time.
- Improvements in monitoring and analytical technologies will greatly increase our awareness of contaminants in our environment.

EQC Strategic Planning Discussion 10/18/07
Remarks by DEQ Director, Stephanie Hallock

Today's agenda is dedicated to a conversation about where DEQ has been, where we are now, and where we want to go.

- With our strategic directions in mind, we would like to address the question: what are Oregon's environmental priorities and what role should DEQ play?
- We have invited our partners and stakeholders including Elin Miller, administrator of EPA Region 10, Mark Reeve, former chair of the Commission, members of the environmental community, the business community, municipal government, and the Tribes, to provide comment, insight, and perspectives on this question.
- Mike Carrier, the Governor's Natural Resource Policy Advisor, is here this morning to share his perspectives.
- In addition to these viewpoints and reflections, we are going to take a few hours this afternoon to explore DEQ's core work and responsibilities.
- This will be an time for you and our audience to become better acquainted with the work DEQ staff must do every day, what our science lab and monitoring activities are telling us about the environment, the interplay of our daily work and our role in the community, our work with local communities in a number of efforts, and an update on our legislative mandates.
- We are looking for your guidance and help in weaving these perspectives, viewpoints, responsibilities, mandates and hopes into the fabric of our strategic directions. The overall goal is to define DEQ's purpose and role while considering our core regulatory work and needed initiatives.
- We have set aside the last hour of the day for a discussion of our impressions, and a recap of what we heard throughout the day. This evening we have scheduled an informal dinner for you with the Executive Team.
- Tomorrow we'll conclude with an open discussion about our future direction.
- I'd like to thank you for investing your time in a three day meeting. This discussion is critical, as we will soon begin to put together our legislative and budget priorities for the 2009 session and we, of course, want those to reflect the future strategic priorities of the agency,

- I'd also like to thank Helen Lottridge and Joanie Stevens-Schwenger for their help in putting together this agenda. I'd also like to send good wishes to Patti Seastrom who was to help facilitate our discussions, but is home recuperating from an automobile accident.

Stephanie's reflections

Next month, somewhere around Election Day, I will complete seven years as Director of DEQ. This past August marked my 19 year anniversary with the agency. I'd like to take a few minutes to reflect on "where we have been" and what lies ahead.

When I became Director, the agency did not have a clear set of strategic priorities. Over the years we have shaped and refined those priorities into the current four you adopted in 2006: promoting sustainable practices; improving Oregon's air and water; protecting people and the environment from toxics; involving Oregonians in solving environmental problems.

It has been a challenge to deliver on these priorities and to fulfill other mandates because of budget cuts, but in 2007 the Governor and the legislature restored funding which will help the agency rebuild what has been lost. We even got some new mandates, such as the bottle bill and electronic waste, and new resources for some programs, like stormwater and UIC.

You will hear more about funding and resource realities and legislative expectations this afternoon but it is important to note that DEQ's budget and programs were downsized over years and it will take years to rebuild – both program capacity and staff morale.

Because we managed our resources wisely, DEQ did not have to lay off staff during the recession and budget reductions, but the heart and spirit of the agency were damaged and it will take time to heal and rebuild.

It will also take time to rebuild and enhance infrastructure needs such as easily accessible data, ability to do business on the web, recruitment and training of staff, and the need for more environmental monitoring, as well as the ability to communicate information to the public about the condition of the environment.

I am proud to say that even during the tough times, we had some notable accomplishments in achieving our strategic directions. Here are just a few examples:

- **We've improved Oregon's air and water while promoting the sustainable practices articulated in the strategic directions:**

- We worked with Senator Wyden's office and Congressman Blumenauer's office to successfully lobby the EPA to reduce benzene levels in Pacific NW gasoline.
- The EQC adopted the OR Low Emission Vehicle (LEV) program to reduce greenhouse gas emissions from cars and trucks. When phased in, OR LEV will reduce greenhouse gas emissions from new vehicles by 30% and will also reduce air toxics and smog forming chemicals.
- The West Coast Clean Diesel Initiative has upgraded engines on tugboats, garbage trucks, school buses, buses, and construction equipment. Idling emissions from truck stops and locomotive yards have been reduced. State and federal grant funding is available to reduce emissions and tax credits are available to encourage retrofits of high polluting engines or the purchase of new, cleaner engines.
- Because of permit program streamlining, the air quality program has been able to avoid permit backlogs, even during the budget cuts.
- The Water program has continued to complete TMDLs on schedule with the consent decree and have them approved by EPA, including the complex and controversial full-basin TMDL for the Willamette.
- The Water program has also kept up with permit issuance, fulfilling commitments made to the regulated community through the Blue Ribbon Committee process.
- Within DEQ, we used the remodeling of our headquarters to implement a number of suggestions from our internal sustainability team: elevator upgrades will reduce energy consumption, as will lighting upgrades – we have completed lighting efficiency upgrades in about half of our leased office space statewide.
- During the remodel we installed more on and off light switches in conference rooms and offices and improved the system of automatic lighting shutoff during non-business hours. The restrooms now have low flow toilets on all floors. Carpet is recycled and environmentally friendly, and recycled paint was used for accent walls.
- In addition, the reconstructed State Office Building in Eugene that DEQ is moving into will have photovoltaic panels that will provide an estimated

15% of the energy for the building. A new state law requires 1.5% of construction costs to be dedicated to solar projects on state buildings.

▪ **We are reducing toxics in the environment**

- The Commission adopted rules to reduce mercury emissions by 90 percent - the largest reduction possible for western coal - from the PGE Boardman coal-fired power plant and any new coal-fired plants that locate in Oregon.
- A task force has been set up under Mark Reeve and a plan developed for reducing mercury emissions from Ash Grove Cement.
- Pesticide Stewardship Partnerships were implemented in five watersheds. These partnerships use a voluntary, collaborative approach to identify problems and improve water quality associated with pesticide use in the Hood River, Walla Walla, Pudding/Molalla, Clackamas, and Yamhill watersheds.
- The Chemical Weapons stockpile at Umatilla continues to be safely destroyed – risk to Oregonians has been reduced by 91%.
- The EQC adopted health benchmarks for the most significant air toxics in Oregon. Benchmarks provide the framework for DEQ to implement one of the first and most unique programs in the country to address air toxics.
- We've cleaned up seventy-four contaminated properties statewide, including the site of Amy's Kitchen, the largest privately owned maker of organic frozen food in the United States, who invested \$17 million in a new facility and created over 320 new jobs in the Ashland area.
- We continue to work with property owners to eliminate sources of contamination in the Portland Harbor area of the Willamette River. With funding obtained by the Governor from EPA, construction was completed on the McCormick and Baxter Superfund site to control pollution to the river and free the property for productive reuse.
- With the Governor's assistance, attention is being paid to the problem of pollution from abandoned mines, resulting in the recent listing of the Formosa mine by EPA as a Superfund site.

- As you will hear this afternoon, the Water program continues to make a significant investment in the dialogue about fish consumption and an appropriate water quality standard for toxics.
 - We worked with EPA, Idaho and Washington to have protection of the Columbia River from toxics included as a priority in EPA's national strategic plan, and \$400,000 in federal funds for monitoring has been directed to that effort.
- **Involving Oregonians in Solving Environmental Problems**
- We have made over \$100 million dollars in low interest loans from the state revolving fund to help 40 public agencies and communities construct or upgrade facilities to manage wastewater.
 - Our drinking water source protection program provided assistance to 42 communities and public water providers and an assessment for all 2471 public water systems in the state.
 - We have provided DEQ-run household hazardous waste collection days in communities throughout the state, and we helped secure EPA grant funds to help local communities establish permanent household hazardous waste collection facilities.
 - We have also helped communities secure Brownfield cleanup grants.
 - We continue to invest in SOLV's "Down By the Riverside" cleanup activities
 - We partnered with Eugene and Metro in the "Healthy Lawns, Healthy Families" campaign
 - We are active participants in the Governor's Economic Revitalization Team which partners with Oregon Solutions and others on projects throughout the state such as development of wave energy and biofuels facilities.
 - We initiated many customer service efficiencies at Vehicle Inspection Stations including: accepting debit and credit cards; repairing vehicles owned by low income drivers using donations from Oregonians; experimenting with 24/7 self-service test lanes, and sending test information from a vehicle's on-board computer to DEQ over the Internet.

One of our proudest accomplishments has been to secure funding for a new lab in tight budget times. In partnership with the Department of Human Services (DHS) Public Health Laboratory, we are opening a new \$34 million state-of-the-art laboratory to be shared by DEQ and DHS. By the way, the lab has been built to Leadership in Energy and Environmental Design (LEED) standards. Move-in date is December 3.

As I look forward I see a number of challenges and opportunities for Oregon and DEQ:

- Natural Resources continues to be under-funded in the state's budget – less than 2 percent. DEQ's continued reliance on fees and cost recovery from the regulated community is a fact, not an option, unless another long-term stable funding mechanism is found.
- Oregon needs to take an integrated, comprehensive, cohesive approach to protecting water quality and ensuring an adequate supply of clean groundwater and surface water for drinking, recreation, industry and growing crops. Until we do, policy will be made permit-by-permit, issue-by-issue, 401 certification by 401 certification.
- Setting water quality standards has become an impossible task and a limitless resource drain. Unless the system for setting standards in this country is changed, all standards will ultimately be determined by the courts. Region 7 is experimenting with a Kaizen process that may or may not prove to be a successful model for setting standards differently.
- Development of alternative energy sources and alternative fuels are a priority for the Governor, and DEQ is being called on to invest significant resources in supporting the public dialogue, regulatory research and permitting for activities like LNG and wave energy. Some other DEQ work may have to be deferred to support these priorities.
- We are increasingly challenged by the complex toxic pollutants in our environment. More work needs to be done to determine where those pollutants are coming from, and what can be done to minimize their entry into the environment and to protect people from exposure. DEQ will be working with municipalities to implement SB 737 to assess toxic discharges from 52 large treatment plants. DEQ also received almost \$2 million from the legislature for water toxics monitoring of the Willamette.

- We need more monitoring and environmental data. DEQ's air and water monitoring equipment and networks are inadequate to provide comprehensive, current and robust data upon which to base policy and regulatory responses, especially to the problem of toxics in air and water, and Oregon needs to make a significant investment in this activity.
- To make significant future gains in maintaining a clean and healthy environment, we must tackle the political and practical consequences of addressing pollution in Oregon, toxic or otherwise, that comes from multiple small sources and/or sources that are minimally regulated and may respond better to incentives than regulation. Addressing non-point sources, which produce most of the pollution in Oregon, means re-thinking and re-focusing our regulatory and incentive-based strategies.
- As the Commission knows, we are in the process of addressing field burning, but the air pollution problem from particulate goes beyond field burning. EPA has tightened the particulate standard, and several communities in Oregon will be hard-pressed to meet it.
- We need to continue our work on climate change. The Governor's leadership on climate change resulted in passage of an impressive array of legislation in support of renewable, clean and efficient energy. As discussed earlier, our air quality program is active in a number of regional initiatives.
- We need to reduce waste and further encourage recycling. The expansion of the bottle bill and passing of the e-waste bill are good beginnings.
- Finally, we need to retain Oregon's legacy as an environmental leader. People want to live and work in Oregon because of our reputation for taking care of our naturally beautiful environment.

A strong environmental future for Oregon will be ensured by courageous leadership from the Commission, the Governor, the legislature, and all of the state's natural resource agencies, including DEQ. I am confident that a strong, engaged EQC, a terrific Executive Team, and the diverse, enthused workforce we are building at DEQ can and will meet these challenges under the new Director.

**Environmental Quality Commission
Public Testimony
October 18, 2007**

**Ivan Maluski
Conservation Coordinator
Oregon Chapter, Sierra Club
2950 SE Stark St., Suite 110
Portland, OR 97214**

The Bureau of Land Management's Western Oregon Plan Revision, and the protection of water quality in Oregon

DEQ needs to continue to play a leading role in protecting water quality in Oregon by upholding the Clean Water Act as it relates to forest practices. In particular, the Bureau of Land Management's Western Oregon Plan Revision appears to be taking Oregon down a path of reduced water quality and threats to numerous streams that are already water quality limited.

The protection of ancient forests on BLM lands, and maintaining the late successional and riparian reserve framework of the Northwest Forest Plan, should be a high priority for DEQ and the EQC in coming months and years. In fact, two recent letters from the EPA to the US Fish and Wildlife Service have raised serious concerns that both the proposed northern spotted owl recovery plan and the increases in logging in currently protected areas under the BLM's plan revision, could roll back water quality improvements Oregon watersheds have seen since the implementation of the Northwest Forest Plan 13 years ago.

EPA has pointed out that many Oregon rivers do not meet the water quality standards of the Clean Water Act, and that tripling logging levels on BLM lands, with an emphasis on increases in logging in older forests within riparian reserves and late successional reserves, will undue the gains made in the past. EPA has seen watershed conditions improve or stabilize in 97% of watersheds surveyed since the adoption of the Northwest Forest Plan. Michael Gearheard, director of the Office of Water and Watersheds in the EPA's Seattle office wrote on August 29, "We are deeply concerned that revisions proposed in the Draft Recovery Plan could delay or even reverse this positive trend. That would be a big step backwards for water quality in Oregon."

We urge the EQC and the DEQ to treat proposals to abandon or reduce late successional and riparian reserves in the BLM's proposed Western Oregon Plan as a very serious threat to water quality in Oregon, as well as your ability to fulfill the mission of protecting and improving water quality, and your strategic direction to enforce environmental laws and regulations to improve water quality. Thank you, on behalf of the Sierra Club's over 23,000 members in Oregon, for this opportunity to give public testimony.

October 18, 2007

Lynn Hampton, Chairperson
Environmental Quality Commission
Department of Environmental Quality
811 SW 6th Ave.
Portland, OR 97204-1390

Chairperson Hampton and Members of the Commission,

On behalf of the Oregon Chemicals Policy Work Group we would like to thank you for taking public comments at this time on your Strategic Directions for 2006-2011. The Oregon Chemicals Policy Work Group (CPWG) includes four nonprofit groups working on toxics reduction and safer chemicals in Oregon for many years: Oregon Toxics Alliance, Oregon Physicians for Social Responsibility, Oregon Environmental Council and Oregon Center for Environmental Health. After decades of efforts to reduce toxics – one chemical, one product or one place at a time – we have begun to work in partnership to bring a more comprehensive strategy to reduce toxics and promote safer chemicals in Oregon.

We believe that toxics reduction and chemicals policy reform will take on increasing significance in the coming months and years. We are encouraged by the efforts of other coalitions in many states around the country. There is a growing body of evidence that even in small amounts, chemicals in our air, water, food and in common consumer products build up in the environment, and have the potential to bio-accumulate in wildlife and in humans. The growing awareness of this problem and determination of many dedicated individuals give us hope that there is a solution, and we think that Oregon can help play a leading role in that solution.

We are pleased to see specific mention in your Strategic Directions of these issues. We believe your Strategic Directions are very important in setting priorities for the coming years, and note that three of the four pertain in one way or another to safer chemicals – promoting sustainability, improving air and water quality, and protecting Oregonians from toxic pollutants. We are also encouraged by several other current efforts in Oregon to address toxics reduction and chemicals policy reform issues, including the Governor's Toxics Policy Work Group and the Oregon Senate 2008 Work Group on Pesticides and Health.

Focusing on the Strategic Direction related to toxic pollutants, the current implementing strategies are "preventing and reducing toxic chemical releases", and "cleaning up and reducing risks from toxics already in our environment." While we agree that a comprehensive chemicals strategy should include "end of the pipe" controls as well as "clean up" of contaminated sites, we encourage you to expand this Strategic Direction to include more preventive measures as well – for example, reducing the amount of toxics produced and used in products and processes, finding safer alternatives, and promoting green chemistry. It was common to think of industrial production as "cradle to grave;" it is now understood that these chemicals really don't have a grave. Industrial toxics remain in one form or another – especially persistent, bioaccumulative toxics.

In order to advance toxics reduction and comprehensive chemicals policy reform, the CPWG is working with colleagues in the public and private sectors. The newly formed Oregon Chemicals Policy Roundtable is a collaborative group of professionals working in the fields of solid waste, hazardous waste, waste reduction, pollution prevention, toxics reduction and safer chemicals. The CPWG, working with the Roundtable group, has developed a draft Call for Safer Chemicals to Protect Our Health and Our Environment. The Call for Safer Chemicals presents policy options and new approaches to toxics reduction and safer chemicals:

- Provide complete information on chemical ingredients and their toxicity
- Categorize chemicals into levels of concern
- Manage chemicals based on hazards and substitute those of highest concern with safer alternatives
- Establish tools to move Oregon toward a healthier environment
- Ensure that workers and impacted communities are protected
- Provide adequate funding and enforcement to implement chemicals policy reform

We believe the Call for Safer Chemicals will be helpful in developing and implementing toxic reduction and safer chemicals policy reforms in Oregon, and we look forward to working with governmental agencies and a wide range of stakeholders toward these goals.

We thank you for the opportunity to comment on the Strategic Directions, and to provide some background information on the work we are doing to help move the conversation in Oregon forward on toxics reduction and safer chemicals. Your leadership is critical in placing environmental and public health as the paramount concerns and giving new life to the DEQ's mission to "be a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water." Oregon's legacy is one of environmental stewardship and sustainability, and toxics reduction and safer chemicals are integral parts of this vision.

Cheyenne Chapman, Chemicals Policy Program Director
Oregon Center for Environmental Health

Jane Harris, Executive Director
Oregon Center for Environmental Health

Renee Hackenmiller-Paradis, Environmental Health Program Director
Oregon Environmental Council

Sara Wright, Environmental Health Program Director
Oregon Physicians for Social Responsibility

Lisa Arkin, Executive Director
Oregon Toxics Alliance

Dona Hippert, Board Member
Oregon Toxics Alliance

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A Call for Safer Chemicals to Protect Our Health and Environment

Recognizing that every Oregonian is accumulating a body burden of toxic chemicals associated with health impacts, we, call for common-sense chemical policies to ensure that only the safest chemicals are used in Oregon.

Whereas:

- *Everyone has a right to live in a safe and healthy environment, without exposures to toxic chemicals that threaten development and long-term health;*
- *Oregon needs a healthy environment with thriving wildlife and clean air, water, soil, and food for all;*
- *Some populations are more vulnerable to chemical exposures – including pregnant women, infants, children, and workers;*
- *Safe and clean design of chemicals, materials, and products is good for businesses, workers, communities, and ecosystems; and*
- *Using chemicals wisely will ensure a healthy Oregon for future generations.*

We support new approaches that will:

Provide complete information on chemical ingredients and their toxicity

The burden to prove that chemicals are safe before they are allowed on the market will fall to producers/manufacturers. Chemical safety data will be made available to the public and regulators. This data must take in to account impacts on vulnerable populations. Due to the size of this information management task, Oregon should support the development of an interstate clearinghouse for chemical ingredients.

Categorize chemicals into levels of concern

The public, businesses, workers and consumers should have the tools to distinguish among chemicals. A chemical categorization system will identify safer chemicals, chemicals to avoid, and chemicals which lack adequate safety data.

Manage chemicals based on hazards and substitute those of highest concern with safer alternatives

Oregon would use criteria to identify chemicals of concern and have the authority to restrict certain chemical uses. State agencies should have the authority to identify, collect data on and mandate the replacement of chemicals of highest concern.

Establish tools to move Oregon toward a healthier environment

In order to move the market toward safer chemicals, Oregon should:

- ❖ Invest in and build in-state institutional alternatives research capacity.

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- ❖ Promote sustainable procurement policies for state, local, and municipal governments and other large institutions such as hospitals, universities, and schools.
- ❖ Ensure that all communities can participate in new green economy by creating incentives for investment.
- ❖ Create tax incentives for and provide technical assistance to firms working toward safer alternatives.
- ❖ Increase and direct research and economic development dollars to promote safer alternatives, particularly in key sectors ripe for alternatives.

Ensure that workers and impacted communities are protected.

Oregon needs to address both concerns around loss of jobs from a transition to safer chemicals and whether alternatives are indeed safer. This means incorporating policies that support a just transition to cleaner, safer jobs. Oregon should also ensure that chemicals of concern to environmental justice communities are prioritized.

Provide adequate funding and enforcement

Oregon needs to create the funding and enforcement mechanisms necessary to successfully implement chemical policy reform. Resources for technical assistance and program implementation are essential to ensuring a level playing field for businesses.

Oregon Chemicals Policy Roundtable

Mission:

The Roundtable works in coalition and seeks to identify, develop, evaluate, and disseminate key chemical research and policy questions, as well as identify and craft innovative ideas for executive and legislative actions that support new chemical policies and toxics reduction in the state. Existing chemical policies are out-dated and inadequately protect Oregonians and the natural resources we depend on. The Oregon Chemicals Policy Roundtable serves, protects, and advocates for the people of Oregon and the natural environment that sustains us. We also provide both technical and policy analysis support for others in the state working on this mission.

Values:

communication, mindfulness, openness, creativity, greater good, efficiency

Goals:

- Reduce toxics in Oregon
- Propose/review and take action on safer chemical policies by 2009.
 - Facilitate a dialogue between toxics reduction experts in the region
 - Share information with both external and internal partners
 - Learn about the work happening in this arena everywhere, but especially in the West and in those states working pro-actively on toxics reduction and chemical policy.
 - Find answers to the key research and policy questions related to chemical policies.
 - Propose, review, and evaluate policy option packages for implementation either through executive orders or legislatively for the 2008 & 2009 legislative session.
 - Support the work of all teams advancing new toxics reduction chemical policies forward.

**Environmental Quality Commission
Strategic Direction Discussion
October 18, 2007**

Oregon Association of Clean Water Agencies

Chairwoman Hampton and Members of the Commission:

I'm Jim Hill, Water Reclamation Administrator with the City of Medford and vice –chair of the Oregon Association of Clean Water Agencies (ACWA). ACWA is a private, not-for-profit association of 114 wastewater treatment and stormwater management utilities in Oregon, along with associated professionals. We are currently celebrating our 20th year of protecting and enhancing Oregon's water quality.

We appreciate the opportunity to share our thoughts about the strategic direction for the EQC and the Oregon Department of Environmental Quality. Our focus is of course on cleaner water as we share several suggested priorities with you including:

1. Toxic Reduction, and
2. Expanding Oregon's Water Resources.

Toxic Reduction

ACWA advocates that the Department's approach to toxic reduction be strengthened by improving the cross-media integration of toxic reduction programs at DEQ.

Mercury is a great example of a toxic that gets emitted into the air, falls on the ground, ends up in waterways, and impacts fish. Mercury is also reaching Oregon waterways through the use of household products.

A focused toxic reduction program as outlined in SB 737 develops priorities and a coordinated response to PBTs (Persistent Bioaccumulative Toxic). Resulting reduction programs for Oregon are needed and should begin now. Development of such a policy framework and implementation program could draw on the many successful programs that have been undertaken across the US, replicating and improving those reduction programs to targeted reductions in the toxics of greatest concern in Oregon.

A coordinated toxic reduction program should be instituted across all DEQ regulatory programs targeting improvements in air pollution control requirements, and increased inspection and compliance with construction and industrial stormwater permits. This regulatory approach should be in partnership with integrated ambient monitoring strategies, public education and outreach strategies, and targeted grant programs through the Clean Water Act 319 and solid waste planning grants, or other funding opportunities.

Also, attempting to control toxics after they have been introduced into the environment is short sighted. We would urge the Commission to continue to find partnerships for toxics reductions at the source through consumer product restrictions, such as banning mercury-containing devices, restricting certain flame retardant chemicals, and advocating effective product stewardship programs. We appreciate DEQ partnering with ACWA and the Oregon Water Utilities Council to consider the issue of unwanted drug disposal in Oregon, and would welcome the Commission's endorsement of the Oregon Drug Take Back Stakeholder's recommendation that a product stewardship system be instituted in Oregon for unused and unwanted drugs.

Expanding Oregon's Water Resources

Meeting Oregon's water resources needs will be very difficult as our population continues to increase and we see the affects of global climate change. Expanding Oregon's the base of water resources by improving the recycling of environmentally-sound cleaned wastewater is an important way to meet Oregon's water needs.

We can increase water available in Oregon streams by substituting cleaned wastewater for a variety of industrial, commercial, domestic, and agricultural uses including industrial cooling, rock cleaning, commercial car washing, landscape irrigation, and expanded agricultural irrigation. DEQ staff have lead a task force over the past year to review and improve the rules for use of recycled water, and we are pleased with the improvements incorporated in the draft rules that will be before you in early in 2008.

Stormwater is an additional opportunity to expand our thinking regarding Oregon's water resources. Effective pollution prevention programs and using "green" infrastructure to replace steel-and -concrete solutions allows stormwater to be naturally treated and infiltrated back into the natural water cycle. ACWA continues to partner with national groups to promote and evaluate "green infrastructure" and hope that you will incorporate elements of green infrastructure in your strategic planning metrics. Retaining the Underground Injection Control (UIC) program in Oregon is an important element in continuing to improve Oregon's green infrastructure, and we appreciate the Commission's support for the UIC program.

At this time I would be glad to answer any questions.

Oregon Pharmaceutical Take Back Stakeholder Group

Executive Summary

Complete report available at www.oracwa.org

In Clackamas County, a 40-year old mother of two died from an accidental overdose of Methadone. She was having difficulty sleeping and decided to try a family member's unused prescription drug left in her medicine cabinet.

Teenagers age 12 to 17 are the fastest-growing group of prescription drug abusers. They arrange "pharming parties" where they swap drugs found in their homes.

Drugs are being found in waterways nationwide; some of them reach the environment by being flushed down the toilet. One study showed male chinook salmon to be very susceptible to sex reversal.

Unused drugs kept in medicine cabinets, tossed in the garbage, or flushed down the toilet or drain can be serious threats to human and environmental health. Drugs of concern include controlled and non-controlled prescription drugs, as well as over-the-counter medications. Drug take back programs — government or industry programs where unused drugs are returned to designated sources — reduce avoidable poisoning of both children and adults; prevent intentional misuse of unwanted prescription drugs, especially by teenagers; and protect water quality, fish and other aquatic species.

Why Oregon Needs a Drug Take Back Program

Based on industry estimates, 3% of the prescriptions written in the US are unused. In Oregon, that translates to a possible 1,004,200 prescriptions unused annually in Oregon - 663,000 from residents and another 341,000 from long-term care facilities. Some of these unwanted and unused prescription drugs reach Oregon's environment. How do they get there? The majority is from people taking medicine and excreting it. However, studies show that because of inadequate disposal options, most people throw unused or unwanted drugs away — either flushing them down the toilet, or disposing of them in the household trash. Adult care facilities in Oregon serve about 35,000 people, and they typically flush unwanted or leftover medications down the drain.

Reduce Avoidable Poisonings

Leftover drugs can result in the unintentional use of wrong or expired prescriptions by people of all ages, poisoning of children

who get access to drugs, and poisoning of children and pets who find discarded medication in the trash. In 2004, the Oregon Poison Center received 28,734 calls for accidental poisonings of children under six years old, which represented 77% of the pediatric hospital visits in Oregon that year. Overall, drugs represent the most common poisoning hazard, resulting in 50% of all avoidable poisoning calls.

Prevent Intentional Misuse of Drugs, Especially by Teenagers

Misuse of unwanted prescription drugs is the nation's second prevalent drug problem, after marijuana use. From 2002 to 2004, Oregon had the third highest rate in the nation (10%) among youths for non-medical use of pain relievers. Oregon also ranks in the top five states with the highest prevalence of stimulant misuse for ages 12 years and older. Estimates show that the state of Oregon may have nearly 15,000 Emergency Room visits per year from the nonmedical use of drugs. These are often severe. In a national study, 33% of such

emergencies resulted in the patient being sent to a critical care unit. Misuse can also result in dependence or abuse of a drug, and those at greatest risk are between the ages of 12 and 25. The Pacific Northwest ranks third in the nation for drug dependence and abuse.

Protect Water Quality

In one national study of 139 streams in 30 states, drugs were found in 80% of the samples. The two biggest concerns of aquatic impacts are hormone disruption in fish and effects of antibiotics. In the Potomac River, male fish were discovered producing eggs. In Colorado, native fish populations in Boulder Creek showed significant endocrine disruption.

Drugs from households and care facilities reach waterways from excretion, flushing drugs down the toilet into sewers and septic systems, and trash disposal resulting in landfill leachate that reaches surface water or infiltrates groundwater. Some drugs can be treated at traditional wastewater treatment plants, but others cannot. While the

majority of drugs enter the water through human excretion, a drug take back program is still an important step in reducing chemicals in the environment.

The Work of the Drug Take Back Stakeholder Group

A select group of Stakeholders, along with interested parties, formed the working group in October, 2006 to study the disposal of unwanted and unused drugs in Oregon. Stakeholders included a breadth of expertise ranging from law and drug enforcement; public water agencies; pharmaceutical groups; environmental organizations; medical, health care, recycling and poison center representatives; and city and county governments. The group focused on unwanted drug disposal from households and care facilities.

The Stakeholders researched and analyzed existing and proposed drug take back programs in other places including British Columbia, the states of Maine and Iowa, and efforts in other U.S. counties and areas. Methods of drug return range from prepaid mail-in envelopes to drop boxes at pharmacies or law enforcement agencies; the benefits and drawbacks of each were explored.

The Stakeholders' task was to create a proposed program for Oregon that is effective, fair, and economical, and includes both controlled and routine drugs. The program should also include education and outreach elements, needs to work in both urban and rural areas of the state, and must have a long-term funding base.

Oregon Program and Funding Recommendations

The Stakeholders' recommendation, endorsed by the majority of the group, is based on the successful, British Columbia Medications Return Program that has been in operation since 1996. There, an organization of pharmaceutical manufacturers known as the Post Consumer Stewardship Association organizes and finances the program. This is known as a Product Stewardship program.

Based on the success of the British Columbia program, estimates for Oregon indicate that approximately 60,000 pounds of unwanted drugs would be returned annually, including about 5,300 pounds of controlled drugs such as narcotics, Vicodin, Demerol, Ritalin, or Xanax.

The majority of the group believes that this approach, which has been used by other industries in the U.S. and Canada, has the best potential for success. The Pharmaceutical Research and Manufacturers of America (PhRMA), opposes the recommendations.

Program Proposal: Product Stewardship Program

In a Product Stewardship Program, pharmaceutical manufacturers and over-the-counter drug companies would be requested to devise and implement a convenient and effective program for consumers to dispose of unwanted medicine. The industry can select the format -- mail-back, drop box, a combination of the two, or another concept that the industry may choose to pursue. In addition, the program for Oregon should seek federal Drug Enforcement Administration waivers (as Washington, California and Maine have already requested) to allow controlled drugs to be included.

Action by the 2007 Oregon Legislature included pharmaceutical take back programs as one program to examine to reduce toxics in Oregon's water. If the industry is unable to move forward with such a program, the Stakeholders propose that legislation requiring it be introduced in the 2009 Oregon Legislature.

Funding Proposal: Industry Funding

The Stakeholders do not believe that the burden of this program should fall directly on consumers, nor be added as an additional cost to the routine responsibilities of Oregon's law enforcement agencies. In 2005, the BC program collected 39,710 pounds of unwanted drugs at a total cost of \$190,935 (U.S. dollars). The group recommends that the industry fund the program, although the Pharmaceutical Research and Manufacturers of America, does not support this option.

The funding method proposed is similar to that in British Columbia and in the recycling of used batteries, mercury-containing thermostats, and electronic equipment in some states including Oregon. This option keeps the program financing directly related to the producers, users, and disposers of medications, instead of spreading the costs across the general public. A private sector system can be designed to be efficient and flexible.

Drug Take Back -- A Simple, Safe Routine

Take-back programs have become common, simple routines throughout Europe and Canada for a wide range of hazardous products including pharmaceuticals, automotive fluids, batteries, electronics, paint, solvents, tires and other products. They are becoming more commonplace in the U.S. Oregon already has a program in place for battery recycling and the Legislature recently passed an electronics recycling program. Take back programs for drugs are of even greater consequence. A proactive approach will help avoid poisonings and drug addiction, and is more cost-effective than treatment in both public health and pollution control.

A safe and secure program can make the collection and disposal of unused and unwanted drugs as easy and convenient as buying a bottle of aspirin or filling a doctor's prescription, while bringing benefits for the health of Oregonians and the environment.

July, 2007

Complete Report Available at:

www.oracwa.org

Presentation to Oregon Environmental Quality Commission

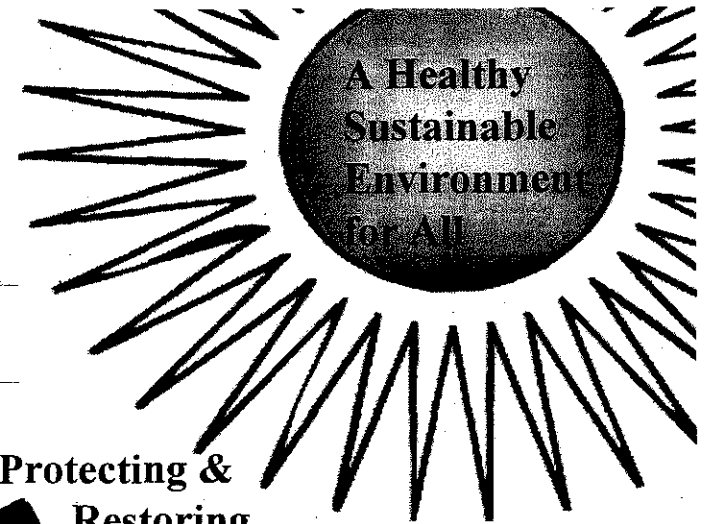
October 18, 2007



**By
Elin D. Miller
Regional Administrator,
USEPA Region 10**

**Sustainability &
Strategic Partnerships**

**Enhancing
Tribal
Environments**



**A Healthy
Sustainable
Environment
for All**

**Support the Core
Programs**

**Protecting &
Restoring
Watersheds**

**A stronger
EPA**

**Clean Affordable
Energy & Climate
Change**

**To protect and restore the environment
of the Pacific Northwest and Alaska for
present and future generations**

**Making a difference through
People and Teamwork**

Expect Excellence

**Professionalism and Respect
Honesty and Integrity**

Communication and Dialogue

Willing to Take Risks

Remind about Korean visitors.

EQC Strategic Planning Discussion 10/18/07 Remarks by DEQ Director, Stephanie Hallock

Invite Mike

Today's agenda is dedicated to a conversation about where DEQ has been, where we are now, and where we want to go.

- With our strategic directions in mind, we would like to address the question: what are Oregon's environmental priorities and what role should DEQ play?
- We have invited our partners and stakeholders including Elin Miller, Administrator of EPA Region 10, ~~Mark Reeve, former chair of the Commission~~, members of the environmental community, the business community, municipal government, and the Tribes, to provide comment, insight, and perspectives on this question. *who will be here this afternoon, along with*
- Mike Carrier, the Governor's Natural Resource Policy Advisor, is here this morning to share his perspectives. *and Mark Reeve, former chair of the EQC*
- In addition to these viewpoints and reflections, we are going to take a few hours this afternoon to explore DEQ's core work and responsibilities.
- This will be an time for you and our audience to become better acquainted with the work DEQ staff must do every day, what our science lab and monitoring activities are telling us about the environment, the interplay of our daily work and our role in the community, our work with local communities in a number of efforts, and an update on our legislative mandates.
- We are looking for your guidance and help in weaving these perspectives, viewpoints, responsibilities, mandates and hopes into the fabric of our strategic directions. The overall goal is to define DEQ's purpose and role while considering our core regulatory work and needed initiatives.
- We have set aside the last hour of the day for a discussion of our impressions, and a recap of what we heard throughout the day. This evening we have scheduled an informal dinner for you with the Executive Team. *Break at 4 pm, dinner at 6 pm,*

OK to be a little late

October 16, 2007

- Tomorrow we'll conclude with an open discussion about our future direction.
- I'd like to thank you for investing your time in a three day meeting. This discussion is critical, as we will soon begin to put together our legislative and budget priorities for the 2009 session and we, of course, want those to reflect the future strategic priorities of the agency,
- I'd also like to thank Helen Lottridge and Joanie Stevens-Schwenger for their help in putting together this agenda. I'd also like to send good wishes to Patti Seastrom who was to help facilitate our discussions, but is home recuperating from an automobile accident.

Stephanie's reflections

Next month, somewhere around Election Day, I will complete seven years as Director of DEQ. This past August marked my 19 year anniversary with the agency. I'd like to take a few minutes to reflect on "where we have been" and what lies ahead.

When I became Director, the agency did not have a clear set of strategic priorities. Over the years we have shaped and refined those priorities into the current four you adopted in 2006: promoting sustainable practices; improving Oregon's air and water; protecting people and the environment from toxics; involving Oregonians in solving environmental problems.

It has been a challenge to deliver on these priorities and to fulfill other mandates because of budget cuts, but in 2007 the Governor and the legislature restored funding which will help the agency rebuild what has been lost. We even got some new mandates, such as the bottle bill and electronic waste, and new resources for some programs, like stormwater and UIC.

You will hear more about funding and resource realities and legislative expectations this afternoon but it is important to note that DEQ's budget and programs were downsized over years and it will take years to rebuild – both program capacity and staff morale.

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Because we managed our resources wisely, DEQ did not have to lay off staff during the recession and budget reductions, but the heart and spirit of the agency were damaged and it will take time to heal and rebuild.

It will also take time to rebuild and enhance infrastructure needs such as easily accessible data, ability to do business on the web, recruitment and training of staff, and the need for more environmental monitoring, as well as the ability to communicate information to the public about the condition of the environment.

I am proud to say that even during the tough times, we had some notable accomplishments in achieving our strategic directions. Here are just a few examples:

- **We've improved Oregon's air and water while promoting the sustainable practices articulated in the strategic directions:**
 - We worked with Senator Wyden's office and Congressman Blumenauer's office to successfully lobby the EPA to reduce benzene levels in Pacific NW gasoline.
 - The EQC adopted the OR Low Emission Vehicle (LEV) program to reduce greenhouse gas emissions from cars and trucks. When phased in, OR LEV will reduce greenhouse gas emissions from new vehicles by 30% and will also reduce air toxics and smog forming chemicals.
 - The West Coast Clean Diesel Initiative has upgraded engines on tugboats, garbage trucks, school buses, buses, and construction equipment. Idling emissions from truck stops and locomotive yards have been reduced. State and federal grant funding is available to reduce emissions and tax credits are available to encourage retrofits of high polluting engines or the purchase of new, cleaner engines.
 - Because of permit program streamlining, the air quality program has been able to avoid permit backlogs, even during the budget cuts.

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- The Water program has continued to complete TMDLs on schedule with the consent decree and have them approved by EPA, including the complex and controversial full-basin TMDL for the Willamette.
 - The Water program has also kept up with permit issuance, fulfilling commitments made to the regulated community through the Blue Ribbon Committee process.
 - Within DEQ, we used the remodeling of our headquarters to implement a number of suggestions from our internal sustainability team: elevator upgrades will reduce energy consumption, as will lighting upgrades – we have completed lighting efficiency upgrades in about half of our leased office space statewide.
 - During the remodel we installed more on and off light switches in conference rooms and offices and improved the system of automatic lighting shutoff during non-business hours. The restrooms now have low flow toilets on all floors. Carpet is recycled and environmentally friendly, and recycled paint was used for accent walls.
 - In addition, the reconstructed State Office Building in Eugene that DEQ is moving into will have photovoltaic panels that will provide an estimated 15% of the energy for the building. A new state law requires 1.5% of construction costs to be dedicated to solar projects on state buildings.
- **We are reducing toxics in the environment**
- The Commission adopted rules to reduce mercury emissions by 90 percent - the largest reduction possible for western coal - from the PGE Boardman coal-fired power plant and any new coal-fired plants that locate in Oregon.

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- A task force has been set up under Mark Reeve and a plan developed for reducing mercury emissions from Ash Grove Cement.
- Pesticide Stewardship Partnerships were implemented in five watersheds. These partnerships use a voluntary, collaborative approach to identify problems and improve water quality associated with pesticide use in the Hood River, Walla Walla, Pudding/Molalla, Clackamas, and Yamhill watersheds.
- The Chemical Weapons stockpile at Umatilla continues to be safely destroyed – risk to Oregonians has been reduced by 91%.
- The EQC adopted health benchmarks for the most significant air toxics in Oregon. Benchmarks provide the framework for DEQ to implement one of the first and most unique programs in the country to address air toxics.
- We've cleaned up seventy-four contaminated properties statewide, including the site of Amy's Kitchen, the largest privately owned maker of organic frozen food in the United States, who invested \$17 million in a new facility and created over 320 new jobs in the Ashland area.
- We continue to work with property owners to eliminate sources of contamination in the Portland Harbor area of the Willamette River. With funding obtained by the Governor from EPA, construction was completed on the McCormick and Baxter Superfund site to control pollution to the river and free the property for productive reuse.
- With the Governor's assistance, attention is being paid to the problem of pollution from abandoned mines, resulting in the recent listing of the Formosa mine by EPA as a Superfund site.
- As you will hear this afternoon, the Water program continues to make a significant investment in the dialogue about fish

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consumption and an appropriate water quality standard for toxics.

- We worked with EPA, Idaho and Washington to have protection of the Columbia River from toxics included as a priority in EPA's national strategic plan, and \$400,000 in federal funds for monitoring has been directed to that effort.

▪ **Involving Oregonians in Solving Environmental Problems**

- We have made over \$100 million dollars in low interest loans from the state revolving fund to help 40 public agencies and communities construct or upgrade facilities to manage wastewater.
- Our drinking water source protection program provided assistance to 42 communities and public water providers and an assessment for all 2471 public water systems in the state.
- We have provided DEQ-run household hazardous waste collection days in communities throughout the state, and we helped secure EPA grant funds to help local communities establish permanent household hazardous waste collection facilities.
- We have also helped communities secure Brownfield cleanup grants.
- We continue to invest in SOLV's "Down By the Riverside" cleanup activities
- We partnered with Eugene and Metro in the "Healthy Lawns, Healthy Families" campaign
- We are active participants in the Governor's Economic Revitalization Team which partners with Oregon Solutions and others on projects throughout the state such as development of wave energy and biofuels facilities.

⑥

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- We initiated many customer service efficiencies at Vehicle Inspection Stations including: accepting debit and credit cards; repairing vehicles owned by low income drivers using donations from Oregonians; experimenting with 24/7 self-service test lanes, and sending test information from a vehicle's on-board computer to DEQ over the Internet.

One of our proudest accomplishments has been to secure funding for a new lab in tight budget times. In partnership with the Department of Human Services (DHS) Public Health Laboratory, we are opening a new \$34 million state-of-the-art laboratory to be shared by DEQ and DHS. By the way, the lab has been built to Leadership in Energy and Environmental Design (LEED) standards. Move-in date is December 3.

As I look forward I see a number of challenges and opportunities for Oregon and DEQ:

- Natural resources continues to be under-funded in the state's budget – less than 2%. DEQ's continued reliance on fees and cost recovery from the regulated community is a fact, not an option, unless another long-term stable funding mechanism is found.
- Oregon needs to take an integrated, comprehensive, cohesive approach to protecting water quality and ensuring an adequate supply of clean groundwater and surface water for drinking, recreation, industry and growing crops. Until we do, policy will be made permit-by-permit, issue-by-issue, 401 certification by 401 certification.
- Setting water quality standards has become an impossible task and a limitless resource drain. Unless the system for setting standards in this country is changed, all standards will ultimately be determined by the courts. Region 7 is experimenting with a Kaizen process that may or may not prove to be a successful model for setting standards differently.

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- Development of alternative energy sources and alternative fuels are a priority for the Governor, and DEQ is being called on to invest significant resources in supporting the public dialogue, regulatory research and permitting for activities like LNG and wave energy. Some other DEQ work may have to be deferred to support these priorities.
- We are increasingly challenged by the complex toxic pollutants in our environment. More work needs to be done to determine where those pollutants are coming from, and what can be done to minimize their entry into the environment and to protect people from exposure. DEQ will be working with municipalities to implement SB 737 to assess toxic discharges from 52 large treatment plants. DEQ also received almost \$2 million from the legislature for water toxics monitoring of the Willamette.
- We need more monitoring and environmental data. DEQ's air and water monitoring equipment and networks are inadequate to provide comprehensive, current and robust data upon which to base policy and regulatory responses, especially to the problem of toxics in air and water, and Oregon needs to make a significant investment in this activity.
- To make significant future gains in maintaining a clean and healthy environment, we must tackle the political and practical consequences of addressing pollution in Oregon, toxic or otherwise, that comes from multiple small sources and/or sources that are minimally regulated and may respond better to incentives than regulation. Addressing non-point sources, which produce most of the pollution in Oregon, means re-thinking and re-focusing our regulatory and incentive-based strategies.
- As the Commission knows, we are in the process of addressing field burning, but the air pollution problem from particulate goes beyond field burning. EPA has tightened the particulate standard, and several communities in Oregon will be hard-pressed to meet it.

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- We need to continue our work on climate change ^{and greenhouse} gas emissions. The Governor's leadership on climate change resulted in passage of an impressive array of legislation in support of renewable, clean and efficient energy. As discussed earlier, our air quality program is active in a number of regional initiatives.
- Greenhouse gas emission reporting will be an issue addressed by the Commission, and we continue to reduce
- We need to reduce waste and further encourage recycling. The expansion of the bottle bill and passing of the e-waste bill are good beginnings.
- Finally, we need to retain Oregon's legacy as an environmental leader. People want to live and work in Oregon because of our reputation for taking care of our naturally beautiful environment.

A strong environmental future for Oregon will be ensured by courageous leadership from the Commission, the Governor, the legislature, and all of the state's natural resource agencies, including DEQ. I am confident that a strong, engaged EQC, a terrific Executive Team, and the diverse, enthused workforce we are building at DEQ can and will meet these challenges under the new Director.

STRATEGIC PLANNING - LEGISLATIVE CONSIDERATIONS

2007 Session Overview

DEQ was very successful in the 2007 Session. This success could be attributed to three main factors:

- The change in the House majority party which resulted in more favorable outcomes for environmental activities,
- There were General Fund monies that could be used to fund activities and programs. This is a significant shift from the budget reduction mode that had been prevalent between 2002 and 2005, and
- A strong and positive reputation of DEQ.

Three distinct outcomes have appeared from the 2007 Session:

- There was strong support to restore lost state funding for DEQ and to allow fee increases to support core programs and even to support several new initiatives. Most of the original DEQ Agency Request Budget was funded, including all of the fee bills.
- Toxics emerged as a driving theme and can be traced to several significant bills and budget policy packages – WQ toxics monitoring, WQ toxics/PBT (persistent bioaccumulative toxic pollutants) reductions (SB 737), Clean Diesel, air toxics and electronic waste. There were a number of other bills that were not successful that focused on pesticides. These bills typically would involve DHS-Public Health, ODA, DEQ and sometimes ODF and ODFW.
- Funding for monitoring and science was given a high priority. Funding was restored for monitoring in the air and water programs and new funding was provided for the new water quality toxics monitoring program. There was continued support to provide needed funding for the new joint DHS/DEQ laboratory in Hillsboro.

Looking Forward - Activities Continuing from the 2007 Session

Agriculture Air Quality – Senate Bill 235, which was introduced jointly with the Oregon Department of Agriculture (ODA), allows regulation of agriculture to the extent necessary to comply with the federal Clean Air Act. This bill creates a task force during the interim that will focus on the dairy industry. DEQ and ODA are currently working with the Governor's Natural Resource Office to create the interim task force, which will likely start meeting in November.

Environmental Justice - Senator Gordly's SB 420 resulted in the creation of an Environmental Justice Task Force and will require natural resource agencies to better incorporate environmental justice concerns into daily work activities. DEQ as well as the other natural resource agencies will need to focus on implementing this new process. Implementation details have yet to be worked out; the Governor's Natural Resources Office is leading this effort.

Title V - Senate Bill 107 increases fees for major industrial permittees to equal the cost of the permitting program as required by federal law. Negotiations between stakeholders and DEQ resulted in a fee table that spreads the increase over three years (approximately 8% per year) and increased disclosure requirements when adopting a rule that affects Title V sources and is more stringent than federal requirements. The increased disclosure includes a description of alternatives considered and the reasons the alternatives were rejected, and groups affected by the rule can request a hearing directly in front of the EQC. Rulemaking has started to implement the changes for disclosure requirements and is anticipated to come before you in February 2008.

Bottle Bill Changes – SB 707 was the successful bill that includes adding water bottles and sets up an interim committee to consider future increases to the bottle deposit, expanding to other types of beverage containers and consideration of redemption alternatives such as special redemption centers. As noted in the Director's Report, the task force was recently appointed and DEQ will be serving as a resource.

WQ Toxics Reduction – This is a non-DEQ sponsored bill. Senate Bill 737 is an agreement by municipalities to start reducing persistent bioaccumulative toxic pollutants (PBTs) through pollution prevention and toxics reduction, by 2011, statewide for the 52 large wastewater treatment plants. It requires DEQ to develop a list of priority PBTs that pose a threat to waters, human health, wildlife and aquatic life by June 2009. By June 2010, DEQ must submit a report to the Legislature on the priority list of PBTs that includes identification of point, nonpoint and legacy sources of priority PBTs "from existing data" and source reduction and control methods that can reduce PBT discharges. By June 2011, the largest wastewater treatment plants statewide must submit to DEQ a plan for reducing their discharges of priority listed PBTs. Their plans can include but not be limited to collection of legacy pesticides; reducing mercury amalgam in dental offices; working with businesses to reduce PBT use and discharge; recycling fluorescent lamps; etc. This work will be funded by a municipal surcharge to fund the first two years of the program begins in July 2008; we would hire as soon as possible after that, but program would probably not start until fall of 2008. There is ongoing work associated with this bill including the review of the reduction plans for the priority PBTs and incorporating those plans into permits.

Greenhouse Gas Reporting – this DEQ rulemaking has begun at the request of the Governor. It will be brought to you for action in June 2008.

Looking Forward - 2008 Special Session

Details for this Session are still being worked out. At this time, the House and Senate appear to have different strategies on proceeding. The Senate is looking at it as a regular session where each member could introduce one bill. The House is looking at it as a special session with a few specific topics and a quick in and out. In the House, it appears that only bills sponsored by committees will be considered. Much of what frames the session will depend on the December revenue forecast. From the Governor's perspective, agencies are being asked to keep a low profile and instead focus on 2009. He expects that the 2008 focus will be mainly on unresolved issues that may come out of the November ballot measures such as the Healthy Children/Tobacco Tax (Measure 50) and Measure 49 (fix for Measure 37). Possibly the US County Payments will become another issue depending on what Congress does or does not do between now and the end of this year when the current payments end. If Congress does not extend the County Payments, this issue could consume the 2008 Session.

Other big issues could be the Real ID for driver's licenses, restoring funding for state troopers, funding for the Big Look Task Force and funding for OMSI. At this time, DEQ is not planning to work on any legislative concepts for 2008. However at the request of the EQC, we are seeking funding for field burning resources to address issues related to further regulation of field burning.

Environmental Enhancement Tax Credits – HB 3500 would have established the Environmental Enhancement Tax Credit Program to replace the existing Pollution Control Tax Credit program that sunsets at the end of 2007. The Oregon Business Association and Associated Oregon Industries drafted HB 3500 to include two classes of tax credits. One class would be very similar to the existing program where qualified businesses can receive tax credits to meet existing federal, state or local pollution requirements. A second class of tax credits would be for pollution control equipment that exceeds existing federal, state or local pollution requirements. A higher percent of credit would be offered to business that exceeded requirements. This bill died in

committee but we understand that the Oregon Business Association will attempt to have this bill before the February 2008 Special Session.

Looking Forward - 2009 Session

The Governor has announced his desire to work on major topics relating to transportation, health care and education. To date, no formal environmental agenda has been identified. However, several major environmental issues will likely be in the forefront in 2009. The Governor's Natural Resources Office in conjunction with various state agencies is working on toxics issues during the interim which will likely result in one or more legislative concepts.

Pesticides - There were a number of unsuccessful pesticide bills in 2007. Sen. Avakian, Chair of the Senate Environment and Natural Resources Committee, has established a task force to consider issues surrounding pesticides and related health issues for 2009. Rep. Suzanne Bonamici will chair the task force and Greg Pettit is the DEQ representative.

Field burning and smoke management - Rep Holvey (D-Eugene) sponsored a field burning ban bill during 2007 which was not successful. Depending on how the EQC addresses field burning within the next year, it may return as a legislative issue for 2009.

Water quality toxics - It is likely that this topic will return in 2009. A number of people saw SB 737, water quality reductions of PBTs, as the first step towards reducing certain types of discharges into the waters of the state. Expansion of this bill, which currently focuses on the 48 largest municipalities, could add smaller cities and/or industry. Other changes could add other toxic compounds or question whether there should be mixing zones. We will need to request General Funds for this position and for associated Attorney General costs in the 2009 Legislative Session.

Heat Smart For Clean Air - The Senate Environment and Natural Resources Committee Bill (SB 338) would have provided funding to help homeowners replace old uncertified woodstoves with cleaner options and includes a requirement for removal of uncertified wood stoves upon sale of the home. The bill would have funded the grant program by redirecting Asbestos and Open Burning penalties from the General Fund to the grant fund. Even though there was considerable support for this bill from numerous lobbyists, legislators and the Governor's Office, it was never allowed to go forward by the Ways and Means Co-Chairs. Thus the bill died but is likely to come back in 2009.

Clean Diesel - House Bill 2172 provides grants, loans and tax credits to retrofit, rebuild or replace older diesel engines and to reduce diesel idling. Incentives will be available for operators of all types of diesel engines, including trucking and construction companies, agricultural operations, municipalities, school districts, marine operators and railroads. This bill had broad support. It will provide \$1,150,000 in General Fund, \$1,500,000 in Federal Funds and \$500,000 federal transportation funds. This bill may return in 2009 if supporters seek additional General Fund support to expand the scope of the program.

Other issues will include Water Storage and Conservation, which will likely appear in both 2008 and 2009, and more bills relating to climate change.

Emerging Factors

Environmental Agenda – 2006 shift in House majority party caught most people by surprise:

- DEQ's (and state) budget request and leg concepts were already developed
- Environmentalists' agendas were pretty much set;
 - SB 235 – Agricultural air emissions is an example where the environmental community pressed for more after the election
- We can anticipate a more aggressive environmental agenda:
 - May put DEQ & EQC in an uncomfortable position – could be seen as
 - unwilling to change or
 - pro-industry
 - We are already feeling pressures to do more environmental work than what has been budgeted. This also creates the perception that DEQ does not want to change. It sets up the need for discussions on what work will be given up to take on new work. This is already being discussed for field burning if additional funds are not provided in 2008
- Some legislators may be more aggressive, particularly if House majority margin expands in 2008
 - Stronger environmental regulations – SB 737 including adding industry or more toxic compounds
 - Desire to have environmental protection in DEQ rather than other NR agencies (WQ/AQ)
- At this time, we have no explicit guidance from the State regarding budget and legislative development. Such guidance may not be available until after the February 2008 Session.

101707

HALLOCK Stephanie

From: LOTTRIDGE Helen [Helen.Lottridge@state.or.us]
Sent: Monday, October 01, 2007 3:00 PM
To: Lynn Hampton; Bill Blosser; Kenneth J. Williamson; RepJudyU@aol.com; Donalda Dodson (Central)
Cc: STEVENS-SCHWENGER Joanie; LOTTRIDGE Helen; HALLOCK Stephanie; PEDERSEN Dick
Subject: October's EQC Meeting

Hello, Commissioners.

Tomorrow we will send out your binders for the October meeting. This is a particularly important meeting with a very full agenda, so Joanie Stevens-Schwenger and I would like to call each of you early next week to walk through the agenda and discuss the strategic planning check-in process. (That's DEQ checking in with you and other interested parties). I have attached the current draft of the internal agenda.

To give you a sneak preview:

The purpose and goal of our strategic planning check-in discussion:

DEQ is completing year 2 of a 5-year strategic plan. The purpose of this month's strategic planning discussion is to assess and evaluate our progress on the 5-year strategic plan, deepen the EQC/DEQ working relationship, enhance the commission and DEQ's ability to work collaboratively on environmental issues, and examine current DEQ assignments and science to inform future strategic directions.

Outcome:

The EQC and DEQ are confident that we know the direction in which the agency is going, and that our priorities and challenges are aligned. The Department knows what categories of budget and legislative proposals will be needed for the 2009 legislative session.

During the meeting, we will ask each Commissioner to comment on this question: What are Oregon's environmental priorities and what role should DEQ play?

Other questions we would like to consider are:

- How do we integrate core work with leadership and new initiatives?
- What are our very highest priorities? How can we ensure getting the work done?
- Has our fundamental purpose changed over the years, shifting from primarily regulatory work to leadership and collaboration?
- Are statutory changes needed?
- What are the cornerstones of our '09 legislative agenda?

Will you let me know when you could be available by telephone early next week?
Joanie and I will work around your schedules.

STEVENS-SCHWENGER Joanie

From: ALDRICH Greg
Sent: Monday, October 15, 2007 10:23 AM
To: ALDRICH Greg; STEVENS-SCHWENGER Joanie; LOTTRIDGE Helen; HALLOCK Stephanie
Cc: PEDERSEN Dick
Subject: RE: EQC Strategic Planning Session - Public Comments
Importance: High

I've added two more comments below:

-----Original Message-----

From: ALDRICH Greg
Sent: Thursday, October 11, 2007 2:58 PM
To: STEVENS-SCHWENGER Joanie; LOTTRIDGE Helen
Cc: PEDERSEN Dick
Subject: EQC Strategic Planning Session - Public Comments

I have called many of the folks that received my e-mail about the EQC meeting and the opportunity for public comment. In most cases, I left messages. So far, I have insights on only two groups:

- The four representatives from OEC, OR Toxics Alliance, OR Center for Environmental Health and Physicians for Social Responsibility will make a unified statement (they hope they may be able to get a little more time than just 5 minutes total for the four of them).
- Jim Hill from Medford will be there to represent ACWA, along with Janet Gillaspie. Janet indicated Jim will focus on:
 - Water reuse
 - Toxics reductions, including better internal DEQ coordination on this topic
 - DEQ needs to be a leader and get out in front of the issues
 - Emphasis on better collaboration and cooperation.
- Lisa Adatto from OBA will likely come and speak. OBA is still interested in the revised tax credits bill known as Environmental Enhancement Tax Credits. Also, may mention the desire that DEQ become more involved in greenhouse gas issues and other cutting edge topics such as greenhouse gas
- Jeremiah Baumann, of Environment Oregon (former OSPIRG) will likely speak. He was not clear on what he would say. He tends to be very supportive of DEQ.

Greg

Gregory K. Aldrich
Government Relations Manager
503-229-6345
aldrich.greg@deq.state.or.us

DEQ: A Statewide Snapshot of Our Work

DEQ works collaboratively with all Oregonians across the state for a healthy, sustainable environment. Our work is diverse and reflects state and federal regulatory authorities, environmental needs and opportunities, statewide priorities, community interests and economic drivers.



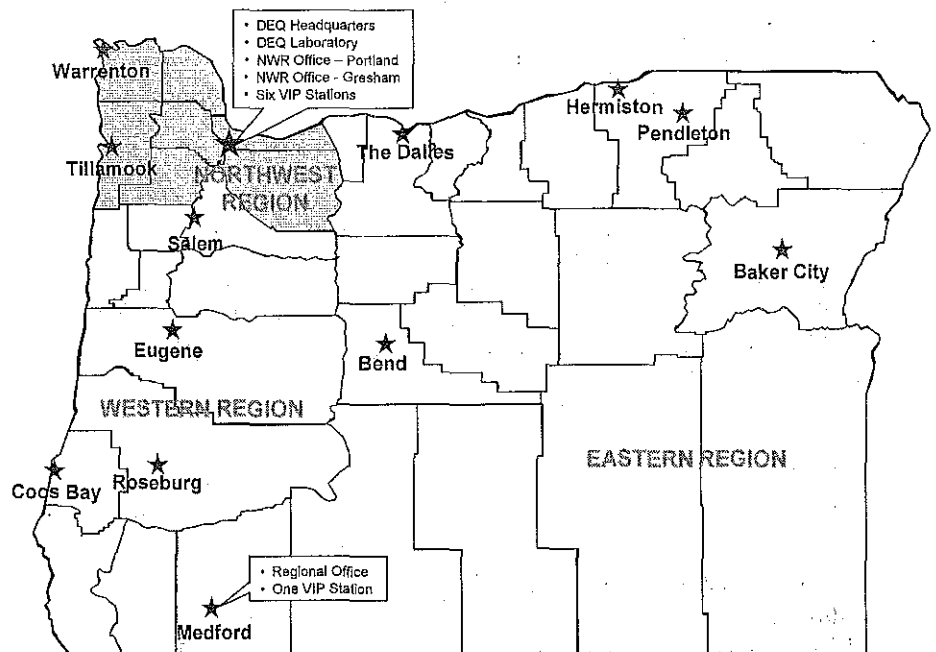
State of Oregon
Department of
Environmental
Quality

Where we work, who we are

In the early 1990s DEQ decentralized. We created regional offices around the state to better connect our employees with local citizens and organizations affected by our regulations. We currently have fifteen offices and seven vehicle inspection stations statewide.

DEQ has nearly 800 employees who issue permits, monitor environmental conditions, provide funding and technical assistance, develop policy, inspect permitted facilities and help Oregonians solve environmental problems every day. Employees include scientists, engineers, technicians, administrators, support staff and environmental specialists.

Science and environmental information are cornerstones of DEQ's credibility. We monitor the quality of Oregon's air and water at over 1,500 sites around the state and use this information to target our pollution reduction work, set permit limits, reach out to new partners, and inform citizens and policy makers about what we all can do to protect Oregon's environment today and in the future.



The people we serve

Oregon's population has been growing at a rate of about 1.2 % in recent years, with over 60% of the growth due to people moving in from other states and countries. Trends over the last decade, indicate that more

Population: 3.7 million
Growth since 2000: 8%
Minority population: 17%
Language other than English: 12%
High school graduates: 85%
Bachelor's degree or higher: 25%
Homeownership: 65%
Median household income: \$43,000
Minority owned businesses: 7%
Small businesses: nearly 90% of Oregon businesses employ less than 20 people

Oregonians are going to college and earning graduate degrees, median household income levels are increasing, our population is growing more ethnically diverse, and more families are speaking a language other than English at home. At the same time, more Oregonians live in poverty compared to 2000.

DEQ is committed to the principles of environmental justice to protect the health of all Oregonians, including traditionally underrepresented groups. DEQ is also committed to building and maintaining a diverse workforce that reflects Oregon's changing population.

Our core regulatory work

DEQ's regulatory responsibilities come from programs delegated to the state by the EPA, including the federal Clean Water Act, Clean Air Act and Resource Conservation and Recovery Act. In addition, state laws give DEQ responsibilities for protecting Oregon's air, water and land. DEQ also receives direction and guidance from the EQC, the Governor, the state legislature and the communities we serve. Our knowledge of local environmental conditions and problems drives our work as well. DEQ's *Strategic Directions* captures and reflects all of these drivers and evolves over time as environmental needs change.

Land Quality

- regulates 530 solid waste facilities/sites and 520 hazardous waste generator
- oversees cleanup of about 400 contaminated sites, and 300 UST¹ facilities/sites statewide per year
- provides over \$500,000 in grants for solid and hazardous waste reduction, recovery and reuse
- has overseen safe destruction of nearly 95,000 nerve agent weapons at UMCDP
- responds to about 920 spills and other environmental emergencies each year
- has issued 60 field citations for leaking underground tanks in 2007 so far, 88 in 2006, 118 in 2005 and 68 in 2004

Air Quality

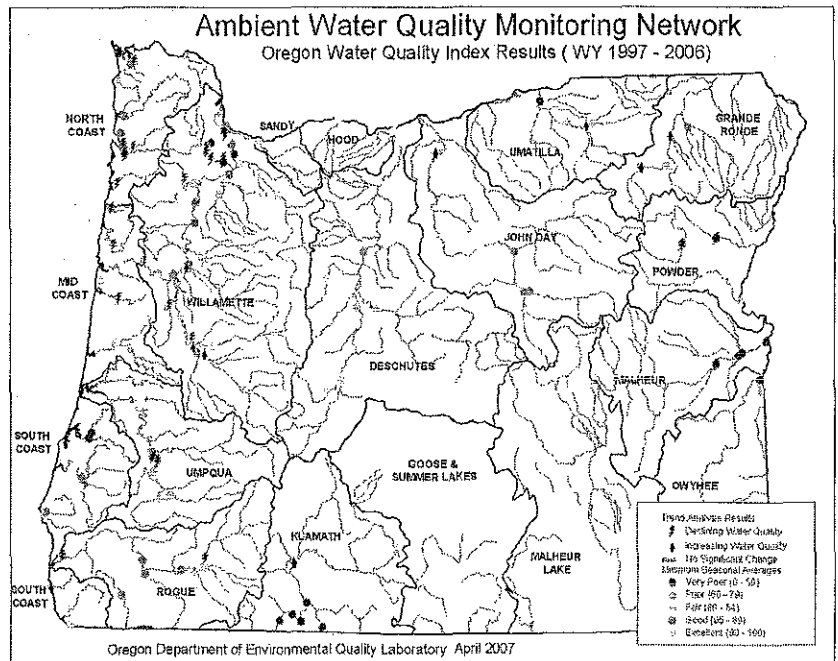
- manages about 125 Title V² permits and 1,100 ACDP³ permits
- monitors 2,500 asbestos abatement projects each year
- certifies 1,000 asbestos abatement contractors
- VIP tests over 500,000 vehicles in Portland and Medford each year
- permits 625 vapor recovery systems at gas stations
- issues about 1500 tanker truck vapor certifications
- assists over 700 large Portland area employers to meet commute trip reduction goals.

Water Quality

- manages about 4,200 NPDES⁴ permits and 450 WPCF⁵ permits
- working on over 800 TMDLs in 33 sub-basins
- provides \$4.8 million in state revolving fund loans to leverage \$24 million
- monitors Oregon's 114,000 miles of rivers, 400,000 acres of lakes, 56,000 acres of tidal wetlands, 360 miles of coastal ocean, and 206 square miles of estuaries, harbors and bays

DEQ's Laboratory

- conducts assessments to determine status and trends, measure compliance with standards, determine sources of pollution, determine stressor/response relationships, and identify new problems
- monitors the quality of Oregon's air and water at over 1,500 stations each year, collects over 20,000 samples each year, and performs approximately 300,000 analyses each year



¹ Underground Storage Tank

² Clean Air Act Title V permits regulate large industrial sources of air pollution

³ Air Contaminant Discharge Permits regulated medium sized sources of air pollution

⁴ Clean Water Act National Pollution Disposal Elimination System permits regulate wastewater discharges from sewage treatment plants, pulp and paper mills and other businesses, as well as stormwater discharges

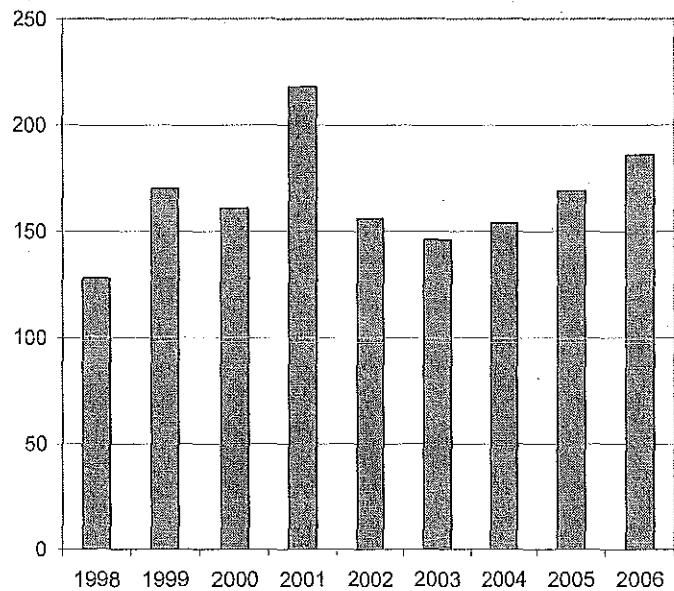
⁵ Water Pollution Control Facility permits regulate wastewater discharges to the ground, including irrigation, wastewater lagoons, onsite sewage disposal systems and underground injection control systems

Compliance and enforcement

In 2005 and 2006, DEQ revised its enforcement rules to better encourage compliance with environmental regulations, to make enforcement actions easier to understand, and to ensure that penalties are equitable and appropriately reflect the severity of each violation.

DEQ uses a combination of tools to ensure compliance including technical assistance, compliance inspections, complaint investigation, civil penalty assessment and compliance orders and public education.

Number of Formal Enforcement Actions



Agency infrastructure



DEQ's infrastructure advances the agency's environmental work and helps employees deliver outstanding customer service. Our infrastructure is essential to help us understand and communicate changes in Oregon's environment, demonstrate the results of public funding, respond quickly to needs and opportunities, and support an effective and diverse workforce. Maintaining DEQ's infrastructure requires ongoing investments, and limited funding has often constrained our ability to optimize these critical agency functions.

Business systems development: designing, developing, implementing and maintaining computer systems

Information services: data exchange services, geographic information systems coordination, web site content management, web server administration

Employee and organization advancement: employee recruitment and hiring, internships, mentorships, performance management, health and safety, labor union relations, benefits, strategic and operational planning, process improvement activities, meeting planning and facilitation

Accounting: purchasing, contracting, invoicing, spending oversight, cost reimbursement, payroll, employee time accounting, inventory control

Budget: budget planning and implementation, program guidance, purchasing, grant management, staffing requests, position reclassification

Environmental data management: collecting and managing information, sample tracking and analysis, scientific and public reporting, interpreting technical data, quality assurance and control





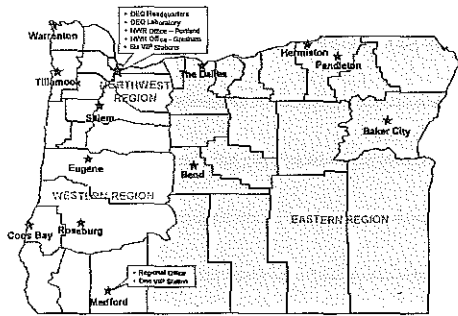
Four perspectives on DEQ

EQC strategic planning discussion, October 18, 2007

- Snapshot of DEQ's "core work" and what drives it – Dick Pedersen
- What the environment is telling us – Greg Pettit
- How community interests drive DEQ's work at headquarters and in the regions – Division Administrators
- Direction DEQ received from the legislature – Greg Aldrich
- Wrap up – Dick Pedersen



DEQ Locations





The People We Serve

Population: 3.7 million
 Growth since 2000: 8%
 Minority population: 17%
 Language other than English spoken at home: 12%
 High school graduates: 85%
 Bachelor's degree or higher: 25%
 Homeownership: 65%
 Median household income: \$43,000
 Minority owned businesses: 7%
 Small businesses: nearly 90% of Oregon
 businesses employ less than 20 people



Agency Infrastructure

- Business systems development
- Information services
- Employee and organization advancement
- Accounting
- Budget
- Environmental data management





Our core regulatory work

Water Quality

- Permits
- TMDLs
- SRF Loans

Land Quality

- Solid Waste
- Hazardous Waste
- Cleanup
- Spills

Air Quality

- Permits
- Asbestos
- VIP

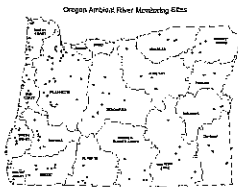
Laboratory

- Monitoring
- Analysis



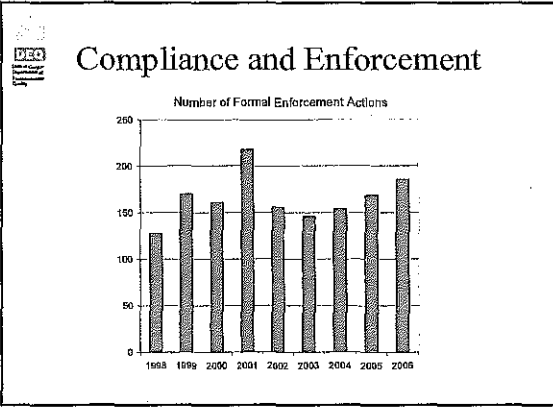
Monitoring

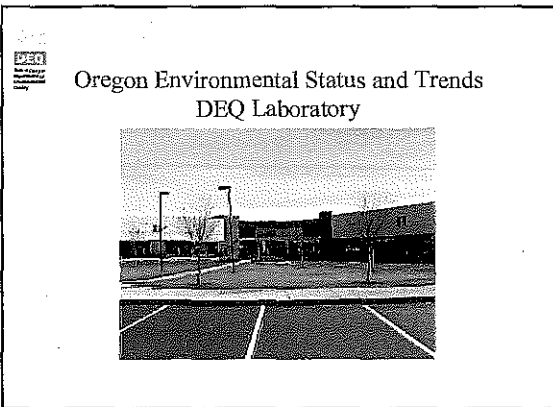
Water



Air







DEQ Laboratory

- Information generated by DEQ Laboratory provides the foundation for identifying and solving environmental problems



DEQ Laboratory

- 83 FTE, support staff, management, information specialists, scientists
- \$10.75 million annual budget
- Collect approximately 20,000 air and water samples per year, generate 300,000 laboratory analytical results.
- Conduct continuous air and water monitoring including 35-40 air monitoring sites
- Conduct integrated aquatic health surveys including macro-invertebrates, fish community, habitat and water quality
- Maintain the agency's environmental data base (LASAR)



Basic Story

- Initially targeted relatively limited list of air and water pollutants
- Significant reductions in ambient concentrations of those pollutants
- As our technology and knowledge of harmful effects of pollutants has increased, criteria (targets) are being lowered and we are becoming aware of new concerns, primarily toxics



Air Pollutants we measure

- Federal Clean Air Act Requirements
 - Criteria Pollutants with National Ambient Air Quality Standards (NAAQS)
 - Carbon Monoxide
 - Ozone (new standard in 2008)
 - Sulfur Dioxide
 - Oxides of Nitrogen
 - Fine Particulate
 - PM10
 - PM2.5 (new standard 2006)
 - Lead

DEQ
 Oregon Department of Environmental Quality

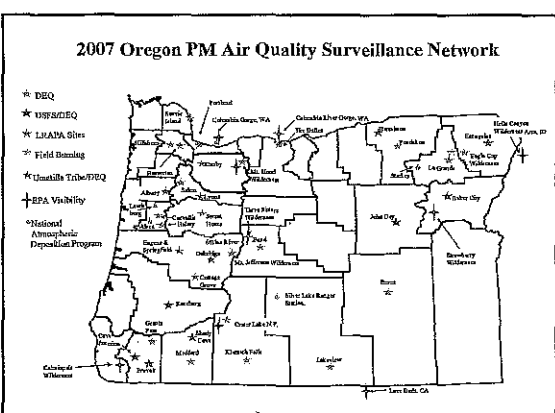
Air Pollutants we measure

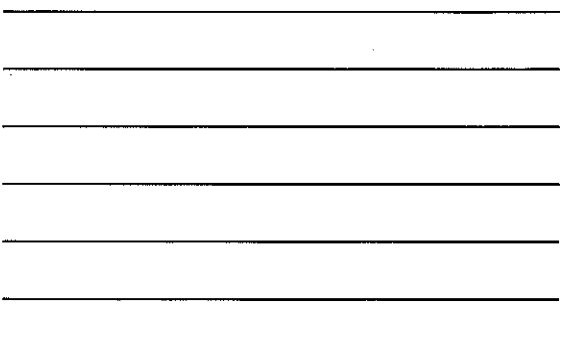
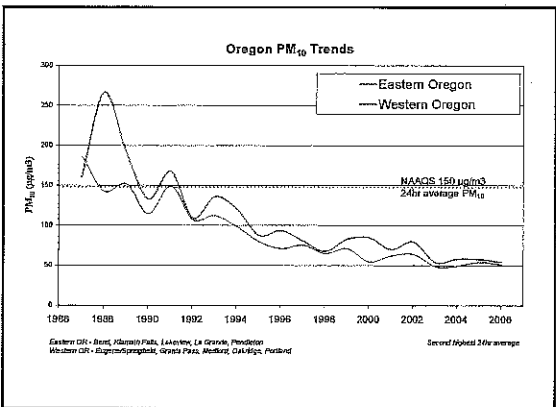
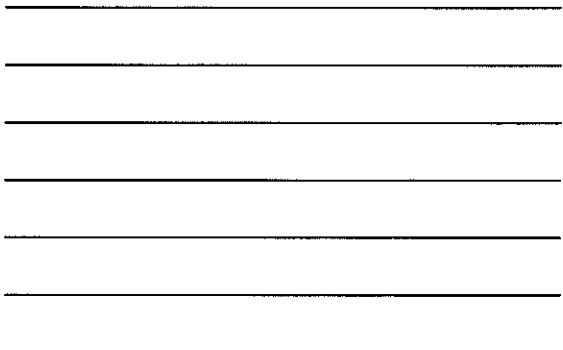
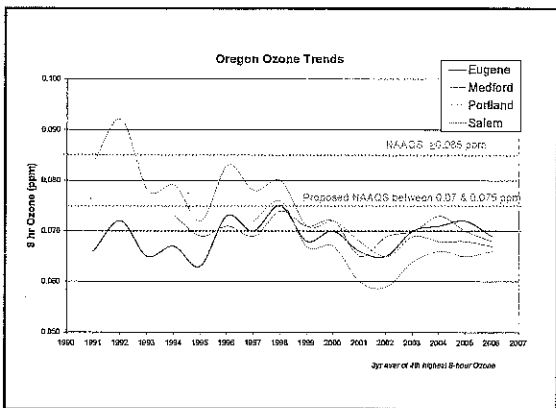
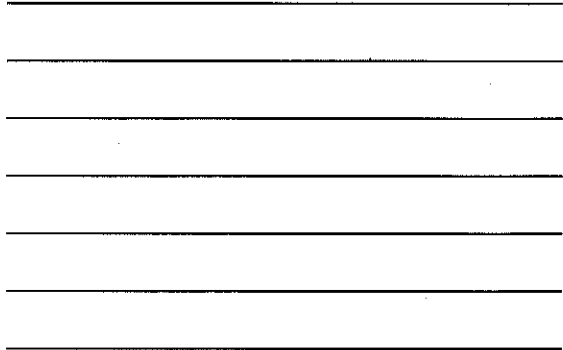
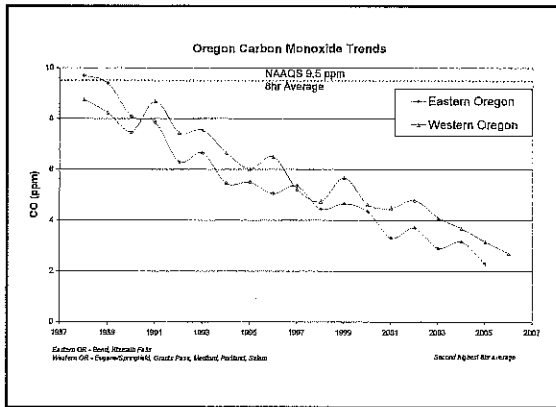
- Air Toxics (CAA lists 188 compounds)
 - Health Benchmarks, but no federal standards
 - Air toxics of concern (>10 times health benchmarks)
 - Acetaldehyde, acrolein, arsenic,
 - Benzene, 1, 3-butadiene, beryllium,
 - carbon tetrachloride, chloroform, chromium,
 - Diesel PM, polycyclic aromatic hydrocarbons (PAH),
 - Nickel
 - Mercury

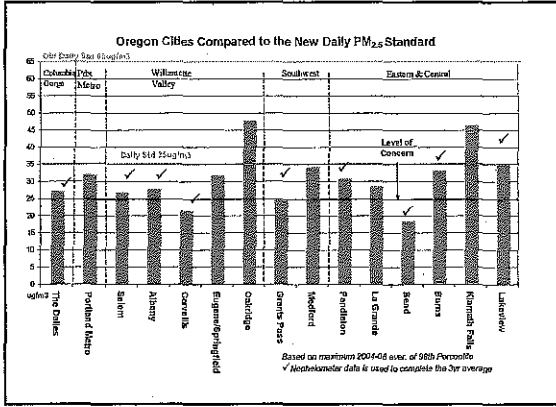
DEQ
 Oregon Department of Environmental Quality

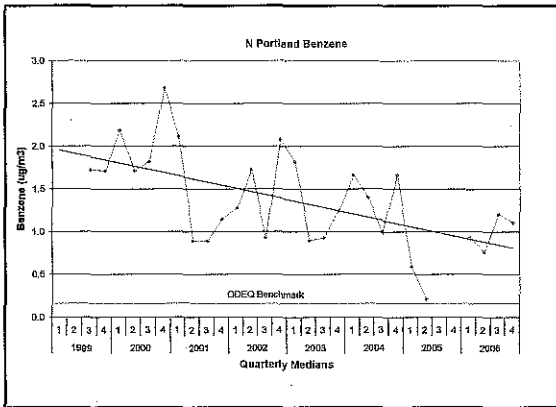
Air Pollutants we measure

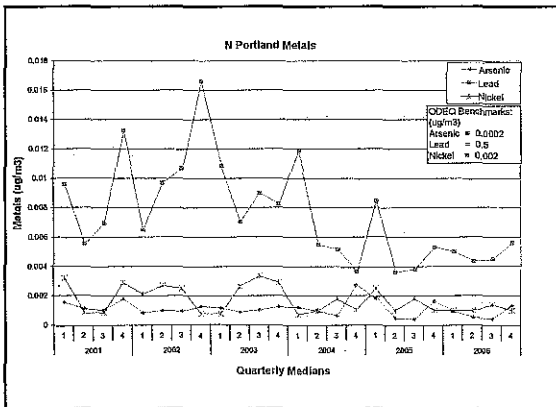
- Support Monitoring
 - Continuous Fine Particulate measurements using nephelometers
 - Air Quality Index, Wood stove advisories
 - Meteorological Stations
 - Wind speed and direction, Temperature, barometric pressure, relative humidity, solar radiation













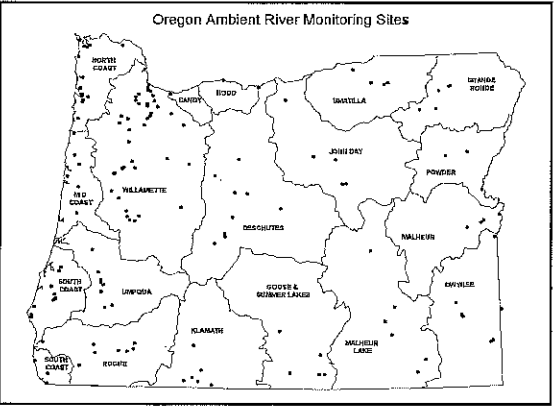
 **Emerging AQ Issues**

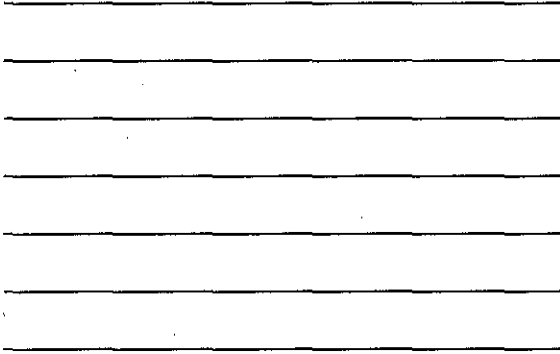
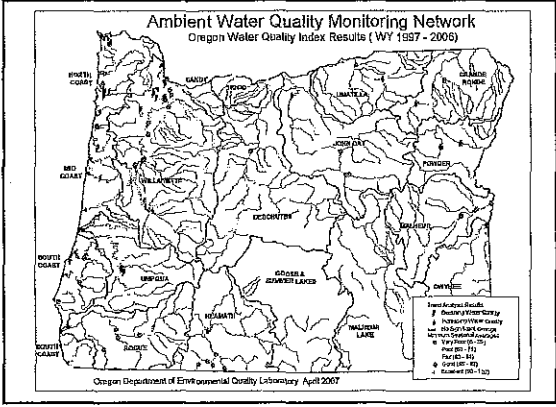
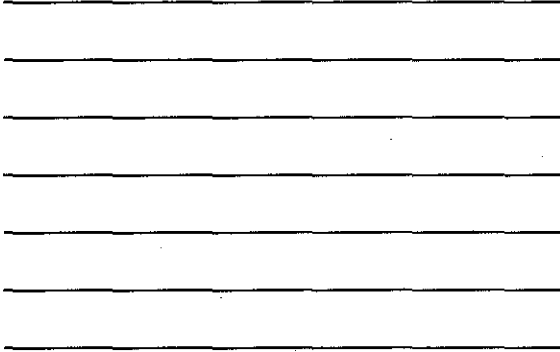
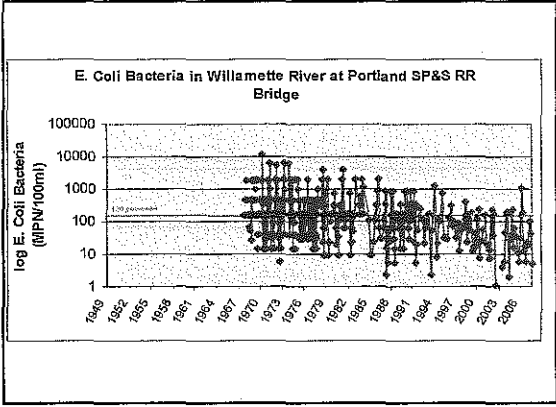
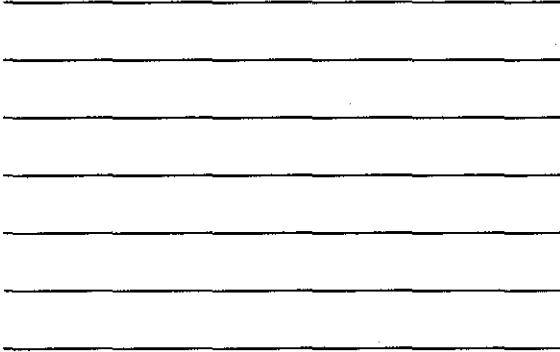
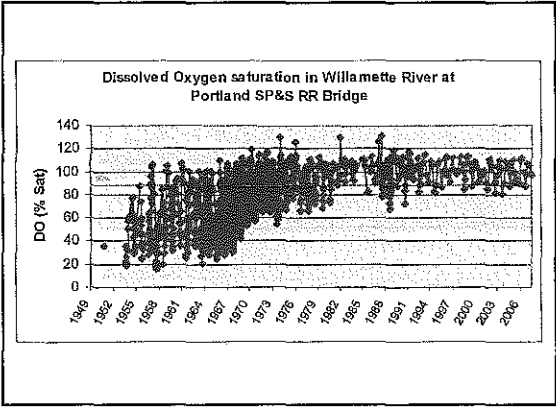
Air Toxics

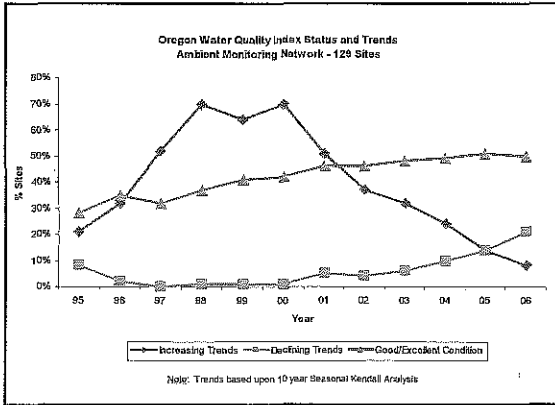
- Every county with at least one compound above health benchmarks.
- Better measurement technology, better understanding of health effects.

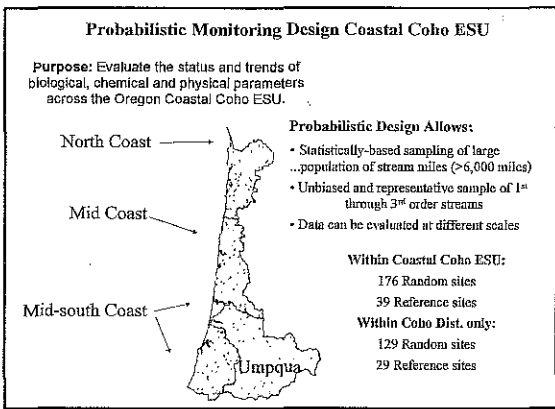
 **Water quality indicators we measure**

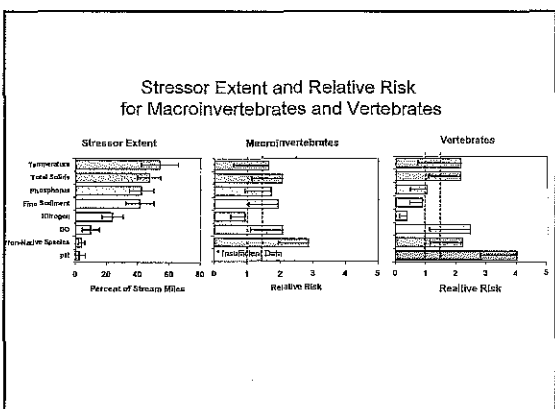
- Conventional water quality indicators: dissolved oxygen, biological oxygen demand (BOD), nutrients, solids, fecal bacteria, temperature, pH
- Toxics: metals (mercury, Arsenic, etc), pesticides (legacy and current use), PCBs, solvents, PAHs
- Habitat, aquatic macro-invertebrates, aquatic vertebrates













Toxics in Surface Water

Most common surface water toxic contaminants based on number of stream miles documented as not meeting water quality standards:

- Mercury
- PCBs
- Arsenic
- DDT and Metabolites



Groundwater Quality

- 70% of Oregonians rely on groundwater for drinking water
- 90% of public water supplies get their drinking water from groundwater
- Over 600,000 Oregonians get their water from individual private wells not regulated or tested under the Safe Drinking Water Act
- 95% of all available freshwater is groundwater
- As surface water supplies are fully allocated increasing demand is being placed on groundwater



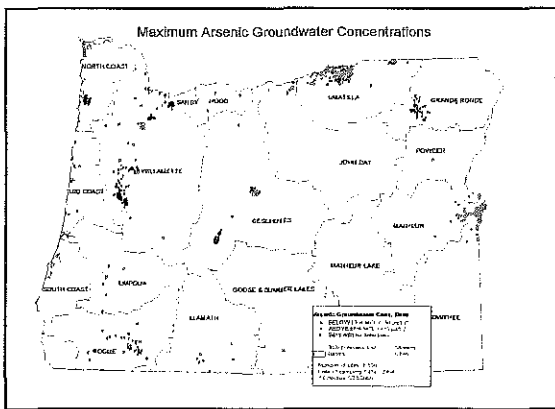
Groundwater Contamination

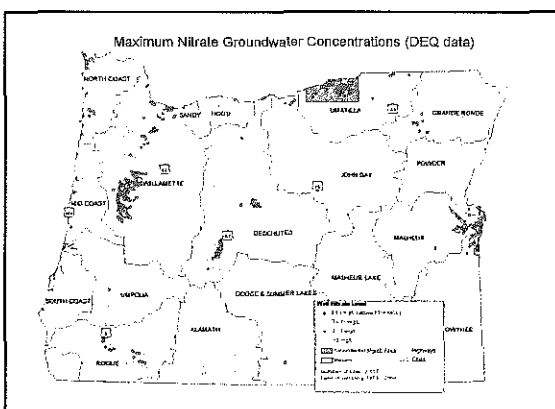
- Groundwater contamination revealed in 35 out of 45 regional assessments DEQ did between 1986 and 2000
- 24% of 1156 wells sampled for arsenic exceeded the MCL of 10 parts per billion
- 16% of 2187 wells sampled for nitrates exceeded the MCL of 10 parts per million



Groundwater Contamination

- USGS study indicates 33% of rural wells in Willamette Valley contain pesticide contamination with up to 15 different pesticides detected in private drinking water wells
- 67% of wells (200+) sampled in Malheur County contained the pesticide Dacthal with concentrations up to 32 times the Health Advisory Level
- Primary drinking water contaminants of concern are arsenic, nitrates, pesticides, and VOCs







Emerging Issues

- Population growth/Land use changes
- Climate change
- Pharmaceuticals, flame retardants, endocrine disrupters
- Global Impacts (atmospheric mercury)



Final Comments

- Valid data on environmental status and trends is essential for measuring management program success and targeting for results
- We have only found what we have looked for – Lack of data does not prove lack of problems
- More monitoring will identify more problems, this should not be interpreted as a trend



Final Comments

- Compliance with standards should not be interpreted as a trend since this is affected by monitoring effort and changes in standards
- Trends are determined by evaluating environmental data consistently collected over time.
- Improvements in monitoring and analytical technologies will greatly increase our awareness of contaminants in our environment.

To: Environmental Quality Commissioners **Date:** 10/9/2007

CC: Stephanie Hallock
Mike Carrier
Mark Reeve
Executive Management Team

From: Helen Lottridge 

Subject: Agenda Item I: Strategic Planning Discussion

Commissioners, attached is some advance reading material for the discussion on strategic planning.

Right after Stephanie's introduction to the topic at 9:30 on Thursday morning, you will engage in a "Reflections and Vision" discussion. At that time, Stephanie, Lynn Hampton, Mike Carrier and all Environmental Quality Commissioners will share their reflections on where we've been, where we are now and where we ought to go. Mark Reeve has graciously agreed to join us and will likely participate in this conversation.

The strategic planning discussion promises to be robust and productive, centered on the question, "What are Oregon's environmental priorities and what role should DEQ play?".

We hope you will have an opportunity to give some thought to your own reflections and vision between now and the meeting next week.

As always, I look forward to seeing you.



**Environmental Quality Commission
Watch List of Emerging Environmental Issues
In Alphabetical Order**

Topic	Description
Air Quality particulate matter standards	Should the DEQ's PM2.5 standards be more stringent than federal requirements? What form should Oregon's fine particulate standards take?
Area (non-point) source air pollution	What should be done to address growth in area source emissions of fine particulate and ozone precursors?
Benzene	Given the EPA standard for this chemical, what standard is right for Oregon? Should we stop looking at area wide conditions and instead look at concentrations of Benzene? Now that EPA has regulated benzene in gasoline, what else should Oregon do to reduce risk?
Carbon dioxide	Carbon cap and trade. Who is going to certify? <i>(We may want to combine this with Climate Change).</i>
Climate Change	Oregon will adopt a greenhouse gas reporting requirement. What other actions are planned to address climate change?
Cumulative Impacts	What are the effects of multiple pollutants in our environment?
Dental amalgam	Commission wants to be kept informed.
Diesel	What are the policy implications of diesel air pollution from off-road vehicles and engines? What are the next steps in reducing risk from diesel particulate matter from heavy duty engines (on-road and non-road)? How will growth in diesel passenger cars impact air quality?
Fish consumption study	What study methods are best for gathering the necessary data to decide what the fish consumption level should be?
Funding stability	If the DEQ cannot rely on historic federal funding levels, what should we be doing about funding now?
Lean government	Many states are using techniques such as Value Stream Mapping, Kaizen and Six Sigma for process improvement. What should DEQ undertake in this area? What role should computerization play in process improvement?
Mixing Zones	Are mixing zones the best avenue for determining compliance for toxics? What are the ramifications of eliminating them? The EQC may wish to hear an update on the status of DEQ work on mixing zones.
Newburg Pool	Deformed fish in Willamette—any new data? Actions?
Ozone	Should we be more proactive? Look at more stringent standards than EPA? Will EPA adopt a more stringent primary and secondary ozone standard, and what will this mean to Oregon?
Pharmaceuticals	DEQ and others have efforts completed or underway to address pharmaceuticals, including trace compounds from sewage treatment

Topic	Description
	plants. Does the EQC desire periodic reports on those activities and results?
Public Health	<p>Commission wants to hear more about what we could be doing, e.g., on ozone. Chair Hampton's three points:</p> <ol style="list-style-type: none"> 1. What is the difference between area sources on public health? 2. How comparable is industrial source effect? 3. Are there potential things that could be done, and how doable are they? <p>It's frustrating to be talking about just 1% of the problem. (During February, 2007 EQC meeting).</p> <p>Emphasis on asthma. What opportunities are available to leverage the link between the environment and public health? DEQ suggests an informational presentation by Gail Shibley of the Health Division and DEQ, including where we are partnering.</p> <p>How should DEQ ensure that we make the connection between environment and public health?</p> <p>Should DEQ look at public health risk by area or by class, e.g., gas station operators.</p> <p>Public education with Health?</p> <p>Health forum on 1) smoke and 2) fish consumption?</p>
Treated wood and formaldehyde	What options and what ramifications are there to alternatives to importing treated wood products?



State of Oregon
**Department of
Environmental
Quality**

Memorandum

To: Chip Terhune, Governor's Chief of Staff
From: Stephanie Hallock, Director, DEQ
Date: July 30, 2007
Re: DEQ Agency Strategic Briefing Memo

Major accomplishments for 2005-07 biennium

- As recommended by the Governor's Global Warming Advisory Group, the Environmental Quality Commission (EQC) adopted the OR Low Emission Vehicle (LEV) program to reduce greenhouse gas emissions from light and medium duty passenger vehicles and trucks. When phased in, OR LEV will reduce greenhouse gas emissions from new vehicles by 30% and will also reduce air toxics and smog forming chemicals.
- The EQC adopted health benchmarks for the most significant air toxics in Oregon. The benchmarks are ambient concentrations that serve as goals and triggers for working with stakeholders and the public to reduce air toxic emissions. By comparing benchmarks to exposure data, we can prioritize source categories and geographic areas for emission reduction strategies, determine if individual sources trigger control requirements under the program, and communicate about risk to the public and measure program performance.
- As part of the West Coast Clean Diesel Initiative to reduce toxic emissions from diesel engines, a number of projects have been implemented such as clean diesel upgrades on garbage trucks, school buses, transit buses, and construction equipment as well as reduced idling emissions at truck stops and locomotive yards. The Governor's Clean Diesel initiative (HB 2172) was a centerpiece of DEQ's 2007-2009 budget request and legislative agenda, and will enable DEQ to significantly reduce public health risks from exposure to diesel exhaust. This successful legislation and budget request provides up to \$3.15 million to fund a grant program to reduce diesel emissions from a number of activities listed above and maintains a \$500,000/ per year tax credit program to encourage the retrofit of existing high pollution diesel engines or the purchase of new, efficient diesel engines.
- DEQ worked collaboratively with Senator Wyden's office and Congressman Blumenauer's office to successfully lobby the Environmental Protection Agency (EPA) to reduce benzene levels in Pacific NW gasoline. EPA's original proposal

would have left gasoline in the Northwest with twice the benzene content of gasoline on the East coast.

- The EQC adopted rules to reduce mercury emissions from the PGE Boardman coal-fired power plant and any new coal-fired plants that locate in Oregon. Mercury, which largely comes from air deposition, is a persistent toxic that bioaccumulates in fish. The Oregon rules require a 90% reduction in mercury emissions - the largest reduction possible for western coal. Without this rule, Oregon would be subject to a much less protective federal program that allows companies to trade mercury credits with other states rather than reduce their own emissions.
- Through oversight of the Army's hazardous waste permit at the Umatilla Chemical Weapons Depot, 27.3% of the chemical stockpile was safely destroyed, including the GB (Sarin) weapons, which has reduced the risk to the community by approximately 91%. Approximately 44% of the nation's stockpile has been destroyed, on track with the Chemical Weapons Convention treaty requirements to destroy at least 45% of the stockpile by December 2007.
- A significant number of Clean Water Plans or Total Maximum Daily Loads (TMDLs) were approved by EPA, including plans for the Willamette, Umpqua, Tillamook, Tualatin, Columbia Slough, Walla Walla and Willow watersheds. These plans serve as blueprints for communities to reduce water pollution from sources such as mercury, temperature, bacteria, phosphorus, and dissolved oxygen. Where Clean Water Plans have been implemented, water quality has improved, (e.g., Tualatin, Pudding, Yamhill, Columbia Slough, Bear Creek, and Grande Ronde rivers).
- The drinking water source protection program provided assistance to 42 communities and public water providers. Source Water Assessment Reports were completed for all 2471 public water systems in the state, providing data and detailed maps of watersheds and aquifers for local governments, county planning departments and other state agencies. DEQ and the Department of Human Services-Public Health Division are evaluating public health priorities and risks for additional monitoring and pollution prevention work.
- Over \$100 million dollars in low interest loans were made by DEQ from the state revolving fund to help 40 public agencies and communities construct or upgrade facilities to manage wastewater.
- DEQ began a number of customer service efficiencies at Vehicle Inspection Stations including: accepting debit and credit cards; repairing vehicles owned by low income drivers using donations from Oregonians; experimenting with 24/7 self service test lanes, and sending test information from a vehicle's on-board computer to DEQ over the internet. As efficiencies are implemented, the number of DEQ staff at stations continues to be reduced.

- Seventy-four contaminated properties were cleaned up statewide. Several have been returned to productive use, including Amy's Kitchen, the largest privately owned maker of organic frozen food and canned soup in the United States, who invested \$17 million in a new facility and created over 320 new jobs in the Ashland area; and, the former Franko #15 service station in Eugene, now operating as a retail biofuels filling station as a result of partnering between EPA, DEQ, Lane County, SeQuential Biofuels and others.
- With funding obtained by the Governor from EPA, construction was completed on the McCormick and Baxter Superfund site, controlling pollution to the Willamette River and freeing the property for productive reuse. Work at McCormick and Baxter sets the example for broader cleanup in the Portland Harbor Superfund site. DEQ is working with nearly 70 property owners to eliminate sources of contamination to this area of the Willamette River.
- With the Governor's assistance, attention is being paid to the problem of pollution from abandoned mines such as Black Butte and Formosa in Western Oregon. The Western Governor's Association provided \$60,000 for environmental studies in 2006 at the Black Butte mine, leading to EPA's recent commitment to spend \$500,000 for cleanup work in spring 2007. The Governor's support for EPA's Superfund listing of the Formosa mine will be instrumental in prioritizing federal action on this multi-million dollar cleanup.
- Stephanie Hallock, DEQ director, lead a national effort by states to restore EPA funding while serving as President of ECOS (Environmental Council of the States). As a result, states now have a place at the table in EPA budget deliberations they did not have before. Congress held hearings on EPA's budget for the first time in several years. EPA was chastised for cuts to states and Congress stressed the need for reform in how EPA oversees programs delegated to states.
- DEQ helped secured grant funds from EPA to help eight communities statewide establish permanent household hazardous waste collection facilities and co-sponsored two agriculture pesticide collection events in the Pudding River watershed (in 2006 and 2007) where a total of over 34,000 pounds of legacy pesticides were collected.
- Pesticide Stewardship Partnerships (PSPs) were implemented in five watersheds, which use a voluntary, collaborative approach to identify problems and improve water quality associated with pesticide use at the local level. The PSP approach uses local expertise in combination with water quality sampling and toxicology expertise of DEQ to encourage and support voluntary changes that result in measurable environmental improvements. PSPs have been initiated in Hood River, Walla Walla, Pudding/Molalla, Clackamas, and Yamhill watersheds.

- In June of 2003, the Governor and the Legislature began the process of providing funding for a new laboratory for DEQ and the Department of Human Services (DHS) Public Health Laboratory. In 2004, a \$6 million building was purchased in Hillsboro. This building is being converted into a \$34 million state-of-the-art laboratory to be shared by DEQ and DHS. The new laboratory is scheduled to be occupied late 2007.
- Through the leadership of DEQ's Information Technology section, Oregon worked with EPA and other states to establish the National Environmental Exchange Network, which allows environmental and health agencies to share data nationwide

Strategic Plan for 2007-09

DEQ began work on a strategic plan when Stephanie Hallock became the Director in 2000. After input from stakeholders and the EQC, a two year plan was finalized in 2002 and then updated in 2004. In 2006, the strategic plan:

<http://www.deq.state.or.us/about/strategicdirections.htm> was updated for five years and a commitment to "promote sustainable practices" was added. DEQ's strategic plan includes executive performance measures and is used to frame biennial budget requests.

2007-09 Legislatively Adopted Budget

The DEQ budget for 2007-09 is \$298 million, an increase in overall funding of 12.4% and an increase in General Fund monies of 67%, from \$22.7 million to \$38 million. Federal funding is \$7 million less than in 2005-07. The funding from fees increases by about 10%, from \$82 million to \$90 million.

Of the \$298 million overall budget, \$104 million is for grants and loans to local communities, and debt service. The remaining \$194 million is DEQ's operating budget, an 11.8% increase from 2005-07. General Funds make up 17% of the operating budget, Lottery Funds contribute 3%, Federal Funds provide 16%, and fees and other revenues provide the vast majority -- 64%.

The budget funds 796 DEQ staff (full time equivalents/FTE). Many of the approved positions are actually renewed positions that were to be cut due to a lack of revenue, and others are restored positions cut in prior years, so that the net increase in DEQ staffing levels from the previous biennium is 19 positions. DEQ's peak staffing level was 862 staff in 2001-03. DEQ is in full recruitment mode and, like many agencies, will be challenged to find qualified staff and to train and retain the new "Gen X" and "Gen Y" employees who have different expectations of the workplace and work life. State salaries are not competitive with the private sector and many local governments.

Fortunately, many people are attracted to the mission of DEQ, but without a significant investment in the infrastructure and employees of state government, we will be challenged to provide the leadership and expertise needed to address Oregon's future environmental

challenges. Oregon's legacy as an environmental leader, a legacy that brings people to Oregon and supports our economy, is at risk unless we significantly increase our investment in natural resource protection and in our state employees.

Future Challenges

Long-term, sustainable funding for state agencies to protect and manage natural resources. Oregon needs to start investing more in natural resource protection. In 1991-93, natural resource agencies accounted for 1.7% of the state general fund budget. The Legislatively Adopted Budget (LAB) for 2007-2009 funds natural resource agencies at 1.1% of the state general fund. When lottery dollars are added, the 2007-2009 LAB for natural resources goes up to 2.4% of the budget. Lottery dollars are not, however, provided to all natural resource agencies.

DEQ reflects particularly poorly in general fund allocation; in 1991-93 DEQ had 39.5% of the general fund allocated to natural resource agencies – in the 2007-2009 LAB that drops to 24.3%. Because DEQ does not receive much lottery funding, when lottery is added to general fund, DEQ's share of all natural resource funding drops to 11.6%.

Two points: 1) given that Oregon's natural resources and the care we take of them is an essential part of defining Oregon and making it a place people want to be, the overall allocation of public funding to natural resource protection and management is inadequate; 2) the share going to DEQ, the agency upon which most Oregonians depend for protection of the environment, has suffered a dramatically declining share of public funding and now relies on those who are regulated to pay for 64% of the budget.

This reliance on the regulated community for funding requires the agency to invest hours and hours of time negotiating, adopting, maintaining, and re-negotiating fee schedules and requires elaborate billing, accounting and cost recovery administration. Time spent on these activities could be better invested in on-the-ground environmental work. A dedicated source of funding would be one way to free up staff time.

Another long term funding issue that affects state agencies like DEQ is the on-going growth in the share of entitlement programs in the federal budget and the combination of entitlement and education programs in the Oregon state budget. This will mean over the next several decades there will be a continual erosion of federal funding for environmental protection work and Oregon will continue to experience very strong pressures to allocate more General Fund dollars to education and entitlement programs to the detriment of other state functions.

Some alternative funding ideas to consider:

- Broaden the use of lottery dollars for natural resource protection and allocate more to DEQ
- Allow DEQ civil penalty dollars to be used specifically for natural resource protection projects rather than going to the general fund to be used for any purpose

- Redesign pollution control tax credits to direct revenue from that program to fund natural resource programs. HB 3500 would have established an Environmental Enhancement Tax Credit Program to replace the existing tax credit program. The Oregon Business Association and Associated Oregon Industries drafted HB 3500 to include some funding for the DEQ groundwater protection program. This bill died in committee.
- Explore a broad “green tax” concept to fund all natural resource activities; Bill Blosser, Vice-Chair of the Environmental Quality Commission, could be involved in establishing some kind of “Blue Ribbon Committee” to figure out how to do this – he is interested in the issue
- Look at Washington Department of Ecology “first possession fee” and Model Toxics Control Act and see if any part of the concept will work in Oregon. Their big payers are oil refiners, which Oregon doesn’t have, but perhaps a similar approach could work
- Some of the escheat from returns under the Bottle Bill could be directed by the legislature to fund natural resource protection agencies/activities
- The solid waste tip fee could be used to fund other DEQ activities (this would take legislation, and there has been opposition in the past)

Integrated state regulation and management of water quality and water quantity. With the declining snowpack, uncertainty about future weather patterns, and demands on supply from cities and agriculture, Oregon needs to take a comprehensive, cohesive approach to protecting water quality and ensuring an adequate supply of clean groundwater and surface water for drinking, recreation, industry and growing crops.

Many agencies at all levels of government play a role in regulating and managing water. While there is often collaboration and cooperation among agencies, there is no coordinated, long-term, statewide plan for protecting and managing water as a resource, even among state agencies. For example, the Water Resources Department regulates the use and quantity of water, DEQ protects surface and groundwater quality (with roles played by the Departments of Agriculture, Forestry and Geology and Mineral Industries), Department of State Lands protects wetlands, and Department of Health and Human Services protects drinking water.

The Governor could appoint a multi-stakeholder, statewide group to develop a long-term strategic plan for water. It could be a group like the “Big Look” committee for land use, or it could be connected to the Oregon Business Plan sustainability cluster, or to an organization like Sustainable Northwest, or the Natural Resource Policy Institute at Oregon State. The group needs to include participants who can actually make a plan happen, and it would help to have a committed, charismatic leader or, better yet, urban-rural co-chairs with stature and vision.

In addition to establishing a group to develop a cohesive plan to protect water as a resource, the state should minimize the bureaucracy around water-related regulation. A serious look should be taken at consolidating and/or eliminating some of the entities in state government

that regulate some water activities. An in-house state agency group could be tasked with this, or a consultant could be hired, or both. This is not a recommendation for a single Department of Natural Resources; it is a recommendation to consolidate some water-related regulatory activities. HB 2251 would have established a removal-fill pilot program; it was an attempt by Department of State Lands and other natural resource agencies to better coordinate and streamline dredge and fill projects. This bill died in committee.

As part of the Governor's alternative plan for SB 483 and HB 3525, the OASIS bills to divert water from the Columbia River, DEQ has been asked to work on the Columbia Basin water issues, particularly on the issue of underground storage of "surplus" surface water. Our efforts will be part of a coordinated response by several state agencies.

The Legislature provided DEQ new resources to better manage stormwater and to provide additional groundwater protection. These represent excellent opportunities to minimize the amount of pollution flowing into Oregon's waterways and into groundwater. Since most Oregonians rely on groundwater for a portion or all of their drinking water, these enhanced protections are critical. Any statewide effort to protect water quality and quantity needs to include groundwater as well as surface water.

Climate change, development of alternative energy sources, and sustainable business.

Leadership by the Governor's office should continue in these inter-related areas that will determine the economic and environmental future of Oregon. The Governor should ensure that the Oregon Leadership Summit and Oregon Business Plan continue to emphasize and build on the sustainable business theme for Oregon and support voluntary and regulatory efforts to reduce greenhouse gases and reliance on fossil fuels.

The Governor's office, in coordination with the Oregon Economic and Community Development Department (OECD), EQC/DEQ, Department of Energy and others, should convene a broad, honest, "out of the box," problem-solving conversation with traditional manufacturing industries that are under increasing pressure because of location, use of natural resources, pollution generated, etc. about what it will take to create a viable future for these industries in a sustainable Oregon.

Efforts should be enhanced to unite urban and rural Oregon in pursuing sustainable business opportunities and practices.

Toxic Chemicals in the Environment. Much progress has been made since Earth Day 1970 in regulating and controlling pollution from industrial and municipal facilities. Until recently, when USEPA adopted more stringent federal standards for particulate matter, all areas of Oregon were in attainment with federal ambient air quality standards. Also until recently, water quality trends throughout the state were improving because of the enormous investment in pollution controls on point sources required under the Clean Water Act. In essence, we have picked the low hanging fruit in environmental regulation.

Today, we are faced with the challenge of an increasing level of complex toxic pollutants in our environment, determining where those pollutants are coming from, and what can be done to minimize their entry into the environment and to protect people from exposure. Toxic substances are in our environment because of human activity (e.g. burning, driving cars, applying fertilizers and pesticides, industrial processes, municipal wastewater discharges, agricultural and forest practices); from past practices (e.g. abandoned mining operations, heavy industry); and, in part, because they occur naturally in the environment (e.g. mercury, arsenic). We also face challenges from “new” pollutants such as dental amalgam and pharmaceuticals.

The 2007 legislative session resulted in a much needed infusion of resources for DEQ to more adequately address issues relating to toxics. Additional funding will add air toxics monitors in Salem/Albany and Medford, expand air toxics outreach and develop an air toxics plan for Portland. A fee increase in the asbestos program will continue current staff and add one position for prevention work with small businesses and homeowners. As noted earlier, the Clean Diesel Initiative (HB 2172) will provide grants and tax credits for fleet operators to reduce diesel emissions through new, retrofit or rebuilt diesel engines. Ten new positions will allow DEQ to develop a water quality toxics monitoring program for Oregon, where the initial focus will begin with the Willamette River. SB 737 provides resources for DEQ to work with large municipal wastewater treatment facilities to reduce the discharge of persistent bio-accumulative toxics into Oregon waters. SB 704 will help reduce mercury from dental amalgam going into wastewater systems.

Fee increases will maintain sufficient staff to protect the environment from toxic releases in three programs: Underground storage tank compliance work will continue, ensuring that hazardous petroleum products do not leak into the groundwater. An increase in hazardous waste generator fees, along with a restoration of General Funds, will maintain hazardous waste compliance efforts to ensure proper handling and storage of toxics. An increase in fees charged to users of major waterways supports marine spill prevention which will minimize petroleum spills in waterways or in adjacent areas.

Federal funding will never be adequate to clean up toxic pollution from past practices and when such funding is available, the process takes many years. The 2007 legislature provided \$4.4 million in bond funding to pay for continuing investigation and cleanup work at about 40 contaminated sites where there is no responsible party to fund the cleanup. Nevertheless, this much needed funding will do little to clean up the major orphan sites such as the abandoned mines. Oregon will need to decide whether we will make future, more robust, investments in cleaning up these “orphan” sites.

Toxic pollution often disproportionately affects low-income and otherwise disadvantaged populations. SB 420 creates of an Environmental Justice Task Force and requires natural resource agencies to better incorporate environmental justice concerns into daily work activities.

Need for Monitoring and Environmental Data. Oregon needs to make a significant investment in gathering detailed and accurate information about the pollution in our environment to help develop effective strategies. DEQ's air and water monitoring equipment and networks are inadequate to provide comprehensive, current and robust data upon which to base policy and regulatory responses, especially to the problem of toxics in air and water. The 2007 legislative session did provide DEQ with additional resources to restore or expand portions of our monitoring programs. These increases occurred in the air quality program for monitoring smog and fine particulate matter and for air toxics monitoring. In the water quality program, resources were restored to monitor groundwater and surface water pollution levels. In addition, funding was provided to establish a water quality toxics monitoring program.

Pollution from Non-Point Sources. If we are to make significant future gains in maintaining a clean and healthy environment, we must tackle the political and practical consequences of addressing pollution in Oregon, toxic or otherwise, that comes from multiple small sources and/or sources that are minimally regulated and may respond better to incentives than regulation. Addressing non-point sources, which produce most of the pollution in Oregon, means re-thinking and re-focusing our regulatory and incentive-based strategies.

SB 235 removes a state exemption and brings agriculture under Clean Air Act requirements. As a result of this bill, DEQ and the Oregon Department of Agriculture will lead a task force to look at options for further reducing emissions from dairy sources. The scope of the task force review can be expanded to include other agricultural sectors. This effort is driven in part by concerns over the creation of large-scale farms and their impacts resulting from highly concentrated animal wastes. The current controversies over new dairy and chicken farms are likely to grow in response to the changing nature of the agricultural industry.

A large number of pesticide bills were heard during the 2007 session and though no significant legislation was approved, it is clear that pesticide-related discussions will continue during the interim. Already the Governor's office has coordinated a meeting with a number of environmental organizations and state agencies.

Several proposals to curtail field burning were debated but did not pass in 2007. The Environmental Quality Commission has been asked by Lane County to make rules banning field burning. If the Commission chooses not to do so, we anticipate legislative proposals in 2009 which could go beyond field burning to address other agricultural burning, forest burning, and residential backyard burn barrels.

Retaining Oregon's Legacy as an Environmental Leader. People want to live and work in Oregon because of our reputation for taking care of our naturally beautiful environment. In Oregon, a healthy environment and a healthy economy go hand-in-hand in. As more people move here and our natural resources are stressed by growth and changes in the climate, it will be a challenge to retain our reputation as an environmental leader.

August 27, 2007

The Governor's leadership on climate change resulted in passage of an impressive array of legislation in support of renewable, clean and efficient energy which will help DEQ ensure that Oregon's air stays clean, clear, and breathable.

In recycling, where Oregon has always been a leader, the legislature passed two landmark bills. SB 707 expands Oregon's Bottle Bill to require deposits on water bottles and sets up a task force to look at further enhancements to the Bottle Bill, which could include new redemption centers, a deposit greater than a nickel, and requirements for more containers to come under the redemption process. The legislature also passed HB 2626 which requires, for the first time, recycling of some electronic devices. This bill provides new resources to DEQ to create and implement this electronics recycling, or "e-waste" program.

A strong environmental future for Oregon will be ensured by courageous leadership from the Governor, the legislature, and the state's natural resource agencies. For state agencies to provide first-class leadership, then Oregon must ensure that first-class employees are attracted to public service. These means investing in the workforce of the future and ensuring that we create a welcoming, progressive and diverse workplace. The state's reputation as an environmental leader should be complemented by a reputation of fine public service.

Cc:
Mike Carrier
Environmental Quality Commission

STRATEGIC DIRECTIONS: 2006-2011

Mission:

To be a leader in restoring, maintaining and enhancing the quality of Oregon's air, water and land.

Vision:

To work collaboratively with all Oregonians for a healthy, sustainable environment.

Values:

- Environmental results
- Public service
- Partnerships
- Excellence and integrity
- Teamwork
- Employee growth
- Diversity
- Health, safety and wellness
- Economic growth through quality environment

DEQ Excellence is:

- Promoting sustainable practices
- Improving Oregon's air and water
- Protecting people and the environment from toxics
- Involving Oregonians in solving problems

DEQ commits to excellence by...

- Delivering outstanding public service and continuously seeking customer feedback to improve its service
- Providing a safe, healthy work climate to support its staff in protecting the environment
PP 140 – Business & Workplace Accountability

PP 151 – Environmental Information Exchange Network

DEQ promotes sustainable practices by...

- Helping to reduce global warming
- Encouraging reuse of wastewater
- Encouraging reinvestment in previously contaminated land
- Practicing sustainable use of resources within DEQ

DEQ measures success in promoting sustainability by...

- Reduction of greenhouse gas emissions from new cars
HB 2272 & PP 118 – OR LEV Registration Denial
- Increased number of electrified truck stops to reduce diesel truck idling
*HB 2172 & PP 119 – Clean Diesel
- Reduction of greenhouse gas emissions from solid waste
- Increased number of facilities that reclaim water for reuse
- Increased number of redeveloped Brownfield sites
*PP 133, 183 & 193 – Orphan Sites
- Reduction of energy and water use in DEQ offices

DEQ improves Oregon's air and water by...

- Strengthening connection between public and environmental health
- Cleaning up the Willamette River Basin
- Meeting air quality health standards for fine particulates and smog
- Protecting natural and scenic areas
- Issuing timely and protective permits
- Enforcing environmental laws and regulations

DEQ measures success protecting air and water by...

- Monitoring changes in water quality
 - *PP 121 – WQ Toxics Monitoring
 - PP 126 – Beach Monitoring
 - *PP 128 Monitoring/TMDLs
 - PP 172 – WQ Lab
- Reduced number of days Oregonians breathe unhealthy air
 - PP 110 – AQ Health Standards
 - PP 171 – AQ Lab
- Actions identified and taken by communities to clean up the Willamette River Basin in response to Total Maximum Daily Loads (TMDLs)
- Pollution controls in place to help clean up the Portland Harbor Superfund Site
- Air and water permits issued on time and kept up to date
 - SB 107 & PP 112 – Title V Fees
 - PP 114 – ACDP Fees
 - PP 120 – Wastewater Permitting Fees
- Improved visibility in the Columbia Gorge, Crater Lake, and wilderness areas
 - PP 115 – Columbia River Gorge Air Quality
- Making timely compliance and enforcement actions

SB 235 – Ag Air Emissions
HB 2118/PP 160 – Underground Injection Control Fees
PP 117 – VIP Technology
PP 122 – Stormwater
PP 123 – Drinking Water Protection
PP 124 – Protect Groundwater
PP 125 – Onsite
PP 127 – 401 Certification
PP 129 – WQ Standards
PP 153 – Liquefied Natural Gas
SB 643 & PP 807 – Ballast Water

DEQ protects Oregonians and our environment from toxic pollutants by...

- Preventing and reducing toxic chemical releases
- Cleaning up and reducing risks from toxics already in our environment

DEQ measures success in protection from toxic pollutants by...

- Chemical weapons at Umatilla Army Depot safely destroyed
- Effective response to toxic spills on land and in water
SB 105 & PP 134 – Marine Spills
- Reduced risks from exposure to toxics in our air, water and land
PP 111 – Air Toxics
PP 113 – Asbestos
SB 737 – WQ Toxics/PBTs
- Toxic pollutants reduced or removed from waste stream
- Contaminated and/or hazardous sites cleaned up
SB 106 & PP 132 – Heating Oil Tanks
HB 5005 – Bonding Bill
*PP 133, 183 & 193 – Orphan Sites
- Amount of legacy pesticides managed safely
- Tons of pollution reduced from diesel emissions
- Pounds of mercury removed from the environment
- Number of abandoned mines assessed for cleanup

SB 103 & PP 131 – Hazardous Waste Fees
SB 104 & PP 130 – Underground Storage Tank Fees
*HB 2172 & PP 119 – Clean Diesel
* PP 121 – WQ Toxics Monitoring
PP 152 – Homeland Security
PP 173 – LQ Lab

DEQ involves Oregonians in solving environmental problems by...

- Encouraging personal actions to protect the environment
- Supporting communities in solving environmental and economic problems
PP 181 & 191 – SRF Funding

DEQ measures success involving Oregonians by...

- Reduction of garbage landfilled or incinerated
SB 707 – Bottle Bill
- Increased collection of household hazardous waste
- Development of new options for managing electronic product waste
HB 2626 & PP 810 – Electronic Waste Recycling
- Increased number of Eco-Biz certified businesses
- Community problems solved as part of the Governor's Economic Revitalization Team
- Secured grant funding to support local environmental projects
- Increased education and involvement of diverse populations in protecting health and the environment
SB 420 – Environmental Justice

DEQ continues to work closely with its state and local agency partners:

- Human Services - *Drinking water*
- Water Resources - *Water rights and quantity*
- State Lands - *Wetlands management*
- Agriculture - *Water quality management plans*
- Forestry - *Oregon Forest Practices Act*
- Fish & Wildlife - *Fish passage, endangered species, fish recovery planning*
- Watershed Enhancement Board (OWEB) - *Grants to watersheds*
- Lane Regional Air Protection Agency (LRAPA) - *Lane County air quality*
- Tribal Nations
- Economic Revitalization Team (ERT) member agencies - *Transportation, Economic & Community Development, Housing, Land Conservation, Agriculture, State Lands and Consumer & Business Services*

Notes:

HB = House Bill

SB = Senate Bill

PP = Policy Package (part of the budget request)

*HB, *SB or *PP = Bill or Policy Package that fits in well in two or more places (it repeats)

----- = Bills or Policy Packages listed below this line "generally" fit into the boarder Strategic Direction entry. Bills or Policy Packages listed above this line directly relate to the sub-Strategic Direction entry or measure.

2007 Session Overview and Looking Forward

DEQ was very successful in the 2007 Session. This success could be attributed to three main factors:

- The change in the House majority party which resulted in more favorable outcomes for environmental activities,
- There were General Fund monies that could be used to fund activities and programs. This is a significant shift from the budget reduction mode that had been prevalent between 2002 and 2005, and
- A strong and positive reputation of DEQ

Three distinct outcomes have appeared from the 2007 Session.

- There was strong support to restore lost state funding for DEQ and to allow fee increases to support core programs and even to support several new initiatives. Most of the original DEQ Agency Request Budget was funded, including all of the fee bills.
- Toxics emerged as a driving theme and can be traced to several significant bills and budget policy packages – WQ toxics monitoring, WQ toxics/PBT reductions (SB 737), Clean Diesel, air toxics and electronic waste. There were a number of other bills that were not successful that focused on pesticides. These bills typically would involve DHS-Public Health, ODA, DEQ and sometimes ODF and ODFW.
- Funding for monitoring and science was given a high priority. Funding was restored for monitoring in the air and water programs and new funding was provided for the new water quality toxics monitoring program. There was continued support to provide needed funding for the new joint DHS/DEQ laboratory in Hillsboro.

Looking Forward

2008 Special Session – Details for this Session are still being worked out. At this time, the House and Senate appear to have different strategies on proceeding. The Senate is looking at it as a regular session where each member could introduce one bill. The House is looking at it as a special session with a few specific topics and a quick in and out. Much of what frames the session will depend on the September and December revenue forecasts. From the Governor's perspective, agencies are being asked to keep a low profile and instead focus on 2009. He expects that the 2008 focus will be mainly on unresolved issues that may come out of the November ballot measures such as the Healthy Children/Tobacco Tax (Measure 50) and Measure 49 (fix for Measure 37). Other big issues could be the Real ID for driver's licenses, restoring funding for state troopers, funding for the Big Look Task Force and funding for OMSI. At this time, DEQ is not planning to work on any legislative concepts for 2008.

2009 Session – The Governor has announced his desire to work on major topics relating to transportation, health care and education. To date, no environmental issues have been identified. However, several major environmental issues will likely be in the forefront in 2009. The Governor's Natural Resources Office is working on toxics and pesticide issues during the interim which will likely result in legislative concepts. There were a number of unsuccessful pesticide bills in 2007 and we can anticipate that some of them will be reintroduced..

Field burning and smoke management - Rep Holvey (D-Eugene) sponsored a field burning ban bill during 2007 which was not successful. He has indicated his desire to try again and will be working on this issue during the interim. The representative wants to work with DEQ and ODA on this issue. Also, Lane County has expressed interest in having the EQC ban field burning, so this may become a high profile issue prior to 2009.

Water quality toxics – it is likely that this topic will return in 2009. A number of people saw SB 737, water quality reductions of PBTs, as the first step towards reducing certain types of

discharges into the waters of the state. Expansion of this bill, which currently focuses on the 52 largest municipalities, or other related topics such as mixing zones may return.

080607

See written materials

Oregon Environmental Quality Commission
Non-toxic monitoring program → toxic reduction program
Include mixing zones in strategic planning. source easy to reduce & should be priority. Open to all & request well. Enforcement is inefficient & ineffective & favors industry. Get rid of backlog.

Agenda Item _____ or
Topic of Presentation

Public Forum: mixing zones and strategic planning

Christine Caurant / Ivan Meluski

Name (Please print clearly)

2950 SE Stark St., Suite 100

Address

Sierra Club christine.caurant@sierraclub.org (503) 243-6656 x302

Affiliation

Email (optional)

Phone (optional)

Cont. leading role WQ Act. Conc @ BCM W. OK plan revision. Increased logging in protective areas.

Improve X-pgm approach to toxics. Hg good example. SB737 implement now.

Oregon Environmental Quality Commission
Toxic red. acc all pgms. Collaborate. Phase takeback. Green infrastructure.
Public Forum
Request to Present Information

See written materials

Agenda Item _____ or
Topic of Presentation

STRATEGIC PLANNING

JIM HILL - JANET GILUSPICE for ACWA

Name (Please print clearly)

537 SE Asu, Pox. OK 97214

Address

ACWA

Affiliation

Email (optional)

Phone (optional)

Customer service to regulated community is troubling - is @

oppose of Oregonians. Ex: Beckman Pkg - DED took CO's word that could only go so far. Also, ^{Request to Present Information} ~~ask for~~ ^{Public Forum} ~~task force~~ - Mark R. professionally. Can have to contrast w/ BE's unwillingness to invest. Installing control technology voluntarily. Encour EAC take heed @ DED's

Agenda Item I or
Topic of Presentation BART proposal. Form at. task force to conduct search.
Mark R. Skedahl

Name (Please print clearly)

10015 SW Terwilliger Blvd

Address

NEPC

msr@nedc.org

Affiliation

Email (optional)

Phone (optional)

Env issues imp i OR: • ^{Local Warming} what add the DED's trans. can

Oregon Environmental Quality Commission
Public Forum
Request to Present Information

- ^{Impact + health effects. ID toxics, monitor. Preventive.}
- ^{Water Quality (see OEC report). River flow not stable.}

Improvement: • Monitor, inspection, enforcement.
• Air toxics rule

Agenda Item I or

Topic of Presentation Strategic Plan

Andrea Durbin • ^{update paper-based permit system}

Name (Please print clearly)

- ^{full funding}
- ^{Public is constitutive}
- ^{X program coord.}

Address

CEC

Affiliation

Email (optional)

Phone (optional)

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

Agenda Item I or
Topic of Presentation Solutions in business strategy running up
against regulatory obstacles. DEQ
should create unit or way
Name (Please print clearly) Lisa Crath OBA to work constructively w/ business

Address

Affiliation

Email (optional)

Phone (optional)

See written testimony

Oregon Environmental Quality Commission

① Not chemical-by-chemical. Look for new, comprehensive approaches *chemical policy reform*
Public Forum
Request to Present Information
Incorporate a more upstream approach. Call for safer chemicals

Agenda Item E-3 or
Topic of Presentation Strategic Directions
* Speaker 2
Name (Please print clearly) Cheyenne Chapman, Oregon Center for Environmental Health

* Speaker 1
Name (Please print clearly) Lisa Arkin, Oregon Toxics Alliance
* Speaker 3
Name (Please print clearly) Sara Wright, Oregon Physicians for Social Responsibility

Affiliation

Email (optional)

Phone (optional)

possibly → Renee Huckenmiller - Paradise, Oregon Environmental Council
2150 NOT

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

Agenda Item ____ or
Topic of Presentation STRATEGIC PLANNING

JIM HILL + JANET GILLASPIE for ACWA
Name (Please print clearly)

537 SE Ash, Pox. OR 97214
Address

ACWA
Affiliation

Email (optional) Phone (optional)

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

Agenda Item ____ or
Topic of Presentation Public Forum - mixing zones and strategic planning

Christine Caurant / Ivan Maluski
Name (Please print clearly)

2950 SE Stark St., Suite 100
Address

Sierra Club christine.caurant (503) 243-6656 x 302
Affiliation Email (optional) Phone (optional)

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

Agenda Item ____ or

Topic of Presentation Strategic Plan

Andrea Durbin

Name (Please print clearly)

Address

OEC

Affiliation

Email (optional)

Phone (optional)

Oregon Environmental Quality Commission

Public Forum
Request to Present Information

Agenda Item ____ or

Topic of Presentation _____

Mark R. Kedahl

Name (Please print clearly)

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Address

NEDC

msr@nedc.org

Affiliation

Email (optional)

Phone (optional)



Oregon Environmental Quality Commission

Public Forum
Request to Present Information

Agenda Item I-3 or
Topic of Presentation Strategic Directions

Cheyenne Chapman, Oregon Center for Environmental Health
Name (Please print clearly)

Lise Arkin, Oregon Toxics Alliance
Address

Sara Wright, Oregon Physicians for Social Responsibility
Affiliation Email (optional) Phone (optional)

possibly also → Renee Hackenmiller-Paradis, Oregon Environmental Council

State of Oregon
Department of Environmental Quality

Memorandum

Date: October 17, 2007
To: Environmental Quality Commission
From: Stephanie Hallock, Director
Subject: Agenda Item H, Informational Item: Oregon Fish and Shellfish Consumption Rate Project Update
October 17, 2007 EQC Meeting

Purpose of Item

- (1) Update the Environmental Quality Commission (EQC) on the progress of the Oregon Fish and Shellfish Consumption Rate (FCR) Project. The Department of Environmental Quality (DEQ) last updated the EQC on February 22, 2007
- (2) Update the EQC about the preliminary findings of the Human Health Focus Group
- (3) Get direction from the EQC on what information the EQC will need and be looking for as the project progresses
- (4) Provide an opportunity for members of the project's Core Group and members of the public to offer comments to the EQC.

Background

DEQ is conducting a public review of the human health criteria for water quality standards, focusing on the fish consumption rate (FCR). The Environmental Protection Agency (EPA) and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) are playing a leadership role with DEQ in the review of the FCR.

On October 6, 2006, DEQ, EPA, and CTUIR presented a plan to the EQC for a collaborative review of Oregon's fish consumption rate. This rate is one variable in the calculation used to establish water quality standards that will protect human health for Oregonians. The EQC supported the proposal and DEQ, EPA, and CTUIR are implementing the plan.

Project Progress to Date

The Planning Team (DEQ, EPA, and CTUIR) has held over 30 meetings since October 2006, and offered several public outreach and communication opportunities. DEQ, EPA and CTUIR held public workshops in Portland on March 13, 2007 and in Coos Bay on March 14, 2007. A Human Health Focus Group (Attachment A) was formed in May 2007 and has held six highly productive meetings. The Planning Team held a public workshop on water quality standards and fish consumption data in Lincoln City on May 16, 2007 and another on human health risks on July 17, 2007 in Portland. These workshops and the focus group meetings have provided the Planning

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Team with information and suggestions on how to better tailor project deliverables to the needs of the EQC and stakeholders.

**Project
 Schedule
 Update**

The Planning Team updated the project schedule to reflect:

- (a) Progress made to date,
- (b) Comments and suggestions received during the public workshops, and
- (c) Availability of resources to achieve milestones.

This revised project schedule (Attachment B) is responsive to requests from workshop participants that DEQ, EPA and CTUIR present specific FCR options for comment during the public workshops. The revised schedule also reflects the Planning Team's commitment to provide the public and stakeholders with meaningful opportunities to understand, comment upon, and suggest alternatives to policy options.

Below is a summary of the deliverables and projected dates. During October, we expect to finalize the specific date for the February workshop.

Deliverable	Projected Date
Human Health Focus Group Report (draft)	October, 2007
Human Health Focus Group Report (final)	December, 2007
Workshop 4- Public Workshop on FCR Options	February, 2008
Fiscal Impact Analysis Report (draft)	January, 2008
Fiscal Impact Analysis Report (final)	March, 2008
Workshop 5 - Public Workshop on Fiscal & Implementation Issues	May, 2008
FCR Options and Recommendations Document (draft)	June, 2008
Workshop 6 - Public Workshop on Toxics Reduction Strategies	June, 2008
Workshop 7- Public Workshop on FCR Options and Recommendations	July, 2008
FCR Options and Recommendations Document (final)	August, 2008
Present FCR Options and Recommendations to the EQC	October, 2008
Anticipated start of formal rulemaking	November, 2008

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**Future Project
Work**

1. The Human Health Focus Group will complete its work and prepare a recommendation, providing a scientifically defensible basis for identifying consumption rate options.
2. DEQ, EPA and CTUIR (the Planning Team) will develop a range of FCR options and present them to the public during public workshops. Reaction from the public on these various options will be important to the Planning Team in deciding which options to develop further and which to put aside.
3. DEQ will convene a Fiscal Impact Advisory Committee (FIAC) to help us understand the economic impacts and implementation challenges associated with various consumption rate options; this work will be done in a manner consistent with ORS 183.333 and 183.335. A contractor (SAIC) has been retained to perform the technical portions of this analysis. Work with the FIAC will lead to a public workshop on fiscal impact and implementation issues. We also plan a public workshop on toxics reduction strategies. After the workshops, we will schedule time for the Planning Team to further revise its FCR options and recommendations in response to public input.

**Principal
Project
Deliverable**

The principal product of this project will be scientifically and technically credible options and recommendations for changing Oregon's fish consumption rate. The process that the Planning Team will use to develop these options and recommendations will require the team to make a number of primarily scientific and technical choices with respect to each of the following key factors (which were modified in response to public comments received at the May 16, 2007 workshop; see Attachment C):

1. Based on the available survey data, which fish consumption rates are options to be considered as the basis for Oregon's human health water quality criteria?
2. Should Oregon use different fish consumption rates for basins or waterbodies that reflect consumption patterns in those areas?
3. What high fish consuming population(s) should Oregon use as the basis for establishing Human Health water quality criteria?
4. What percentage of the high fish consuming population(s) should Oregon use as the basis for the human health water quality criteria?
5. How will salmon (an anadromous fish) be addressed (i.e., included or excluded) in deriving the fish consumption rate?
6. How could a fish consumption rate be effectively and equitably implemented to ensure that Oregon's public health is protected?

The Planning Team will use these key factors to develop specific FCR options for comment during the public workshops to provide the public and stakeholders with meaningful opportunities to understand, comment upon, and suggest alternatives to policy options.

The Planning Team will present options and recommendations to the EQC in the form of a final report. Our goal is to present this report, along with supporting information on fiscal, implementation, and other issues relevant to selection of an FCR, to the EQC in time for its October 2008 meeting. The team's scientific and technical choices, reflected in their recommendations for changing the FCR, will inform the EQC's higher-level policy decision: that of an appropriate fish consumption rate for Oregon.

**EQC
Involvement**

DEQ will report to the Commission in the Spring of 2008. The EQC may request an update from DEQ at any time.

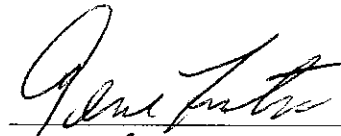
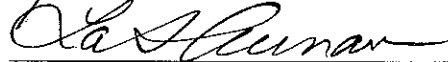
Attachments

Attachment A: Human Health Focus Group Update
Attachment B: Revised Schedule for Workshops
Attachment C: DEQ Initial Responses to Public Input from Workshop 2

Approved:

Section:

Division:

Report Prepared By: Jordan Palmeri
Phone: 503-229-6766

Attachment A:

Human Health Focus Group Update

Background on Human Health Focus Group Development

The Human Health Focus Group (HHFG) members are technical experts with experience in the areas of toxicology, risk assessment and public health. The Planning Team put forth a call for nominations of HHFG members to the Core Group of workshop participants in April, 2007. The Planning Team reviewed the nominations from the Core Group members and chose the following six members:

Name	Affiliation
Dave McBride	Washington State Department of Health
Sue MacMillan	URS Corporation
Joan Rothlein, PhD	Oregon Health and Science University
Ken Kauffman	Oregon Department of Human Services
Elaine Faustman, PhD	University of Washington
Pat Cirone, PhD	Retired Federal Scientist

Questions Posed to the Human Health Focus Group

The Planning Team posed three questions to the HHFG:

1. Considering the available local, regional and national information on fish consumption, what is the scientific evidence Oregon should rely on in selecting a fish consumption rate to use in setting water quality standards?
2. How should anadromous fish (i.e. salmon) be considered in selecting a fish consumption rate?
3. To what extent are populations who consume more than the current fish consumption rate of 17.5 g/day at a greater risk for health impacts?

Meetings and Preliminary Findings

The HHFG has held six meetings over the past four months. They prepared and presented materials at Workshop 3 focusing on question 3 ("To what extent are populations who consume more than the current fish consumption rate of 17.5 g/day at a greater risk for health impacts?").

To date, they are near completion on questions (1) and (3), and are currently working on question (2).

Their preliminary findings include the following:

- Of the nine fish consumption rate studies evaluated, the Focus Group recommended six (all with caveats) that the State could use in choosing a fish consumption rate;
- Rates for consumers only, in most cases, tend to be higher than rates that include non-consumers of fish. Consumer only data is a better representation of a population of people who are actually eating fish.
- Populations who consume greater than 17.5 g/day are at a greater risk of health impacts for both cancer effects and non-cancer effects- which is especially concerning for vulnerable populations (women of child-bearing age, children);
- A review of the fish consumption rate studies, including regional data, indicate that: there are multiple and diverse fish consuming populations, populations are consuming fish at a rate higher than 17.5 g/day, and that 17.5 g/day is not reflective of the 90th percentile of fish consumers in Oregon.

Products and Outcomes

Meeting notes and materials of the HHFG can be found on DEQ's website at:

<http://www.deq.state.or.us/wq/standards/fishfocus.htm>. Presentations by the HHFG at Workshop 3 and meeting notes from that meeting are available on DEQ's website at:

<http://www.deq.state.or.us/wq/standards/fish.htm>.

A report of the HHFG findings regarding the three core questions is currently being developed. The information from this report will be used by the Planning Team in informing development of specific fish consumption rate options (e.g., What fish consuming population will be protected? How will Pacific salmon be addressed in the fish consumption rate? What source of data will be used in choosing a fish consumption rate?). The final HHFG report will be included with the "Policy Options Paper" to the EQC.

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Attachment B:

Revised Schedule for Workshops

The following schedule outlines the tentative meeting dates and themes for each of the remaining workshops in the FCR project. We expect to have a firm day selected for the February workshop some time in October.

These dates and themes are subject to change with input received from public workshops, reviews and updates to the workplan, and other relevant sources to ensure that the workshops satisfy the goals of this project.

In order to ensure transparency for the public regarding the workshop process and eventual EQC policy options document, the following will be established at the onset of each workshop planning process:

- Clear purpose of the meeting, including the goals for public involvement/input (e.g. information-based meeting seeking data or understanding, public feedback on key issues and policy options);
- Plan and explanation of how the public involvement/input will be utilized in informing the EQC decision;
- Plan for responding to public input where appropriate.

These will be reflected in the final agenda for each workshop. The agenda will also describe the specific opportunities for participants to provide input and information and specify how the Planning Team will utilize this information.

Workshop Schedule		
Event	Theme	Date/Month
Workshop 1	Background and Scope	3/13/07 – Portland 3/14/07 – Coos Bay
Workshop 2	Review of Water Quality Standards and Fish Consumption Data	5/16/07 – Lincoln City
Workshop 3	Human Health Risks	7/19/07 – Portland
Workshop 4	Discussion of Policy Options	February 2008
Workshop 5	NPDES and Implementation	May 2008
Workshop 6	Toxic Reduction Efforts	June 2008
Workshop 7	Discussion of Policy Options and Recommendations	July 2008

OVERVIEW: WORKSHOPS 1, 2 AND 3

Three workshops have been held in this process: Workshop 1- held twice- 3/13 (Portland) and 3/14 (Coos Bay); Workshop 2- 5/16 (Lincoln City) and Workshop 3- 7/17 (Portland). The first three workshops were primarily information based, with the purpose of explaining the fish and shellfish consumption rate, water quality standards, and key considerations associated with revising this rate. Workshop 1 provided a background and scope of the fish consumption rate issue. Workshop 2 focused on reviewing the water quality standards and fish consumption data. Feedback on the Core Policy Questions was also gathered in Workshop 2, and will be used by the Planning Team to help inform the relevant policy questions of this process. Workshop 3

explained the human health risks associated with fish consumption under the existing water quality standards.



PLEASE NOTE THAT THIS DOCUMENT ONLY REPRESENTS THE VIEWS AND
OPINIONS OF DEQ

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DEQ Initial Responses to Public Input from Workshop 2 Oregon Fish and Shellfish Consumption Rate Project

Overview

At Workshop 2 of the Oregon Fish and Shellfish Consumption Rate Project, held on May 16 in Lincoln City, workshop participants were asked to comment on “key factors” for this Project. Workshop participants discussed the “key factors” in small groups and as a large group. Many workshop participants raised additional issues for the Planning Team to consider. This document outlines the additional issues and questions raised at the May 16th workshop and DEQ’s initial response to these issues and questions; responses to similar issues and questions have been grouped where appropriate. As noted throughout this document, the key factors will be discussed in more depth at future workshops.

Key Factors presented at Workshop 2 (May 16)

The goal of bringing these issues in front of the public was to get input on whether these are the right issues and whether the issues are clearly articulated.

1. Based on the available survey data, which fish consumption rates are options to be considered as a basis for Oregon’s human health water quality criteria?
 - What level of EPA’s preference hierarchy does this data fall into (local, regional, national)?
 - Should Oregon use different fish consumption rates for basins or waterbodies that reflect consumption patterns in those areas?
2. What target population(s) will Oregon use as the basis for establishing Human Health water quality criteria? (e.g. tribal, general, anglers, etc.)
3. What percentage of the target population(s) will Oregon use as the basis for the human health water quality criteria?
4. How will anadromous fish be addressed in deriving the fish consumption rate? (e.g. classification of fish as marine, freshwater and estuarine; include marine or exclude marine)
5. How will the EQC weigh the fiscal and economic costs of implementing more stringent human health water quality criteria against the added public health benefits?
 - How could a fish consumption rate be effectively and equitably implemented to ensure that Oregon’s public health is protected?

Revisions to the Key Factors in Response to Public Comments

Based on the issues and questions raised by the public during Workshop 2, the Project Planning Team (staff from DEQ, the Environmental Protection Agency, and the Confederated Tribes of the Umatilla Indian Reservation) revised the key factors. The revisions, along with the rationale for their revision, appear below.

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1. Based on the available survey data, which fish consumption rates are options to be considered as a basis for Oregon's human health water quality criteria?
 - Key factor #1 was changed to remove the sentence about EPA preference hierarchy. The Planning Team is considering EPA's preference hierarchy but for the sake of simplicity and clarity about the policy question being expressed here, the sentence was removed. We regarded the second sub-bullet as its own key factor (see below).
2. Should Oregon use different fish consumption rates for basins or waterbodies that reflect consumption patterns in those areas?
 - Key factor #2 used to be a sub-bullet of key factor #1. The Planning Team felt it was a separate key factor that needed to be considered despite its relationship with key factor #1
3. What high fish consuming population(s) (e.g., tribal, general, anglers, etc.) will Oregon use as the basis for establishing Human Health water quality criteria?
 - Key factor #3 was changed to reflect that there are numerous populations in Oregon that may be considered a "high fish consuming" population. The original sentence referred to a "target population". This effort may not necessarily target one population, but instead, will aim to protect numerous high fish consuming populations.
4. What percentage of the high fish consuming population(s) will Oregon use as the basis for the human health water quality criteria?
 - See explanation for key factor #3
5. How will salmon (an anadromous fish) be addressed (i.e. included or excluded) in deriving the fish consumption rate?
 - This key factor was changed to accurately reflect that the Planning Team is considering whether or not to include salmon in the fish consumption rate and not whether to include all marine fish in the fish consumption rate.
6. How could a fish consumption rate be effectively and equitably implemented to ensure that Oregon's public health is protected?
 - The Planning Team received a number of public comments on the economic analysis of an increased fish consumption rate. There was concern that the EQC would be "trading off" protection of people's health against costs of implementing more stringent water quality standards. This is a complex area. The question, "How will the EQC weigh the fiscal and economic costs of implementing more stringent human health water quality criteria against the added public health benefits?" has been revised to focus on how a rate would be implemented to protect public health. Water Quality Administrator Lauri Aunan has consistently stated that when a range of options and recommendations are presented for increasing the fish consumption rate, DEQ will need to understand and communicate to the Environmental Quality Commission what it will take for DEQ to implement the

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resulting revised criteria, and what it will take for the regulated community to implement the criteria.

- In addition, as required by state law, a fiscal impact analysis will need to be developed. The Planning Team and the Fiscal Impact Advisory Committee will provide as much information as possible to the EQC about the fiscal impact of implementing more stringent criteria based on an increased fish consumption rate.

Responses to Issues and Questions Raised by Workshop Participants

Below are the issues and questions raised by participants at Workshop 2. Similar issues and questions have been grouped together. The responses were compiled by DEQ.

(1) TYPES AND SOURCES OF DATA; AVAILABLE DATA

- How will the EQC consider data from Washington, Alaska, San Francisco, CA?
- Will/should local data be used for a state-wide standard?
- How are we using qualitative fish consumption data?
- What level protection is based on what level of data?
- What is being done to gather information from tribes, tribal elders, and tribal treaty rights?
- Will the policy default to a highly protective rate, or will policy makers ask for more data?
- How substantial do data and analysis need to be in order to be used by the Commission to change fish consumption levels?
- If the CRITFC study is not considered sufficient information upon which to increase fish consumption levels, what level of data would be sufficient?
 - Given the existing time, can we get the best available information, or should the timing be changed?
- How do we include the higher consumption information? What is being done to gather the maximum amount of information?

Response

EPA's guidance on choosing a fish consumption rate for water quality criteria includes a preference hierarchy emphasizing the use of local, State or regional data where available¹. There are several local and regional studies on fish consumption rates available, as well as some national fish consumption data. The Human Health Focus Group, experts with experience in human health risk assessment and toxicology, is reviewing 9 such studies (see Table 1 below).

In two of the public workshops, personal accounts of fish consumption were encouraged, and in many cases, participants did share personal stories. These stories were informative and are considered qualitative data. The personal stories given by workshop participants become a part of the public record but are not part of the information the Human Health Focus Group is reviewing. As with all information gathered at the public workshops, this qualitative information will be included in the final Policy Options package to the EQC so that the EQC can consider this information in its decision making.

¹ EPA, 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. EPA-822-B-00-004. Pp. 4-24-4-27

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Table 1.

Fish Consumption Studies under Review by Human Health Focus Group	Year
Re-evaluation of the CRITFC survey data (Rhodes thesis)	2006
EPA Estimated Per Capita Fish Consumption in the United States	2002
Lake Whatcom residential and Angler Fish Consumption Survey	2001
Fish Consumption Survey of the Suquamish Indian Tribe of the Port Madison Indian Reservation, Puget Sound Region	2000
EPA Asian and Pacific Islander Seafood Consumption Study	1999
Consumption Patterns of Anglers who frequently fish Lake Roosevelt (WA)	1997
A Fish Consumption Survey of the Tulalip and Squaxin Island Tribes of the Puget Sound Region	1996
City of Portland Fish Consumption and Recreational Use Survey of Columbia Slough and Sauvie Island	1996
A Fish Consumption Survey of the Umatilla, Nez Perce, Yakama, and Warm Springs Tribes of the Columbia River Basin (CRITFC)	1994

(2) NON-LOCAL FISH

- How do we deal with consumption of “non-local fish” (i.e., fish that may be served in restaurants or purchased in a grocery store)?

Response

The fish consumption rate is intended to represent fish and shellfish caught and consumed from Oregon’s waters. In reviewing the 9 fish consumption studies, the Human Health Focus Group is noting how each survey accounts for personal/family harvest of fish and shellfish from local rivers versus the consumption of fish and shellfish bought in restaurants or supermarkets.

(3) INCLUSION OF CULTURAL VALUES

- How should cultural/other values be weighed?

Response:

The Environmental Quality Commission recognizes that fish are important to the culture, tradition and religion of tribal governments, and that tribal members consume fish at higher rates than the general population. At the workshops, both tribal and non-tribal members of the public have provided information about how fishing and the use of fish is an important aspect of their culture. This information will be included in the final policy options paper to the EQC so that

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the EQC can consider this information in its decision making.

(4) WQS IMPLEMENTATION ISSUES

- How do we consider upstream vs. downstream issues?
- Geographical division of standards – how would that work? Interesting in that this approach could take into consideration the specific, unique aspects of that region and the differences in types of fish.

Response

One of this project's key factors for consideration is "Should Oregon use different fish consumption rates for basins or waterbodies that reflect consumption patterns in those areas?" The Planning Team will be seeking public input on this question at a future workshop. As with all information gathered at the public workshops, this information will be included in the final Policy Options paper to the EQC so that the EQC can consider this information in its decision making.

During the last triennial review of water quality toxics criteria (1999-2003), DEQ convened a Technical Advisory Committee and Policy Advisory Committee. These committees considered applying different fish consumption rates on regional levels. Possible inequities between permitted sources, the difficulty in implementing numerous sets of water quality criteria on one river, and protecting downstream uses were all issues discussed during this review (more information can be found at: <http://www.deq.state.or.us/about/eqc/agendas/2004/5.20-21.04.EQCAgenda.htm>). Oregon does have other water quality standards that differ by region or water body. For example, Oregon's temperature standard varies depending on whether the waterbody is being used for fish spawning, migration, or juvenile rearing.

(5) PORTLAND SUPERFUND SITE

- How do we use the fish consumption rate from the Portland Superfund site statewide?

Response

Portland Harbor is a federal Superfund site spanning about 6 miles of the Willamette River from its confluence with the Columbia River to downtown Portland. Superfund sites contain uncontrolled hazardous waste and are a National priority for cleanup. EPA is leading cleanup of contaminated sediment on the river-bottom. DEQ is leading cleanup of contaminated land on the riverbanks of Portland Harbor. There is not one unique fish consumption rate used in the Portland Harbor project; instead, various fish consumption rates ranging from 17.5 g/day to 175 g/day are used to guide cleanup of contamination.

The Oregon Fish and Shellfish Consumption Rate Project is a separate effort focusing on fish consumption rates as it relates to the human health criteria for water quality standards. Water quality standards are used to protect the designated uses of Oregon's waters. One of those designated uses, which is the focus of this project, is fishing. In order to protect people's ability to fish and consume the fish they catch, DEQ needs to accurately represent how much fish Oregonians eat.

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One of the questions to be answered in the workshop process is “Should Oregon use different fish consumption rates for basins or waterbodies that reflect consumption patterns in those areas?” The Planning Team will be seeking public input on this question at a future workshop.

(6) HIGH FISH CONSUMING POPULATIONS

- Should we be targeting the more sensitive populations: pregnant women, those with poor health, children, others that may be at a higher risk?
- Are we going to be protecting the Native Americans – the greatest eaters of fish – how much weight is placed on that population?
- How is one population more important than another?
- Do people in human subpopulations suffering from disparate impacts only deserve protection if the government has provided funds to amass a significant body of data, such as the CRITFC study, concerning their actual fish consumption levels?
- Will the Commission consider the greater health protection provided to the Oregon population at large that would be a benefit of increasing the fish consumption level to provide greater protection to human subpopulations in Oregon?
- What does the Commission consider to be the maximum acceptable risk to a human subpopulation in Oregon?
- What justification is there for a policy of “lower yet adequate” protection of some of Oregon’s citizens? How is this different from “separate but equal”?
- Assuming that conservatism is built into EPA recommended criteria in order to address factors of uncertainty, does the Commission want to establish a fish consumption rate to preserve that conservatism or to undermine it for human subpopulations in Oregon?
- How will the Commission decide what percentile of fish consumers to protect and what populations to protect?
- Will the Commission honor EPA’s regulations implementing Title VI of the Civil Rights Act of 1964 that prohibit disparate impact (non-intentional) discrimination by recipients of federal funds, such as Oregon’s Department of Environmental Quality?

Response

The Oregon Fish and Shellfish Consumption Rate Project is being undertaken at the specific request of the Oregon Environmental Quality Commission and DEQ’s Director. The EQC directed DEQ to review the existing fish consumption rate of 17.5 grams per day because the EQC was concerned about whether that rate is appropriate for Oregon. One of DEQ’s strategic directions is to protect Oregonians and the environment from toxic pollutants. EQC and DEQ take seriously the fact that studies have shown that fish in the Columbia River basin and other basins in Oregon carry contaminant loads that pose a risk to human health.

One of the questions to be addressed in the workshop process is “What high fish consuming population(s) (e.g., tribal, general, anglers, etc.) will Oregon use as the basis for establishing

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Human Health water quality criteria?" The Planning Team will be seeking public input on this question at a future workshop. As with all information gathered at the public workshops, this information including public feedback data will be included in the final Policy Options paper to the EQC so that the EQC can consider this information in its decision making.

EPA, DEQ and CTUIR have entered into this process in full recognition of the Treaties which exist between the US Government and many of the Northwest Tribes. The substantial investment of technical staff time and elected official representation from CTUIR, as well as the regular participation in the Workshop process of many Oregon and even Washington tribes, gives us confidence that tribal priorities and interests will be voiced and considered. Further, given that tribal fish consumption rates from the CRITFC Fish Consumption Rate study provide the best available regional data to inform the ultimate EQC decision, we believe tribal fish consumption rates are well represented.

(7) MIGRATORY FISH

- How do we address migratory fish or fish with different life histories?
- How do we allocate sources of contaminants in fish to the life stages of fish?
 - Knowing that many fish spend part of life in the ocean – how do we account for this in setting standards – is it relevant?
- How should we consider the life histories of fish?

Response

EPA provides guidance to states that the fish consumption rate used as the basis for setting water quality criteria should be based on freshwater and estuarine finfish and shellfish. The water quality criteria apply to the waters of the State and used to regulate discharges to those waters. In deriving the national fish consumption rate, EPA classified some anadromous species as freshwater/estuarine (e.g. sturgeon, all trout species), and others marine (e.g. Pacific salmon, including chum, coho, king, pink and sockeye) as marine. Because EPA classified Pacific salmon species as marine, they are not included in EPA's default national fish consumption rates or recommended criteria.

One of the key factors to be considered in the workshop process is "How will salmon (an anadromous fish) be addressed (i.e. included or excluded) in deriving the fish consumption rate?" The Planning Team will be seeking public input on this question at a future workshop. As with all information gathered at the public workshops, this information including public feedback data will be included in the final Policy Options paper to the EQC so that the EQC can consider this information in its decision making.

(8) ROLE OF ECONOMICS

- Should economic impacts be considered at all in making a decision about the fish consumption rate?
 - Should economic impacts be considered in determining the acceptable risk to human subpopulations when it is not considered in determining acceptable risks to Oregon's population as a whole? If so, what is the

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basis for considering economic impacts to sources of pollution to public waters when some human subpopulations suffer disparate impacts from that pollution?

- If economics are considered, will the economic benefits of improved public health be considered in evaluating the economic impacts of an increased fish consumption rate or will the Commission only consider the economic costs to sources of pollution?
- If economics are considered, will the overall economic and/or health status of human subpopulations suffering disparate impacts from pollution be considered in evaluating the economic impacts of an increased fish consumption rate?
 - If the Commission uses economics as the basis for changing or not changing the fish consumption level, how will it balance decreased risks to human health against projected increased costs to polluters? What type of economic analysis will the Commission use, i.e., will it follow economic principles and look at all costs or will it engage in a fallacious so-called economic evaluation that only considers costs to polluters? How will the Commission weigh dollar figures against human health impacts?
- Will the Commission adopt a “better safe than sorry” conservative approach to establishing acceptable risks to Oregon’s highest fish consumers or view high fish consumption by American Indians as experimental – namely that it is better public policy to see whether adverse health impacts arise and whether funding is available to link such health effects to increased toxic burdens from fish consumption than it is to prevent such adverse impacts?
- How do we factor the global exposure to risk – are we doing enough risk analysis?
- What parts of disease risk is attributable to this?
- Will there be economic analysis on the human health benefits of a new fish consumption rate?

(9) BENEFITS ANALYSIS

- Will there be economic analysis on the human health benefits of a new fish consumption rate?

Response

State law requires an analysis of fiscal impacts as part of any rulemaking. The economic analysis proposed for this project is intended to function as the fiscal impact analysis [per ORS 183.335(b)(E)] in the event EQC decides to move forward with rulemaking. The fiscal impact requirement under State law is not a comprehensive cost benefits analysis- it only focuses on economic costs associated with a rule change.

As discussed on the July 17, 2007 workshop, performing an analysis of the economic benefits of increased fish consumption rates is less certain and requires more data than estimating the economic costs.

Although we will not be including a quantitative economic benefits analysis within our economic analysis, we are open to receiving information about the economic benefits of an increased fish consumption rate that others may have. Information we receive about economic or other benefits

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of an increased fish consumption rate will be provided to the EQC to help inform their final decision.

(10) IMPLEMENTATION & REGULATORY FLEXIBILITY

- If the intent of changing fish consumption levels underlying Oregon's criteria is to actually protect human health, how can Oregon assure implementation of the criteria to reduce toxic contamination?
- How is the fish consumption rate discussion/decision considering other pollutants?
- Are there any unintended consequences of choosing a high level of fish consumption that should be addressed? If so, what are they and what are options for addressing them? On what basis would regulatory flexibility be justified?
- What is an appropriate process to use that allows technology to keep up?
 - What is the role of WQBEL if technology does not exist to meet the water quality standards?
- Is there a role for adaptive management?
- How will DEQ enforce the standard, if it is adopted?

Response

Implementation and enforcement of a revised fish consumption rate is the topic of discussion for a future Workshop. All of the above questions relating to implementation will be open for discussion at that workshop. It is also anticipated that the Fiscal Impacts Advisory Committee will discuss issues related to implementation. As with all information gathered at the public workshops, information from this workshop will be included in the final Policy Options paper to the EQC so that the EQC can consider this information in its decision making.

(11) MECHANISMS FOR TOXICS REDUCTION

- What does Oregon need to do to identify and control the major sources of contamination, including air deposition and other non-water media sources?
- How is the fish consumption rate discussion/decision considering other pollutants?
- Cleaner water is the overall goal, and the fish consumption rate is only one piece in a much larger picture
- How does the Clean Water Act fishable/swimmable goal influence our discussion?
- Is developing a strict water quality standard the best use of all resources?
- Is this the best way to protect human health?
- Is there another way that is more fiscally savvy?
- Should there be more focus on toxics reduction at their source?
- How does the water quality review process handle emerging contaminants or other substances that are not currently regulated?

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Response

The Oregon Fish and Shellfish Consumption Rate Project goals include developing recommendations and supporting documentation to present the EQC with (1) a range of options to increase the fish consumption rate and (2) options for pollution control strategies that can help reduce the risks associated with consuming contaminated fish and decrease the toxics levels present in fish. The Project facilitator will be working with interested members of the Core Group to plan workshop #6 on Toxic Reduction Efforts

As with all information gathered at the public workshops, information from this workshop will be included in the final Policy Options paper to the EQC so that the EQC can consider this information in its decision making.

(12) IMPACTS ON RISK POLICY

- If we change the risk assumptions associated with fish consumption, how will they impact the other programs that have a risk policy?
 - How do they interact with the Portland Superfund site, and/or other places in Oregon, etc.?

Response

Risk policy is program specific. For instance, the acceptable cancer risk for DEQ's cleanup program is stipulated by State statute as one in a million, and sites cleaned up under DEQ's authority must be protective to that level. The State statute enabling DEQ's Air Toxics program also stipulates a one in a million level for benchmarks for carcinogenic air toxics. The Clean Water Act, which is implemented by the State, has flexible risk policies. The EPA provides guidance for the acceptable risk for cancer versus non-cancer causing chemicals. For cancer, the acceptable risk is anywhere between one in 10,000 and one in a million. When the EQC adopted revised water quality toxics criteria in 2004, the criteria were based on a cancer risk level at one in a million. The Oregon Fish and Shellfish Consumption Rate Project does not include either a task or the time to revisit this risk policy decision in the context of this project.

(13) RISK FROM CURRENT vs. LEGACY POLLUTANTS

- How do we compare risk from legacy pollutants vs. currently discharged pollutants?

Response

Legacy pollutants are those that are no longer in active use and are outlawed from production. Two examples are DDT and PCBs. Many local risk assessments have shown that fish tissue still contains elevated levels of legacy pollutants and in many cases legacy pollutants are the main risk drivers for people consuming fish.

Raising the fish consumption rate will not solve the problem of legacy pollutants already present in river sediment. It will also not clean up the fish already living in the river. It will not address the problem of such pollutants reaching Oregon waters from remote, global sources. DEQ is concerned with legacy pollutants in Oregon's waters and fish. Through other DEQ programs, we

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have sponsored pesticide collection events where large amounts of legacy pesticides have been collected. Finally, the Project facilitator will be working with interested members of the Core Group to plan workshop #6 which will focus on Toxic Reduction Efforts. As with all information gathered at the public workshops, information from this workshop will be included in the final Policy Options paper to the EQC so that the EQC can consider this information in its decision making.

(14) SINGLE VERSUS MULTIPLE POLLUTANTS

- Given that criteria are set on the basis of the risk to human health created by individual pollutants, yet pollutants rarely occur individually, is a more conservative approach to setting fish consumption levels warranted than is provided by the national average?
- How do we consider multiple exposures to multiple chemicals/stressors?
 - What are the additive, synergistic effects?

Response

EPA has established guidance for estimating risk/impacts associated with cumulative (additive) and aggregate (multiple pathways) exposures. This guidance will be considered when the Planning Team develops the Policy Options Paper for presentation to the EQC. Ultimately, the EQC will make the policy decision on which fish consumption rate should be the basis for Oregon's human health water quality criteria. Any information regarding cumulative and multiple risks and exposures provided through the workshops and rulemaking process will be included in the staff reports to the EQC so that the EQC can consider this information in its decision making.

(15) BALANCING RISK & BENEFITS

- How do we balance the human health benefits with risk of eating fish?
 - How do we quantify the balance and put the issue in perspective?

Response

It is generally known there are health benefits to eating fish.^{2,3} However, this project will not be comparing the benefits of fish consumption to the health risk from consuming contaminated fish. The EQC and DEQ take seriously the fact that studies have shown fish in the Columbia River basin and other basins in Oregon carry contaminant loads that pose a risk to human health. The EQC has asked DEQ to gather and present the EQC with information through the public workshop process that will inform the EQC and the public about risk exposure and public health impacts from proposals to increase the fish consumption rate and decrease water quality human health criteria to more protective levels.

² Teutsch, S.M. and Cohen, J.T. (2005). Health trade-offs from policies to alter fish consumption. *American Journal of Preventative Medicine* 29, 324.

³ Cohen, J.T., Bellinger, D.C., Connor, W.E., Kris-Etherton, P.M., Lawrence, R.S., Savitz, D.A., Shaywitz, A., Teutsch, S.M. and Gray, G.M. (2005b). A quantitative risk-benefit analysis of changes in population fish consumption. *American Journal of Preventative Medicine* 29, 325-334.

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(16) SHELLFISH

- How do we emphasize and account for shellfish?

Response

The Planning Team is now aware that some members of the general public do not realize that the fish consumption rate represents freshwater and estuarine finfish and shellfish. The shellfish component may be particularly important for Oregon's coastal population. In response, we have changed the name of the project to the Oregon Fish and Shellfish Consumption Rate Project and will continue to emphasize that shellfish are included in the fish consumption rate in future workshops.

(17) COMMUNICATION

- How can we more effectively communicate the issues (what the fish consumption rate represents), so more people understand what it means for them?

Response

Water quality standards and the fish consumption rate are complex, technical and scientific formulas and analyses, and can be difficult to communicate.

DEQ's website contains project information, background and presentations at <http://www.deq.state.or.us/wq/standards/toxics.htm>. DEQ, EPA and CTUIR staff are available to respond to questions. We are always open to specific suggestions for how we can more clearly communicate what the fish consumption rate represents.

(18) CRITFC STUDY

- Will the Commission consider that the Columbia River Inter-tribal Fish Commission (CRITFC) study omitted the fish consumption levels of the Tribes' highest consumers, those who could be considered "subsistence" level fishers within the tribal community?

Response

The Human Health Focus Group is providing a technical review of the CRITFC study. Any finding they make on the CRITFC study and other studies being reviewed will be presented in a report to the EQC.

(19) REGIONAL RESPONSE

- Where are Washington and Idaho?
- How does Oregon's work interact with / affect Washington, Idaho, other states?

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Response

In the past, DEQ has requested that EPA address the fish consumption rate as a regional approach including Washington and Idaho. EPA declined to take this on as a regional priority. Idaho submitted its revised water quality standards to EPA recently with a fish consumption rate of 17.5 grams/day and EPA has yet to act on these standards. Washington's rate is 6.5 grams/day. Both states are tracking the issue in Oregon.

(20) OUTREACH & EDUCATION

- What are the public outreach/education requirements for Oregonians?
 - How aware are folks of the risk of eating fish with contaminants?

Response

The Oregon Department of Human Services (DHS) is responsible for setting fish advisories for waterbodies that contain fish unsafe to eat. DHS conducts public outreach, places signs near the rivers or lakes, and has a website (<http://www.oregon.gov/DHS/ph/envtox/fishconsumption.shtml>) and brochures aimed towards educating people about the public health concerns of eating contaminated fish.

(21) EXPOSED POPULATIONS

- What are the exposed population assumptions?

Response

Although this question could be asking a couple different things, the exposure assumption that DEQ uses to calculate the human health water quality criteria are: 70 years for the length of time an individual is exposed to a chemical; 70 kg for the body weight of the exposed individual; 2 liters of drinking water a day; and the amount of fish one consumes, which is currently 17.5 grams/day under the existing WQS. The current fish consumption rate is based on EPA's national default fish consumption rate, which reflects the 90th percentile of consumers and nonconsumers based on a national USDA food intake survey. The fish exposure assumption, of course, is the focus of this project. More information about the assumption variables can be found on the DEQ website for this project (<http://www.deq.state.or.us/wq/standards/fish.htm>).

(22) DAMS

- How have dams affected the behavior and life cycles of fish?

Response:

It is generally known that hydroelectric dams have affected the life cycle of many different species of fish. The details of the dams' effect on the life cycle of those fish are not part of this project. For more information, please refer to the Oregon Department of Fish and Wildlife (<http://www.dfw.state.or.us/fish/>), National Marine Fisheries Service (NOAA) and Portland District of the US Army Corps of Engineers (<https://www.nwp.usace.army.mil/home.asp>) for more information.

Attachment C

(23) DEQ IMPLEMENTATION RESOURCES

- Does DEQ have staff/resources to apply more stringent water quality criteria?

Response

This question will need to be answered by DEQ as a part of the workshop where implementation issues are discussed. It will also be covered in the official fiscal impact statement required by state law to be developed as part of a formal rulemaking.

(24) NON-PERMITTED SOURCES

- What is being done for non-permitting sources?

Response

Many of the toxic chemicals in Oregon's rivers come from "all of us." Heavy metals and oil run off from roads and parking lots. Pesticides and fertilizers run off from lawns, gardens and farm fields.

Water quality standards form the basis for pollution limits in federally required permits; measures against which to evaluate monitoring data; Total Maximum Daily Loads (if a water body is determined not to be meeting its water quality standards) and establishing goals for best management practices.

The Oregon Department of Agriculture and the Oregon Department of Forestry are the lead agencies working with farmers and forest land owners to reduce pollution from agricultural and forestry operations. DEQ works with these agencies to provide information and assistance. DEQ also develops partnerships with people and organizations to identify pollution problems and reduce pollution, such as with the Pesticide Stewardship Program. DEQ believes that more can and should be done to address "non-point" sources of pollution through best management practices and other actions.

The Oregon Fish and Shellfish Consumption Rate Project goals include developing recommendations and supporting documentation to present the EQC with options for pollution control strategies that can help reduce the risks associated with consuming contaminated fish and decrease the toxics levels present in fish. The Project facilitator will be working with interested members of the Core Group to plan workshop #6 on Toxic Reduction Efforts. As with all information gathered at the public workshops, information from this workshop will be included in the final Policy Options paper to the EQC so that the EQC can consider this information in its decision making.

(25) OTHER STUDIES

- Will there be an opportunity to use other studies/listings and/or changed circumstances for future changes?

Attachment C

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Attachment C

Response:

As required by the Clean Water Act, DEQ conducts triennial reviews of its water quality standards. This means that every 3 years DEQ assesses the greatest needs for reviewing, revising, or developing new standards based on new science or circumstances within limited resources. New information may be presented to DEQ for consideration during a triennial review.

(26) PROJECT FEASIBILITY

- Can this be done during the allotted time frame?

Response:

Our goal is to present the EQC with options and recommendations by October 2008. It is our intent to complete this project within that timeframe. To meet our time line, we need to manage the scope of work very carefully. Taking on work outside the project plan increases the likelihood that the project will not meet its deadlines. In addition, projects can be, and this project has been, affected by circumstances such as staff and manager turnover and funding issues.

(27) AQUATIC ORGANISMS

- How do we consider the effects on aquatic organisms, not just on human health?

Response

Oregon has adopted separate aquatic life criteria that are based on the effects of pollutants on aquatic life. These criteria were adopted by the EQC in 2004 as part of the last triennial review. Both the aquatic life and human health criteria are currently undergoing EPA review. The Oregon Fish and Shellfish Consumption Rate Project is reviewing only the human health criteria, not the separate aquatic life criteria.

(28) ROLE OF EQC

- Is EQC the right decision making body?

Response:

Under the federal Clean Water Act, states are expected to develop and adopt their own water quality standards to meet state conditions and needs. The EQC has the authority and responsibility to adopt and revise water quality rules under Oregon Revised Statutes 468.020.

(29) TRIBAL TREATY RIGHTS

- What, if any, value does the Commission place on preserving the treaty rights of Columbia River Tribes, and other Oregon Tribes, based on the fact that fish consumption is integral to their culture?
- What role does the Commission believe American Indian treaty rights should play

Attachment C

in establishing the fish consumption level in Oregon? If the Commission believes those treaty rights should or must be honored, does it believe that it can weigh economic implications of a changed fish consumption rate against treaty-protected fishing rights?

- Will the Commission take into account that if Oregon's policies intended to restore salmon and other depressed fish populations to healthy levels are successful, tribal fish consumption levels will likely increase upward towards treaty levels, or does the Commission want to assume that Oregon's fish policies will not be successful and that future tribal fish consumption levels will remain at the depressed levels they are today.
- What types of data are needed to make findings on fish consumption levels? Why should the Commission not use the fish consumption levels determined by a federal court (620 grams/day average adult, salmon only, for the Yakama Nation) in setting Oregon's fish consumption levels?
- Will the Commission consider sources of information, some of which were used to support the *Boldt* decision and of a similar quality, concerning historic fish consumption rates by American Indian Tribes?

Response

EPA, DEQ and CTUIR have entered into this process in full recognition of the Treaties which exist between the US Government and many of the Northwest Tribes. The substantial investment of technical staff time and elected official representation from the Confederated Umatilla Tribes, as well as the regular participation in the Workshop process of many Oregon and even Washington tribes, gives us confidence that tribal priorities and interests will be front and center. Further, given that tribal fish consumption rates from the CRITFC Fish Consumption Rate study provide the best available regional data to inform the ultimate EQC decision, we believe tribal fish consumption rates are well represented.

023



State of Oregon
Department of
Environmental
Quality

DEPARTMENT OF ENVIRONMENTAL QUALITY

Public Hearing Attendance Sheet

Date: 10-17-07

Location: _____

Hearing Topic: Fish Consumption Rates

PLEASE PRINT

NAME	AFFILIATION	E-MAIL OR MAILING ADDRESS	Copy of Final EQC Report (yes/no)?
1. Sue MacMillan	Human Health Focus Group (URS Corp.)	Susan-macmillan@urscorp.com	
2. Nancy Todd	Windward Environmental	nancyj@windwardenv.com	yes
3. Amanda Rich	Special Districts Association of Oregon	amanda@westernadvocates.com	yes
4. Elan Faust	USWA		
5. Larry Harvey	Pac West	harvey@pacwest.com	
6. Ann Courtney	Martin Law Group	acourtney@martinlaw.com	yes
7. Roy Spino	CTWS	RSP140@Hotmail.com	yes
8. Patti Howard	CRITFC	HOWP@critfc.org	yes
9. Cheyenne Chapman	OLEH	Cheyenne@oreg-u-keel.org	yes
10.			



State of Oregon
Department of
Environmental
Quality

DEPARTMENT OF ENVIRONMENTAL QUALITY

Public Hearing Attendance Sheet

Date: 10-17-07

Location: _____

Hearing Topic: _____

PLEASE PRINT

	NAME	AFFILIATION	E-MAIL OR MAILING ADDRESS	Copy of Final EQC Report (yes/no)?
1.	Tom Downey	ETSI	Tomd@ETSI.NSW.ILS	
2.	Art Kamp	SELF	14520 SW Pleasant Valley Beaverton	No
3.	Norman Penner	Friends of Refuge	14712 SW Wood Ave Tigard, OR	
4.	Dick Winn	" " "	Refuge-5, 99W, Sherwood	
5.	DICK PONZI	SELF	RLP@PONZIWINES.COM	
6.	Emily Bartha	Sierra Club	emily.bartha@sierraclub.org	(Y)
7.	Paul Janssi	Friends of the Refuge	pauljanssi@gmail.com	(N)
8.	Elyshah Shon	neighbor	rwithor@gotsky.com	Y
9.	Kathleen Fuhon	CTUR	kathleenfuhon@ctur.com	X
10.	Rick George	CTUR	rickgeorge@ctur.com	

State of Oregon
Department of Environmental Quality

Memorandum

To: Environmental Quality Commissioners **Date:** 10/9/2007

From: Helen Lottridge *HL*

Subject: Agenda Item H: Oregon Fish and Shellfish Consumption Rate Project

Commissioners, here is the sub-agenda for Agenda Item H, which is slated for the afternoon of Wednesday, October 17, beginning at 1:00.



EQC FISH CONSUMPTION RATE PROJECT BRIEFING

4 Hour Special Session

OCTOBER 17, 2007

Portland, Oregon

NOTE: The estimated times for the presentations and Q&A equals 3.5 hours. It is anticipated that some items may go over their allotted time. We cannot predict the number of people who will want to testify to the EQC.

Key Messages:

- This is an important project that can make a difference both in fish toxins and human health;
- The three governments are working together to listen and hear public input on the issue—and respond to what’s been heard;
- The project is making progress towards the original goals agreed to by the three governments.

1) Project Refresher (30 minutes: 20 presentation, 10 for questions)

DEQ, EPA, CTUIR AT TABLE

- i) Review today’s agenda (Lauri Aunan)
- ii) Refresher on water quality standards, EPA role (Mike Gearheard)
- iii) Importance of fish consumption rate to Tribes (Eric Quaempts, Director, CTUIR Dept. of Natural Resources, possibly Armand or Antone Minthorn)
- iv) Brief project update (Lauri Aunan)
 - Briefly overview the project schedule and why we changed it
 - Fiscal Impacts Advisory Committee (under development)
 - End product: Fish consumption rate options & recommendations to the EQC

2) How do we get to the end product: discussion of key factors in developing a recommended fish consumption rate (30 minutes: 20 to present, 10 for questions)

DEQ, EPA, CTUIR AT TABLE

- i) DEQ, EPA, CTUIR identified key factors that form the basis of a fish consumption rate
 - (1) Fish consumption rate
 - (2) Population to protect
 - (3) Percentile (portion) of that population to protect
 - (4) Inclusion or exclusion of anadromous fish (e.g., salmon)
 - (5) One rate or multiple rates
 - (6) Efficient and equitable implementation
- ii) Describe the process we are using to consider these factors

3) Human Health Focus Group (30 minutes: 15 presentation, 15 Q&A)

DEQ (Jordan Palmeri) AT TABLE

- i) DEQ will present summary of information and insights developed by the group

DRAFT 9/28/07

ii) HHFG members will be present to answer questions

4) Open Public Comment Opportunity (90 minutes)

a) PANELISTS AT TABLE – INVITED - NOT YET CONFIRMED

i) Northwest Pulp & Paper + similar (10 minutes)

ii) Association of Clean Water Agencies + similar (10 minutes)

iii) Environmental Groups – NW Environmental Advocates, Oregon Center for Environmental Health, Columbia Riverkeeper (10 minutes)

iv) Grande Ronde Tribe, Siletz Tribe, Klamath Tribe (10 minutes)

b) PUBLIC AT MICROPHONE (@50 minutes)

5) Wrap-Up with EQC (30 minutes)

DEQ, EPA, CTUIR AT TABLE

i) Is there any additional information that we have not mentioned that you feel would be useful to help guide your decisions?

ii) Any other feedback on what they'll need / be looking for

Columbia River Basin Fish Contaminant Survey
1996-1998

RECORD.
PRESENTED BY
LLEWELYN MATTHEWS,
NWPP

Table 6-6. Percent contribution of contaminant groups to total non-cancer hazards for resident fish species. Based on Columbia River Basin-wide averages.

	white sturgeon	bridgelip sucker	largescale sucker	mountain whitefish	walleye	rainbow trout
<i>Tissue Type</i>	<i>FW</i>	<i>WB</i>	<i>FS</i>	<i>FS</i>	<i>FS</i>	<i>FS</i>
<i>Number of samples</i>	16	3	19	12	3	7
Total metals	22	18	50	9	77	55
Mercury	17	6	45	7	54	46
Arsenic	1	2	<1	<1	4	ND
Chromium	<1	1	1	<1	1	1
Manganese	<1	3	<1	<1	<1	<1
Selenium	2	1	1	1	2	3
Thallium	ND	ND	ND	ND	14	ND
Zinc	<1	1	1	<1	1	2
Other Metals	<1	4	1	<1	1	2
Total Aroclors	63	60	40	83	20	42
Total Pesticides	15	21	10	8	3	3
Total DDT	13	21	9	7	3	3
Other Pesticides	2	<1	<1	1	ND	ND

FW = fillet without skin; FS = fillet with skin; WB = whole body; ND = Not Detected

Columbia River Basin Fish Contaminant Survey

1996-1998

Table 6-8. Percent contribution of contaminant groups to total non-cancer hazards for anadromous fish species. Based on Columbia River Basin-wide averages.

	spring chinook	coho salmon	eulachon	fall chinook	Pacific lamprey	steelhead
<i>Number of samples</i>	24	3	3	15	3	21
<i>Tissue type</i>	FS	FS	WB	FS	FS	FS
Total Metals	65	54	95	58	7	55
Mercury	43	41	ND	39	ND	43
Aluminum	<1	ND	2	<1	ND	<1
Arsenic	12	6	62	12	2	7
Cadmium	<1	ND	2	ND	1	<1
Chromium	3	2	ND	1	1	1
Copper	1	2	5	1	1	1
Selenium	3	2	12	3	2	2
Zinc	1	1	9	1	1	1
Other Metals	2	<1	2	<1	<1	<1
Total Aroclors	34	45	ND	40	87	43
Total Pesticides	2	1	4	2	6	2
Chlordane (total)	<1	<1	ND	<1	2	<1
Total DDT	2	1	4	2	4	1
Hexachlorobenzene	<1	ND	ND	<1	<1	<1

FS = fillet with skin; FW = fillet without skin; WB = whole body; ND = not detected

Columbia River Basin Fish Contaminant Survey

1996-1998

Table 6-15. Percent contribution of contaminant groups to estimated cancer risks for resident fish species. Based on Columbia River Basin-wide averages.

Tissue Type	White	Largescale	Mountain	Wallace	Rainbow	Bridgelip
	Sturgeon	Sucker	Whitefish		Trout	Sucker
Number of Samples	FW	FS	FS	FS	FS	WB
Total Metals	4	2	1	33	ND	8
Arsenic	4	2	1	33	ND	8
Total PCBs/Aroclors	39	46	83	31	68	46
PCB 105	3	2	6	3	4	2
PCB 114	1	1	2	1	2	1
PCB 118	4	6	15	6	9	3
PCB 126	2	9	18	ND	29	14
PCB 156	6	6	12	6	8	4
PCB 157	1	1	2	ND	2	ND
PCB 169	ND	2	<1	ND	ND	1
Other PCBs	<1	<1	1	<1	<1	<1
Total Aroclors*	21	19	26	15	15	22
Total Semi-Vocatives	ND	28	ND	ND	ND	1
1,2-Diphenylhydrazine	ND	ND	ND	ND	ND	1
Benzo(a)pyrene	ND	8	ND	ND	ND	ND
Dibenz[a,h]anthracene	ND	17	ND	ND	ND	ND
Indeno(1,2,3-cd)pyrene	ND	2	ND	ND	ND	ND
Other Semi-Vocatives	ND	2	ND	ND	ND	ND
Total Pesticides	23	21	10	11	5	32
Aldrin	2	ND	2	ND	ND	ND
DDD	2	1	1	1	<1	3
DDE	15	16	8	10	4	25
DDT	<1	2	<1	<1	1	3
Heptachlor Epoxide	1	ND	ND	ND	ND	ND
Hexachlorobenzene	1	ND	<1	ND	ND	ND
Other Pesticides	2	2	<1	ND	<1	<1
Total Dioxins/Furans	36	5	8	26	29	13
2,3,4,6,7,8-HxCDF	<1	<1	<1	1	2	<1
2,3,4,7,8-PeCDF	1	<1	1	1	2	2
2,3,7,8-TCDD	7	1	1	7	6	2
2,3,7,8-TCDF	26	1	5	6	2	3
OCDD	<1	<1	<1	<1	<1	<1
OCDF	<1	<1	<1	ND	<1	<1
1,2,3,7,8-PeCDD	1	2	2	7	13	5
1,2,3,4,7,8-HxCDD	<1	<1	<1	1	1	<1
other dioxins	1	1	<1	2	4	1

ND=Not detected; *Based on adjusted Aroclor concentration (See Section 5.3.2)

Columbia River Basin Fish Contaminant Survey
1996-1998

- Salmon and steelhead look very similar in that arsenic and PCBs were the major contributors to cancer risk followed by dioxin/furans and then pesticides. For Pacific lamprey, PCBs were the major risk contributor at 77% with the rest of the risk split between arsenic, dioxin/furans and pesticides. Most of the risk for eulachon is from arsenic, then dioxins/furans with less than 4% from PCBs and pesticides combined.

Table 6-17. Percent contribution of contaminant groups to cancer risk for anadromous fish species. Based on Columbia River Basin-wide averages.

	Spring Chinook Salmon	Coho Salmon	Fall Chinook Salmon	Steelhead	Pacific Lamprey	Eulachon
<i>Tissue Type</i>	<i>FS</i>	<i>FS</i>	<i>FS</i>	<i>FS</i>	<i>FS</i>	<i>WB</i>
<i>Number of samples</i>	24	15	3	21	3	3
Total Metals	50	45	54	33	7	58
Arsenic	50	45	54	33	7	58
Total PCB/Aroclors	32	43	32	50	77	4
PCB 105	1	3	2	1	3	1
PCB 114	1	1	1	1	2	<1
PCB 118	3	ND	4	3	8	2
PCB 123	<1	<1	<1	<1	<1	<1
PCB 126	14	6	10	24	35	ND
PCB 156	1	5	1	2	3	1
PCB 157	<1	ND	<1	<1	1	<1
PCB 169	ND	ND	ND	<1	ND	ND
Other PCBs	<1	<1	<1	<1	<1	<1
Total Aroclors**	12	28	15	19	25	ND
Total Pesticides	4	1	4	4	9	2
Aldrin	ND	ND	ND	ND	ND	ND
Chlordane total	1	<1	1	1	2	ND
DDD	<1	<1	<1	<1	<1	ND
DDE	2	<1	2	2	3	2
DDT	1	<1	<1	<1	2	ND
Heptachlor Epoxide	ND	ND	ND	ND	ND	ND
Hexachlorobenzene	1	ND	1	1	2	ND
Total Dioxins/Furans	14	11	9	14	9	36
2,3,4,6,7,8-HxCDF	<1	ND	ND	<1	<1	1
2,3,4,7,8-PeCDF	4	2	1	6	1	4
2,3,7,8-TCDD	1	1	1	1	1	5
2,3,7,8-TCDF	4	4	5	2	3	5
OCDD	<1	<1	<1	<1	<1	<1
OCDF	<1	<1	<1	<1	ND	<1
1,2,3,7,8-PeCDD	4	3	2	4	2	16
1,2,3,4,7,8-HxCDD	<1	ND	ND	<1	<1	1
Other dioxins	1	1	<1	1	1	5

* Number in parenthesis is number of samples in basin data ** Based on adjusted Aroclor concentration (see Section 5.3.2)
ND = not detected

**Environmental Quality Commission
Fish Consumption Rate Issues
October 17, 2007**

**Oregon Association of Clean Water Agencies/
League of Oregon Cities/Special Districts Association of Oregon**

Chairwoman Hampton and Members of the Commission:

I'm Dave Kliewer with the City of Portland Bureau of Environmental Services and the Chair of the ACWA Water Quality Committee, along with Bob Baumgartner with Clean Water Services, Willie Tiffany with the League of Oregon Cities, and Amanda Rich with the Special Districts Association of Oregon (SDAO). We are here to discuss fish consumption rate issues with you on behalf of the Oregon Association of Clean Water Agencies (ACWA), the League of Oregon Cities (LOC), and the Special Districts Association of Oregon (SDAO).

As representatives of the majority of municipal wastewater treatment plants in Oregon, we have been involved and engaged in the fish consumption rate issue and associated water quality standards discussions for many years. ACWA, LOC, and SDAO represent a principal interest for these discussions: municipalities with NPDES discharge permits that will be directly impacted by the fish consumption rate decisions.

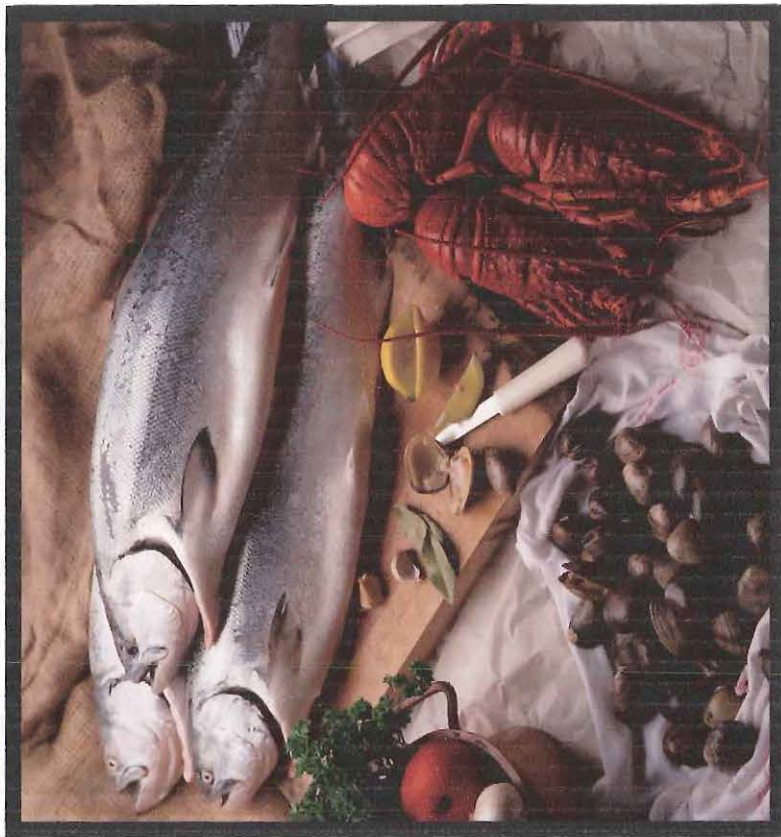
We recognize the cultural and health significance of the fish consumption rate to the Tribes. We acknowledge the need to increase the fish consumption rate used in setting Oregon water quality standards. However, we need to work with the Commission, DEQ, EPA, the Tribes and others to carefully craft a standard designed to actually reduce health risk to the Tribe and other fish eaters.

Toxic reduction is at the heart of the fish consumption concerns. We believe that the fish consumption rate process must incorporate the toxic reduction efforts outlined in SB 737, passed by the 2007 Oregon Legislature. The true solution to consuming safer fish is focusing on the highest priority toxics in Oregon's water, and the development of specific plans to reduce those toxics.

An important reminder for the Commission is that discharges from municipal wastewater treatment plants contribute a relatively small amount of persistent bioaccumulative toxicants (PBTs) to Oregon waterways. For example, in the Willamette TMDL, only 4% of the mercury load in the Willamette is assigned to municipal wastewater treatment plants discharges. Data collected over the past few years by wastewater facilities in the Willamette show that we are actually discharging much less mercury than the assumed contributions.

Any toxics in the discharge are from our domestic, commercial, and industrial customers. Wastewater treatment plants do not generate toxics. Rather, we are in the toxics reduction business. For example, we have been actively working with the dental community on mercury reduction Best Management Practices, and mercury collection programs. We have long-acknowledged our role in overall toxics reduction and taken responsible actions to meet those obligations.

Update: Human Health Focus Group



Development of the Human Health Focus Group

- In April, DEQ, EPA, and CTUIR requested nominees for Focus Group from the Core Team. We sought members that were:
 - Technical experts in toxicology, risk assessment and public health;
 - Non-biased in reviewing data/providing expert opinion
- Received ~26 nominations- 6 members were chosen for final Focus Group



[Focus Group Members]

Name	Affiliation
Dave McBride	Washington State Department of Health
Sue MacMillan	URS Corporation
Joan Rothlein, PhD	Oregon Health & Science University
Ken Kauffman	Oregon Department of Human Services
Elaine Faustman, PhD	University of Washington
Pat Cirone, PhD	Retired Federal Scientist

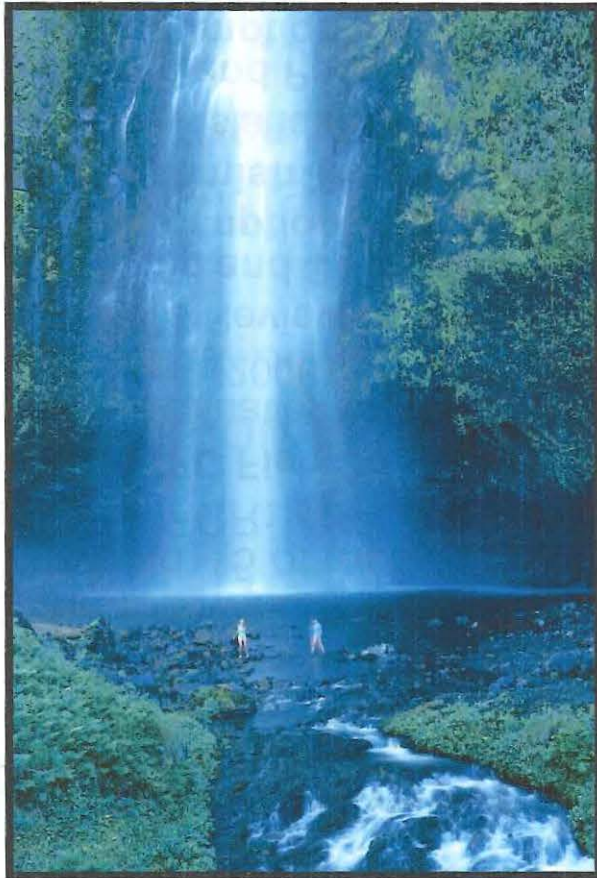
Questions for the Focus Group

- **Question 1:** “Considering the available local, regional and national information on fish consumption, what is the scientific evidence Oregon should rely on in selecting a fish consumption rate to use in setting water quality standards?”
- **Question 2:** “How should salmon be considered in selecting a fish consumption rate?”
- **Question 3:** “To what extent are populations who consume more than the current fish consumption rate of 17.5 g/day at a greater risk for health impacts?”
- **Note:** Focus Group members were tasked to just focus on the science and not policy.

[Accomplishments to Date-]

- There have been six meetings of the Focus Group since May;
- Focus Group presented at Workshop 3 (July 17) in Portland, explaining:
 - How risks from consuming fish are included in water quality standards;
 - Risks that fish consumers >17.5 g/day face under OR's existing water quality standards;

[Preliminary Findings, Cont.]



- Review of these surveys indicates:
 - There are multiple and diverse fish-consuming populations;
 - Populations are consuming fish at a rate higher than 17.5 g/day; and 17.5 g/day is not reflective of fish consumers in Oregon

[Preliminary Findings, Cont.]

- Populations who consume more than 17.5 g/day face greater cancer/non-cancer risks;
 - Particularly concerning for children, women of child-bearing age;
- Consumer data (vs. consumer plus non-consumer data) better represents fish consumers



[Product and Outcomes]



- Final Report of Focus Group findings
 - Will be included in final Fish Consumption Rate Options paper to EQC.

[Q&A- Focus Group Members]



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Environmental Quality Commission Meeting October 17, 2007
Agenda for Item H: Informational Item: Oregon Fish and Shellfish Consumption Rate Project Update

- 1) **Project Refresher (30 minutes: 20 presentation, 10 for questions)**
 - a) Review today's agenda (Lauri Aunan, Department of Environmental Quality)
 - b) Refresher on water quality standards, EPA role (Mike Gearheard, Environmental Protection Agency)
 - c) Importance of fish consumption rate to Tribes; working with industry and municipalities (Rick George, Confederated Tribes of the Umatilla Indian Reservation (CTUIR))
 - d) Brief project update (Lauri Aunan)
 - Briefly overview the workshop schedule and why we changed it
 - Work currently underway (Human Health Focus Group, Fiscal Impact Advisory Committee)
 - Project deliverable: Fish consumption options & recommendations to the EQC by October 2008

- 2) **How do we get to the project deliverable: discussion of key factors in developing a recommended fish consumption rate (20 minutes: 10 to present, 10 for questions) (Lauri Aunan)**
 - a) DEQ, EPA, CTUIR identified key factors that form the basis of a fish consumption rate
 - (1) Based on survey data, which rates are options to be considered?
 - (2) Statewide rate or geographic rate?
 - (3) What population(s) to protect
 - (4) Percentile (portion) of that population to protect
 - (5) Inclusion or exclusion of anadromous fish (e.g., salmon)
 - (6) Efficient and equitable implementation
 - b) Describe the process being used to consider these factors

- 3) **Human Health Focus Group (30 minutes: 15 presentation, 15 Q&A)**

DEQ (Jordan Palmeri) will present summary of information and insights developed by the group. Human Health Focus Group members will be present to answer questions.

- 4) **Invited Panels and Open Public Comment (est. 2 hrs)**
 - a) Invited Panels
 - a) Llewelyn Matthews, Northwest Pulp & Paper (10 minutes)
 - b) Dave Kliewer, Association of Clean Water Agencies; Bob Baumgartner, Clean Water Services; Willie Tiffany, League of Oregon Cities; Amanda Rich, Special Districts (10 minutes)
 - c) Cheyenne Chapman, Oregon Center for Environmental Health; Brent Foster, Columbia Riverkeeper (10 minutes)
 - d) Cheryle Kennedy, Confederated Tribes of the Grande Ronde; Armand Minthorn, Confederated Tribes of the Umatilla Indian Reservation; Don Gentry, The Klamath Tribes; Roy Spino, The Confederated Tribes of Warm Springs (20 minutes)

b) Public Comment (@50 minutes)

5) Wrap-Up with EQC (30 minutes)

DEQ, EPA, CTUIR at table

- a) Is there any additional information that we have not mentioned that EQC members feel would be useful to help guide decisions?
- b) Any other feedback on what EQC needs or will be looking for?

**Lauri Aunan – Speaking Notes – Oregon Fish & Shellfish Consumption Rate
Project Update
Environmental Quality Commission meeting, October 17, 2007**

Opening Remarks & Agenda Overview

Chairwoman Hampton, members of the Commission, good afternoon. For the record, my name is Lauri Aunan, Administrator of the Water Quality Division of DEQ. I am very pleased to be here today along with representatives of EPA and the Confederated Tribes of the Umatilla Indian Reservation. These governments are partnering with DEQ in reviewing the fish and shellfish consumption rate used in Oregon's water quality standards, which are set with a goal of protecting people's health from effects of water pollution.

I want to briefly review the agenda for today.

Mike Gearheard, Water Director for EPA Region 10, will briefly discuss water quality standards and EPA's role.

Rick George with the Confederated Tribes of the Umatilla Indian Reservation will briefly discuss the importance of the fish consumption rate to the tribes, and the importance of understanding the effects of an increased rate on the regulated community.

I will review the project's status and the public workshop schedule.

We will spend some time on the key factors the three governments have identified as the critical path to developing a recommended fish consumption rate.

We will hear a report on the work of the Human Health Focus Group.

We will hear from invited panelists representing business, tribes, the environmental community and local governments. There will be an opportunity for open public comment following the panels.

**Lauri Aunan – Speaking Notes – Oregon Fish & Shellfish Consumption Rate
Project Update
Environmental Quality Commission meeting, October 17, 2007**

In the wrap up we will have time to respond to your questions, and we will be asking you what information you will need or be looking for as this project continues, to help you make the ultimate decision on a fish consumption rate or rates for Oregon.

This project has developed a wealth of background and context information – all of which are posted on DEQ's project website. The workshops to date have been setting the stage for getting to the heart of the issues at stake here. You will hear a lot of information today. The main goals of this meeting are to:

- Provide an overview of the status and future of this project
- Provide the opportunity for the public to speak directly to you about this project
- For us to hear from you about how you want to be involved as this project progresses, and what information you will need, leading up to your policy decision on Oregon's fish consumption rate

[Turn over to Mike Gearheard with EPA]

RECORD

The Role of Fish Consumption Rates in Water Quality Standards

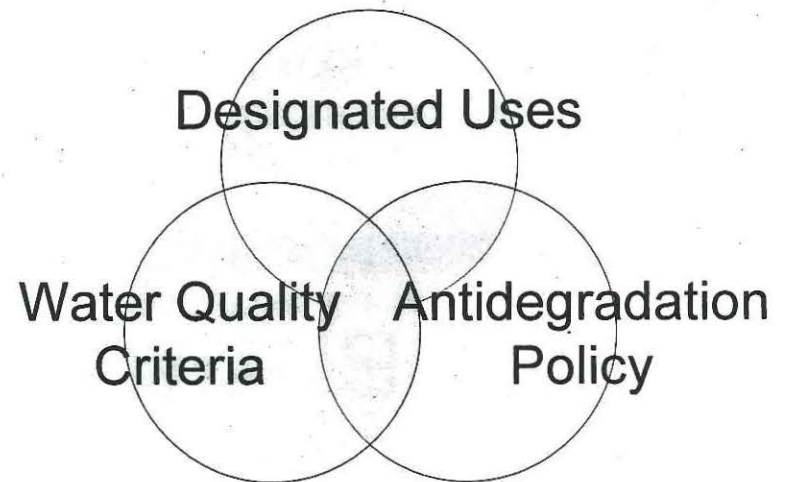
**Mike Gearheard, Director
Office of Water and Watersheds
U.S. EPA Region 10**

**OR Environmental Quality Commission
October 17, 2007**

What are Water Quality Standards (WQS)?

- ❑ WQS are the foundation of state/tribal water quality-based pollution control programs under the Clean Water Act.
- ❑ WQS are to protect public health or welfare, enhance the quality of the water and serve the purposes of the Clean Water Act.

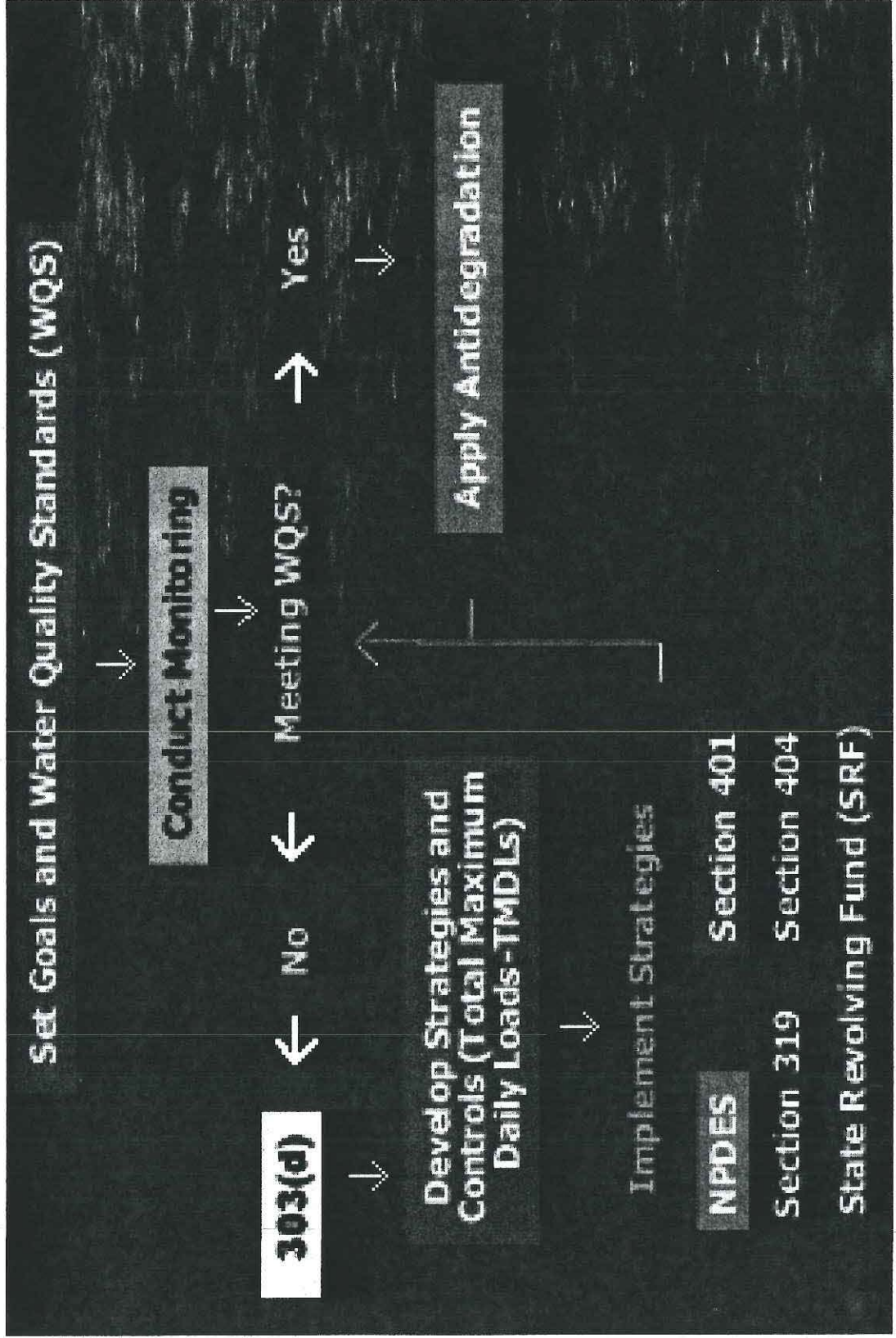
WQS are composed of:



Responsibilities of EPA and States (Tribes, or Territories) in WQS

- ❑ States, tribes and territories have the responsibility to develop and adopt WQS regulations for their waters;
- ❑ EPA reviews these WQS for consistency with the CWA requirements – either approving or disapproving- this is a federal action (i.e. subject to legal challenge);
- ❑ Once EPA approves the WQS, they become effective for CWA purposes;
- ❑ If EPA disapproves, and the state (or tribe or territory) does not correct its WQS, EPA must promptly propose to promulgate replacement WQS

Role of WQS in Water Quality Programs



Fish Consumption Rates in WQS

- ❑ WQS must protect the 'fishable/ swimmable' goals of the CWA;
- ❑ Human health criteria are intended to protect the fishing use;
- ❑ There are two components of the human health criteria: exposure to chemical and toxicity of chemical;
- ❑ The fish consumption rate is an exposure variable of the human health criteria.



Director

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rick George, CTUIR

- Recog leadership EDC, SH, LA.
- Tribes' consumption per their genl pop.
Range up to 389 gr/day.
- Advocate for higher rate.
- Worked w/ many governments, associations,
industry & individuals.
- Standards should support fish that
are healthy and safe to actively eat.

**Lauri Aunan – Speaking Notes – Oregon Fish & Shellfish Consumption Rate
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Lauri's remarks resumed, following Rick George, CTUIR

As Mr. Gearheard discussed, water quality standards are the foundation of the water quality program under the federal Clean Water Act. When you – the Commission -- adopt a water quality standard, you are making a statement about what you want Oregon's waters to achieve – how clean and healthy do you want Oregon's waters to be?

As Mr. George discussed, the fish consumption rate is not just a policy statement about how clean waters should be to protect people's health. An increased rate will have real effects on reducing toxics in Oregon's waters over time and will affect the operations of Oregon municipalities and industries. Mr. George touched on important discussions that will occur at future public workshops: how an increased fish consumption rate will be implemented; and how toxics reduction strategies can decrease the toxics levels in fish and help reduce the risks associated with eating contaminated fish. It is important to me that when the 3 governments make our recommendations to you a year from now, we can tell you what implementation of a fish consumption rate means to DEQ work; what it means to the regulated community; and what it means to protecting people's health by reducing toxics in fish.

This issue is scientifically complex; emotionally charged; full of uncertainties; and on the cutting edge. So it is with great respect and gratitude that I recognize the staff of the three governments who have been working extremely hard on this project.

- Jordan Palmeri is Water Quality Standards Specialist with DEQ (and has a new baby boy so Jordan is also a new dad).
- Rebecca Chu is Water Quality Standards Coordinator with EPA's Region 10 (and got married over the summer).
- Kathleen Feehan is Water Quality Policy Analyst with the Confederated Tribes of the Umatilla Indian Reservation and is working on many other important issues in addition to this one.

**Lauri Aunan – Speaking Notes – Oregon Fish & Shellfish Consumption Rate
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- These staff, with help from DEQ's Bruce Hope and Debra Sturdevant, are supporting the human health focus group and the fiscal impact advisory committee, planning the workshops, presenting information at the workshops, responding to questions from the public, and developing all written materials. This is an immense amount of work, and they are doing a great job.
- I also want to thank DS Consulting for facilitating this project.

As noted on page 001 of the staff report, we have held 3 public workshops to date.

- There were 76 attendees at the two March workshops, 22 of which were tribal.
- 50 people attended the May workshop, of these, 21 were tribal.
- 44 people attended the July workshop, 11 of them tribal.
- Many of the attendees are part of what we are calling the project's "Core Group" - groups or individuals who are directly impacted by the fish consumption rate or have been engaged in this issue in the past. There are about 40 people on the Core Group representing local governments, businesses, tribes, environmental community, the sports fishing community, public health organizations, and more.

Page 002 of the staff report shows the revised workshop schedule. The workshops were postponed until next year to respond to feedback from workshop participants. We heard that for workshops to be useful, we need to gather more information and we need to be clear about what input we are asking from workshop participants. To support this need, Workshop # 4 has been postponed to February 21, 2008. Between now and February, there is a lot of work going on:

- The Human Health Focus Group will finalize its findings by December. You will hear more about the work of this group later today.
- We will establish a Fiscal Impact Advisory Committee to provide input on fiscal impacts of increasing the fish consumption rate, as well as implementation strategies. We are working with the Core Group on the process and scope of work for this Committee. The Core Group has nominated members for the Committee, and we plan to convene the Committee in November.

**Lauri Aunan – Speaking Notes – Oregon Fish & Shellfish Consumption Rate
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- We have begun the process to develop options for the key factors that form the basis of a revised fish consumption rate (I will talk more about this in a minute).

We are working with DS Consulting to plan and prepare for the workshops.

- On February 21 in Portland, the 3 governments will present fish consumption rate options and have a dialogue with workshop attendees to get their feedback on these options. I will talk more about this in a few minutes.
- The May workshop – exact date and location TBD – will focus on fiscal and implementation issues.
- The June workshop will focus on toxics reduction strategies.
- The July workshop will be a public discussion of draft fish consumption rate options and recommendations. This will be another opportunity for us to get feedback from the public before we prepare a final recommendation to you.

In October 2008 we will present you with a package of options and recommendations for increasing the fish consumption rate, implementation strategies, and the role of toxics reduction efforts. Depending on the outcome of the process, the recommendations may be delivered as a consensus opinion of DEQ, EPA and CTUIR, or the three governments may provide separate recommendations and supporting rationale.

If there are no further questions I will move to the next agenda item: key factors that will be used to develop fish consumption rate options.

Key Factors

Before I get into the key factors, I want to give a quick overview of our water quality standards that protect human health. Our standards rules contain human health criteria that are designed to protect people who eat fish and drink water from Oregon's waterbodies. The fish consumption rate is one of the variables used in calculating the human health criteria. While some chemicals are more likely to accumulate in fish than

**Lauri Aunan – Speaking Notes – Oregon Fish & Shellfish Consumption Rate
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others, the consumption of fish is a major human health exposure pathway for toxic pollutants. This project is focused solely on the fish consumption rate because we have both local and regional data that indicates a higher fish consumption rate than what we currently use in our criteria.

The 3 governments have identified 6 key factors (page 003 of staff report) that will influence the choice of a fish consumption rate. In order to keep the project focused and meet our timelines, work around these key factors is on the critical path to complete the project. As you know, members of the public have raised, and will continue to raise, many good questions. We will respond to these questions throughout the course of this project. For example, attachment C of the staff report for agenda item H shows our initial response to more than 60 questions raised by the public. (page 009) However it's important to note that we plan to focus our work on these 6 factors in order to bring you recommendations by October 2008. Any significant time spent outside these 6 factors raises the risk that the project deadline will need to be pushed back.

We are planning for the workshops to provide a very public, transparent discussion of the key factors and the policy choices that underlie the key factors. I am going to walk through the key factors, provide an example of how the key factors are the basis for Oregon's current fish consumption rate of 17.5 grams per day, and talk about the workshop process.

[go to next page]

**Key Factors used to Develop Fish
Consumption Rate Options**



1. Available survey data?
2. Statewide or geographical rate?
3. Which populations?
4. What percentage of the populations?
5. Include or exclude salmon?
6. Effective and equitable implementation.

The first key factor is, “based on available survey data, which fish consumption rates are options to be considered as the basis for Oregon’s human health water quality criteria?” EPA guidance to the states provides a preference for use of local and regional fish consumption data where such data is available. The Human Health Focus Group is helping us with this task. You will hear more from them later today.

Key Factor #2 is, “should Oregon use different fish consumption rates for basins or waterbodies that reflect consumption patterns in those areas,” or should the rate be a statewide rate? For this Key Factor, we will need to consider whether the available fish consumption survey data supports one statewide rate, or multiple rates on different waterbodies. We will also need to consider implementation issues.

Key Factor #3 is “what high fish consuming populations should Oregon use as the basis for establishing human health water quality criteria?” EPA’s national guidance to states provides that states should choose a target population to protect. Examples of a target

**Lauri Aunan – Speaking Notes – Oregon Fish & Shellfish Consumption Rate
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population include sports fishers, tribes, the Oregon general population, or the coastal community. DEQ, EPA and CTUIR believe it is appropriate for the state to base its human health water quality criteria on high fish consuming populations in order to provide more protection. We will be developing options of which populations to use and discussing these at the February 2008 workshop.

Moving to Key Factor #4, once the choice is made on which target population to protect, the next question is, “what percentage of the chosen population should Oregon use as the basis for the human health water quality criteria?” EPA guidance suggests that states use the 90th or 95th percentile for high fish consuming populations.

Key Factor #5

EPA has not included Pacific salmon in its national default consumption rate. Because of the regional importance of salmon, we will consider options that both include and exclude salmon.

Key factor #6, implementation, comes into play when looking at a range of fish consumption numbers, discussing how the numbers affect the human health toxics criteria, and how the criteria should be applied and implemented in Oregon's water quality program including permits and Total Maximum Daily Loads.

In this next slide, I have used Oregon's current fish consumption rate of 17.5 grams/day to demonstrate how the key factors influence the rate. [go to next page]

Lauri Aunan – Speaking Notes – Oregon Fish & Shellfish Consumption Rate
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**Key Factors that are the basis of
17.5 grams/day:**



1. **Key factor #1, Available survey data:**
 - ◊ National survey of consumption patterns for the US general population
2. **Key factor #2, Statewide or geographical rate:**
 - ◊ Statewide rate
3. **Key factor #3, What populations:**
 - ◊ The general US population including consumers of fish and non-consumers of fish
4. **Key factor #4, What percentage of the population:**
 - ◊ The 90th percentile of the general US population including consumers and non-consumers
5. **Key factor #5, Include or exclude salmon:**
 - ◊ Does not include salmon

So you can see that the key factors are the building blocks for the ultimate decision on the fish consumption rate.

The 3 governments will be bringing a number of options around the key factors and different fish consumption rates to the future public workshops, and public feedback at those workshops will help us decide which options to further develop and which to drop. The information at the workshops will be highly technical and in-depth. [go to next page]

Lauri Aunan – Speaking Notes – Oregon Fish & Shellfish Consumption Rate
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Workshop Process for Key Factors



1. Available survey data?
2. Statewide or geographical rate?
3. Which populations?
4. What percentage of the populations?
5. Include or exclude salmon?



Workshop #4
(February 21,
2008)

Lauri Aunan

6. Effective and equitable implementation



Workshop
#5 (May,
2008)

For the February 21 workshop, the 3 governments will use the first 5 key factors to develop specific fish consumption rate options. These options will be made available to the public before the workshop so people can come prepared to provide meaningful feedback and suggest alternatives.

Key factor #6, implementation, will be the topic of the May 2008 workshop. I expect there will be robust presentations from the 3 governments and members of the Core Group on how an increased rate could be effectively and equitably implemented to reduce toxics in fish, in order to protect people who eat fish.

By October 2008 we will bring you a package of options and recommendations on increasing the fish consumption rate, implementation strategies, and the role of toxics reduction efforts. We will describe the options, how they were built (explaining the analysis and rationale for each of the key factors) and an analysis of implications including protection, risk and costs. We will provide a summary and response to public comment. The document will explain the rationale for our recommendations. You will

**Lauri Aunan – Speaking Notes – Oregon Fish & Shellfish Consumption Rate
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then decide whether to adopt our recommendation, whether to choose between the options we have packaged, or whether to direct us to look at different combinations of options. I hope that many of you will be able to attend the February, May, June and July workshops so you can see the presentations and listen to the dialogue.

If there are no further questions, we can move to the Human Health Focus Group update.

[Update: Human Health Focus
Group]



- Hello Chairwoman Hampton and members of the Commission
- My name is Jordan Palmeri and I work in the WQS section of DEQ
- With me today are members of the Human Health Focus Group
- Before they introduce themselves I wanted to recognize their commitment to this project and thank them for volunteering
- They have been a great group to work with and have graciously extended their expertise to this project for much longer than we asked of them originally.

- (GROUP MEMBERS INTRODUCE Themselves)

- Today, I will be presenting an update to the HHFG work and covering some of their preliminary findings
- I want to stress that this group has not yet finished their work, but does have some preliminary findings to present today.
- After this brief presentation, they will field any questions about the work they've complete so far

Development of the Human Health Focus Group

- In April, DEQ, EPA, and CTUIR requested nominees for Focus Group from the Core Team. We sought members that were:
 - Technical experts in toxicology, risk assessment and public health;
 - Non-biased in reviewing data/providing expert opinion

- Received ~26 nominations- 6 members were chosen for final Focus Group



[Focus Group Members]

Name	Affiliation
Dave McBride	Washington State Department of Health
Sue MacMillan	URS Corporation
Joan Rothlein, PhD	Oregon Health & Science University
Ken Kauffman	Oregon Department of Human Services
Elaine Faustman, PhD	University of Washington
Pat Cirone, PhD	Retired Federal Scientist

•(Say the names and affiliations of only those people who are not at the table with me)

[Questions for the Focus Group]

- **Question 1:** “Considering the available local, regional and national information on fish consumption, what is the scientific evidence Oregon should rely on in selecting a fish consumption rate to use in setting water quality standards?”
- **Question 2:** “How should salmon be considered in selecting a fish consumption rate?”
- **Question 3:** “To what extent are populations who consume more than the current fish consumption rate of 17.5 g/day at a greater risk for health impacts?”
- **Note:** Focus Group members were tasked to just focus on the science and not policy.

Q1:

I want to be clear that we were not asking the Focus Group to recommend a FCR. The choice of a rate is policy decision and the group was not asked to make policy recommendations. Instead, they have compiled a body of literature from which a rate can be chosen. This work is helpful to us because they have characterized the strengths, limitations, and applicability of certain fish consumption surveys to Oregon..

Q2:

The group is still working on this question. Salmon spends part of their life in freshwater and part of their life in ocean waters, outside the regulatory jurisdiction of the State. There are a couple of different ways to account for the salmon portion of someone’s diet and the HHFG is helping us to review the scientific aspects of the issue.

Q3:

Since it is known that people eat more than 17.5 grams/day (which is about 2 fish meals permonth), the HHFG is helping us characterize the extent of that risk.

•And finally, within all 3 of these questions are policy considerations. The focus group is focusing on the science and not the policy.

[Accomplishments to Date-]

- There have been six meetings of the Focus Group since May;
- Focus Group presented at Workshop 3 (July 17) in Portland, explaining:
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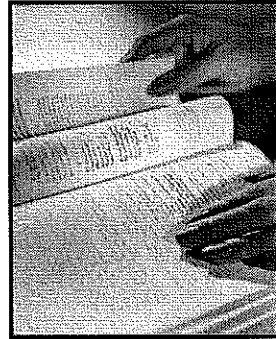
[Currently working on:]

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- The HHFG is working on finalizing their group response to Questions #1 and #3, which are the scientific evidence to base the rate on, and the risks high consumers face
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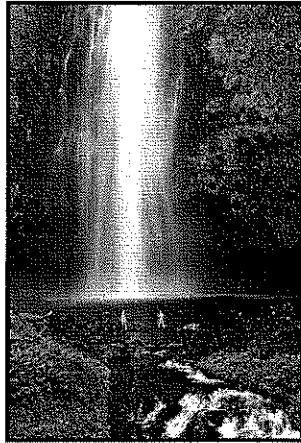
[Preliminary Findings]

- Of the following 9 studies, would recommend 6 (blue/bold)- 5 of those caveated(*)- as a basis for OR's FCR:
 - **CRITFC Fish Consumption Survey (1994)**
 - Re-evaluation of CRITFC Fish Consumption Survey (2006)
 - **EPA's Review of the CSFII (1998)***
 - **Tulalip and Squaxin Island Tribes Fish Consumption Study (1996)***
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 - Sauvy Island Fish Consumption Survey (1995)
 - **Asian and Pacific Islander Seafood Consumption Study (1999)***
 - **Lake Whatcomb***
 - Lake Roosevelt



- In addressing Question #1 and compiling the scientific evidence that should be used to choose a rate, the HHFG choose 9 studies to review.
- There are many more studies that the HHFG thought might be relevant to this work....but....because of time and resource constraints, they simply could not review more than these 9.
- There are 6 studies that are highlighted in blue on this slide that the group identified as being a survey Oregon can rely upon to choose a rate. These surveys provide good information on fish consumers and targeted populations that are relevant to Oregon's population.
- Please note that there are "caveats" to 5 of the 6 studies highlighted. These caveats characterize the limitations of the studies. For instance, some of the Puget Sound Tribes consumed species of fish that are not present in Oregon's fresh and estuarine waters. So, in some cases, there are certain aspects of studies that are more relevant than others.

[Preliminary Findings, Cont.]



- Review of these surveys indicates:
 - There are multiple and diverse fish-consuming populations;
 - Populations are consuming fish at a rate higher than 17.5 g/day; and 17.5 g/day is not reflective of fish consumers in Oregon

- In reviewing all of these studies, the HHFG found that :
 - (READ FINDINGS FROM SLIDE)

[Preliminary Findings, Cont.]

- Populations who consume more than 17.5 g/day face greater cancer/non-cancer risks;
 - Particularly concerning for children, women of child-bearing age;
- Consumer data (vs. consumer plus non-consumer data) better represents fish consumers



•(Do not explain first bullet- just leave q's for the HHFG members)

•Our current rate of 17.5 grams/day actually includes both fish consumers and non-fish consumers. The rate is calculated this way because it is meant to represent a per capita or per person estimate of fish consumption for the entire US population. So, to calculate a per capita FCR, you need to include everyone in your population – even the people that don't eat fish. The HHFG simply said that in order to accurately represent and protect those people that do eat fish, the data for the consumers only should be used.

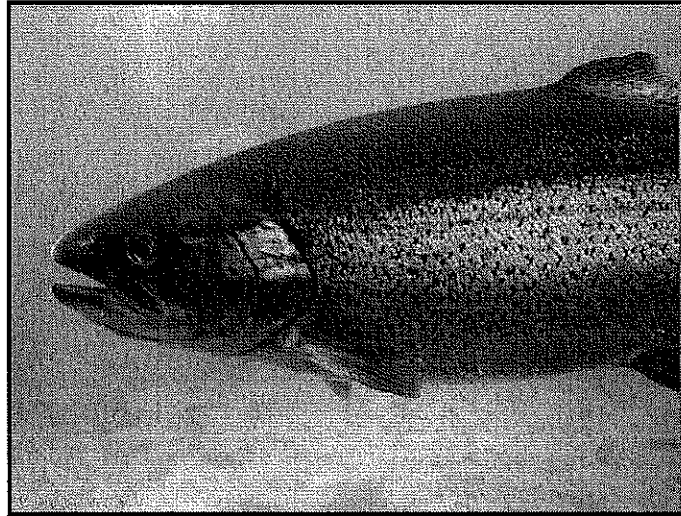
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[Product and Outcomes]



- Final Report of Focus Group findings
 - Will be included in final Fish Consumption Rate Options paper to EQC.

[Q&A- Focus Group Members]



[Update: Human Health Focus Group]

*Jordan Palmeri,
all 6 members of the HHFG
(see pp. 3)*



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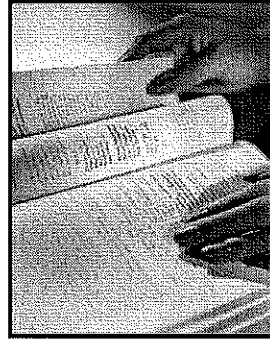
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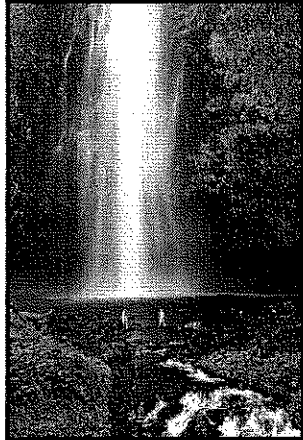
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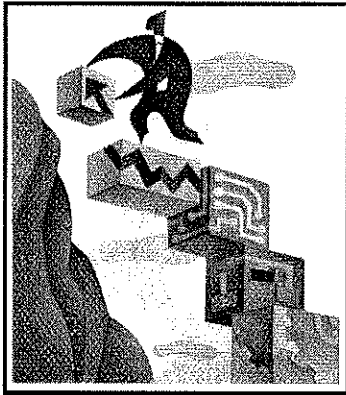


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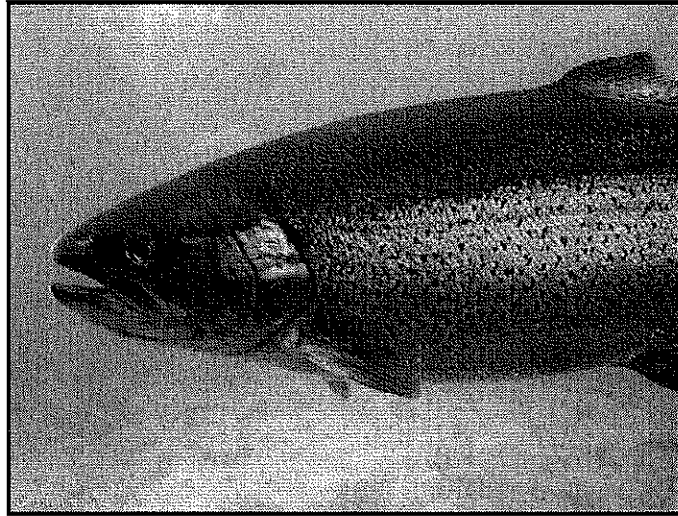
[Product and Outcomes]



- Final Report of Focus Group findings
 - Will be included in final Fish Consumption Rate Options paper to EQC.

in December

[Q&A- Focus Group Members]



NWPPA Comments
Fish Consumption Rate
(A Factor for Setting Human Health Based Water Quality Standards)

EQC
October 17, 2007

My name is Llewellyn Matthews and I am the Executive Director of the Northwest Pulp and Paper Association (NWPPA), a position that I have held for over two decades. NWPPA represents the pulp and paper mills in Oregon, Washington and Idaho. My membership supports the process you have initiated to revise the fish consumption rate to reflect Native American cultural uses. We will support an outcome that produces appropriately protective water quality standards and that is sensitive to the economic impacts of regulated parties such as the pulp and paper mills.

We have been working with the Confederated Tribes of the Umatilla Indian Reservations (CTUIR) in an effort to find a way to improve health of tribal fish consumers. We recognize that Native American need to be represented in the process of increasing the fish consumption rate.

The task facing all of us who agree that the fish consumption factor should be raised is a daunting one. Oregon currently uses a fish consumption factor of 17.5 grams/day in deriving its water quality standards. The highest rate used in water quality standards of general applicability is 33 grams/day. We are truly heading into uncharted territory and it is important that we do so carefully with the goal of meaningful and successful outcomes. This means reducing the risk of negative health effects from fish-borne toxic contaminants while at the same time preserving a healthy economy. Action to more adequately reflect tribal cultural values has the potential to set regional and national precedent. We must do this thoughtfully and carefully so that others considering similar action are inspired by, rather than dissuaded by, Oregon's example.

We urge the EQC and the DEQ to consider the following ideas:

- 1. Action should be risk-based, that is, those chemical compounds that account for the greatest risk should be targeted for improvement.**

We recommend starting with those chemicals that account for the greatest proportion of risk to tribal fish consumers (see charts). These include legacy contaminants such as PCBs and pesticide residues, as well as metals (primarily arsenic and mercury) and some dioxins. Together, these contaminants account for the vast majority of the non-cancer and cancer health risk imparted to consumers of both resident and anadromous fish.

These chemical contaminants are primarily legacy pollutants, with the exception of arsenic and mercury. As we know, both mercury and arsenic are naturally occurring

elements in soil and certain rock formations in the Pacific Northwest. Mercury contamination above background levels is primarily due to air deposition and much of this comes from out of state and even international sources. This situation presents unique challenges and EPA now has recognized that a specialized type of TMDL is needed to address mercury levels in fish. Arsenic has criteria that are currently being re-evaluated by EPA's Science Advisory Board. The remaining metals, as a group, pose essentially no risk to any consumers of fish.

NWPPA supports an approach that addresses the highest risk and we think there are a number of ways to do so. Options might include revising the fish consumption rate used to set water quality standards for the legacy pollutants that pose the greatest risk. Other approaches might be to revise the water quality standards for anadromous fish or setting site-specific standards. For mercury and arsenic, we need to understand whether there are effective actions that have not already been taken before revising water quality criteria. We do not support revision to the remaining metals criteria at this time.

This leads me to my second point.

2. We need to avoid costly unintended consequences.

Although water quality standards serve a number of purposes, the primary regulatory purpose is setting effluent limits for NPDES permits. Most, if not all, permit holders have installed treatment technology that EPA has determined is economically feasible. If we make water quality standards more stringent to reflect higher fish consumption factors, permit holders potentially face higher costs than their counterparts elsewhere and that may not be economically feasible.

I will offer my industry as an example.

If the EQC adopts across the board water quality standards that are far more stringent than the current ones, pulp and paper mills will be limited for the group of metals that pose essentially no risk to the health of fish consumers. Our industry-wide cost for installation of treatment technology for these metals would range up to a half a billion dollars capital investment plus annual operating and maintenance costs of up to \$350 million.

Such costs are prohibitive and ironically would not target the chemicals posing the most significant risk to the health of fish consumers.

It will be very difficult indeed to gain corporate or public support for a precedent setting regulation if we cannot show that resulting expenditures are meaningful.

I realize that there are speakers who will follow me and will say there are very long lists of chemical contaminants in fish that need to be reduced. Clearly, with today's science we can measure trace quantities of essentially everything in every food. It is not my

intention to dispute the concern, but we need to stay focused on known risks when contemplating significant actions like increasing the fish consumption factor.

My point again, is that we need to start with those contaminants that account for the greatest part of the currently known risk so that when the EQC moves forward with this extraordinary action to revise the fish consumption rate, we have the confidence that our limited financial resources will be well spent.

3. Implementation Program

Any proposal to revise water quality standards to reflect tribal cultural values should be coupled with a clear plan for how the water quality standards will be used. Will implementation be primarily through the TMDL program or are there other effective actions? If NPDES permit limits will become more stringent, are there cost effective technologies to meet them. We appreciate the DEQ staff effort to address these questions so that it can be demonstrated that public and private funds used to meet any new criteria will be spent meaningfully.

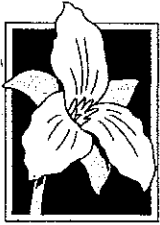
Thank-you and I would like to answer any questions.

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NORTHWEST ENVIRONMENTAL ADVOCATES



October 15, 2007

Lynn Hampton, Chair
Bill Blosser, Member
Donalda Dodson, Member
Judy Uherbelau, Member
Ken Williamson, Member
Oregon Environmental Quality Commission
c/o Department of Environmental Quality
811 S.W. Sixth Ave.
Portland, OR 97204

**Re: Oregon Fish and Shellfish Consumption Rate Project
October 17 Special Commission Meeting**

Dear Chair Hampton and Commissioners Blosser, Dodson, Uherbelau, and Williamson:

Due to scheduling difficulties, I will be unable to attend the Commission's October 17th meeting. In lieu of making a one and a half minute presentation at that meeting, I am providing you my thoughts as an active participant in the Oregon Fish and Shellfish Consumption Rate Project. I say "active" because I have provided input into the process prior to its first meeting, written an extensive memorandum and a letter on the process, copies of which were provided to you, and participated in all three of the full-day workshops held so far. I have also spoken to agency managers and staff involved in the project as well as other participants, primarily from the municipal and industrial sectors.

As a consequence of my participation, I am convinced that, at least to date, this project has largely been a waste of time. While it is possible that the Human Health Focus Group has made some progress, nobody outside of that group could know since, as discussed below, the substance of their meetings is not yet publicly available. In any case, the point of this letter is to raise the many concerns Northwest Environmental Advocates has about the project as it moves forward from this special Commission meeting. Nothing that I've read in preparation for the meeting leads me to believe that the process will be markedly improved from what has taken place in the last seven months since it was officially launched.

Policy or Science?

Before I explain my concerns about the many policy issues that are being decided by inattention or default, I would like to explain a fundamental problem in the way the ultimate fish

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consumption rate will be chosen. In a recent letter¹ to Northwest Environmental Advocates (NWEA) from DEQ, EPA, and the CTUIR, the entities state that their goal is to “develop a scientifically defensible recommendation or set of recommendations for EQC consideration.” I believe this is correct. But, the point is exactly that there is a range of scientifically-defensible options. Therefore, policy, not science, will be the basis of the Commission’s ultimate choice between otherwise scientifically defensible options. If the Department makes policy choices now without the Commission’s input, the range of fish consumption rates it puts in front of the EQC, as well as the analytical underpinnings of those rates, will perforce be limited. For example, when the Department concludes that the *Boldt*² decision rates are not relevant, it has made a major policy decision without Commission input. It is making this decision based on policy, not because the *Boldt* rates are scientifically unsound.

Who is Making the Policy Decisions: the Commission or the Staff?

In previous materials I provided to agency and tribal staff and to the Commission, I set out many policy decisions that need to be addressed. Many, if not most, of these have been included in the bulleted lists set out in Attachment C to the Commission Agenda.³ As discussed below, the DEQ responses set out in Attachment C are perfunctory and generally meaningless. What DEQ does not answer in these materials is: Who is going to answer these policy questions and when? If the Commission does not answer them prior to the point that the Department makes decisions that preclude further evaluation of options or choices, it is the Department who is making the decisions. Put another way, the Commission’s failure to discuss, debate, and to instruct the staff on which options to consider is a delegation of its policy-making role to staff. For example, if the Commission does not state that treaty rights for fish consumption are legally, scientifically, and morally relevant at this early juncture in the process, the Department will conclude that they are not relevant. The treaty rights will then not form the basis of any work – whether it be to evaluate health or fiscal impacts – that will be done by the staff, its consultants, and discussed in meaningful detail in future workshops. This issue – along with the majority of other major

¹ Letter from Stephanie Hallock, DEQ, Eric Quaempts, CTUIR, and Michael Gearheard, EPA, to Nina Bell, NWEA, undated but sent on October 11, 2007.

² *U. S. v. Washington*, 384 F.Supp 312, 380 (W.D. Wash. 1974) (“[A]t the time of the treaty, the Indians who were parties to the Yakima Treaty . . . annually consumed [salmon] in the neighborhood of 500 pounds per capita.”). See discussion in NWEA Memorandum dated May 15, 2007, “Policy Questions Underlying Commission Decision on Fish Consumption Levels.”

³ Agenda Item H, Informational Item: Fish Consumption Update, October 17, 2007, Attachment C.

policy issues – will be relegated to that dustbin of inaction that the staff calls “information provided by the staff to the EQC to help inform their [sic] final decision.”

The purpose of the meeting on the 17th is to update the Commission and to “[g]et direction from the EQC on what information the EQC will need and be looking for as the project progresses.”⁴ Again, this description omits any role that the Commission will play in making on-going determinations on policy issues that, unanswered, will be implicitly delegated to the Department to ignore. The Department will decide the boundaries of the discussion, eliminating the Commission’s role.

The Department’s October 17th memo to the Commission ends with the curious statement: “The team’s scientific and technical choices, reflected in their [sic] recommendations for changing the FCR, will inform the EQC’s higher-level policy decision: that of an appropriate fish consumption rate for Oregon.”⁵ The use of this phrase “higher-level policy decision” implies what is obvious from the materials and the plan for this project, namely that the Commission will make the ultimate decision on a fish consumption rate only by default deciding the policies that underlie the chosen rate. The Department will actually make many of the policy decisions, deciding, for example, whether to honor tribal treaty rights.

This is further illustrated by the six “key factors” presented by the Department, which themselves demonstrate that policy decisions have already been made by staff. For example, Key Factor No. 1 concerns data. It states that options under consideration will be “[b]ased on the available survey data.”⁶ In other words, the Department and/or Planning Team have already made a policy decision to exclude: (1) any non-data sources as the basis for rate options, including treaties; (2) qualitative data – the so-called “stories” tribal members have been encouraged to share at workshops; (3) any further data and information that the Planning Team could obtain from Oregon’s Tribes should it choose to do so; and (4) any historic data or information on historic levels of fish consumption. With the Department and/or Planning Team already having made this decision in the absence of Commission direction, it is easy to understand why other Oregon Tribes might decline to participate in this process.

⁴ Agenda Item H, Informational Item: Fish Consumption Update, at 1.

⁵ Id. at 4.

⁶ Id. at 3.

Another policy decision is reflected in the Key Factor No. 6 which asks how a new rate can be “equitably implemented”⁷ First, this statement ignores that: (1) the Clean Water Act does not allow for equitable implementation; (2) one person’s equity is generally obtained at the expense of another person (e.g., achieving equity between upstream and downstream polluters will likely cause inequities between other categories, such as old and new sources or big and small sources); and (3) this discussion of equity is limited to between polluters rather than between the polluters and the polluted (fish consumers). But putting those issues aside, why has the Department and/or Planning Team already concluded that equitable implementation, as elusive a concept as it is, is a policy goal? Why is this not a decision for the Commission to make on behalf of all Oregonians? Why is this issue not open for public discussion in the workshop process?

Materials Provided to the Commission

The DEQ staff has prepared a lengthy document for the Commission’s meeting. Unfortunately most of the information is either misleading or unresponsive and, in almost every case, the answers include DEQ’s stock reply that the information will be provided to the Commission in its rulemaking package for it to consider. Being included in a package is not synonymous with having been seriously evaluated.

Key Factors

The discussion of how the Planning Team has changed the wording of the so-called key factors does not alter the fact that these factors assume policy decisions that have not already been made by the Commission, as discussed above. In addition, Key Factor No. 6 has been reworded to avoid the “concern that the EQC would be ‘trading off’ protection of people’s health against cost of implementing more stringent water quality standards.” To avoid this appearance, it has been reworded “to focus on how a rate would be implemented to protect public health.” This Orwellian reworking does not alter the fact that DEQ originally said it was conducting a fiscal impacts analysis because one or more Commission members had requested it. When I inquired as to why the Department was going to evaluate only the costs to industry and not the costs to fish consumers, the answer was that the Commission was only interested in the former. That the statute requires some fiscal impact analysis is a *post hoc* rationalization of the analysis the Department has already decided to do. In other words, changing the wording on Key Factor No. 6 does not alter the views of some Commissioners that the implementation costs to dischargers can and should be weighed against the benefits of changing the fish consumption rate.

This *post hoc* rationalization does not make sense for two additional reasons. First, I cannot recall a single rulemaking process in which DEQ considered the fiscal implications, land use

⁷ Id.

evaluations, and other requirements of Oregon rulemaking during the policy-making process. These have always been taken care of by the Department at the end, as opposed to having been integrated into the rulemaking process. Here, DEQ wants to have it both ways: reword the key factors discussion to remove the implication that cost-versus-health tradeoffs are in the making but keep the attention on the costs to permitted sources claiming that it's required by the rules. Second, the rationalization is flawed because there is no current rulemaking proposal for which DEQ could analyze the fiscal impacts.

Response No. 1 – Types and Sources of Data: Available Data

DEQ's response to questions concerning what level of information is considered "sufficient" data to warrant being used in this process and how tribal and other consumer information will be gathered and used, is to note EPA's hierarchy of data and to state that tribal members were "encouraged ... [to] share personal stories" that will not be reviewed by the Human Health Focus Group but will be provided to the Commission for its consideration.

This is not a response to the questions that have been posed. It does not answer why tribal and other consumers are being asked on a completely random basis to discuss their fish consumption, why DEQ is doing nothing to gather any information whatsoever directly from Oregon Tribes or other high fish-consuming groups, and how these personal stories could possibly be "considered" by the Commission when it makes its final decision.⁸ To the extent that, for example, the experiences of other non-Columbia River Tribes could mirror the fish consumption patterns seen in the CRITFC study, thereby providing a basis for extending those findings across the entire state, the Department is not considering it. There is simply no explanation of why anybody would bother attending an all-day meeting for which they must travel long distances so that their personal information will be included in the rulemaking package. There is no explanation of the legal and policy reasons why treaty rights have no bearing on the fish consumption rate and why this issue is not being addressed directly by the Commission.

Response No. 3 – Inclusion of Cultural Values

As with Response No. 1, DEQ simply avoids answering the question posed – concerning the weight of cultural values in fish consumption – in favor of a stock answer that it's a recognized issue and that the information will be included in the policy options paper provided to the

⁸ The October 11, 2007 letter to NWEA from the three entities rather shockingly observes that "[w]e also believe that our Workshops have informed us substantially about the fish consumption rates of other tribes and tribal members, and of sport fishers, and commercial fishers along the coast of Oregon." (Emphasis added.) It's hard to understand how agency staff could make so much out of so little information.

Commission. Putting something in an options paper is not the same as including it in the analysis. The Department should end the charade of pretending that some issues matter – such as treaty rights, qualitative data, personal accounts, cultural values, etc. – and just be honest that these issues will not be included in its analysis and therefore will not be a part of the options. It is misleading to state otherwise. The Department witnessed a serious drop in participation by Oregon’s tribal representatives between the second and third meetings; has it stopped to consider why Tribes with limited resources would bother sending their staff and other representatives to workshops that value their participation so little?

Response No. 4 – WQS Implementation Issues

DEQ’s response to how a fish consumption rate that applies to different regions would work is to cite to a previous triennial review and its discussion of “[p]ossible inequities between permitted sources.” The Department needs to constantly remind the Commission and workshop participants that the Clean Water Act inherently creates inequities between permitted sources. No pollution source with an NPDES permit containing water quality-based effluent limits is immune. If there are more pollution sources into a river or a basin, or simply less water to dilute the effluent, a discharger’s effluent will be restricted more than it would be otherwise. That is the entire basis of the water quality standards-based aspect of pollution control.

Response No. 6 – High Fish Consuming Populations

A cluster of questions are consolidated concerning sensitive populations (e.g., pregnant women); how to consider the disparate impacts on populations (e.g., non-Columbia River Tribes) when the federal government has not provided them with millions of dollars with which to evaluate fish consumption levels; why it is acceptable to provide a lower level of human health protection to subpopulations, particularly subpopulations that suffer from other major health and economic deprivations; the role of the Civil Rights Act; which percentiles of subpopulations to protect; and maintaining the same conservatism for Oregon’s subpopulations that is provided to the majority of Oregonians. To these concerns, the Department has only two substantive comments: (1) that the investment in the process by the CTUIR “gives us confidence that tribal priorities and interests will be voiced and considered;” and (2) that “we believe tribal fish consumption rates are well represented” because the CRIFTC study is the best regional data to inform the Commission.

These are both non-answers. First, that CTUIR is involved does not answer the questions about federal civil rights laws and regulations or the major policy issues noted above. The questions posed are not whether CTUIR is involved and its interests will be “voiced and considered.” The questions that were posed are policy questions that must be answered by the Commission. If they are not answered directly, they are being answered indirectly, by default. The default answer to

are you considering EPA's regulations on disparate impact discrimination under the Civil Rights Act? is "no" because the failure to consider it is the answer of not considering it. The Department's analysis and the Commission's evaluation of an issue is where the policy decisions will be made, whether overtly or covertly – a far different matter than whether positions are "voiced" and supposedly "considered." If there is no explicit consideration of a policy question, the answer is that the matter is rejected.

Moreover, the CTUIR's interests are well-represented by the CRITFC study and their place on the Planning Team. The same is simply not true for Oregon's other Tribes. Specifically, if the Department were to recommend and the Commission were to adopt, an approach that was based on providing only the Columbia River tribes a higher level of protection based on the CRITFC study, how would either the study's existence or the Tribe's involvement help the other Oregon Tribes? It wouldn't. And the Department has already specifically rejected the idea that it would substantively engage in obtaining any kind of information from other Oregon Tribes – aside from inviting them to speak into an open microphone – that would allow its Human Health committee, the Planning Committee, the Department, or ultimately the Commission to decide that the CRITFC data were in any way representative of the fish consumption patterns of other Oregon Tribes or other fish consumers. How do we know the Department has rejected this idea? Because, it has chosen to not take action.

Response No. 7 – Migratory Fish

DEQ fails to take the opportunity in this discussion of the role of migratory fish to note that the recipient of any form of pollution – whether fish, human, bird, or mammal – does not care where the contamination comes from. In protecting humans from fish-borne contaminants under the Clean Water Act, the question is "What are people consuming?" not "What are industries dumping?" A numeric or narrative criterion in a water quality standard is established to protect the beneficial use, in this case fish consumption, regardless of the source of the pollutant.

Response No. 8 & 9 – Role of Economics & Benefits Analysis

As you may recall, NWEA has raised numerous concerns about the Department's intent to conduct a one-sided economic analysis. The Department's response in these materials is both curt and disingenuous. As stated above, the Department initially argued that its partial economic analysis was based on the Commission's narrowly-expressed interest. Now it has switched to arguing that DEQ is doing the analysis because it is a required part of any rulemaking. Yet no rulemaking in which NWEA has ever been involved directly or explicitly considered any economic analysis, least of all one involving the setting of water quality standards under the Clean Water Act.

In fact, the Department cannot at this time – well in advance of the rulemaking proposals – be able to evaluate fiscal impacts as required by Oregon statute. The reason is simple: the content of the rulemaking has not yet been decided. Clearly the cost implications are tied to whatever the content of the rule is, particularly the fish consumption rate, its geographic application, and any “implementation” considerations included in the rule (e.g., to apply the fish consumption rate to a limited number of pollutants, to consider the impacts of multiple pollutants, to treat legacy pollutants differently, to allow trading, etc.). None of this work to define a large range of possible implementation caveats to a higher fish consumption rate has been done, let alone narrowed to a rulemaking proposal. So, how can this process now be described as supporting the statutory requirement?

Finally, DEQ misstates the statutory requirement. ORS 183.335(b)(E) states:

A statement of **fiscal impact identifying** state agencies, units of local government and **the public which may be economically affected by the adoption, amendment or repeal of the rule and an estimate of that economic impact on** state agencies, units of local government and **the public**. In considering the economic effect of the proposed action on the public, the agency shall utilize available information to project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected.

Id. (emphasis added). Evaluating the “fiscal impact” and “economic effect” of a regulation on the public, as required by the statute, is not limited to the cost to industry of compliance. It includes the cost to the public. In this case, as discussed in NWEA’s previous memorandum and letter, those costs are primarily in decreased health (and the expense of health care) and premature death of populations exposed to more than the average amount of toxic chemicals through fish consumption. The cost to members of Oregon Tribes of not being protected is as sure a cost to the public as the cost of increased pollution controls is a cost to industry.

Response No. 10 – Implementation & Regulatory Flexibility

In response to a series of questions concerning actual implementation of a revised fish consumption rate, DEQ says that it will be the subject of a future workshop and be addressed by the Fiscal Impacts Advisory Committee. It is unclear, as discussed elsewhere in this letter, how the fiscal impacts can be determined in advance of knowing how the rule will be implemented. In addition, it is unclear how the fiscal impacts experts could possibly be the same people as those who can help discuss implementation issues. Finally, half a day of a workshop format is hardly sufficient input from environmental and industrial/municipal experts on implementation to have input into this discussion. DEQ has witnessed groups working on implementation issues

in numerous well-functioning advisory committees taking months, if not years, to work out these kinds of issues due to their complexity, as well as other issues implicated in discussions of implementation such as equity concerns. It is a mystery why the Department thinks that allocating this amount of time will result in any meaningful dialogue.

Response No. 11 – Mechanisms for Toxics Reduction

Toxics reduction strategies is a broad subject for an entire state. Why does DEQ think that a single workshop in which participants will have an “opportunity to discuss and inform each other about efforts to reduce toxics in fish tissue” will be either meaningful or complete?

Response No. 13 – Risk from Current vs. Legacy Pollutants

How Oregon decides to treat the risks from legacy pollutants in its fish consumption rate is a major policy issue. Instead of presenting some serious options, or explaining where in its process the Commission will address this issue, DEQ’s response merely states that DEQ is working on reducing legacy pollutants. It also states that raising the fish consumption rate will not solve the problem of legacy pollutants already present in Oregon’s waterways. It is unclear if the Department is hinting that it will exclude legacy pollutants from the risk analysis associated with higher fish consumption levels, or if it will include them. While there are arguments from the industry perspective that they should be excluded, from that of the endpoint of water quality standards – the protection of beneficial uses – the source of the risk is irrelevant. DEQ’s superficial response to this issue does not advance the discussion.

Response No. 14 – Single Versus Multiple Pollutants

As with all of the responses, DEQ’s response to questions concerning the treatment of multiple toxic pollutants is unhelpful and fails to advance the thought process on this issue. Specifically, the Department fails to provide any information to the Commission on the policy options that are implicated by these questions so that the Commission can make decisions in advance of the final rulemaking proposal. As the Department has stated elsewhere, it plans on eliminating policy options in order to focus on a few. By doing so, it will make the policy choices that are the Commission’s to make.

Response No. 15 – Balancing Risks & Benefits

In response to a question concerning the balancing of benefits to consuming fish with the dangers of consuming pollutants in fish, the Department actually footnotes several journal articles on this issue. Why this level of attention when DEQ does not respond substantively to any other issue in this 20-page document?

Response No. 16 – Shellfish

DEQ's response to the question of whether shellfish should be included is to state that the project has been renamed to demonstrate that it does include shellfish, due to its relevance to Oregon's coastal population. There is, however, no explanation of how the Department intends to address the lack of quantitative data on coastal population fish or shellfish consumption.

Response No. 18 – CRITFC Study

DEQ's answer to whether the project will include or exclude the highest "subsistence" level fishers within the CRITFC study population is to note that the Human Health Focus Group is providing a technical review of the study. This does not ensure that this policy issue will be addressed but only that it will be mentioned in the final report to the Commission. Not addressing a policy question is the same as making a policy decision (i.e., the "sin of omission.").

Response No. 24 – Non-Permitted Sources

DEQ's response to the age-old question of how to address non-point sources is to state its "belief" that "more can and should be done" to address them, without discussing why the Department repeatedly neglects all opportunities to recommend, urge, and demand that Oregon's other agencies take necessary actions to control nonpoint sources. To state that this issue will be covered in the workshop on Toxic Reduction Efforts frankly insults everybody, from environmental participants to high fish consumers to point sources. Nothing short of regulation will begin to address the massive problem caused by non-point sources, to clean up Oregon's rivers, and to create some nascent equity between permitted and unpermitted sources.

Response No. 25 – Other Studies

DEQ's response stating that it conducts its triennial reviews every three years is factually incorrect and misleading.

Response No. 29 – Tribal Treaty Rights

As in its Response Nos. 1, 3, and 6, DEQ persists in responding to the issue of tribal treaty rights by stating that the CTUIR's participation gives it "confidence" that the tribal interests will be "front and center." As explained above, this is not an answer to a set of serious legal and policy questions.

What Workshop Participants Want

Many participants in the workshops have been disappointed in their lack of substance and substantive discussion. In response, the Department has concluded that workshop participants have asked for “DEQ, EPA and CTUIR [to] present specific FCR options for comment during the public workshops.”⁹ This could not be further from the truth. The majority of people who have consistently participated in the three workshops held to date are very much used to discussing policy and implementation issues in the absence of specific DEQ proposals. What they are used to is having those discussions. Instead, the workshops have not been the type of discussions that DEQ has typically sponsored through its advisory committees but rather have been low-level presentations with questions and an open microphone. Workshop participants have not requested that DEQ avoid having open policy discussions and skip right to the proposals. Instead, they are tired of day-long workshops that provide no new information and no opportunity for intense debate and discussion, workshops that are, in short, a waste of time.

Having concluded that the public only wants to respond to options, the Department now states that “[r]eaction from the public on these various options will be important to the Planning Team in deciding which options to develop further and which to put aside.”¹⁰ Why is the Planning Team deciding which options to develop further and which to put aside rather than the Commission? The choices on options are likely indicative of major policy decisions that are within the Commission’s, not the staff’s, purview. Moreover, who is the “public” attending the workshops and why is their “reaction” at those workshops apparently the deciding factor or at least a significant factor as to which options will be pursued? Are the current participants going to be encouraged to pack the workshops with people who will vote on the options they most desire? Is this how Oregon makes public policy?

Role of Workshop Participants

As demonstrated in the discussion immediately above, the Department’s response to the introduction of policy questions is to note in nearly every instance that any information that is gathered will be “included in the staff reports to the EQC so that the EQC can consider this information in its decision making.”¹¹ We do not doubt the ability of the staff to catalogue nearly every thought that is presented by someone participating in the workshop process. The question is: what meaningful intellectual response will there be to those thoughts? So far, the answer is

⁹ Id. at 2.

¹⁰ Id. at 3.

¹¹ Id. at 11.

“none.” There is no reason to believe that the future workshops will be any more meaningful discussions than they have been to date, that the Department will engage with the policy questions posed, or that those issues will be incorporated into the options and their assessment. In all likelihood, the Department will continue to fend off policy questions it doesn’t want to discuss with the kind of non-answers it has provided in its most recent materials, making the workshops an even greater mockery of their stated purpose. To date, the workshops have been window-dressing on a failed process and there is no indication that the future will be different. That’s a frankly unpleasant statement but, unfortunately, it is substantiated. Here’s why:

- Workshops have covered material in a highly superficial manner. For example, the discussion of risk, to an audience well-versed in matters of risk assessment, involved numerous pictures of people wearing hard-hats; participants being asked to line up by height in order to demonstrate the idea of variability; and illustrations on how one plugs numbers into algebraic equations. The entire third workshop was aimed at a general public audience, few if any of whom were in the room. Many people left early because of the lack of content.
- Workshops are workshops. That means that they involve presentations, questions, possibly some kind of response from agency personnel. There is no real discussion, no attempt to resolve differences, no consensus, no creative meeting of minds. It’s just free-floating discussion, after which the ideas are committed to paper so that the Commission can “consider” them.
- The wide-open workshop format is not overcome by having an email list called the “Core Team.” The decision to avoid an advisory committee with a set and limited group of people, representing their constituencies, and making a long-term commitment to resolving issues – in favor of a wide-open workshop format – was not a good one. Setting up an email list of a smaller, apparently more committed, group of people does not change the dynamic of this process decision.
- A single workshop has been assigned to cover both “fiscal” and “implementation” issues. Having participated in numerous full-day advisory committee meetings in which implementation issues were discussed and debated, and creative solutions sought, it is difficult to understand how a half-day workshop will result in any meaningful exchange of ideas. In addition, as explained elsewhere in this letter, it is difficult to understand how the fiscal impacts of a rulemaking proposal including “implementation” issues can be done prior to the proposal being drafted.
- Why does this already highly complicated process include an entire workshop on “Toxics Reduction Strategies”? We agree that toxics reduction strategies are important for

Oregon but it is unclear why this issue is inserted into determining the appropriate fish consumption rate for the state. An early draft of Attachment B describes this workshop as “an opportunity to discuss and inform each other about other efforts to reduce toxics in fish tissue.” To the extent that this is a general discussion about education and outreach programs to retrieve hazardous materials, encourage the use of less toxic alternatives in households, gardens, lawns, and fields, etc. this is totally irrelevant to the decision about changing Oregon’s fish consumption rate or the regulatory actions that will, should, or could result from any changes. NWEA does not object to Oregon’s adopting extensive toxics reduction strategies but they will not be hammered out in one day of sharing ideas.

- Repeated allusions to transparency in decision-making do not result in open and participatory decision-making. Given that the workshops are just workshops, rather than forums for more focused discussion and debate, any work to better define and resolve the issues, develop creative solutions, etc. will take place outside the workshops. Specifically, this will take place in the Human Health Focus Group and the Fiscal Impact Advisory Committee. As discussed below, obtaining information from the former is nearly impossible, suggesting that most of this discussion will be hidden from view at least during the time it is going on. In addition, a separate and parallel process totally hidden from public view has begun between representatives of industry and municipal interests and the CTUIR.¹²

The Fiscal Impact Advisory Committee

According to the Department’s reports, the soon-to-be-formed Fiscal Impact Advisory Committee is not only charged with helping the agencies to understand the economic issues but is also in charge of discussing the “implementation challenges.”¹³ It is not clear why those people who are considered experts on economic issues are also those who should be discussing implementation of regulatory or non-regulatory pollution controls. By limiting the arena in which the most substantive discussion on implementation will likely take place to those who have economic expertise, the planners exclude people who are highly knowledgeable about implementation. While it certainly would help if the Department defined what it means by

¹² See Confederated Tribes of the Umatilla Indian Reservation Journal, October 2007, <http://www.umatilla.nsn.us/cuj.html> (October 2007 at pages 6 and 38). CTUIR “hopes talks [with municipal and industrial interests] can lead to a faster process that some say has been bogged down by a series of DEQ-organizaed workshops that are expected to last well into 2008.”

¹³ Id. at 3.

“implementation,”¹⁴ it would generally be thought to include: the development of water quality-based permits, use of mixing zones, impacts on existing and future TMDLs, consideration of non-point sources, implications for Superfund and other hazardous waste sites, the relationship of the new fish consumption rates and Oregon’s narrative criterion on toxics, treatment of legacy pollutants, pollution trading, implications for antidegradation, etc. Not only is this a long list but it represents issues well beyond the expertise of economists.

Human Health Focus Group

Workshop participants are being kept in the dark as to the content of the Human Health Focus Group’s discussions and conclusions. Many participants went to the last workshop with the expectation that the Focus Group would report on its conclusions to date. Instead, we were inundated with photographs of people wearing hard hats, presentations by people well-informed about doing risk assessment on toxic clean-up sites but not the Clean Water Act, and explanations of how to plug numbers into algebraic equations. Meanwhile, DEQ has not made public the minutes for the four meetings that the Focus Group has held since May of this year in order to ascertain what progress they have made or their conclusions.

Conclusion

In conclusion, NWEA’s fundamental concern is that the Commission is not engaged in making the major policy issues that underlie any future rulemaking proposals on fish consumption rates. But the Department (with the help of the Planning Team) is making those decisions, incorrectly constraining the boundaries of the discussion. Nor is DEQ engaging in the kind of arduous advisory group process that ensures all major interests are part of crafting the proposal(s) to the Commission. Instead, the agencies’ choice of a superficial workshop approach has left participants so frustrated with the level of dialogue that the CTUIR and the municipal and industrial dischargers recently began a parallel non-public process. The dangers such an approach poses to an ostensibly transparent workshop process should be evident.

Finally, in the end, an array of scientifically-valid fish consumption rates will be before the Commission but the discussion of what policies should drive the choice of one of them to be Oregon’s rate will not have taken place, a discussion that should be underway now. The result will be a Commission decision based on “gut responses,” “cut-the-baby-in-half” approaches, costs to industrial and municipal dischargers, or personal responses (or lack thereof) to the anecdotal information provided by the Department that it says will provide the Commission with

¹⁴ The only indication of what DEQ means by “implementation” are its references to additional costs of implementing new criteria. The staff has never explained why new criteria would lead to any additional staff costs for the Department.

Oregon Environmental Quality Commission
October 15, 2007
Page 15

“context and perspective.”¹⁵ Failure to consider policy issues as policy issues is to abdicate their consideration.

Sincerely,

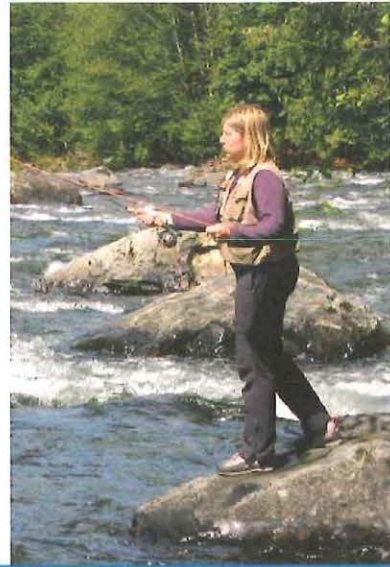
Nina Bell
Executive Director

cc: Stephanie Hallock
Rick George
Mike Gearheard
Donna Silverberg
Lauri Aunun

¹⁵ May 11 letter to NWEA from EPA, DEQ, CTUIR, at 2.

Cleaner Rivers for Oregon

Why Our Rivers Need Our Help



A WATER QUALITY PROGRESS REPORT BY THE
OREGON ENVIRONMENTAL COUNCIL

2007

Columbia

Deschutes

Grande Ronde

John Day

Malheur

Owyhee

Rogue

Snake

Umpqua

Willamette

Cleaner Rivers for Oregon Why Our Rivers Need Our Help

By Teresa Huntsinger

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We gratefully acknowledge the support of the Jubitz Family Foundation, the Clean Water Network, the Norcross Wildlife Foundation, and Bill and Julie Young, all of which helped make this report possible.

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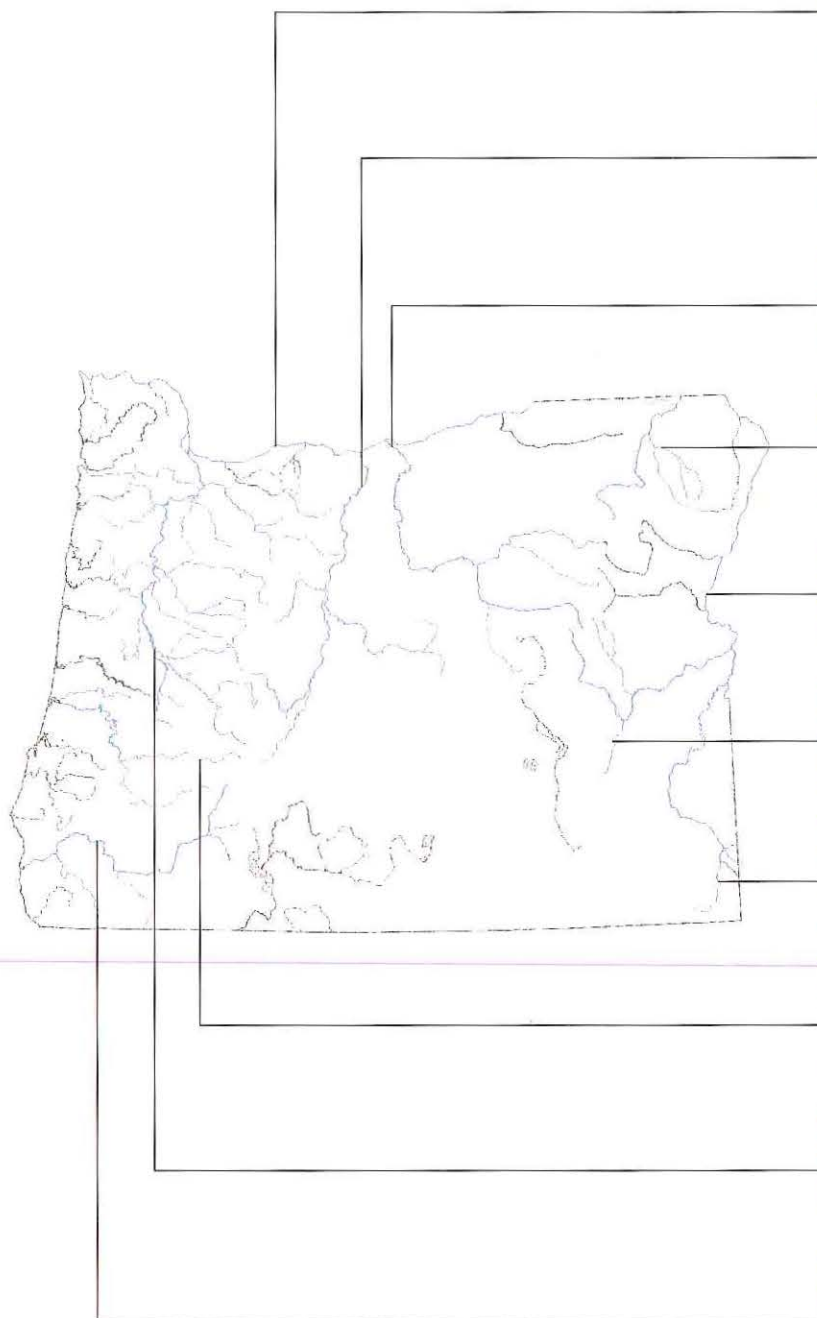
Illustrations by Matt Wuerker



The Oregon Environmental Council safeguards what Oregonians love about Oregon – clean air and water, an unpolluted landscape and healthy food produced by local farmers. For 40 years we've been a champion for solutions to protect the health of every Oregonian and the health of the place we call home. We work to create innovative change on three levels: we help individuals live green, we help businesses – including agriculture and health care – thrive with sustainable practices, and we help elected officials create practical policy. Our vision for Oregon includes ending global warming, building sustainable economies, protecting kids from toxins, cleaning up our rivers and ensuring healthy foods and local farms. We offer a variety of resources and events to help people make changes at home, at work and across the state. Join thousands of Oregonians by becoming a member today at www.oeonline.org.

Printed on 100% recycled paper (30% post-consumer content) with soy-based inks.

TEN OREGON RIVERS



- 
7 COLUMBIA RED ALERT
 306 miles long
 Basin area approximately 50,000 square miles
- 
8 DESCHUTES YELLOW ALERT
 245 miles long
 Basin area approximately 10,700 square miles
- 
13 JOHN DAY YELLOW ALERT
 284 miles long
 Basin area approximately 8,000 square miles
- 
11 GRANDE RONDE YELLOW ALERT
 174 miles long
 Basin area approximately 3,700 square miles
- 
21 SNAKE ORANGE ALERT
 270 miles long
 Basin area approximately 16,900 square miles
- 
15 MALHEUR ORANGE ALERT
 190 miles long
 Basin area approximately 4,700 square miles
- 
17 OWYHEE ORANGE ALERT
 186 miles long
 Basin area approximately 6,000 square miles
- 
23 UMPQUA YELLOW ALERT
 112 miles long
 Basin area approximately 5,000 square miles
- 
25 WILLAMETTE RED ALERT
 187 miles long
 Basin area approximately 11,400 square miles
- 
19 ROGUE YELLOW ALERT
 215 miles long
 Basin area approximately 5,000 square miles

CLEANER RIVERS FOR O

We Oregonians love our rivers, and they need our help. From the Willamette to the Owyhee, every major river in Oregon is violating Clean Water Act standards. This report seeks to make information about the health of our rivers more accessible to Oregonians. Learn which pollutants are impacting the rivers you live nearby, play on, or even get your drinking water from, and what can be done to clean them up.

In this report you'll find examples of the great work that is happening around the state to clean up Oregon's rivers. Each of these projects makes a difference, and by working together we can turn around the fate of our rivers. The Oregon Environmental Council (OEC) is working to ensure

that state policies protect water quality and support these local efforts, and we're helping people find out what they can do to make sure our rivers are safe places for Oregonians to swim, play and fish.

No matter where you are at this moment, you are in a watershed. When a drop of water hits the ground, if it is not absorbed by plants or allowed to soak into the soil, it will eventually make its way downhill into a river, bringing with it any pollutants it picks up along the way. Our actions impact water quality even when we are not right next to a stream. You can help clean up Oregon's rivers by using the tips in this report, and additional tips are available in OEC's booklet "50 Ways to Love Your River," available at www.oeconline.org.

such a plan can take several years. Every single one of Oregon's major rivers is on the 303(d) list for one pollutant or another, most for many pollutants. OEC is especially concerned about listings for bacteria and toxics because of the dangers they pose to human health.

The challenge we face in interpreting the 303(d) list is that it is based on numerous data sources gathered in an ad-hoc way, and water quality monitoring is not consistent from river to river. In some cases a river segment may be listed for a pollutant because it tested positive at one location several years ago, but it has not been tested since, and other rivers have never been tested for that pollutant. Federal and state funding for implementing the Clean Water Act and monitoring Oregon's waters is woefully inadequate, leading to these data gaps. We supplemented the information in the 303(d) list by contacting local watershed groups and reviewing scientific watershed assessments.

It is important to note that the state of water quality in Oregon's largest rivers is greatly impacted by the tributaries that feed into them. In most cases, water quality declines as you move from a headwaters stream down a river to its mouth, because pollutants are added and surrounding lands change from forested to agricultural and urban. But in some cases smaller streams have unique water quality problems that become diluted once they reach a major river. Taking action to protect and restore streams and uplands throughout a watershed can improve the conditions of our major rivers and

ALERT LEVELS

Red Alert

Columbia and Willamette

These rivers have serious water quality problems, including toxics that are dangerous to human and aquatic health.

Orange Alert

Malheur, Owyhee and Snake

These rivers have significant water quality problems, often including toxics and bacteria.

Yellow Alert

Deschutes, Grande Ronde, John Day, Rogue and Umpqua

These rivers have some water quality problems, but they do not violate standards for toxics and they have some stretches that are in relatively good condition.

Green Alert

No major Oregon rivers

These rivers have good water quality and they do not violate Clean Water Act standards.

Sources of information

Our data comes from a government report called the 303(d) list. Every two years, Oregon's Department of Environmental Quality (DEQ) develops a list of streams and rivers that do not meet minimum water quality standards (named the 303(d) list after the section of the Federal Clean Water Act that requires it). We used the most recent version, which is the 2004/2006 303(d) list. You can find the 303(d) list at www.deq.state.or.us/wq/assessment/rpt0406/search.asp. Each time the list is updated, additional miles of rivers are added if they are found to be exceeding pollution limits. Rivers are removed from the list when water quality improves, or when a plan is developed to manage the culprit pollutants. The process of developing

OREGON

provide important habitat for fish and wildlife. Water quality is impacted not only by pollution, but also by water flow, streamside vegetation, and changes to the stream channel, and these factors are important for overall stream health.

What is polluting Oregon's rivers?

Arsenic

In Oregon, the principle source of arsenic in surface water and groundwater is believed to be native rocks and soil. Arsenic residues also come from industrial processes, paints and pesticides. Arsenic has been used as a poison for centuries, and at low levels over a long period of time it can cause cancer.

Aquatic Weeds & Algae

Weeds or algae can be so rampant that they interfere with using a stream or significantly reduce its surface area. Excessive algae can also contribute to other water quality impairments, such as pH or dissolved oxygen.

Biological Criteria

Rivers are listed for biological criteria when there is significant damage to fish and it is suspected that the cause is pollution-related. For example, sections of the Willamette River are listed due to skeletal deformities in fish.

Chlorophyll

Chlorophyll is a green pigment found in plants. It absorbs sunlight and converts it to sugar during photosynthesis. High chlorophyll

levels indicate the excessive growth of algae. While chlorophyll levels naturally fluctuate over time, long-term persistence of high chlorophyll levels can indicate poor water quality and excess nutrient levels.

Dioxin

Dioxins are some of the most toxic and carcinogenic compounds known. In addition to causing cancer, they act like a hormone in the body, disrupting the endocrine system (the glands that produce hormones) and suppressing the immune system. Dioxins break down very slowly, so they tend to accumulate in aquatic life, from algae to fish. Dioxins are produced as a byproduct from the manufacture of chlorinated herbicides, the combustion of domestic and industrial wastes, and chlorine bleaching of wood pulp and paper.

Dissolved Oxygen (DO)

Just like it sounds, this is the amount of oxygen dissolved in water. Dissolved oxygen (DO) is not a pollutant; on the contrary, fish need oxygen to breathe through their gills. Streams are listed when dissolved oxygen levels are dangerously low. A number of factors impact dissolved oxygen levels. Aquatic plants produce oxygen through photosynthesis, and it is removed from the water by plant and animal respiration and decomposition of organic material. Cold, fast-flowing water holds more oxygen than warm, still water. Wastewater from sewage treatment plants, storm water runoff, and failing septic systems can cause low DO levels.

POLLUTANTS IN TEN OREGON RIVERS

TEMPERATURE

DISSOLVED OXYGEN

FECAL COLIFORM

MERCURY

DIOXIN

pH

DDT & DDE

TOTAL DISSOLVED GAS

ARSENIC

DIELDRIN & ALDRIN

SEDIMENT

IRON

MANGANESE

BIOLOGICAL CRITERIA

CHLOROPHYLL

AQUATIC WEEDS & ALGAE

PHOSPHORUS

PCBs

PAHs

TURBIDITY

PENTACHLOROPHENOL

0 500 1000 1500 2000

MILES OF POLLUTED RIVER

Each bar on this graph shows the number of miles on the mainstems of Oregon's ten longest rivers that violate water quality standards for each pollutant, according to DEQ. Pollutants of greater concern for human health are in red. Added together, these ten rivers make up 2,169 river miles.

Anadromous

Anadromous fish such as salmon and steelhead hatch in streams, swim to sea when they are young, and return years later to their freshwater streams to spawn and die.

Basin

A basin is the area that a river drains. Generally the word "basin" is used for larger rivers that have multiple tributaries, and the word "watershed" is used for smaller rivers and streams, but both words convey the same concept.

Floodplain

The floodplain is the area alongside a stream or river that is usually dry but becomes inundated at least once a century when the river floods. Floodplains are often flat and highly fertile due to the sediments deposited there by the river.

Instream water rights

Instream water rights establish flow levels to remain in a stream and they have the same status as other water rights. Instream water rights are not guarantees that a certain quantity of water will be present in the stream because they do not have priority over other water rights that were established before them.

Riparian

Riparian areas are the areas immediately adjacent to streams and rivers. They can also be called streamside areas. Although they occupy a fairly small percentage of any watershed, riparian areas have large impacts on fish and wildlife. Their vegetation controls water temperatures and screens out pollutants.

Total Maximum Daily Load (TMDL)

Total Maximum Daily Loads are plans DEQ develops for reducing pollution in "impaired" bodies of water that violate water quality standards. They include an assessment of the amount of pollution coming from various sources and an analysis of how much each source needs to be reduced by in order to meet water quality standards. They are sometimes called clean water plans.

Upland

Uplands are lands at higher elevation than riparian areas and floodplains. Land management practices in upland areas can have a substantial impact on streams and rivers, even though they may seem far away.

Watershed

A watershed is defined as the area of land where all precipitation drains to a common water body. Since water flows downhill, the boundaries of a watershed are determined by the contours of the land around it.

Fecal Coliform

Fecal coliform is a type of bacteria, including *E. coli*, which is found in the intestines of mammals. Its presence indicates that feces is in the water, so it is used as an indicator of pathogens dangerous to human health. DEQ had been testing for fecal coliform in general, and it is now switching to testing specifically for *E. coli* as a bacteria indicator. Most strains of *E. coli* do not cause serious illness, but when *E. coli* is detected it may indicate the presence of more harmful bacteria, such as salmonella or giardia. Sources of *E. coli* and other fecal coliform include the fecal matter of birds and wildlife, domestic dogs and cats, livestock, and sewer overflows.

Iron & Manganese

Iron and manganese are natural minerals dissolved from rocks. They can affect the taste, odor, color, and staining properties of water, but do not cause illness or hazards to aquatic life.

Legacy Toxics (PCBs, DDT & DDE, Dieldrin & Aldrin)

DDT and its byproduct DDE, and aldrin and its byproduct dieldrin are pesticides that were banned in the 1970s and can still be found in river sediments. They have toxic effects on wildlife, take a long time to break down, and can have harmful effects on human health. These legacy pesticides are washed into rivers from agricultural soils where they were once used. PCBs were widely used as coolants and

lubricants until they were banned in the 1970s. Consumer products that may contain PCBs include old fluorescent lighting fixtures, electrical devices or appliances containing PCB capacitors, and hydraulic fluids. DDT, DDE, PCBs, dieldrin and aldrin persist in the environment for long periods of time and become concentrated as they move up the food chain. Fish advisories have been issued for PCBs in the Willamette and Columbia rivers.

Mercury

Mercury is a naturally occurring element that has many industrial commercial uses. However, it is highly toxic, persists for years in the environment and can accumulate to higher concentrations as it moves up the food chain. Mercury is a neurotoxin that can slow fetal and child development and cause irreversible deficits in brain function. People are exposed to mercury primarily through fish consumption, and mercury is the number one reason for fish consumption advisories in Oregon and nationwide. A significant amount of mercury enters Oregon's waterways from global air deposition and erosion of native soil. It also comes from abandoned mines, mercury-added products (such as thermostats and automotive switches) and dental amalgam. Industrial sources such as cement plants and coal-fired power plants emit mercury into the air, which eventually is deposited on the ground and picked up by runoff water.

Nutrients (Phosphorous & Ammonia)

Phosphorous is an essential nutrient for plant and animal growth, but too much phosphorous (or phosphate) can cause accelerated plant growth, algae blooms, low dissolved oxygen, and the death of certain aquatic organisms.

Ammonia is one form of nitrogen, which is also an essential nutrient for plant growth. Like phosphorous, nitrogen can cause excessive plant growth and other associated water quality problems. Excessive nutrients can come from wastewater treatment plants, fertilizer runoff, faulty septic systems, livestock confinement areas or manure storage facilities and phosphate-containing detergents.

PAHs

Polycyclic aromatic hydrocarbons (PAHs) come from vehicle emissions, the smoke and soot from power plants, or material left behind by tires. They also can leach from asphalt-based and coal tar-based sealants used on paved lots. PAHs are suspected carcinogens and they have adverse ecological effects on aquatic organisms.

Pentachlorophenol

Pentachlorophenol is a pesticide and wood preservative. Since 1984, the purchase and use of pentachlorophenol has been restricted to certified applicators. It is no longer available to the general public, but it is still used

industrially as a wood preservative for utility poles, railroad ties, and wharf pilings. Pentachlorophenol can cause cancer, damage to the central nervous system, reproductive effects and damage to liver and kidneys.

pH

pH is a measure of acidity or alkalinity on a scale from 0 to 14, with low numbers being more acidic and 7 being neutral. Exposure to very low or high pH may cause death or reproductive problems for fish and other aquatic life. Dissolved minerals from rocks and soil contribute to pH, as do photosynthesis and respiration of plants. Sources of abnormal pH levels include mine drainage, industrial effluent, acid rain, sewage, and livestock containment areas. Fertilizers can indirectly lead to high pH levels by causing excessive plant growth.

Sediment

Sedimentation is the formation of significant bottom or sludge deposits. Some sediment is natural, but high sediment levels are harmful to macroinvertebrates (such as crustaceans and water insects) and to fish because sediment can smother fish eggs. In addition, sediment can bind with a number of persistent, toxic pollutants. Soil erosion contributes to sediment, and common sources include exposed streambanks, roads, agricultural and forestry practices, construction and urban runoff.

Temperature

The most common impairment in Oregon rivers is temperature. High water temperatures can be deadly to fish and other river critters, even though warm water may not sound scary if you're planning to take a swim. High water temperatures are often caused by the removal of shade-providing streamside trees and vegetation. Warm water can also enter streams from industrial processes and urban stormwater runoff. Dam-created reservoirs can increase river temperatures by holding water in place and allowing it to be warmed by the sun more than it would if it were flowing naturally. However, some deeper reservoirs discharge from the bottom and can be a source of cool water.

Total Dissolved Gas

Extreme aeration of the river under certain types of spillways on dams can lead to supersaturation of dissolved gasses that can be harmful to fish.

Turbidity

Turbidity is a measure of how clear the water is. Suspended particles such as soil, algae, plankton and microbes contribute to turbidity. High turbidity levels may increase temperatures, lower dissolved oxygen levels, reduce photosynthesis, clog gills, and smother fish eggs and macroinvertebrates.

COLUMBIA

RED ALERT

The Columbia is one of Oregon's most polluted rivers, second only to the Willamette. Stretches of the Columbia are contaminated with toxics such as dioxin and PCBs, and the river has problems with high temperatures and numerous other pollutants.

POLLUTANTS IN THE RIVER

TEMPERATURE

DISSOLVED OXYGEN

DIOXIN

pH

PCBs

ARSENIC

DDE

PAHs

FECAL COLIFORM

50 100 150 200 250 306

MILES OF POLLUTED RIVER

Each bar on this graph shows the number of miles in the Columbia River that violate water quality standards for each pollutant, according to DEQ. Pollutants of greater concern for human health are in red.

LOCAL RESOURCES

Columbia Riverkeeper (Hood River)
(541) 387-3030
www.columbiariverkeeper.org

Columbia River Inter-Tribal Fish Commission (Portland)
(503) 238-0667
www.critfc.org

Lower Columbia River Estuary Partnership (Portland)
(503) 226-1565
www.lcrep.org



The River

The mighty Columbia is one of the largest rivers in North America. It drains a 259,000 square-mile basin that encompasses parts of seven states (Oregon, Washington, Idaho, Montana, Nevada, Wyoming, and Utah) and British Columbia. The Columbia begins in Canada and flows through eastern Washington before forming the border between Oregon and Washington, and eventually reaching the Pacific Ocean. It cuts through the Cascade Mountains, creating the 100-mile-long and 3,000-foot-deep Columbia River Gorge. Many of Oregon's other major rivers flow into the Columbia, including the Deschutes, John Day, Snake, Umatilla and Willamette. There are eleven major dams on the mainstem of the Columbia, four of which are on the section bordering Oregon. The hydroelectric dams are the foundation of the Northwest's power supply, but they harm endangered salmon and significantly impact water quality. The lower 146 miles of the river, up to Bonneville dam, are influenced by ocean tides, and this entire area is considered to be an estuary.

A Closer Look

The federal Environmental Protection Agency (EPA) has identified the Columbia as one of its top water priorities and has named it one of the Nation's Great Water Bodies. Because the Columbia and its tributaries drain an area about the size of France, "legacy pollutants" - chemicals banned in the 1970s such as PCBs, DDT and its derivative DDE - still flush into the river from farms, roads,



10 Ways to Love Your River

Buy Organic Foods and Unbleached Paper Products: By supporting farmers who use sustainable or organic practices, you are reducing pesticide use. Look for the USDA organic label, Food Alliance, or Salmon Safe certifications. When you need paper products, look for unbleached or chlorine-free products. Bleaching paper with chlorine can release a highly toxic chemical called dioxin into rivers.

construction sites and stormwater systems. These toxins are primarily found in sediment and fish tissues, and they accumulate in fish at some of the highest levels in the Northwest. The EPA has suggested that for some Native Americans, who eat up to eleven times more fish than other Americans, the risk of cancer from toxins in Columbia River fish may be as high as 1 in 50 for sturgeon and 7 in 10,000 for salmon. According to the EPA, pollutants are generally of concern if they exceed a "one in a million" risk of cancer. Newer chemicals for which water quality standards have not yet been established are found at increasing levels in the Columbia, such as certain pesticides and flame retardants.

Dioxins, some of the most carcinogenic substances in the world, are also present in the Columbia River. They come from the chlorine bleaching of paper at pulp and paper mills along the river's shores. A plan has been developed for reducing Columbia River dioxins, but no testing has been done yet to see if it is working.

Water temperatures in the Columbia have been slowly climbing over the last 65 years, and temperatures are highest in August and September. Large reservoirs behind the Columbia's dams absorb the sun's heat and make temperatures warmer than the natural snowmelt waters fish are adapted to. The Columbia's dams also contribute to the river's high dissolved gas levels due to the turbulence caused by their spillways. The loss of streamside vegetation on tributary streams and the impacts of stormwater runoff from developed areas also harm the river.

Clean Water Plans, known as Total Maximum Daily Loads, have been completed by the Oregon Department of Environmental Quality for dioxin and total dissolved gas in the Columbia River. Efforts are underway to develop clean water plans for temperature and toxics.

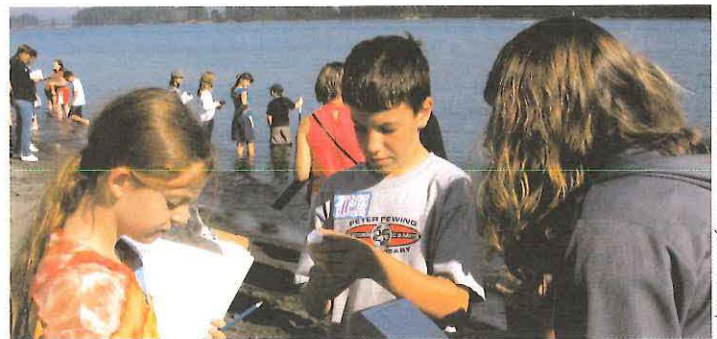
Filling in the Data Gaps

In 2001, there were only five ongoing water quality monitoring sites on the mainstem of the lower

Columbia River between Bonneville Dam and the river's mouth. Four were monitored by DEQ and one by the U.S. Geological Survey (USGS). Although these sites provided a great deal of water quality data, the condition of this 146 mile stretch of river could not be adequately characterized and there was not enough data to identify localized problems. To help fill some of the gaps and educate and involve students and the public in water quality issues and monitoring, the Lower Columbia River Estuary Partnership began organizing an annual Water Quality Monitoring Event. Each September the event engages hundreds of students and volunteers in monitoring water quality on the lower Columbia River and its tributaries.

In 2003, the Estuary Partnership was awarded funding through Bonneville Power Administration's Fish and Wildlife Program to expand monitoring on the lower river. They worked with USGS to collect and analyze water quality samples that will provide detailed data on over 130 emerging contaminants such as pharmaceuticals, estrogen compounds, and personal care products; over 180 pesticides; nearly 20 trace elements including chromium, copper, and lead; and more than 25 suspended organic contaminants. This data will be available August 2007.

These important monitoring efforts will help all organizations working in the lower Columbia Basin focus their restoration and pollution prevention efforts where they are most needed to protect the environment and human health.



© Lower Columbia River Estuary Partnership

Staff and middle school students from Whitford Elementary School in Beaverton, Oregon monitored water quality at Sawie Island in September 2006. During the two-week event, 1,088 students and 46 volunteers monitored water quality at 61 sites along the lower Columbia River and its tributaries.

DESCHUTES

YELLOW ALERT

While parts of the Deschutes are relatively clean and healthy, and it is not known to be contaminated with toxics or bacteria, sections of the river are severely impacted by low water levels. Water quality in the Crooked River is generally worse than in the rest of the Deschutes Basin.

POLLUTANTS IN THE RIVER

TEMPERATURE

pH

DISSOLVED OXYGEN

SEDIMENT

TURBIDITY

CHLOROPHYLL

50 100 150 200 245

MILES OF POLLUTED RIVER

Each bar on this graph shows the number of miles in the Deschutes River that violate water quality standards for each pollutant, according to DEQ. Pollutants of greater concern for human health are in red.

LOCAL RESOURCES

Crook County Soil and Water Conservation District (Prineville)
(541) 447-3548

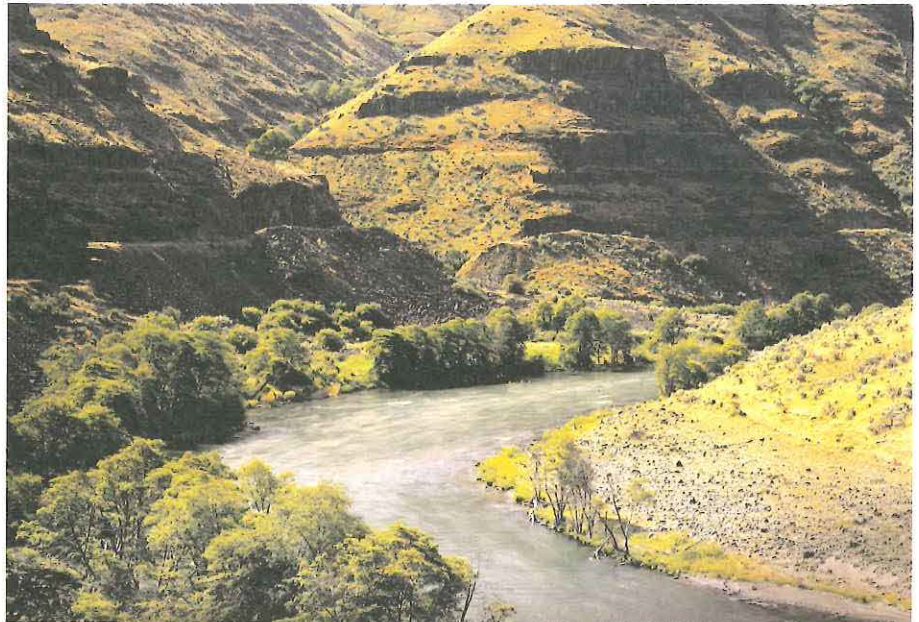
Crooked River Watershed Council (Prineville)
(541) 447-3548

Deschutes Basin Land Trust (Bend)
(541) 330-0017 www.deschuteslandtrust.org

Deschutes River Conservancy (Bend)
(541) 382-4077 www.deschutesriver.org

Jefferson Soil and Water Conservation District (Redmond)
(541) 923-4358 ext. 101

Upper Deschutes Watershed Council (Bend)
(541) 382-6102
www.restorethedeschutes.org



© Bruce Jackson

The River

In the early 1800s, the Deschutes River was known by French fur traders as the "Riviere des Chutes" - the "river of falls." Today the Deschutes is known for its rugged scenery, and it is a popular destination for whitewater rafting, hiking and sportfishing for steelhead and trout. Much of the Deschutes River is designated as a National Wild and Scenic River.

The Deschutes flows through Central Oregon and is a major tributary to the Columbia River. The Deschutes Basin encompasses roughly 10,000 miles, making it the second largest river basin in the state. The Deschutes begins in Little Lava Lake in the Cascade Mountains, flows through two reservoirs and the city of Bend, and heads north through a deep gorge. The river forms Lake Billy Chinook at the Pelton Round Butte Dam Complex, where it is joined by the Metolius River and the Crooked River. Natural flows in the lower Deschutes have less seasonal variation than most U.S. rivers because much of the lower river's water comes from groundwater. It passes through the Warm Springs Indian reservation, and a popular whitewater stretch near the city of Maupin, before ending at its confluence with the Columbia.

A Closer Look

Water quality on the Deschutes is highly variable from one part of the river to another, from season to season, and from year to year. The most significant factor contributing to degraded water quality in



10 Ways to Love Your River

Stay Engaged in the Political Process: Vote. Research candidates before elections and support those with proven commitments to a healthy environment. Let your national, state and local representatives know that you care about our rivers. Write, call, or email them about proposals you think they should support or oppose.

the Deschutes is low streamflows. Downstream of Bend in the summer, nearly 98% of the river's waters are diverted for irrigation. This leaves very little water in the middle Deschutes River in the summer months, resulting in significant water quality problems and habitat degradation. In the winter, streamflows are low in the upper Deschutes, defined as the reach from below Wickiup Reservoir to Bend, because water is being held in the reservoir for irrigation season.

Central Oregon is experiencing rapid urban growth and changes in lifestyle and land uses. Population in Central Oregon grew by 20% in the last five years. More and more farmland is being converted to urban uses or hobby farms. These land use changes will undoubtedly impact the Deschutes River, and whether those impacts are positive or negative depends on choices being made today. As demand for irrigation water decreases, there is the possibility of transferring that water to urban uses or leaving it in the river for fish. Urban stormwater runoff and agriculture can both negatively impact water quality if improperly managed. But they can also create opportunities for restoration and water quality protection when done right.

Noteworthy steps are being taken to restore watershed health in the Deschutes Basin. Soil and water conservation districts, watershed councils and others are working with landowners to improve farming and conservation practices, and water users are allocating significant energy and funds toward water conservation and efficiency. The City of Bend has become a leader in water conservation and stewardship. Through an aggressive program of water metering, conservation incentives and partnerships, and public education, the city maintained the same peak summer demand in 2003 as compared to 2002, despite 1,000 new service connections. In addition, the Oregon Department of Environmental Quality is working with local partners to develop a Total Maximum Daily Load for the Deschutes River.

Returning Water to the River

Rivers need water. This fact seems obvious, yet Oregon water law permits landowners and irrigators to own rights to more water than our rivers actually carry, causing parts of the Deschutes and many other rivers to nearly run dry during the summer months. The Deschutes River Conservancy (DRC), a non-profit organization in Central Oregon, is working to address this issue. The DRC Leasing Program pays water rights holders who are not using all of their water to lease the water back into the river, or to permanently purchase the water for in-stream water rights. This can provide an incentive for water conservation and irrigation efficiency projects. To date, the DRC has restored 111 cubic feet per second (cfs) of stream flow through conservation, 6 cfs through water transfers, and in 2006 they restored 93 cfs of stream flow to the Deschutes and its tributaries through water leases. Of course, buying water rights requires funding, and grants from the Columbia Basin Water Transactions Program and the federal government have been critical to the DRC's success.



© Deschutes River Conservancy

Jim and Deb Marshall sold their Central Oregon Irrigation District water rights to the DRC, keeping 0.5 cfs of water in the middle Deschutes during the peak summer months. They participated in the first permanent water right transfer between the DRC and an irrigation district, laying the groundwork for future agreements.

GRANDE RONDE

YELLOW ALERT

The Grande Ronde has some serious water quality problems, but it is not known to be polluted by toxics.

POLLUTANTS IN THE RIVER

SEDIMENT

TEMPERATURE

DISSOLVED OXYGEN

pH

WEEDS/ALGAE

PHOSPHOROUS

50 100 150 174

MILES OF POLLUTED RIVER

Each bar on this graph shows the number of miles in the Grande Ronde River that violate water quality standards for each pollutant, according to DEQ. Pollutants of greater concern for human health are in red.

LOCAL RESOURCES

Grande Ronde Model Watershed
(La Grande)
(541) 663-0570
www.grmw.org

Union Soil and Water Conservation District (La Grande)
(541) 963-0724 ext. 109

Wallowa Soil and Water Conservation District (Enterprise)
(541) 426-4588 ext. 3



© Thomas O'Keefe

The River

The Grande Ronde River, in northeastern Oregon, drains parts of the Blue Mountains and the Wallowas. Major streams flowing into the Grande Ronde are Catherine and Joseph creeks and the Wallowa and Wenaha rivers. The river flows through the agricultural Grande Ronde Valley in its middle course and through a series of scenic canyons in its lower course. The last approximately 38 miles of the river are in Washington, where it joins the Snake River. On a map the river traces the pattern of a large circle, hence the name Grande Ronde. 44 miles of this river are designated as part of the National Wild and Scenic Rivers system. The Grande Ronde Basin is sparsely populated, and agriculture, livestock production, and forestry play significant roles in the local economy. Until the mid-1800s, the Grande Ronde Basin was inhabited solely by the Cayuse, Umatilla, Walla Walla and Nez Perce tribes, and the tribes retain treaty rights to harvesting salmon and other resources on their former lands. The Grande Ronde is host to threatened Chinook salmon, steelhead and bull trout.

A Closer Look

The relatively low elevation (7,700 ft.) of the Blue Mountains can result in early snowmelt, which leads to low flows in the Grande Ronde River in late summer. These low flows significantly impact water quality. Elevated water temperatures are a significant problem, and improved streamside vegetation along tributary streams could



10 Ways to Love Your River

Keep Your Car In Good Condition: Drips of oil and other automotive fluids are washed into rivers with each rain. Remember to fix any leaks promptly. To find an automotive shop in your area that is committed to pollution prevention, visit www.ecobiz.org/autolist.htm. If your auto mechanic is not on the list, encourage them to join the program.

dramatically reduce the river's temperature, reduce erosion, improve water quality, and increase wildlife habitat. A Total Maximum Daily Load (TMDL) plan to reduce water temperatures has been developed. Improperly managed livestock grazing, cumulative effects of timber harvest and road building, water withdrawals for irrigation, and agricultural activities impact water quality. The Grande Ronde has had problems with fecal coliform in the past, but it currently meets the standard.

Restoration on a Working Ranch

Water quality and fish habitat were the key drivers of a large, multi-year project to restore wetlands and stream channels in Longley Meadows, along the upper Grande Ronde River. Historically the wet meadow held and slowly released the cold, clear waters of Bear Creek, providing habitat for summer steelhead and spring Chinook salmon. Since early settlement, land management activities such as converting the meandering creek to a straightened ditch, constructing roads and railroads, and replacing native vegetation with livestock forage had altered the meadow, disconnected it from the river, and increased water temperatures. It no longer provided viable habitat for salmon and steelhead.

The restoration project, initiated in 1999 and completed in 2003, involved a diverse group of partners, including Alta Cunha Ranches (the landowners), the Confederated Tribes of the Umatilla Indian Reservation, Oregon Department of Fish and Wildlife, the Grande Ronde Model Watershed and the Natural Resources Conservation Service. The project partners established conservation easements to permanently protect more than five miles of creeks and the river, and built a fence to keep livestock out. They reconstructed a meandering channel for Bear Creek, planted more than 50,000 native plants, and placed large woody debris to improve fish habitat. Two new wells, ten water troughs and 9,800 feet of pipe provide water for livestock on the upland portion of the site, eliminating the need for the cattle to access the creek and improving the utility

of the ranch.

In 2006, Eastern Oregon University professor Karen Antell began involving her biology students in monitoring improvements on the site. As vegetation grows and water quality improves over time, they should begin to see changes in the aquatic insect species composition. "This is a perfect project because students are learning how to follow specific sampling protocols and collect field data while providing a service to the watershed and the landowners," said Antell.



© Karen Antell

Eastern Oregon University students in Karen Antell's Principles of Biology class collect samples in Bear Creek at Longley Meadows to help monitor water quality as the restoration project progresses.

JOHN DAY

YELLOW ALERT

The John Day is one of Oregon's cleanest major rivers, but it suffers some water quality problems that need attention.

POLLUTANTS IN THE RIVER

TEMPERATURE

DISSOLVED OXYGEN

FECAL COLIFORM

pH

50 100 150 200 284

MILES OF POLLUTED RIVER

Each bar on this graph shows the number of miles in the John Day River that violate water quality standards for each pollutant, according to DEQ. Pollutants of greater concern for human health are in red.

LOCAL RESOURCES

Gilliam County Soil and Water Conservation District (Condon)
(541) 384-2672

Gilliam - East John Day Watershed Council (Condon)
(541) 384-2281 ext. 111

Grant Soil & Water Conservation District (John Day)
(541) 575-0135 ext. 3

Mid-John Day Watershed Council and Wheeler Soil & Water Conservation District (Fossil)
(541) 468-2990 www.oregonwatersheds.org/

Monument Soil & Water Conservation District (Monument)
(541) 934-2141

North Fork John Day Watershed Council (Monument)
(541) 934-2188
www.oregonwatersheds.org/



© Angela Stark

The River

Undammed along its entire 284-mile length, the John Day is the second longest free-flowing river in the United States. It drains the Strawberry Mountains, flows through the town of John Day, across sparsely populated parts of northeastern Oregon, through exceptionally scenic canyons, including the John Day Fossil Beds National Monument, and finally enters the Columbia River east of the Columbia Gorge. Major tributaries flowing into the mainstem are the North Fork, Middle Fork, and South Fork John Day rivers. The John Day provides excellent habitat for diverse fish species, including salmon, steelhead, bass, redband trout, bull trout, and cutthroat trout.

Historically, the John Day Basin was used by Native Americans, fur trappers and homesteaders. Gold mining fueled settlement starting in the late 1850s, and mining continued as a significant activity into the early 20th century. Today over 95% of the lands within the John Day Basin are zoned for agriculture and forestry. Cattle and sheep ranching, and hay and wheat farming are the primary agricultural uses, and water from the river is used for cropland irrigation on ranches in the basin. Timber production in the area has significantly decreased over the last fifteen years, and many communities have been hard hit by sawmill closures and the decline in forestry jobs. Tourism and recreation are growing industries. Parts of the John Day are designated as a National Wild and Scenic River, and it is an excellent destination for steelhead and bass fishing and whitewater rafting.



If You Have Leftovers: Have leftover paint, pesticides, prescription drugs, or other chemicals? Always dispose of them safely. Dumping chemicals or drugs down the drain or toilet is not a safe option. Throwing full bottles of potentially hazardous substances into the garbage is dangerous as well. To find out about pick-up days for leftover hazardous chemicals in communities around the state, call 1-800-732-9253.

A Closer Look

The John Day's water is fairly clean, but water quality is reduced in the summer when water temperatures are higher, there is less water in the river, and pollutants become more concentrated. Disturbance of streamside areas causes the greatest damage to the river. These areas are typically managed as part of agricultural operations, and many streamside areas have been altered from their natural state by water diversions, channelization, and vegetation changes. Runoff from improper agricultural and forestry practices reduces water quality because it carries sediments, fertilizers, and manure. Wastewater treatment plants, faulty septic systems, and urban runoff also impact the river. Historical mining also contributes to water quality problems.

Efforts have been taken to restore streamside areas and improve agricultural practices, which has improved water quality. A number of cooperative projects and landowner initiatives have improved the river's health, and existing efforts should be expanded upon. They include successful incentive programs using federal and state funds. The Oregon Department of Environmental Quality (DEQ) is currently developing a Total Maximum Daily Load (TMDL) plan for the John Day River.

Healing Historic Wounds

In Clear Creek, located in the headwaters of the North Fork John Day River, historic dredge mining activity had destroyed the floodplain and made the creek virtually uninhabitable for fish. The dredge mining left piles of river rock over ten feet high in some places and hundreds of feet wide at some points. The consolidated rock has been unmovable by creek flows for over a half century and it constricted about a mile of the channel and made it unnaturally straight. The rock piles were devoid of soil and have remained unvegetated for decades, leaving the creek unshaded. Water velocities were high in the constrained channel, flushing silt and gravels through the reach and making it nearly

uninhabitable for fish.

In 2006 the Grant Soil and Water Conservation District (SWCD) began a project to restore Clear Creek's floodplain. They are re-creating a functioning floodplain by progressively redistributing the historic dredge tailings back from the stream banks. This will allow the creek to overflow its banks when the water is high and deposit silt in the floodplain, creating soil so that vegetation can re-establish itself. Three John Deere 230 excavators, one Caterpillar D8 dozer and three dump trucks redistribute the tailings rock.

Phase I of the project was completed this year, which included redistribution and shaping of 168,640 cubic yards of rock along 0.75 miles of Clear Creek and Beaver Creek. Planned work for 2007 will relocate 93,000 cubic yards of dredge tailings and restore an additional 2,100 linear feet of stream-floodplain reconnection. When completed, the project will have moved an estimated 261,500 cubic yards of dredge tailings to restore just under 1.2 miles of stream.

Additional partners in the project include the Umatilla National Forest, the Confederated Tribes of the Umatilla Indian Reservation, the Oregon Watershed Enhancement Board, U.S. Fish and Wildlife Service and three private landowners.



© Grant Soil and Water Conservation District

Grant SWCD Hydrologist Ed Calame assesses a stretch of Clear Creek before beginning a project to reshape the rock piles left behind by historic mining operations.

MALHEUR

ORANGE ALERT

The Malheur River suffers from low levels of dissolved oxygen throughout, bacteria and legacy pesticide contamination in its lower reaches, and high summer water temperatures in the upper stretches.

POLLUTANTS IN THE RIVER

DISSOLVED OXYGEN

FECAL COLIFORM

CHLOROPHYLL

DDT

DIELDRIN

TEMPERATURE

50 100 150 190

MILES OF POLLUTED RIVER

Each bar on this graph shows the number of miles in the Malheur River that violate water quality standards for each pollutant, according to DEQ. Pollutants of greater concern for human health are in red.

LOCAL RESOURCES

Malheur Watershed Council (Ontario)
(541) 881-1417
www.oregonwatersheds.org/oregoncouncils/malheur

Malheur Soil and Water Conservation District (Ontario)
(541) 889-2588



© Watershed Professionals Network

The River

Malheur means "bad fortune" or "unhappiness" in French. The river was named in 1826 by fur trappers who lost a stash of furs they had cached along the river. It drains a high desert plateau region south of the Blue Mountains and is a tributary of the Snake River. Despite the similar name, the Malheur River does not flow from or to Malheur Lake, which is located in an enclosed basin to the southwest and is fed by small streams. Property in the Malheur River Basin is primarily publicly owned, with almost half managed by the Federal Bureau of Land Management, and only 35% of property in private ownership. Livestock and agricultural production and processing are the primary economic activities within the basin. Residential and commercial/industrial areas make up only 0.1% of the entire Malheur Basin. The climate is semi-arid, and the river is fed by winter and spring snowmelt and occasional intense thunderstorms in the summer.

A Closer Look

The most distressed stretch of the river in terms of water quality is the lower 67 miles, where it is impacted by agricultural runoff. Multiple dams and reservoirs significantly alter the river, at some points diverting all of its water for irrigation or storage. Stream flows below the reservoirs are now extremely low from fall through spring and unnaturally high during the summer irrigation season. The primary method of irrigation is flood irrigation through ditch



10 Ways to Love Your River

Landscape for Healthy Rivers: Instead of growing grass and exotic plants, consider landscaping with native plants, which require less water and chemicals. If you prefer grass, remember that a lawn needs only 1 1/2 inches of water each week (that's only as deep as a tuna can). Remember to water in the morning or the evening and not in the middle of the day when water evaporates quickly.

systems, which can be highly inefficient. Some instream water rights to protect water for fish exist. But because most of the river's water has been appropriated for other uses with earlier priority dates on their water rights, the instream water rights are not usually met. High water temperatures are likely caused by the arid desert climate and a lack of riparian vegetation. The Oregon Department of Environmental Quality is working with local partners to develop a clean water plan for the Malheur River.

Additionally, the lower portion of the Malheur Basin is designated as a Groundwater Management Area due to nitrate contamination.

Helping Farmers Help the River

Willow Creek, a tributary of the Malheur River, was placed on the DEQ 303(d) list in 2002 for violating water quality standards for chlorophyll and bacteria. Excessive chlorophyll can indicate that the water has high levels of nutrients, particularly phosphorous, which can be brought to the creek through irrigation-induced erosion. Runoff from irrigated pastures and animal feeding operations is also a likely source of bacteria contamination.

To address these problems, the Malheur Watershed Council helped 22 farmers convert from flood irrigation to sprinklers, eliminating nutrient-heavy irrigation return flow from more than 2,000 acres. They also worked with the Vale Oregon Irrigation District to bury 38,872 feet of pipe in farms and animal feedlots, eliminating animal access to surface water and preventing bacteria contamination. The irrigation pipes also reduce seepage and evaporation from open ditches, saving over 2,500 acre feet of water per year. Weekly water quality monitoring will enable the partners to document the positive impacts of the project.

All of the involved landowners, with assistance from the Lower Willow Creek Working Group, have made substantial personal and financial commitments to the project, demonstrating their desire to be good watershed stewards. This project's success is inspiring still more progress. The Lower

Willow Creek Working Group was recently awarded a \$1.9 million grant from Oregon Watershed Enhancement Board (OWEB) for comprehensive restoration of the watershed, and the irrigation district continues work on piping irrigation canals.



© Malheur Watershed Council

The Vale Oregon Irrigation District and the Malheur Watershed Council worked with local farmers to install 38,872 feet of irrigation pipe on local farms. The elimination of seepage and evaporation from open ditches resulted in a water savings of over 2,500 acre feet per year.

Owyhee

ORANGE ALERT

The Owyhee has some significant toxic pollution, including arsenic, mercury, bacteria and legacy pesticides, in addition to high temperatures.

POLLUTANTS IN THE RIVER

TEMPERATURE

ARSENIC

MERCURY

CHLOROPHYLL

FECAL COLIFORM

DDT

DIELDRIN

50 100 150 186

MILES OF POLLUTED RIVER

Each bar on this graph shows the number of miles in the Owyhee River that violate water quality standards for each pollutant, according to DEQ. Pollutants of greater concern for human health are in red.

LOCAL RESOURCES

Owyhee Watershed Council (Adrian)
(541) 372-5782
www.owyheewatershed.com

Malheur Soil & Water Conservation District (Ontario)
(541) 889-2588



© Jim Labbe

The River

The Owyhee River was named in the 1800s for three Hawaiian fur trappers. It drains 11,049 square miles in Nevada, Idaho, and Oregon. The Owyhee begins at its headwaters in Nevada, flows through Idaho, and crosses into southeastern Oregon, where it eventually flows into the Snake River. From the Oregon/Idaho border to the Owyhee Reservoir (formed by the Owyhee Dam), the river flows through deeply incised canyons in a remote, arid and almost unpopulated area. The Owyhee is classified as a National Wild and Scenic River. Recreational use is increasing despite the difficulty of access. The desert canyons of the Owyhee basin support an ecologically significant and unique diversity of wildlife and plant species, including large populations of California bighorn sheep and sage grouse. Currently, 49 species of fish inhabit the Owyhee subbasin, including 25 native and 11 sensitive species. Anadromous fish (such as salmon) have been extinct in the Owyhee since the Owyhee Dam was completed in 1933. The area downriver of the dam supports irrigated agriculture. Ranching is a primary economic activity in the basin.

A Closer Look

Water quality impairment on the Owyhee can be linked to historic and present land use activities as well as to the natural geology of the area. The arid climate, sudden storm events and cyclic drought cycles lead to natural erosion, which is compounded when cattle and



10 Ways to Love Your River

Plant a Tree: Participate in tree plantings in local neighborhoods, parks and riverbanks. Trees and shrubs always help filter water and clean the air. Along rivers, they also stabilize the banks with their roots, provide habitat for wildlife and provide much-needed shade to cool waters for fish.

wildlife concentrate in riparian areas and around seeps and springs. Improper management of livestock grazing and agricultural activities have impacted water quality and resulted in the removal of riparian vegetation. Historic mining operations still impact the river today through elevated concentrations of heavy metals, such as mercury, in sediments. The state has issued fish consumption advisories for the Owyhee Reservoir due to high concentrations of mercury. Legacy pesticides and their breakdown products have been detected at sites along the Owyhee River below irrigated farmland and in drain water return canals.

Landowners Leading the Way

Jesse and Pam White are cattle ranchers who took an interest in the way their cattle operation affects the environment. The Whites came to Oregon Watershed Enhancement Board (OWEB) in 2001 with \$69,000 of their own money to invest in a project to move their feedlot a mile away from the banks of the Owyhee River. The project would allow the Whites to restore the riverbank and reduce the risk of nitrates and bacteria entering the river. OWEB provided a \$91,000 grant. The Whites, with the assistance of the Owyhee Watershed Council, the Malheur Soil and Water Conservation District, state and federal agency personnel, and the Boy Scouts, relocated their feedlot and installed piping to deliver stockwater to troughs at the new location. The Whites then fenced off the riparian area along the river, including the old feedlot, and reseeded the land with native grasses and willow trees to filter sediment, utilize nutrients, control erosion, provide shade, and retain water in the soils. Revegetating the stream bank will not only improve water quality in the Owyhee River and help implement the Agricultural Water Quality Management Area Plan, but also restore fish and wildlife habitat. People like the Whites are leaders in their community, and by restoring their own land they demonstrate to their neighbors that successful ranching operations can contribute to good stewardship of the valuable natural resources in the Owyhee Basin.



© Owyhee Watershed Council

This riparian area was once the site of a feedlot. With assistance from numerous organizations and government agencies, Jesse and Pam White moved their feedlot away from the Owyhee River and restored the riverbank.

ROGUE

YELLOW ALERT

Aside from some problems with bacteria and high temperatures, the Rogue River is fairly clean.

POLLUTANTS IN THE RIVER

TEMPERATURE

FECAL COLIFORM

50 100 215

MILES OF POLLUTED RIVER

Each bar on this graph shows the number of miles in the Rogue River that violate water quality standards for each pollutant, according to DEQ. Pollutants of greater concern for human health are in red.

LOCAL RESOURCES

Curry County Soil and Water Conservation District (Gold Beach)
(541) 247-2755

Jackson Soil and Water Conservation District (Medford)
(541) 734-3143 Ext. 3
www.jswcd.org

Josephine Soil and Water Conservation District (Grants Pass)
(541) 474-6840

Lower Rogue Watershed Council (Gold Beach)
(541) 247-2755
www.currywatersheds.org

Middle Rogue Watershed Council (Grants Pass)
(541) 474-6799

Rogue Basin Coordinating Council (Central Point)
(541) 890-3107
www.restoretherogue.org

Upper Rogue Watershed Council (Shady Cove)
(541) 878-3710
www.upper-rogue.org



The River

The Rogue River's headwaters begin at Crater Lake in the Cascade Mountains, and the river runs through Grants Pass and numerous small towns before cutting through the Coast Range and reaching the Pacific Ocean at Gold Beach. It drains the relatively populated Medford-Ashland area with its orchards and irrigated agriculture. Mining and forestry are also significant economic sectors in the basin. The river provides habitat for Chinook and Coho salmon, steelhead, brown trout, cutthroat, golden trout, catfish and sturgeon. 84 miles of the Rogue is a designated National Wild and Scenic River, and its exciting class IV rapids are popular among white-water rafters; it is also heavily used by jet boats. Both are regulated, with a permit system in place for rafters. French fur trappers called this area the "Riviere aux Coquins," or Rogue River, after the Native Americans who lived along its shores.

A Closer Look

The Rogue is the cleanest river of its size in the state of Oregon. Even so, sections of the Rogue River violate standards for temperature and fecal coliform bacteria. Parts of the river have violated pH standards in the past, but in 2006 the pH was within acceptable levels. The upper Rogue watershed is largely undeveloped and has very good water quality. Other parts of the watershed are impacted by agriculture and urban uses. Agricultural practices in floodplain areas have led to over-allocation of water, increases in



10 Ways to Love Your River

Be A River Watchdog: Boaters and fishers are in a unique position to keep an eye on the river. If you see things that are wrong, from garbage to eroded banks to pollution from pipes, investigate the problem and notify someone who can help. If you spot a potential environmental threat on the river, contact the Oregon Department of Environmental Quality at 1-800-452-4011.

water temperature and the input of chemical and biological wastes to streams. Urban runoff and wastewater from the cities of Medford, Ashland and Grants Pass also contribute to the river's water quality problems. The Oregon Department of Environmental Quality is working with partners to develop a clean water plan for the Rogue River. All anadromous fish species in the Rogue are listed or being considered under the Endangered Species Act.

The Power of One

Landowner Joan Kostelnik was concerned about the erosion occurring along Cooksie Gulch, which runs through the middle of her property and directly into the Rogue River. She was also having a heck of a time managing the invasive blackberry growing along the edges of the creek. So she contacted the Middle Rogue Watershed Council, and they helped her develop a restoration plan and obtain a small grant from the Oregon Watershed Enhancement Board.

The restoration plan called for eradicating the blackberry, bioengineering to reduce erosion, and planting native grasses, trees and shrubs along the edges of the creek to provide shade and stabilize the streambanks. One year has passed since Joan began working on the project in early 2006, and she has used some creative techniques to make it successful. She hired local school youth to eradicate the blackberries (providing them with job skills and a few extra bucks). She used heavy black landscaping fabric to prevent re-growth of the blackberries, and through online research she discovered coconut fiber matting for erosion control. She worked with local nurseries and grass seed banks to identify native riparian grasses, trees and shrubs. And she even kept the birds from eating the native grass seeds by trying out the concept of "Fukuoka balls." She mixed the seeds with mud, rolled them into golf ball sized balls, and threw them into the area where she wanted the grass to grow. Amazingly, it has worked wonders!

The initial project is nearly complete, and the creek is well on its way to being restored to natural conditions. Through her own efforts, research, and

never say die spirit, Joan Kostelnik is proving that one person can make a difference to improve our rivers.



© Middle Rogue Watershed Council

Property owner Joan Kostelnik proudly displays some large blackberry roots she removed while restoring the creek on her land.

SNAKE

ORANGE ALERT

The Snake River is troubled by two major problems throughout its length in Oregon: toxic mercury and high water temperatures. The river also violates numerous other water quality standards according to the state of Idaho.

POLLUTANTS IN THE RIVER

TEMPERATURE

MERCURY

50 100 150 200 270

MILES OF POLLUTED RIVER

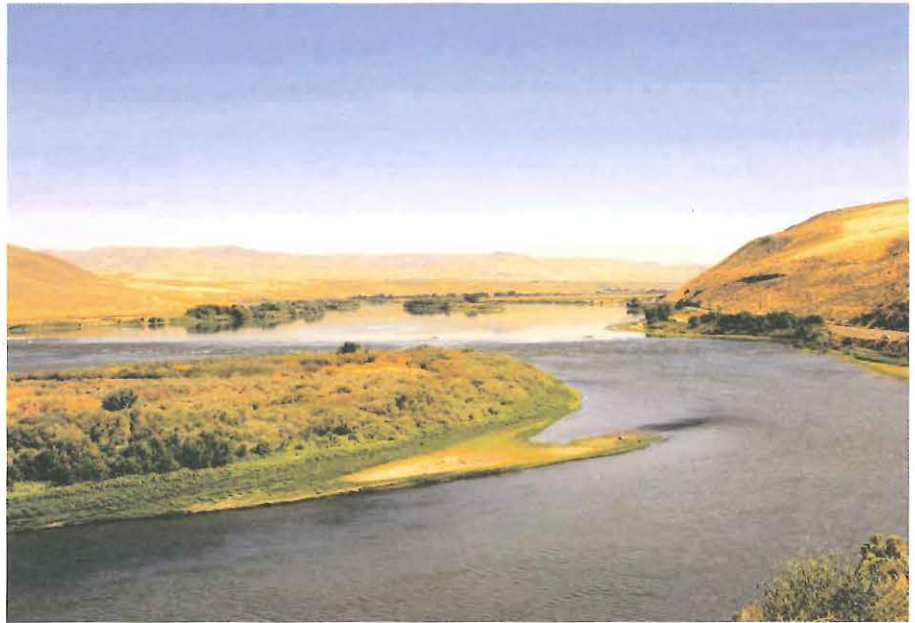
Each bar on this graph shows the number of miles in the Snake River that violate water quality standards for each pollutant, according to DEQ. Pollutants of greater concern for human health are in red.

LOCAL RESOURCES

Baker Valley Soil and Water Conservation District (Baker City)
(541) 523-7121 ext. 100

Malheur County Soil and Water Conservation District (Ontario)
(541) 889-2588

Wallowa Soil and Water Conservation District (Enterprise)
(541) 426-4588 ext. 3



The River

The Snake River is the 10th longest river system in the United States, extending over 1,000 miles from its headwaters in Yellowstone National Park, Wyoming, to its confluence with the Columbia River near Pasco, Washington. Oregon's Grande Ronde, Powder, Malheur and Owyhee rivers are tributaries of the Snake, and it is the Columbia River's largest tributary. About 270 miles of the river forms the border between Oregon and Idaho, where it flows through Hell's Canyon, one of the deepest gorges in the world. Hell's Canyon has been inhabited by Native Americans for the last 7,100 to 10,000 years, and the Nez Perce tribe maintains treaty rights to fish and other natural resources. Many competing demands are placed on the river, including agriculture irrigation, hydroelectric power generation, water-based recreation, and fish and wildlife habitat.

A Closer Look

Flow on the Snake River is heavily controlled by dams, distributing water volume more evenly throughout the year than would naturally occur. The dams impact water quality because pollutants accumulate in sediments behind dams (which can reduce pollutant concentrations downstream). They also impact water temperatures when slow moving water is warmed by the sun, and cool water gathers at the bottom of deep reservoirs.

The state has issued fish consumption advisories for the Snake River due to high concentrations of mercury in fish tissues. The



10 Ways to Love Your River

Consider Upgrading Your Boat To A Four-Stroke Engine: Two-stroke engines, commonly used in boats, are inefficient and cause unnecessary pollution. In addition to contributing to water pollution, operating a typical 50 horsepower two-stroke outboard engine for one hour causes air pollution equal to driving a new car over 8,500 miles.

primary sources of mercury are air deposition, legacy mining activities and natural geologic materials. Air deposition of mercury comes from cement plants, coal-fired power plants, and is blown in from places as far away as China. Reducing erosion can help control mercury that is transported to the river in sediment.

In addition to mercury and temperature, the state of Idaho lists the Hells Canyon portion of the Snake River, which borders Oregon, for bacteria, dissolved oxygen, nutrients, pH, sediment, DDT and dieldrin. In 2004, the two states developed a Total Maximum Daily Load (TMDL) for all these parameters except mercury. Practices in both states need to be managed in order for the river to achieve water quality standards.

Putting Nature to Work

In 2004, the Malheur County Soil and Water Conservation District partnered with landowners, local, county, state and federal organizations to create a 12.8-acre, 5-pond constructed wetland to filter the agricultural drain water from 850 acres of irrigated farm land. The five ponds were specially designed to filter sediment, nitrates, phosphates and bacteria from the agricultural drain water before returning it to the Malheur River. Monitoring has demonstrated that the constructed wetlands are effective at cleaning the water and will help achieve water quality targets in the Malheur and Snake rivers. In two years, the project treated an estimated 310 million gallons of water. In addition, wildlife such as migratory birds, quail, pheasants, mule deer and pelicans are making use of the new wetlands.

Malheur County landowners have been working for years to reduce the water quality impacts of agricultural drains. Due to the economic struggles today's farmers face and the limited availability of funding, only 5-10% of landowners in the county have been able to convert to more efficient sprinkler irrigation systems. While the cost of converting to a sprinkler system is about \$700-1,200 per acre, the cost of installing the constructed wetland was \$294

per acre, creating a more cost-effective solution. The success of this project led the Malheur Soil and Water Conservation District to plan five other constructed wetlands in the Snake and Malheur basins, which are in varying stages of completion today. The constructed wetlands are a new best management practice for water quality in Eastern Oregon.



© Malheur County Soil and Water Conservation District

When the Malheur County Soil and Water Conservation District constructed a wetland to improve water quality from agricultural drains, they found that it provided additional environmental benefits. Within weeks of its initial filling, pelicans began using the new wetland.

UMPQUA

YELLOW ALERT

Almost the entire length of the Umpqua River has high water temperatures and bacteria contamination.

POLLUTANTS IN THE RIVER

TEMPERATURE

FECAL COLIFORM

25 50 75 112

MILES OF POLLUTED RIVER

Each bar on this graph shows the number of miles in the Umpqua River that violate water quality standards for each pollutant, according to DEQ. Pollutants of greater concern for human health are in red.

LOCAL RESOURCES

Partnership for the Umpqua Rivers
(Roseburg)
(541) 673-5756
www.ubwc.org

Douglas Soil and Water Conservation District (Roseburg)
(541) 957-5061
www.douglasswcd.org



© Gary Sharp

The River

One of the principal rivers of the Oregon coast, the Umpqua drains an expansive network of valleys west of the Cascade Range and south of the Willamette Valley. It is one of only two Oregon rivers (the Rogue is the other one) that begin in the Cascades and cut through the Coast Range to the Pacific Ocean. The Umpqua Basin is a timber-producing area, and 90% of the basin is federal, state and private forestland. “Umpqua” is the native name for the country around the river and it became used as a word for both the river and local tribes. The river provides habitat for a number of species of anadromous fish, including coho salmon, fall and spring chinook salmon, summer and winter steelhead, and seagoing and resident cutthroat trout. A major tributary, the North Umpqua River, is world-famous for salmon fishing.

A Closer Look

Temperature and fecal coliform bacteria are the primary water quality problems on the Umpqua River. High stream temperatures typically occur during mid to late summer. The removal of streamside vegetation in some areas contributes to warmer temperatures. In addition, stream flow has been modified by straightening, diking, and constriction due to management and diversion structures. Studies by DEQ indicate that sources of fecal coliform bacteria in the Umpqua may include wildlife, livestock wastes, failing residential septic systems, wastewater treatment



10 Ways to Love Your River

Get To Know Your Watershed Council or Conservation District: There are 64 volunteer watershed councils in Oregon and 45 Soil and Water Conservation Districts. They provide technical assistance to landowners, and could use your help with stream restoration and education projects. Visit www.oregonwatersheds.org and www.oacd.org to find your local groups.

plant malfunctions, and stormwater runoff.

While the Umpqua's water quality is fairly good, its tributaries - the North and South Umpqua rivers, Elk Creek and Calapooya Creek - have more water quality problems. For example, the Umpqua Basin is home to the abandoned Formosa and Bonanza mines, which leach mercury and arsenic into tributary creeks and create fish-killing acidic waters. Additional pollution problems in the tributaries include sediment, phosphorous, chlorine, chlorophyll, weeds and algae, plus fecal coliform and temperature. The Department of Environmental Quality (DEQ) is currently developing a Total Maximum Daily Load (TMDL) plan to reduce pollution in the Umpqua Basin.

Water for Fish and Farms

In 2000, a diversion structure was removed from South Myrtle Creek, a tributary of the South Umpqua River, allowing passage of salmon and trout to a stream that had been blocked for nearly a century. The dam spanned the entire creek and was fourteen feet high in the summer, diverting water into a 2-1/2 mile irrigation ditch. It contributed to the creek's high stream temperatures and low flows.

The project was initiated by a landowner who contacted the Oregon Water Resources Department and recruited all the other landowners who used water from the diversion. The Umpqua Basin Watershed Council received funding for the project from numerous sources including DEQ, Oregon Watershed Enhancement Board, U.S. Fish & Wildlife Service and the Umpqua Fisheries Enhancement Derby. All the landowners contributed to the project, donating services and supplies. They worked with the watershed council to remove the dam, install a more efficient sprinkler system with individual pumps drawing from the stream instead of the ditch, and plant vegetation alongside the stream. The improved irrigation efficiency removes less water from the creek during the summer, which helps with flows and water temperatures.

The landowners discovered that by working

together and mobilizing available resources, they were able to restore their local creek, improve water quality and fish habitat, and continue to irrigate their lands.



© Partnership for the Umpqua Rivers

Mike Danielle, landowner of the site, stands proudly on the spot where a local irrigation dam had once blocked South Myrtle Creek.

WILLAMETTE

RED ALERT

The Willamette is a river in crisis. The river touches many Oregonians' lives and is worthy of renewed efforts to restore it.

POLLUTANTS IN THE RIVER



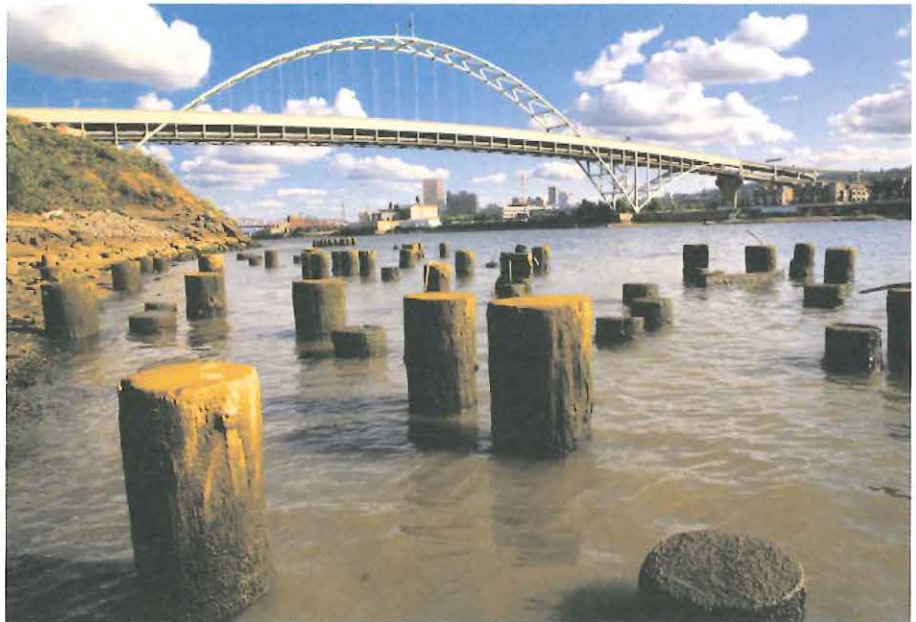
MILES OF POLLUTED RIVER

Each bar on this graph shows the number of miles in the Willamette River that violate water quality standards for each pollutant, according to DEQ. Pollutants of greater concern for human health are in red.

LOCAL RESOURCES

Willamette Riverkeeper (Portland)
(503) 223-6418
www.willamette-riverkeeper.org

Willamette Basin Explorer
www.willametteexplorer.info



© Vivian Johnson

The River

The Willamette River is the 13th largest river by volume in the United States. The Willamette Basin is more than 11,000 square miles in area, and it is home to more than 70% of all Oregonians. The Willamette begins in the Cascade Mountains, and flows through Eugene, Corvallis, and Salem, before ending in Portland at its confluence with the Columbia River. The river's flow is modified by some 13 dams on its tributaries, 11 of which produce hydropower. The Willamette Valley has some of the richest farmland in the nation and produces about half of Oregon's yearly farm sales. Population in the Willamette Basin is expected to double to nearly 4.0 million by 2050.

A Closer Look

Over the past 80 years the Willamette River has been polluted by industry, agriculture, and cities. In the late 1960s Governor Tom McCall led a cleanup effort that reduced industrial pollution. The river is significantly cleaner today than it was then, but it still has a long way to go. In 2006 American Rivers listed the Willamette as the third most endangered river in the United States. Industries continue to discharge wastes into the river under authorized permits. Attention is being drawn to permits that allow "mixing zones" - areas where pollution is allowed to exceed water quality standards until it mixes with the receiving stream and becomes diluted. A six-mile stretch of the river in the Portland harbor is now



10 Ways to Love Your River

Minimize Pavement: Pavement covers 50% to 75% of most urban areas, and it has a huge impact on rivers and streams. Everywhere you have any influence such as at home, at work, and in neighborhood parks, advocate for porous alternatives. Pervious asphalt and concrete are available, and bricks and pavers allow water to seep into the ground around them.

a federal Superfund site. This area is highly polluted with toxins, heavy metals and other substances, and the cleanup will likely take a decade.

Human uses have dramatically altered land in the Willamette Basin from its natural state, removing forests, grasslands, prairies, and wetlands, and converting them to agricultural and urban uses, including nearly four miles of road for every square mile of land in the basin. The stream channel has been altered and confined by Army Corps of Engineers projects designed to control flooding, which has destroyed fish and wildlife habitat. Spring chinook and steelhead, the Willamette's native salmonids, are listed as threatened under the federal Endangered Species Act. The state advises against eating any species of resident fish due to mercury and PCB contamination. Resident fish include most fish except salmon, lamprey and sturgeon, which leave the river for the ocean during much of their lifespan.

Runoff from agricultural land and urban areas contributes more to the Willamette's pollution than industrial sources. There is a need to reduce pollution from agricultural runoff throughout the basin, and a portion of the Southern Willamette Valley is designated as a Groundwater Management Area due to nitrate contamination. Urban runoff is a particular problem in the Portland area because of the city's Combined Sewer Overflow (CSO) system. Parts of the city have an old sewer system where water that enters storm drains is mixed into the same pipe with raw sewage as it all makes its way to the treatment plant. When it rains, there is too much water for the pipe to hold and it overflows, sending raw sewage into the Willamette. The City of Portland is addressing this problem by investing in a "big pipe" project so overflows will occur much less frequently. But the pipe will still have limited capacity, so the City must continue to promote downspout disconnects and other techniques that keep rainwater from entering the sewer system.

DEQ has recently completed a Total Maximum Daily Load (TMDL) assessment for temperature,

bacteria, and mercury in the Willamette Basin. The TMDL is an important step in the implementation of the Clean Water Act because it codifies how much pollution is too much for the river, and where the pollutants are coming from. The TMDL does not prescribe a specific plan for cleaning up the river. Instead, it includes general ideas and requires local government agencies to develop implementation plans by next year. The DEQ estimates it will take 20 years before the Willamette meets water quality standards for bacteria, 20 to 50 years to reduce instream temperatures to make them cold enough for endangered salmon, and 50 to 100 years to reduce mercury to low enough levels that resident fish are no longer hazardous to eat.

Continued on page 27



Greener Cities for Cleaner Rivers

Continued from page 26.

The Willamette River is more severely impacted by urban stormwater runoff than any other Oregon river because so much of the land in its basin is urbanized. When rainwater hits impervious surfaces such as streets, sidewalks, and roofs, it flows overland instead of soaking into the ground as it would in a natural area. Most stormwater systems were not designed with water quality in mind. They send untreated stormwater directly into streams or pump it underground at high volume and velocity, carrying all the pollutants picked up along the way. Common stormwater pollutants include eroded soil, oil, metals, bacteria, pesticides and fertilizers. Urban runoff can change stream flows, increase flooding, scour out stream banks and channels, and destroy fish habitat.

Today, builders are using new techniques to reduce impervious surface and filter stormwater before it ends up in our rivers. These “low impact development” techniques use soil and plants to filter and slow down rainwater, creating an urban system that functions more like a natural one. You can now find examples of pervious pavement, ecoroofs, raingardens, vegetated swales, and stormwater planters in cities around the state. They can be used in commercial and residential developments and on streets to change stormwater from a problem into an amenity and create attractive landscapes. Rainwater can also be harvested in rain barrels or cisterns and used for irrigation. Many of Oregon's local governments are leading the way in promoting low impact development and river-friendly cities. The Oregon Environmental Council is working to build upon these efforts to make sustainable stormwater management standard practice in cities and towns around the state.



Pervious Pavement (Pringle Creek Community, Salem)

Water filters through the pervious asphalt installed on all the roads in Salem's Pringle Creek Community, reducing the streets' impact on the nearby creek.



Green Roof (SeSequential Biofuels, Eugene)

The SeSequential Biofuels retail station, located just off Interstate 5 in Eugene, was built with a “living roof” containing thousands of plants and five inches of soil to help to control rainwater runoff and cool the convenience store during the summer.



Stormwater Curb Extension (NE Siskiyou St, Portland)

Street runoff flows into these curb extensions on NE Siskiyou Street in Portland. They are landscaped with plants to filter pollutants, improve water quality, reduce stormwater flow, and look great.

© Pringle Creek Community

© SeSequential Biofuels

© Environmental Services, City of Portland

HELPING OUR RIVERS

Clean, healthy rivers are necessary for our survival. Rivers provide water for drinking and irrigation, help sustain our economy, provide essential habitat for fish and wildlife, and offer opportunities for recreation. Healthy rivers are an integral part of the environment that supports human life.

This report provides tips on how you can help our rivers. The collective impact of our individual actions can make a huge difference. But it is imperative that we also have strong policies in place to protect our rivers, that private and governmental institutions work together effectively to improve watershed health, and that we use our resources wisely.

State agencies that work to protect and restore our rivers include the Oregon Watershed Enhancement Board (OWEB), the Oregon Department of Environmental Quality (DEQ), the Oregon Department of Agriculture (ODA), the Oregon Department of Fish and Wildlife, the Oregon Department of State Lands, and the Oregon Department of Forestry. Soil and water conservation districts, watershed councils, and independent nonprofit organizations such as riverkeepers groups, "friends of the creek" groups, and the Oregon Environmental Council help clean up our rivers as well.

The Federal Clean Water Act, which requires DEQ to track water quality, develop Total Maximum Daily Loads (TMDLs), and issue stormwater permits for cities, and Oregon's Senate Bill 1010, which requires the ODA to develop Water Quality Agricultural Management Plans, are key tools in the effort to protect and clean up our rivers. Citizens need to get involved in these efforts to make sure these agencies are doing their job well, and that they are receiving adequate funding.

Federal and state funding for natural resource protection agencies has been declining steadily. DEQ does not currently have adequate staffing levels to issue water quality permits, update standards based on current scientific data, or monitor our rivers for water quality problems. DEQ's budget is a very small

portion of the entire state budget; making increases to bring the agency's budget back up to at least 2003 levels would make a significant difference for Oregon's rivers. Watershed councils and soil and water conservation districts, which bring local communities together to protect and restore watersheds, are critical leaders in efforts to clean up Oregon's rivers. They rely on funding from the state of Oregon and need adequate support for their important work to continue.

In addition to the information included in this report, many chemicals are entering our rivers that are not currently being tracked for the 303(d) list. These emerging concerns include several pesticides, pharmaceutical products, endocrine disruptors, and toxic flame retardants. We are releasing thousands of chemicals into the environment every day with very little knowledge of their impacts on human health or aquatic ecosystems. We must do a much better job of monitoring water quality and preventing pollution from entering our rivers in the first place.

This report focuses on Oregon's longest ten rivers, all of which need help. Even those with fewer pollution problems still violate Clean Water Act standards. All Oregon's rivers need people, businesses, and governments to care about them and take steps to make them clean and healthy for people and fish.



REFERENCES

- Bastasch, R., 1998. **Waters of Oregon: A Source Book on Oregon's Water and Water Management**. Oregon State University Press
- Deschutes Coordinating Group, 2004. Deschutes Subbasin Plan. Northwest Power and Conservation Council.
- Deschutes Water Alliance, 2006. Growth, Urbanization And Land Use Change: Impacts On Agriculture And Irrigation Districts In Central Oregon.
- Lower Columbia River Estuary Partnership, 2005 Report on the Estuary: Assessing Trends in the Lower Columbia River.
<<http://www.lcrep.org/pdfs/Estuary%20Report%202005%20Final.pdf>>
- Malheur Watershed Council and Burns Paiute Tribe, 2004. Malheur River Subbasin Assessment and Management Plan for Fish and Wildlife Mitigation.
- Northwest Power and Conservation Council, 2004. Mainstem Lower Columbia River and Columbia River Estuary Subbasin Plan.
- Nowak, M. C., 2004. Grande Ronde Subbasin Plan. Northwest Power and Conservation Council.
- Oregon Department of Agriculture, 2001. Malheur River Basin Agricultural Water Quality Management Area Plan.
- Oregon Department of Environmental Quality, 2006. Assessment Methodology for Oregon's 2004/2006 Integrated Report on Water Quality Status.
- Oregon Department of Environmental Quality, 2006. Oregon's 2004/2006 Integrated Report Assessment Database.
<<http://www.deq.state.or.us/wq/assessment/rpt0406/search.asp>>
- Oregon Department of Human Services, 2002. Technical Bulletin: Arsenic Health Effects Information.
<<http://www.oregon.gov/DHS/ph/dwp/docs/fact/arsenic.pdf>>
- Oregon Department of Human Services, Fish Advisories: Consumption Guidelines
<http://www.oregon.gov/DHS/ph/envtox/fishconsumption.shtml>
- Pearson, A., 2006. Public views sought on Milltown Dam revival. **News-Review**. August 16. Roseburg, OR.
- Perkins, S., 2004. Paved Paradise: Impervious surfaces affect a region's hydrology, ecosystems - even its climate. **Science News Online**. September 4.
- Rogue Basin Coordinating Council, 2006. Watershed Health Factors Assessment.
- Shoshone-Paiute Tribes and Owyhee Watershed Council. 2004. Owyhee Subbasin Plan. Northwest Power and Conservation Council.
- Turner, D. et al., 2006. Draft Umpqua Total Maximum Daily Load (TMDL). Oregon Department of Environmental Quality.
- United States Environmental Protection Agency. Columbia River Basin Fish Contaminant Survey 1996-1998.
- United States Environmental Protection Agency. Consumer Factsheet on: PENTACHLOROPHENOL
<http://www.epa.gov/safewater/contaminants/dw_contamfs/pentachl.html>
- Weiss, L. and Wright, S. 2001. Mercury: On the Road to Zero. Oregon Environmental Council.
- Welch, C. 2006. Columbia River toxins moving up food chain. **The Seattle Times**, July 10.
- Willamette Riverkeeper, The River. <<http://willamette-riverkeeper.org/river1.htm>>
- Willamette Restoration Initiative, 2004. Draft Willamette Subbasin Plan. Northwest Power and Conservation Council.
- Willamette Riverkeeper, Water Quality Monitoring Handbook <<http://willamette-riverkeeper.org/programs/WQvol/documents/WQManual.pdf>>



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