

**OREGON  
ENVIRONMENTAL QUALITY  
COMMISSION MEETING  
MATERIALS 02/26/2009**



**State of Oregon  
Department of  
Environmental  
Quality**

This file is digitized in **color** using Optical Character Recognition (OCR) in a standard PDF format.

Standard PDF Creates PDF files to be printed to desktop printers or digital copiers, published on a CD, or sent to client as publishing proof. This set of options uses compression and downsampling to keep the file size down. However, it also embeds subsets of all (allowed) fonts used in the file, converts all colors to sRGB, and prints to a medium resolution. Window font subsets are not embedded by default. PDF files created with this settings file can be opened in Acrobat and Reader versions 6.0 and later.

### Oregon Environmental Quality Commission

Public Forum  
Request to Present Information

Agenda Item \_\_\_\_ or  
Topic of Presentation Public Comment - Wapato Lake

Brian Wegener  
Name (Please print clearly)

12360 SW Main St Suite 100  
Address 503-620-7507

Tualatin Riverkeepers brian@tualatinriverkeepers.org 503-620-7507  
Affiliation Email (optional) Phone (optional)

### Oregon Environmental Quality Commission

Public Forum  
Request to Present Information

Agenda Item 11.30 or  
Topic of Presentation Public Forum

Sharon Genasci  
Name (Please print clearly)

2217 NW Johnson PDX 97210  
Address

Chair, NWSA Health & Environ Utter 503-229-0525  
Affiliation Email (optional) Phone (optional)

Steph - copy  
7. material  
EQC white folder  
2/26

State of Oregon  
Department of Environmental Quality

---

Memorandum

Date: February 23, 2009  
To: Joni Hammond, Office of the Director  
From: Keith Andersen, Western Region, Eugene *KJA*  
Subject: Mattis Complaint Regarding Forest Practices

The Director's Office received an email from Ms. Tara Mattis on January 27, 2009. Ms. Mattis is concerned about how the logging road construction will impact the water quality in Wolf Creek. Ms. Mattis asked that we forward her concerns to the EQC for their review. As background, I have provided below a brief history of DEQ's investigation of Mattis's original complaint, which was provided verbally to Dick Pedersen at the June 2008 Medford EQC Town Hall meeting, and in writing by letter dated July 9, 2008.

As you recall, the majority of the June 2008 Medford EQC Town Hall was devoted to folks with concerns about the Liquefied Natural Gas (LNG) project and the associated pipeline from Coos Bay to Malin. Ms. Mattis raised an issue relating to the environmental impact of road construction associated with a timber sale near Wolf Creek.

DEQ discussed Ms. Mattis' concerns with Bureau of Land Management (BLM) staff and Oregon Department of Forestry (ODF) staff, and responded with the attached letter. We noted in our letter that BLM had received and evaluated, under their process, the concerns that the Mattis' raised with us, and that the BLM had concluded that adequate water quality protections were in place to address the Mattis' environmental concerns. ODF also reviewed the right of way and planning documents and concluded that the proposal met Forest Practices Act requirements.

The new information that Ms. Mattis asked to be conveyed to the EQC raises the same concerns regarding construction in geologically and ecologically sensitive areas, but added the additional concern relating to construction associated with the LNG pipeline project.

Our conclusion continues to be that we rely on our state and federal partners to make appropriate decisions regarding the environmental viability of their projects, while reserving the ability to take enforcement actions if projects result in environmental violations that are not addressed in other state or federal rules or regulations.



## Marshall Day

---

**From:** Matt and Tara Mattis [upthecreek@terragon.com]  
**Sent:** Wednesday, January 28, 2009 9:53 PM  
**To:** Marshall Day  
**Subject:** Report to RBCC  
**Attachments:** Special Report to RBCC for Jan 27 08 mtg.doc

Hello, Day,

I did finally make a more succinct version of the data to be distributed or read at yesterday's RBCC meeting. I have attached it here to make the file complete. This is my last submission to DEQ. Thank you for helping me complete my task.

Sincerely,

tara

Tara Lowrance-Mattis  
Up the Creek Ranch  
621 Speaker Road  
Wolf Creek, OR 96497  
(541) 866-2464  
[upthecreek@terragon.com](mailto:upthecreek@terragon.com)

## ***Special Report to the RBCC from a member of the public:***

Oregon DEQ and BLM had a 2003 Revised Memoranda of Agreement to meet state and federal water quality rules that expired on Dec. 31, 2008. This MOA was required to satisfy pollution control regs, including the maintenance surface and ground waters' beneficial uses; as well as forming the framework for cooperative actions to support the recovery of salmonids and their habitat. Under Mutual Coordination and Responsibilities, watershed councils and the public were recognized as having critical roles in aquatic habitat restoration and recovery. BLM undertook to work together and support the councils in this MOA. Unfortunately, DEQ and BLM failed to mention this role to the watershed councils. The councils should have been participants in BLM processes all along...

There were many actions regarding watershed and habitat restoration that BLM (and DEQ) promised to make in this agreement. Most of them were never implemented, although BLM did make some quicky Water Quality Restoration Plans (again, most of these never were followed through in agency planning and on-the-ground activities). The WQRPs all cited the Aquatic Conservation Strategy of the NW Forest Plan as providing for the basic protection of watersheds and aquatic habitat on BLM lands. Now that the NW Forest Plan has been discarded by BLM, all of their WQRPs are now effectively invalid.

The 2003 MOA also established a process and time line for review of ongoing watershed restoration and compliance priorities which included a method for raising issues within the bounds of the agreement. The review should have occurred during 2007. Although it's not apparent that the review occurred any more than the other restoration provisions, ODEQ is currently working on the next revision of the MOA itself.

This revision process has a time line which requires *immediate attention* from the watershed councils throughout the State if they wish to be included or considered in this vitally important document. Director Petersen should be contacted ASAP, if for no other reason than to allow the councils time to consider their role in water quality management-- has it changed from inception of the Oregon Plan for Salmon Recovery? Aren't the watershed councils the primary mechanism for private landowners to participate in cooperative actions that support the maintenance and restoration of streamsheds and aquatic habitat in Oregon?

Last month (12/18/2008), BLM issued its latest revision of their 6840 Manual for Management of Special Status Species, which describes how the Bureau should manage for sensitive species, including fish. This manual directs BLM to retain habitat essential for conservation of any listed species, and cooperate with State and Local agencies, including participating on the watershed councils to help resolve water resource issues. The portions describing the role of Watershed Councils are in the following subsections:

- 6840 .06 Policy .1 Administration of the ESA
  - A. Section 2 (Findings, purposes, and policy)
    - 2. State and Local Agency Cooperation
      - a. Participate on watershed councils
  - D. Section 6 (Cooperation with States)

Between the absence of a water quality MOA, the invalidation of the Water Quality Restoration Plans, and the Governor's non-compliance finding on the WOPR, the State of Oregon should have adequate grounds to halt BLM ground-disturbing activities under the new RMP...but only if it really wants to. Relevant to challenging the validity of the WOPR under ESA: 6840 .06.1 E. 5(1) & (2) F. Section 7(a)(2) (Consultation)

The Rogue Basin Watershed Councils have an opportunity under this manual and the ESA to improve coordination and cooperation between BLM and non-federal landowners. Perhaps engagement with ESA processes and the water quality MOA can help revive the councils, thus empowering them to build upon their previous and current work to improve or restore aquatic habitat in the Rogue River watershed.

Certainly, the upland forest health element of the anadromous fish marine nutrient pump cycle is vastly under-reported in Oregon, and it needs to be brought forward into the whole ecosystem management discussion if the SW Oregon ecosystem is to be even partially retained during the global warming process.

The SONCC Coho ESU is officially administered out of California. There are no habitat descriptions or recovery plans for this ESU posted on any Oregon internet sites. The NOAA/NMFS Branch Chief in Arcata:

Irma Lagomarsino @ (707) 825-5160. The Roseburg Branch Chief, Ken Thippen, told me they don't really liaise with the CA region, they just use guidelines from the other ESUs in Oregon...

The concern about that approach involves the special soils and hydrology characteristics of the Siskiyou Province and Klamath Mts. There are characteristics here that create more areas of sensitive soils and contain more complex hydrologic systems than in many other areas with ESU populations. Without a snowpack or a fog belt to recharge the system, a sub-watershed like Wolf Creek is more sensitive to loss of canopy, increased run-off rates during the wet season, sedimentation of redds etc.

The Dept. of Interior/BLM stated during the WOPR process that sensitive soils were already withdrawn from the timber base in O&C lands. This is far from the truth: thousands of square miles within the Rogue Basin O&C lands have not been properly inventoried for sensitive soils or impermeability due to roads.

The Wolf Creek issue of defining riparian headwalls and proximity of ESU fish species is key to non-timber interests gaining some control over what shouldn't be logged. BLM has existing plans to build roads across or into headwalls to log what residual old-growth stands remain in this watershed. By denying that these headwalls exist, they effectively skirt the issue of consultation or maintaining ESU Coho and Chinook EFH in their environmental documents-- subjecting important riparian habitat and stream headwaters to 'Regeneration' (clear-cut) harvest. It would be the death knell for Coho in Wolf Creek sub-watershed.

Those watersheds with a Watershed Council holding an institutional role (like an Adaptive Management Area) or that have activist engagement with an agency (like BLM Ashland RA and KSWild) are definitely less likely to see damaging project and timber sale proposals from BLM. There really isn't any other mechanism for non-public and private land owners to work together on watershed and aquatic habitat restoration other than the councils. Likewise for resolution of water quality issues. It sure would help the less-populated watersheds to engage that institutional role with BLM and other agencies.

**The Rogue basin would really stand to benefit if we could even get a handle on the definition of EFH and identification of sensitive soils to be withdrawn from the timber harvest base. Both can be done within the current framework of the law.**

These acronyms may be unfamiliar to some people:

**MOA, MOU** -- Both are a legal instruments making a mutual agreement between official bodies like States, Federal or local agencies, etc. so as to delineate responsibilities and determine how differing sets of rules will adapt to each other for operations where multiple jurisdictions occur. MOA is a Memoranda of Agreement, MOU is Memoranda of Understanding. Many, including myself, inadvertently interpose one acronym with the other. In this case, both refer to the attached MOA with BLM.

**IM** = Information Memoranda. This is a Federal agency designation for a legal notification of a given directive.

**ESU** = Evolutionarily Significant Unit. This is how NMFS and biologists differentiate particularly endangered salmonid populations from all other populations of the same species under the Endangered Species Act (ESA). Oregon Coast Coho is a different ESU from the Southern Oregon/Northern California Coast (SONCC) Coho.

**EFH** = Essential Fish Habitat. This is how NMFS describes the habitat in need of protection to maintain an ESA-listed fish species, and is described for each ESA-protected ESU.

**WOPR & PRMP** = Western Oregon Plan Revision and Proposed Resource Management Plan. These are one in the same, the recently approved BLM land management plan for their lands in the State of Oregon. RMP = Resource Management Plan.

**ODF** = Oregon Department of Forestry

January 26, 2009

Researched and written by T. Mattis, resident of the Grave Creek Watershed and formerly active with Rogue River basin council work.

## Marshall Day

---

**From:** Marshall Day  
**Sent:** Tuesday, January 27, 2009 4:15 PM  
**To:** 'Matt and Tara Mattis'  
**Subject:** RE: Communication to watershed councils and local OWEB

Tara,

Thanks for the message and attachments. I will be happy to forward this on to Dick and the EQC. I will also send it to our regional staff who have been included in the information you've shared and concerns you've expressed in the past.

I hope you are doing well. Thanks for your continued efforts.

Thank you,  
Day

~~~~~  
Day Marshall  
Office of the Director  
(503) 229-6725  
Office hours: Tues and Thurs 11 am - 5 pm (but I will be checking email and vmail on other days)

---

**From:** Matt and Tara Mattis [mailto:upthecreek@terragon.com]  
**Sent:** Monday, January 26, 2009 7:56 PM  
**To:** Marshall Day  
**Subject:** Fw: Communication to watershed councils and local OWEB

Hello, Day.

Would you please forward this message to Director Petersen, the Environmental Quality Commission members, and whoever is interested? It was originally sent to Mark Grenbemer, the OWEB Representative for SW Oregon, and the Rogue Basin Coordinating Council. The latter is a regional body made up of member Watershed Councils.

This message relates to (is a continuation of) the Issue Paper I presented to the EQ Commission in Medford last June. You will recognize the documents sent to the Governor last Dec., I cc'd them for you to forward to the boss.

While the issue described involves logging, I'm sure you will readily see how the same soils and hydrology concerns will surface with any route proposed for the LNG Pipeline. The proposed SW Oregon route goes through the most sensitive forestland soils in the state!

These acronyms may be unfamiliar to some people:

**MOA, MOU** -- Both are a legal instruments making a mutual agreement between official bodies like States, Federal or local agencies, etc. so as to delineate responsibilities and determine how differing sets of rules will adapt to each other for operations where multiple jurisdictions occur. MOA is a Memoranda of Agreement, MOU is Memoranda of Understanding. Many, including myself, inadvertently interpose one acronym with the other. In this case, both refer to the attached MOA with BLM.

**IM** = Information Memoranda. This is a Federal agency designation for a legal notification of a given directive.

**ESU** = Evolutionarily Significant Unit. This is how NMFS and biologists differentiate particularly endangered salmonid populations from all other populations of the same species under the Endangered Species Act (ESA). Oregon Coast Coho is a different ESU from the Southern Oregon/Northern California Coast (SONCC) Coho.

EFH = Essential Fish Habitat. This is how NMFS describes the habitat in need of protection to maintain an ESA-listed fish species, and is described for each ESA-protected ESU.

WOPR & PRMP = Western Oregon Plan Revision and Proposed Resource Management Plan. These are one in the same, the recently approved BLM land management plan for their lands in the State of Oregon. RMP =Resource Management Plan.

ODF = Oregon Department of Forestry

(I should also note that BLM put the definition of headwall back onto Ore. Dept. of Forestry, who has refused to answer my headwall question with a written response. The phone call from Director Brown's Assistant assured me there were no water or soil stability problems with the Perpetua ROW project. Period. Last Word. I will request that they send someone out to Wolf Creek to show us what they do call a headwall, but don't expect a response.

The question about headwalls in Wolf Creek was a correspondence sent to ODF and Susan Morgan that I referred to in the attached letter to Kulongoski and case study. A headwall is a special land form occurring at the headwaters of some streams, common in SW Oregon. This hydrologically active land form often has unstable soil characteristics, and is considered part of EFH. It is identified as a type of riparian reserve under the NW Forest Plan.)

Thank you very much for your assistance in distributing this information to the relevant parties.

Tara Lowrance-Mattis

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

**From:** Matt and Tara Mattis

**To:** Mark Grenbemer

**Cc:** Rose Marie Davis ; MRWC

**Sent:** Monday, January 26, 2009 4:24 PM

Thank you Mark, for returning my call.

I have asked Rose Marie to pass the information on to others. Perhaps you could too, other watersheds may benefit from it. (If you know Engineering Geologist Bill Hicks, you can ask him if I am wrong about the local soil stability and stream headwalls. I paid him as consultant to come out and evaluate the road construction project that initiated my protest.)

Here are the most important details of my research:

**The modified ODEQ-BLM MOA** that expired on Dec. 31, 2008 is attached. According to the Medford Regional Office, ODEQ is currently working on the next revision. This is a timeline which requires *immediate attention* from the watershed councils throughout the State if they wish to be included or considered in this vitally important document. Director Petersen should be contacted ASAP, if for no other reason than to allow the councils time to consider their role in water quality management-- has it changed from inception of the Oregon Plan for Salmon Recovery?

The only direct reference to watershed councils in the last MOA is under MUTUAL COORDINATION AND RESPONSIBILITIES. Otherwise, their relationship to BLM is implied throughout insofar as the councils are state bodies recognized as having a "critical" role in aquatic habitat and recovery, as they do under the plan for salmon recovery. BLM undertook to work together and support the councils in this MOA.

There was supposed to be a review during the fifth year (2007) of the agreement and progress report generated. The councils should have been participating all along with many of the actions BLM promised to



perform in the MOA. And DEQ should have been proactive and let the councils know! Maybe they did up north, but to my knowledge, SW Oregon watershed councils were unaware of their role.

**Linking** the Water Quality MOA to the BLM 6840 guidance manual is the Water Quality Restoration Plan and its relevance to maintaining and restoring habitat for ESA-listed species. Basic Water Quality Plans were created by BLM for most watersheds, but they were never implemented in most areas (piece-meal, if at all). Certainly not in the Grave Creek Watershed. All BLM water quality plans rely on the NW Forest Plan Aquatic Conservation Strategy to provide the necessary resource protection to enable species and habitat recovery and they incorporate it by reference. Now the ACS is out the window with the NWFP, all BLM's water quality plans are without substance.

Between the absence of a water quality MOA, the invalidation of the Water Quality Plans, and the Governor's non-compliance finding on the WOPR, the State should have adequate grounds to halt BLM ground-disturbing activities under the new RMP...but only if it really wants to.

The PRMP (WOPR) decision can't just be rescinded. However, should the State of Oregon challenge it in court, the new Secretary of Interior need only refuse to defend it; depending on the judge, it should be overturned on ESA consultation and water-quality grounds. BLM figured that it would start activities (timber sales) under the new RMP, and then let a legal challenge test the consultation issue after the damage is done. Naturally, it would be better to have issued a challenge to the WOPR *before* a watershed is damaged!

Last month (12/18/2008), BLM issued its latest revision of their 6840 Manual for Management of Special Status Species which describes now the Bureau should manage for sensitive species. I have attached the IM that came with the revision, there is a direction for each State Director to revise their current practice to this guidance within one year.

**The 6840 Manual** is also attached. The portions describing the role of Watershed Councils are in the following subsections:

Relevant to the ODEQ-BLM MOA Re: Clean Water Act, Safe Drinking Water Act, State water quality standards;  
6840 .06 Policy .1 Administration of the ESA  
    A. Section 2 (Findings, purposes, and policy)  
        2. State and Local Agency Cooperation  
            a. Participate on watershed councils  
    D. Section 6 (Cooperation with States)

Relevant to challenging the validity of the WOPR under the ESA :  
6840 .06.1 E. 5(1) & (2) F. Section 7 (a)(2) (Consultation)

**The SONCC Coho ESU** is officially administered out of California. There are no habitat descriptions or recovery plans for this ESU posted on any Oregon internet sites. The NOAA/NMFS Branch Chief in Arcata : Irma Lagomarsino @ (707) 825-5160. The Roseburg Branch Chief, Ken Thippen, told me they don't really liaise with the Cal. region, they just use guidelines for other ESU in Oregon...

The concern about that approach involves the special soils and hydrology characteristics of the Siskiyou Province and Klamath Mts. There are characteristics here that create more areas of sensitive soils and contain more complex hydrologic systems than in many other areas with ESU populations. Without a snowpack or a fog belt to recharge the system, a watershed like Wolf Creek is more sensitive to loss of canopy, increased run-off rates during the wet season, sedimentation of redds etc.

The Dept. of Interior/BLM stated in the WOPR and their response to the Governor's Consistency Review that sensitive soils were already withdrawn from the timber base in O&C lands. This is far from the truth. The attached Wolf Creek 'case study' illustrates to some degree how EFH, riparian areas, and sensitive soils have not been withdrawn from the harvest base-- thus are at considerable risk under the new RMP.

The Wolf Creek issue of defining riparian headwalls and proximity of ESU fish species is key to non-timber interests gaining some control over what shouldn't be logged. BLM has existing plans to build roads across or into headwalls to log what residual old-growth stands remain in this watershed. By denying that these

headwalls exist, they effectively skirt the issue of consultation or maintaining ESU Coho and Chinook EFH in their environmental documents-- subjecting important habitat and stream headwaters to 'Regeneration' (clear-cut) harvest. It would be the death knell for Coho in Wolf Creek watershed.

**Regarding the riparian headwalls and headwall swales:** They are EFH under the SONCC Coho Management Guidelines published by NMFS in California. BLM and ODF have undertaken to deny the existence of these features where they might interfere with timber harvest and road construction activities in the Wolf Creek sub-watershed.

I have vigorously appealed that denial to the highest levels of agency management in the state. Not one agency would help Board Tree Creek, no one would even come out and look at the obviously slumping slopes along the fault scarf crossing it. Wolf Creek hasn't got much of a chance without some organization to lend weight to its residents and newly-re-established coho population. Because BLM said they had properly described and analyzed their project, every other agency agreed with them, sight unseen.

As it stands now, a sub-watershed like Wolf Creek really has no agency looking out for it. To my mind, that should be one of the roles of a watershed council, since a private citizen is very easy for BLM and ODF to dismiss. An organization like a council could lend a voice to Wolf Creek that is less easy to ignore. After all the talk about how Oregon's streams are protected by a host of laws and agencies and environmental interests, it is a great shame that a salmon and steelhead-bearing watershed (and the security of its human inhabitants) can be so easily brushed off with a couple of lies within the hands-off convention that governs forest management in Oregon.

While I am deeply dismayed and many in this community are disappointed, none of us are surprised that the agencies and organizations let this watershed down. That has been the pattern for most of rural Josephine County, especially Wolf Creek and Sunny Valley for decades before I got here. We feel can't get a fair hearing from ODF (or even OWEB, really) because the company that wants to harvest this old-growth timber badly and already cut the road through the Board Tree headwall is owned by a long-standing member of both agency's Boards (DiFillipi). This is the usual experience out here, that is why it is so hard to recruit people for watershed councils and RACs in outlying areas like Wolf Creek.

Thanks for taking a look at my info. The Wolf Creek 'Case Study' and cover letter to Kulongoski are a little dramatic because they are part of a political appeal. I have tarred all of Medford District with the same brush by necessity: under Kempthorne, BLM staff have all signed a type of loyalty oath to the agency, and are not allowed to argue their managers' directives in public. Employees that didn't toe the agency line were subjected to invasive investigation of their personal lives. This happened to the Ashland R.A. Hydrologist, Dave Squyres, who resigned over it. (My husband and I are ex-employees of Medford District.) Denial of the existence of the Board Tree Creek headwall came from BLM's Oregon State Office down the chain.

The Rogue basin would really stand to benefit if we could even get a handle on the definition of EFH and identification of sensitive soils to be withdrawn from the timber harvest base. Both can be done within the current framework of the law.

Any help relaying this message is greatly appreciated, I've exhausted all my avenues to raise the issue!

tara

Tara Lowrance-Mattis  
Up the Creek Ranch  
621 Speaker Road  
Wolf Creek, OR 97497  
(541) 866-2464  
[upthecreek@terragon.com](mailto:upthecreek@terragon.com)

## THE RUINATION OF WOLF CREEK, AN ILLUSTRATION of THE FATAL FRAGMENTATION OF OREGON'S SYSTEM of RESOURCE MANAGEMENT

We live within an old unincorporated rural community which straddles I-5 at the Rogue-Umpqua Divide. Because the O & C "checkerboard" was developed around our ranch, our lives and livelihood are being put at risk by BLM and State of Oregon agencies (especially the Dept. of Forestry) who claim management of forest lands in this mixture of residential small woodlot and industrial forest ownership. This whole community is at risk from loss of water supplies and landslides that will occur if existing plans to log in 2009 across all ownerships in this drainage proceed.

Much of the proposed activity is illegal under current resource management rules (BLM RMP/ROD), but that fact is certainly not going to stop these corrupt managers: patent illegality has yet to stop damage being wrought in the Rogue and Umpqua watersheds by aggressive local loggers and their agency protectors. They've certainly put me off the logging industry-- where I made my living for a quarter-century! Is Oregon really going to let a handful of greedy loggers and dishonest bureaucrats cause permanent damage to one the state's premier economic assets, the Rogue River?

Here's a brief illustration of how lives and resource assets are being put at risk through BLM's management methods, with a focus on one of many interlinked issues: water quality & fish habitat.

BLM's non-compliance with the existing RMP starts with a failure to properly update and maintain the road system database in the northern 2/3 of the Medford District. Because their managers *intentionally* don't understand the importance of ground-truthing a geographic database, their system forwards incorrect GIS data to BLM planners. The District dumped field survey positions to create full-time jobs for employee's spouses and development of the WOPR, reorganizing the agency under a vision of doing business without true environmental analysis of proposed activities.

Most of MDFO Soils/Water Quality/Aquatic Habitat/Fish cumulative effects analysis figures are fabricated from the incorrect database, if they even bother to use corporate data. Area Managers direct their Environmental Assessment writers to throw statistics into documents allowing *carte blanche* to timber management practices that degrade our resources, merely to make it cheaper for a logger to operate e.g.: Glendale Resource Area asserts that the 48 square-mile Wolf Creek sub-watershed could have up to 100 miles of new roads built throughout it without registering any significant effects, demonstrated by use of road & soils statistics that have little bearing on reality.

By using un-attributed effects "research" to support wide statistical extrapolations, no effects threshold that might trigger mitigation or ESA consultations under current rules is reached. All BLM need do is claim building 100 miles of permanent road in Wolf Creek watershed will have no effect to find "No Significant Impact" for a road construction plan. The Interior Board of Land Use Appeals and Southern Oregon District Court will automatically support the Government decision. By the time long-term adverse effects manifest, the BLM Area Manager who ordered this specific analysis result will have taken her cash award and moved on to another state, free of any consequence for her decision.

*"Even if road acres were increased by 50% (up to 100 new miles) as a result of future access needs on private and public ground, road acres within this sub-watershed would remain below the 3-4% of road acres, which research indicates may result in measurable changes to hydrologic timing and peak flows. Since this would be an unrealistically high amount of new road miles that would be built in the foreseeable future, it would be logical to conclude that this project would not result in any measurable effects to hydrologic function or water quality even when assessed with other projects that have occurred, or could potentially occur within this HUC 6 drainage." -pg 36 Rev. Perpetua R.O.W. Road Construction EA, BLM April 2008*

According to BLM'S 1999 watershed analysis of the area, 195 miles of road covered 4.2% of the watershed ("road acres"), already exceeding the stated 3-4% threshold. With a current estimate of 236 miles of road, 5.0% is covered in road acres; the 100 new miles (0.2% coverage) would increase road acres to 5.2%. Using the incorrect percentage of land area analysis cited above, BLM claims there would be no measurable effects from a ridiculously large amount of road construction. Such internal inconsistencies are typical within their EAs.

*"Road densities within the Wolf Creek HUC 6 drainage are currently at approximately 5.2 mi/mi<sup>2</sup>. Road densities as a result of past road construction are currently above National Marine Fisheries Service (NMFS) recommended levels for properly functioning subwatershed condition. The NMFS target established for proper functioning condition is 2 mi/mi<sup>2</sup>, and above 3 mi/mi<sup>2</sup> is considered not functioning properly". Rev. Perpetua R.O.W. EA*

Building 100 miles in Wolf Creek would add 2.7 miles of road per square mile to the watershed. With an existing density of 5.2 mi/sq mi, the Wolf Creek watershed is already rated 'Not in Proper Functioning Condition'. Over 5 miles of road/sq.mi, let alone 7.9 mi/sq mi should trigger "a concern from a hydrologic perspective". It doesn't really matter to them. What is most important in the Perpetua R-O-W analysis is that the Administrative

Record shows that no statistical threshold requiring further consultation or mitigation is reached. The data has been manipulated with that in mind, instead of water quality and legal MDFO Resource Management Plan guidelines.

This watershed analysis should have been used as the basis for an informed plan to extract timber in compliance the Aquatic Conservation Strategy that is key to the NW Forest Plan. Stream inventories are rarely performed by Glendale R. A. BLM, even in timber sale and road construction projects. The same watershed analysis also documents\* that they don't have the most basic information on 40% of the roads in Grave Creek. \*attached map 1 Without a road inventory or any attempt to ground-truth a whopping 40% of current conditions, BLM cannot really state with any accuracy how many miles of road actually exist to make their analysis on: their made-to-order justification for unlimited road-building is based upon a fabrication to begin with!

Medford District's Glendale R. A. uses the following disclaimer to justify deviation from the recommendations of watershed analyses in their planning documents: *"The Wild Rogue North Watershed Analysis and the Southwest Oregon Late-Successional Reserve Assessment is incorporated by reference. Watershed analysis is an analytical process and not a decision-making process as provided in the Record of Decision for the Northwest Forest Plan (p. B-20)". Rev. August Knob Salvage EA, BLM August 2006.*

**Grave Creek Watershed Analysis:**

*"All the sub-watersheds have high road densities and all are above the two miles per square mile target established by the National Marine Fisheries Service (NMFS) for proper functioning condition. Above 3 miles per square mile is considered not functioning properly by NMFS. Road densities are important in that roads result in more rapid runoff and increase ground water interception. In essence, each mile of ditched road becomes a first order intermittent stream." Aquatic Conservation Strategy page 14*

*"Roads cause changes in hydrologic function and result in an increase in the effective mileage of intermittent stream channels. The ditches on these roads act as streams during runoff events. Roads also intercept subsurface water thereby altering the natural hydrologic regime. Road densities above 5 miles per square mile are cause for concern from a hydrologic perspective." Fish Habitat Condition page 20*

*"The greatest impact from a hydrologic stand point occurring in this watershed is road density." Hydrologic Effects page 79*

*"Logging will also potentially continue to affect water tables. As more areas are logged, water tables may temporarily fluctuate, but then recover over the first 20 years after harvest. The numerous locations of surface water originating on BLM land and used at residences will also be affected." Social page 89*

The same revealing discussion could be made about BLM's resource effects analysis and decision rationale for: CUMULATIVE EFFECTS, BIODIVERSITY, SOIL STABILITY, WILDLIFE & FISHERIES EFFECTS/ESA CONSULTATION, RURAL INTERFACE/ENVIRONMENTAL JUSTICE, LATE-SUCCESSIONAL HABITAT AND CONNECTIVITY, SILVICULTURE SYSTEMS, COMMODITY PRODUCTION/HARVEST LEVEL SUSTAINABILITY, LOGGING SYSTEMS/ROAD CONSTRUCTION ...The NEPA process itself has been inverted by BLM to avoid public notification and ESA consultations, to ignore information supplied by other agencies or the public in comment to create environmental analyses that *justify* the

**"WATERSHED ANALYSIS is one of the principal analyses on which decisions implementing the ecosystem management objectives of this SEIS will be made. The watershed analyses will be the mechanism to support ecosystem management proposed by this SEIS at approximately the 20 to 200 square mile watershed level.**

*Watershed analysis will focus on collecting and compiling information within the watershed that is essential for making sound management decisions. It will be an analytical process, not a decision-making process with a proposed action requiring NEPA documentation. It will serve as basis for developing project specific proposals, and determining monitoring and restoration needs for a watershed.*

*...The information from the watershed analyses will contribute to decision making at all levels. Project-specific NEPA planning will use information developed from watershed analysis. For example, if watershed analysis shows that restoring certain resources within a watershed could contribute to achieving landscape or ecosystem management objectives, then subsequent decisions will need to address that information.*

-NW Forest Plan Final SEIS, 1994

way a timber sale or project is planned- ensuring a Finding of No Significant Impact decision. This is exactly the situation that NEPA and the current Resource Management Plan were intended to prevent. It would take multiple pages to outline how each affected resource analysis is manipulated in SW Oregon for the convenience of industrial timber production. This case study only scratches the surface of one resource issue: Water Quality and Fish Habitat.

This Forest Management Issue is closely interwoven with: SUSTAINABLE SILVICULTURE SYSTEMS and HARVEST METHODS, FOREST ECOSYSTEM HEALTH and BIODIVERSITY, REGIONAL ECOLOGY and GLOBAL WARMING, INTRINSIC VALUES, ECONOMICS and RECREATION PUBLIC HEALTH and SAFETY...an unavoidable feature of our complex Oregon landscape. That is why the NW Forest Plan centered around ecosystem management. The system administering resource management in the Pacific Northwest is as complex as the ecosystem, and it is fatally fragmented. And the NW forest coastal ecosystem is about to become so as well, if our elected

Representatives don't call a screeching halt to WOPR-style practices like those occurring in Wolf Creek right now. The continuing piece-meal approach to forest management is being used to postpone the inevitable collapse of old-growth logging, at the expense of the entire state.

*"I was the BLM's forestry planning chief through much of the 1970s and early 1980s. I'd like to set the record straight.*

*We completed a forest inventory and a proposed land use plan revision in 1980. It had become quite clear by that time that the old growth ecosystem was about to disappear throughout Western Oregon. It already had been essentially liquidated on industrial forest land.*

*Given then-current levels of sustained-yield timber production, the old growth ecosystem was within a decade or two of being liquidated on much of the BLM lands..." -Ron Sadler "Owls not to blame for forest problems" The Register-Guard July 9, 2008*

Now that most of the remaining mature timber lies in late-successional and riparian reserves or adjacent to residents, the pressure to produce timber volume for one small sector has placed sustainability and public welfare at risk in Oregon. Environmental arguments, once considered merely subjective, have spilled into a real-world conflict posing significant risk to Western Oregon's residents, economic base, and the ecosystem itself. And federal agencies are not alone in exposing us to this risk\*: see my attached letter to Representative Susan Morgan regarding ODF complicity in OFPA water protection and landslide hazard rules violations. \*map reverse

Not all forest stands and streams are permanently damaged by industrial logging; NEPA, FLPMA, and the OFPA were enacted to prevent fragile natural resource elements from damage through informed land use management plans. However, under politically-driven directives from Presidential administrations with minimal regard to legality, the Department of Interior has been notorious for ignoring environmental constraints and social justice directives for a large part of its 62 years to favor the interests of resource extraction.

1994 -Amendments to Oregon Forest Practices Rules increase overall stream protection by adding riparian protection, but only require negligible protection for the smallest streams and areas susceptible to land-slides. (See e.g. Murphy, 1006: "The buffers for small non-fish streams appear to be minimal or inadequate for sediment control.")

1994 -"Botkin Report" commissioned by Oregon legislature finds Oregon Forest Practices Rules as amended in 1994 are *inadequate for recovery of aquatic ecosystems*, particularly with respect to large wood supplies.

1994-1995 -Coasts of Oregon and Washington declared federal Disaster Areas eligible for economic assistance due to the collapse of the salmon fishery. 60,000 jobs lost since 1975. From OREGON COAST COHO: THE ENDANGERED SPECIES ACT AND THE OREGON PLAN: A CHRONOLOGY OF KEY REGIONAL EVENTS Pacific Rivers Council web article, 12/9/ 2008

In Oregon, the Department of Forestry pretty much lets industry write its' own ticket. (See Attached letter to Rep. Morgan) BLM's institutional failure to actually comply with the NW Forest Plan has been instrumental in undermining the plan's effectiveness.

Biologically, the NW Forest Plan *actually does work* to protect forest resources and still provide commodities at a sustainable level. However, the power of the timber industry is so deeply entrenched in Oregon's system of resource management that the Forest plan was never truly implemented. Now the residual mature and old-growth timber stands in SW Oregon and the Coast Range are hanging on seasonally wet, unstable slopes that form the headwaters of salmon tributaries. These slopes lie above rural homes and businesses scattered throughout BLM and USFS managed lands. Our ranch in Wolf Creek has been legally occupied under the same human use since the turn century, superceding BLM itself. We live in the other half of the Revested Oregon and California lands, where people have been granted the right to live since the 1850s.

*"The continued logging of our National Forests also wastes American tax dollars and diminishes the possibilities of future economic benefits. The Forest Service and independent economists have estimated that timber accounts for only 2.7 percent of the total values of goods and services derived from the National Forests, while recreation and fish and wildlife produce 84.6 percent.*

*Annually, timber produces roughly \$4 billion per year while recreation, fish and wildlife, clean water, and unroaded areas provide a combined total of \$224 billion to the American economy each year. When the dramatic values of ecological goods and services are taken into account, it is clear that protecting National Forests creates more economic benefits than continued logging. Moreover, only 4 percent of America's timber supply comes from National Forests. Timber should no longer be extracted from our National Forests, especially when it comes at the expense of biological diversity and healthy ecosystems."*

*Excerpted from an April 16, 2002 letter written to Pres. Bush by 222 scientists from across the nation.*

After years of political directives under the Bush administrations, the Rule of Law has become moot: the Dept. of Interior has institutionalized the use of specious legal diversions to circumvent our nation's and state's environmental protections. Hence the endless legal battles and stalled commodity (timber) production. DOI is the single largest land management agency in the world, and the Secretary of Interior wields this power unilaterally in the face of local citizens, environmental advocates, state and tribal governments, other federal agencies, even the U.S. Congress itself. The individual non-industrial land-owner has virtually no recourse to invoke the laws that should protect him or her from improper actions by this giant bureaucracy- even federal District Courts located in Oregon are stacked with politically-appointed judges who enforce DOI's hegemony against the few who can afford a legal challenge of BLM's actions. **There is no desire within this agency to conform to the conservation practices written into the Environmental Policy Act and their own land-use management plans.** Our forest legacy will *always* be at risk from managers like Glendale R.A. BLM who will happily risk a court loss to get old-growth logs for their industrial partners. There's no "punishment" for BLM/DOI breaches of federal laws!

Under current law, the only way to truly protect the rural public and streams vital to the regional ecology on federal land in Oregon would be to locate the individual sensitive sites using *existing* definitions to identify them; then have them administratively removed from timber production land classification in both the Public Domain and the O & C lands. Oregon's DEQ, legally charged with enforcing the Clean Water Act, needs to start doing it's job on all forest lands, instead of leaving it to BLM and the logging industry's puppet, Oregon Department of Forestry. If BLM is violating the Clean Water Act and NEPA protections to aquatic systems, throw their M.O.U. out when it expires Dec. 31 and re-negotiate an enforceable agreement.

Likewise, on non-federal lands, ODF & ODFW (Fish & Wildlife) must identify sensitive features, (especially stream headwalls and landslide-prone soils), and ODF must start following the minimal protective guidelines given to these and the public under the Oregon Forest Practices Act. ODF's role in allowing logging practices that cause people to die is inexcusable. Our state

managers need to accept the recommendations of fisheries scientists if there is real desire to save the Western Oregon forest ecosystem and economy from disaster. There's so much more to our economy than old-growth logging, why is this minority sector allowed to control the future of the state?

It's not too late to save a good part of our coastal aquatic ecosystem, but only if state government and federal representatives act now. With extinction of anadromous fish runs comes the end of the western Oregon's wet forest ecosystem and big trees. The marine nutrient fish pump component of inland forest health is widely accepted as scientific fact everywhere but here, where it scarcely hits the radar in the media. Leaving the biological fortune of an entire region in the hands of an agency directed by political whim does not serve the public's interest. **We** are the owners of the O & C lands; not the timber industry, BLM, or the State. These stockholders are not happy.

My family's lives and financial security is being put at substantial risk, as are my neighbors. How many people have to die or anadromous fish runs become extinct before this state realizes that the revenue raised by damaging logging practices simply isn't worth the cost to the public? To stop further fragmentation of our natural resource economic base our Governor needs to wake these agencies up and make them do their jobs properly. Rejection of BLM's Proposed Resource Management Plan (the WOPR) was a fine start, but follow-through is needed with state agencies.

#### OREGON AND CALIFORNIA LANDS ACT

"The management of the O&C lands is governed by a variety of statutes, including the O&C Lands Act, FLPMA, the Endangered Species Act, and the Clean Water Act. The O&C Lands Act requires the Secretary of the Interior to manage O&C lands for permanent forest production; however, such management must also be in accord with sustained-yield principles. Further, that Act requires that management of O&C lands protect watersheds, regulate streamflow, provide for recreational facilities, and contribute to the economic stability of local communities and industries. The Act does not require the Secretary to harvest all old-growth timber or all commercial timber as rapidly as possible or according to any particular schedule...The Secretary must necessarily make judgments, informed by as much information as possible, about what kind of management will lead to permanent forest production that satisfies the principle of sustained yield.

O&C lands must also be managed in accordance with other environmental laws such as the Endangered Species Act and the Clean Water Act. Some provisions of these laws take precedence over the O&C Lands Act. For instance, the Endangered Species Act (ESA) requires the Secretary to ensure that management of O&C lands will not likely result in jeopardy to listed species or destruction or adverse modification of critical habitat. The ESA directs the Secretary and all federal agencies to utilize their authorities to carry out programs for the conservation and recovery of listed species. Section 5(a) of the Act also directs: "the Secretary, and the Secretary of Agriculture with respect to the National Forest System, shall establish and implement a program to conserve fish, wildlife, and plants, including those which are listed as endangered species or threatened species pursuant to Section 4 of this Act." 16 U.S.C. § 1534(a).

Protection of watersheds and regulating streamflow are explicit purposes of forest production under the O&C Lands Act."

-pg 49-50B. VIII. Findings Legal and Regulatory Compliance, NW Forest Plan ROD April 13, 1994

Golden State Park and Coyote Wetlands National Historic District lie on the other side of the hill, below the headwall cut open by the Perpetua R-O-W road. Slopes are not as steep, but more water from the transient snow zone collects in alluvial basins above many more residents. These Coho salmon-bearing Rogue tributaries meet at the town of Wolf Creek, where Heritage Tourism fans stay at the Historic Wolf Creek Inn State Park, part of the Rogue River's romantic west. Lawsuits will not restore lives or ruined property, but the first landslide that occurs in Wolf Creek from administrative negligence\* will initiate action against those state and federal employees who ignored their respective laws, personally- each and every one! *\*see reverse of attached map* Eventually, some official in this state *must* bite the bullet, come out here and define a stream headwall.

Tara Lowrance-Mattis, Up the Creek Ranch  
621 Speaker Road, Wolf Creek, OR 97497  
(541) 866-2464 [upthecreek@terragon.com](mailto:upthecreek@terragon.com)

## Tara Lowrance-Mattis Resume Page: 27 years in Forestry and Resource Management

**1976-7:** Two years college in Portland, studied Biology and the general study prerequisites for an Oregon B.S.

**1977-8:** Umpqua National Forest; firefighter, broadcast burns, hand-piling and burning, site prep, tree species identification and tree-climbing for cone collection, and mapping.

**1978-81:** Co-op treeplanter doing federal service contracts. Contract bidding and administration, tree planting and timber stand exams throughout the Pacific NW. As Corporate Treasurer and Bookkeeper, I became familiar with Worker's Comp programs, minimum wage and procurement laws.

**1987-95:** Reforestation contract administration, forest mensuration and timber cruising. Contract specification, budgeting, bidding, and performance. Extensive mapping, plant ID specialist-digitizing forest stands for management purposes. Numerous survey types, including stream survey and wildlife data collection, identification of tree diseases, plant associations and stand typing in state, federal, and private forest lands. In 1989, my first 5-year stewardship reforestation technical proposal became the standard for small stewardship contracts in the Umpqua N.F. Seedling protection, stocking surveys, stand exams performed for hundreds of thousands of points on as many acres throughout Oregon. Reforestation Contract administrator and inspector for Second Growth Inc. (Eugene), and Up the Creek Resources-a survey business with my husband.

**1995-2000:** Hired by Medford District BLM as tree-marker and timber/cruiser appraiser trainee. During two years as Interdisciplinary Team Leader at BLM, I received National Training Center courses in the NEPA Process, Environmental Assessment-level Analysis, implementation of the NW Forest Plan ROD S&Gs in SW Oregon, as well as training in sampling statistics, native plant cultivation, lumber grading. Wrote Timber Sale appraisals and contract stipulations, Environmental Assessments, interdisciplinary clearance plans and budgets for the annual work plan for 1/4th of Grants Pass RA. Also worked as a Botany Technician, Timber Sale Administrator, Federal Collections Officer, Silviculture Project Inspector, and as a Cadastral Survey assistant. Painted, cruised, and appraised numerous BLM timber sales for Grants Pass R.A.

**2000-05:** Botany surveys under subcontract for Medford District BLM Glendale RA, who viewed me as a community partner under the NW Forest Plan- I was the only non-agency person trained with Medford District staff in seeking natural resource grant funding. As a Middle Rogue Watershed Council member, I helped review and proof-read their Grave Creek Watershed Analysis and Action (Strategic) Plan. Member of MRWA Projects Committee and the Rogue Basin Coordinating Council Monitoring Committee. Wrote numerous grant applications to Oregon Watershed Enhancement Board, Department of Environmental Quality, Rural Economic Development Boards for Douglas County and Southern Oregon, to the National Fire Plan, and Ore. Dept of Forestry for Rural Fire Department grants for facilities construction, equipment, and training.

Became a Master OSU Watershed Steward. Hired as the Natural Resources Project Coordinator for the Sunny Wolf Community Response Team to implement Strategic Plan Benchmarks, a year later became the Executive Director. Wrote and administered grant-funded projects such as Small Diameter Utilization under the National Fire Plan; technical contract specifications and clearances for community facilities like the Tiller RFD Firehall Addition and fleet improvements, the Wolf Creek Library Construction EA; supervised the Sunny Valley Fire Station completion, fire truck purchase, its self-maintaining RuralMetro staffing through a federal loan. Referred to as a rural community liaison capable of articulating socio-economic issues by Sustainable Northwest, the AuCoin Institute, Jefferson Sustainable Development Initiative, Rogue Community College.

**2006-7:** Worked for Butte Falls RA, Medford District BLM as a Hydrologic Technician; performing stream surveys and mapping, building databases, stream temperature/rainfall monitoring, and timber stand exams.

My husband, Lewis Mattis, was forced into disability retirement May 2008 after nearly 11 years' employment with Medford District BLM. He worked with Glendale and Ashland Resource Areas, as well as the District Manager's staff; primarily performing computer data entry, editing, and GIS map-making. Databases edited include the Glendale R.A. Timber Production/Operations Inventory & corporate transportation geodatabase. He was the District Hydrology geodatabase Editor for a number of years. Prior experience included over a decade in forestry.





# Oregon

Theodore Kulongoski, Governor

Department of Environmental Quality Western Region Medford Office

221 Stewart Avenue, Suite 201

Medford, OR 97501

(541) 776-6010

FAX (541) 776-6262

TTY (541) 776-6105

July 24, 2008

Lewis Mattis and Tara Lowrance-Mattis  
612 Speaker Road  
Wolf Creek, OR 97497

Dear Mr. and Mrs. Mattis,

Dick Pedersen, Director of the Department of Environmental Quality has asked me to respond to your July 9 letter regarding BLM and Perpetua Forest Products Right of Way construction activities in the Wolf Creek area. In that letter you also mentioned the request you made at the June Environmental Quality Commission Community Forum asking about availability of Memoranda of Understanding documents between BLM and the State. Enclosed you will find a copy of the DEQ MOU with BLM and the Forest Service. Oregon Department of Forestry informs me that they do have a Forest Practices agreement with the Federal Agencies (BLM and USFS) that obligates the Federal Agencies to meet or exceed the Oregon Forest Practices Act. I am told it's been around since the 1970's, and local ODF staff does not have ready access to the document. I also asked regional Oregon Department of Fish and Wildlife staff whether or not they had any Federal MOU information available; they were unable to locate any.

Relative to the Wolf Creek right of way issue, I have spoken with the BLM Resource Field Area Manager. She stated that the appeal action before the Interior Board of Land Appeals should have concluded July 17<sup>th</sup>. She further stated that BLM has reviewed the information you provided through your consultant, relative to landslide hazards and the proposed road construction; and believe they have addressed the issues raised. DEQ does not have the authority to override scientifically and professionally based decisions arrived at through the Federal processes in place to address environmental concerns. We do work with BLM and other agencies in a collaborative manner to address environmental issues. And, we do have the authority to enforce against violations that occur and impact environmental standards. We are not in a position to override or veto legitimate decisions made by those other agencies. Many times there are conflicting opinions around proposed actions and issues; the Federal process is designed to deal with those conflicts.

I have also communicated with the Oregon Department of Forestry (ODF) on the road issue. They have recently inspected the full length of the proposed right of way and conclude that the road proposal does meet Oregon Forest Practices requirements on both Perpetua and BLM property. ODF is the State agency responsible for compliance with the Oregon Forest Practices Act, and will be the lead for enforcement of any violations of that Act on this project. As mentioned BLM does have a MOU with the State to meet or exceed Forest Practices Act requirements in Oregon, and if there are issues in that area, ODF will resolve them with the BLM.

If you do observe violations with this project as it proceeds, you should inform the Oregon Department of Forestry so they can investigate.

Sincerely,

/Signed/

John W. Blanchard  
Lead Water Manager  
DEQ Western Region

Cc: BLM Medford District  
ODF Dan Thorpe  
DEQ Keith Andersen

**EQC Meeting Agenda**  
**February 26, 2009**  
**NW Power Planning and Conservation Council**  
**851 SW 6<sup>th</sup> Ave, Suite 1100, Portland OR**

**Day 1: Thursday, 2/26/09 -- Regular Meeting**

| Time            | Item | Topic                                                                                                                                  | Presenter/Status                                   | Background                                                                                                                                   |
|-----------------|------|----------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| 8:30<br>15 min  | A    | Preliminary Commission Business: Adopt draft minutes of the December 11-12, 2008, regular meeting and January 6, 2009, special meeting |                                                    |                                                                                                                                              |
| 8:45<br>30 min  | B    | Informational Item: Update on the status of the Umatilla Chemical Agent Disposal Facility (UMCDF)                                      | Joni Hammond, Rich Duval                           | Routine and video on mustard agent processing                                                                                                |
| 9:45<br>30 min  | C    | Informational item: Director's Dialogue                                                                                                | Dick Pedersen                                      |                                                                                                                                              |
| 10:15<br>15 min |      | BREAK                                                                                                                                  |                                                    |                                                                                                                                              |
| 10:30<br>60 min | D    | Informational Item: Budget and Legislative Update                                                                                      | Greg Aldrich                                       |                                                                                                                                              |
| 11:30<br>30 min | E    | Public Forum                                                                                                                           |                                                    |                                                                                                                                              |
| 12:00<br>60 min |      | Lunch Break                                                                                                                            | Informal lunch meeting with AG Kroger and staff    |                                                                                                                                              |
| 1:00<br>60 min  |      | Executive session                                                                                                                      | Larry Knudsen                                      | Discuss current and pending litigation with counsel.                                                                                         |
| 2:00<br>90 min  | F    | Contested Case: Johnston                                                                                                               | Jane Hickman and Leah Koss                         | Contested case hearing                                                                                                                       |
| 3:30<br>15 min  |      | BREAK                                                                                                                                  |                                                    |                                                                                                                                              |
| 3:45<br>15 min  | G    | Action item: Director's Transactions for Commission Review                                                                             | Kerri Nelson and MSD staff                         | Oregon Accounting Policy and DEQ policy require that the EQC review and approve certain financial transactions of the DEQ Director annually. |
| 4:00<br>30 min  | H    | Informational Item: Klamath River Basin Agreements                                                                                     | Suzanne Knapp, Governor's Natural Resources Office | A briefing on the Klamath Basin Restoration Agreement and the Hydro Agreement in Principle                                                   |
| 4:30<br>30 min  | I    | Commissioner Reports                                                                                                                   | EQC members                                        |                                                                                                                                              |
| 5:00            |      | Adjourn                                                                                                                                |                                                    |                                                                                                                                              |



**Umatilla Chemical Demilitarization Program  
Status Update  
Environmental Quality Commission  
February 26, 2009  
Agenda Item B**

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

Cumulative Operations:

As of January 14, 2009 the facility has destroyed:

- 217,969 munitions which represent 99 percent of all Umatilla munitions and bulk containers
- 37 percent of the original Umatilla stockpile by agent weight
- 100 percent of all nerve agents stockpiled at the facility.

Sarin Operations:

The UMCDF finished processing munitions and bulk items related to the nerve agent Sarin in July 2007, which totaled 21.4 percent of the Umatilla stockpile by agent weight. Altogether the UMCDF destroyed 155,539 munitions and bulk containers filled with 2,028,020 pounds of the Sarin nerve agent, which is 70.5 percent of all Umatilla munitions and bulk containers.

The only remaining Sarin-related waste is the carbon used in the incinerator's filter system. All other Sarin secondary wastes have been treated.

VX Operations:

All VX munitions have been treated. The 155 mm VX projectile campaign began March 20, 2008, and was completed June 27, 2008. The UMCDF completed changeover activities and began processing the eight-inch VX projectiles on July 15, 2008, and completed the campaign on August 6, 2008. The VX mines campaign began September 2008 and was completed November 5, 2008.

VX munitions/bulk items comprised 9.8 percent of the total Umatilla stockpile by agent weight. The UMCDF destroyed 14,519 VX rockets and warheads, 1 VX ton container, 156 VX spray tanks, 32,313 155mm VX projectiles, 3,752 eight-inch VX projectiles, and 11,685 VX mines.

The UMCDF is undergoing changeover activities for the start of mustard ton container operations.

Mustard Agent Operations

There are 2,635 mustard gas ton containers in the UMCD stockpile. This represents 1 percent of all UMCD munitions and bulk containers and 63 percent of the original stockpile by agent weight.

Mustard gas operations began with the VX-to-the mustard nerve agent changeover on November 6, 2008. Mustard agent ton container processing is scheduled to begin in June 2009 and is expected to be completed by mid-2010.

**Other UMCD Chemical Demilitarization Program News**

**UMCDF PMR Activity (November 20, 2008, through January 28, 2009):**

| <b>SUBMITTALS</b><br><i>(includes 08-032, which was accepted during this period, and 08-020, which was denied during this period.)</i> |                                                                          |                  |             |
|----------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|------------------|-------------|
| <b>PMR#</b>                                                                                                                            | <b>Title</b>                                                             | <b>Submitted</b> |             |
| UMCDF-08-031-PFS(2)                                                                                                                    | Pollution Abatement System (PAS) Filter System (PFS) Carbon Filter Media | 11/26/08         |             |
| UMCDF-08-030-DMIL(3TA)                                                                                                                 | Bulk Drain Station Modifications                                         | 11/26/08         |             |
| UMCDF-08-028-MISC(1N)                                                                                                                  | Redline Annual Update for General/PAS Systems                            | 11/26/08         |             |
| UMCDF-08-036-WAP(2)                                                                                                                    | Mustard (HD) Waste Analysis Plan (WAP) Update                            | 12/17/08         |             |
| UMCDF-08-032-BRAT(1N)                                                                                                                  | BRA Surge Tank Inspection Procedure                                      | 12/17/08         |             |
| UMCDF-08-020-MISC(3)                                                                                                                   | HD Agent Trial Burn Plan                                                 | 12/19/08         |             |
| UMCDF-09-002-CONT(1N)                                                                                                                  | Annual Contingency Plan Update                                           | 01/20/09         |             |
| UMCDF-09-001-MISC(1N)                                                                                                                  | Redline Annual Update-Furnace System                                     | 01/21/09         |             |
| <b>DENIALS</b>                                                                                                                         |                                                                          |                  |             |
| <b>PMR#</b>                                                                                                                            | <b>Title</b>                                                             | <b>Received</b>  | <b>Decn</b> |
| UMCDF-08-020-MISC(3)                                                                                                                   | Mustard (HD) Agent Trial Burn Plan                                       | 12/19/08         | 12/24/08    |
| UMCDF-08-018-MPF(2)                                                                                                                    | MPF DAL Low-Temperature Monitoring Changes                               | 05/13/08         | 12/31/08    |
| <b>APPROVALS/ACCEPTANCES</b><br><i>(Permit modification notice 08-032 was also submitted during this period)</i>                       |                                                                          |                  |             |
| <b>PMR#</b>                                                                                                                            | <b>Title</b>                                                             | <b>Received</b>  | <b>Decn</b> |
| UMCDF-08-035-MISC(1N)                                                                                                                  | Redline Annual Update to CHB, HVAC and MISC Systems                      | 10/16/08         | 12/19/08    |
| UMCDF-08-029-MISC(1N)                                                                                                                  | Redline Annual Update to BRA, TANK, and MISC Systems                     | 09/18/08         | 01/07/09    |
| UMCDF-08-032-BRAT(1N)                                                                                                                  | BRA Surge Tank Inspection Procedure                                      | 12/17/08         | 01/12/09    |
| UMCDF-08-033-BRA(2)                                                                                                                    | Brine Loadout Station                                                    | 06/24/08         | 01/23/09    |
| UMCDF-08-021-MON(2)                                                                                                                    | HD Multiagent Monitoring                                                 | 08/12/08         | 01/23/09    |

Agenda Item B, Informational Item: Umatilla Chemical Agent Disposal Facility Update  
 February 26, 2009 EQC Meeting  
 Page 3 of 5

| <b>IN PROCESS: DEQ is currently reviewing the following permit modification notices and requests</b><br><i>(includes 08-028, 08-030, 08-031, and 08-036, which were also submitted during this period)</i>                                |                                                        |                 |                                                |                                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|-----------------|------------------------------------------------|-------------------------------------|
| <b>PMR#</b>                                                                                                                                                                                                                               | <b>Title</b>                                           | <b>Received</b> | <b>Public Comment Period Close</b>             | <b>Target Decision/ Review Date</b> |
| UMCDF-05-034-WAST(3)                                                                                                                                                                                                                      | Deletion of the DUN and Addition of the CMS            | 10/25/05        | 12/24/05 <sup>1</sup>                          | TBD                                 |
| UMCDF-07-006-DFS(3TA)                                                                                                                                                                                                                     | Minimum Temperature Limit Change on the DFS            | 01/16/07        | 04/25/08 <sup>2</sup>                          | TBD                                 |
| UMCDF-07-005-MISC(2)                                                                                                                                                                                                                      | Condition II.M-Liability Insurance Requirement Changes | 01/30/07        | 04/02/07                                       | 07/15/09                            |
| UMCDF-08-037-MISC(1N)                                                                                                                                                                                                                     | Annual Procedures Update                               | 05/29/08        | N/A                                            | TBD                                 |
| UMCDF-08-022-WAST(2)                                                                                                                                                                                                                      | Brine Management                                       | 07/01/08        | 09/01/08 <sup>1</sup>                          | 03/31/09                            |
| UMCDF-08-010-DMIL(3TA)                                                                                                                                                                                                                    | Depressurization Glove Box Miscellaneous Unit          | 08/19/08        | 10/18/08 <sup>1</sup><br>01/06/09 <sup>3</sup> | 02/20/09                            |
| UMCDF-08-034-MPF(2)                                                                                                                                                                                                                       | Miscellaneous MPF Mustard (HD) Design Changes          | 08/26/08        | 10/25/08 <sup>1</sup><br>12/08/08 <sup>3</sup> | 02/18/09                            |
| UMCDF-08-025-MISC(1N)                                                                                                                                                                                                                     | Redline Annual Update-DMIL/MDB/ Misc Systems           | 09/08/08        | N/A                                            | 02/15/09                            |
| UMCDF-08-030-DMIL(3TA)                                                                                                                                                                                                                    | Bulk Drain Station Modifications                       | 11/26/08        | 01/26/09 <sup>1</sup>                          | 02/24/09                            |
| UMCDF-08-031-PFS(2)                                                                                                                                                                                                                       | PFS Carbon Filter Media                                | 11/26/08        | 01/26/09 <sup>1</sup>                          | 02/24/09                            |
| UMCDF-08-028-MISC(1N)                                                                                                                                                                                                                     | Redline Annual Update for General/PAS Systems          | 11/26/08        | N/A                                            | 02/15/09                            |
| UMCDF-08-036-WAP(2)                                                                                                                                                                                                                       | Mustard (HD) Waste Analysis Plan (WAP) Update          | 12/17/08        | 02/16/09 <sup>1</sup>                          | 03/17/09                            |
| UMCDF-09-002-CONT(1N)                                                                                                                                                                                                                     | Annual Contingency Plan Update                         | 01/20/09        | N/A                                            | 03/23/09                            |
| UMCDF-09-001-MISC(1N)                                                                                                                                                                                                                     | Redline Annual Update-Furnace System                   | 01/21/09        | N/A                                            | 03/24/09                            |
| <sup>1</sup> Initial (permittee) public comment period.<br><sup>2</sup> Department (draft permit) public comment period.<br><sup>3</sup> Additional public comment period required/opened due to incompleteness of original PMR submittal |                                                        |                 |                                                |                                     |

**UMCD PMR Activity (November 20, 2008, through January 28, 2009):**

| <b>APPROVALS</b>     |                                                    |                 |             |
|----------------------|----------------------------------------------------|-----------------|-------------|
| <b>PMR #</b>         | <b>Title</b>                                       | <b>Received</b> | <b>Decn</b> |
| UMCDF-08-002-MON(1R) | SUOMP Igloo Monitoring (resubmittal of PMR 08-001) | 11/18/08        | 01/23/09    |

### **Significant Events at Other Demilitarization Facilities**

The U.S. Army's Chemical Materials Agency destroyed the last of all VX nerve agent at disposal sites on December 24, 2008, with the elimination of the final land mine at the Anniston Chemical Agent Disposal Facility, located in Anniston, Alabama. The remaining VX at Blue Grass will be destroyed by Assembled Chemical Weapons Alternatives. To date, 58.9 percent of the national chemical agent stockpile tonnage has been destroyed.

#### **Anniston Chemical Agent Disposal Facility, Alabama**

The Anniston Chemical Agent Disposal Facility has destroyed 56.2 percent of its total stockpile by agent weight and is currently undergoing VX-to-HD agent changeover activities.

#### **Pine Bluff Chemical Agent Disposal Facility, Arkansas**

The Pine Bluff facility has destroyed 17.4 percent of its total stockpile by agent weight, and started mustard agent ton container processing December 7, 2008. As of January 14, 2009, the facility had processed 67 ton containers.

#### **Tooele Chemical Agent Disposal Facility, Utah**

Tooele's agent disposal is 75.7 percent complete.

Processing of low-heel, low-mercury ( $\leq 1$  ppm of mercury) ton containers resumed August 25, 2008. High-heel ton container operations using the heel transfer system began October 3, 2008. As of January 14, 2009, 2,898 ton containers had been treated.

Three sulfur-impregnated carbon filters have been installed as part of an expansion to the existing pollution abatement system. The filters are being used to capture mercury that may remain after incineration of high-mercury ( $> 1$  ppm mercury) mustard mortars and ton containers.

#### **Newport Chemical Agent Disposal Facility, Indiana**

Newport has completed agent disposal operations. It is the third site to complete operations, following Johnston Atoll Chemical Agent Disposal System in 2000 and Aberdeen Chemical Agent Disposal Facility in 2006. Closure activities will occur over an 18- to 24-month period. Newport is still in Phase 1 closure activities, which includes demolition of the chemical agent transfer system glove boxes and flushing hydrolysate tank. The facility has completed the in-place decontamination of the reactor bay equipment and begun removal of agent piping.

#### **Pueblo Chemical Agent Destruction Pilot Plant, Colorado**

Pueblo will use neutralization followed by biotreatment to destroy the 2,611-ton mustard agent stockpile of artillery and mortar projectiles. The overall design is complete and some

construction is under way, but site-specific equipment, such as a munitions treatment unit or projectile mortar disassembly machine, is still being designed and fabricated in preparation for testing this fall.

Because of continuing schedule delays, Colorado issued a hazardous waste compliance order in June 2008 mandating the destruction of chemical weapons at Pueblo by 2017, which is four years ahead of the Department of Defense's latest schedule for destruction at the site, but matches congressional mandates that were put in force less than a year ago. The order indicates the Pueblo Chemical Depot has long been out of compliance with state hazardous waste regulations that limit the amount of time hazardous waste may be stored. The Army is disputing the order.

The permit issued by the state October 17, 2008, allows the project to build the remainder of the plant.

#### **Blue Grass Chemical Agent Destruction Pilot Plant, Kentucky**

Blue Grass will use neutralization followed by supercritical water oxidation to destroy Blue Grass's 523-ton stockpile of nerve and mustard agents. Chemical agent operations are slated to begin in 2017 and to be completed by 2023.

The design work is 91 percent complete.

Blue Grass Chemical Activity has had two leaking mustard projectiles in separate igloo magazines.

Neutralization of three Sarin agent ton containers began November 12, 2008. The first phase, neutralization and its breakdown products, has been completed. The second phase, in progress, includes removing and neutralizing any sludge, rust, or other solids that may have formed inside the containers. The last phase will involve processing the legacy and secondary wastes generated during the management and destruction of the Sarin containers for off-site shipment. When completed, the operational facilities will be shut down and the temporary structures and equipment will be shipped back to Aberdeen Proving Grounds in Edgewood, Maryland.

## **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

ACWA – Assembled Chemical Weapons Alternatives, agency of the Army overseeing operations at Pueblo, CO (PCAPP) and Bluegrass, Kentucky (BGCAPP)

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

APG – Aberdeen Proving Grounds, Edgewood, Maryland

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 UMCDP 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/>)

CWC Treaty – Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. Ratified by the U.S. Senate on April 24, 1997.

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

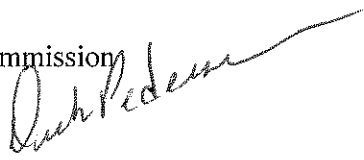
State of Oregon

Department of Environmental Quality

Memorandum

**Date:** February 26, 2009

**To:** Environmental Quality Commission

**From:** Dick Pedersen, Director 

**Subject:** Agenda Item C, Informational Item: Director's Dialogue  
February 26, 2009 EQC meeting

**Confined Animal Feeding Operations**

On February 2, 2009, the Oregon Department of Agriculture and DEQ re-noticed the renewal of National Pollutant Discharge Elimination System Confined Animal Feeding Operation General Permit #01. We will hold a public hearing at ODA's headquarters in Salem on March 9, 2009, at 6 p.m. The public notice period ends on March 16<sup>th</sup>.

The renewal was postponed from September 2008 to address federal regulations adopted by EPA. Our original renewal did not sufficiently address new federal requirements for public notice of substantial changes to animal waste management plans for federally-defined concentrated animal feeding operations. We also defined the term "substantial changes" for animal waste management plans at confined animal feeding operations and developed public notice requirements for these changes.

The proposed permit requires that all new and renewal applications are publicly noticed for at least 35 days with an opportunity to request a public hearing. Additionally, the permit requires that all proposed substantial changes to an animal waste management plan at a concentrated animal feeding operation are publicly noticed for at least 35 days with an opportunity to request a public hearing. The permit also requires that all proposed substantial changes to an animal waste management plan at a confined animal feeding operation are publicly noticed for at least 14 days with an opportunity to request a public hearing.

**Liquefied Natural Gas Projects**

In December, I provided an update on three proposed liquefied natural gas facilities: the Bradwood Landing project on the Columbia River between Astoria and Clatskanie, the Oregon LNG project on the Columbia River in Warrenton, and the Jordan Cove/Pacific Connector project near North Bend, about five miles up Coos Bay from the ocean.

Bradwood Landing:

In January, the Oregon Land Use Board of Appeals issued its decision on the appeal of Clatsop County's September 2008 local development decisions for the Bradwood Landing project. Most of the county's decisions were upheld, but the board did disagree with the county on two important points. The board ruled that the county applied the wrong definition when it decided

that a zoning change would protect habitat of some threatened and endangered species, and that the county improperly interpreted a provision that the development needed to be of small to moderate scale. Columbia Riverkeepers has appealed the board's decision.

Clatsop County recently responded to a letter from the Oregon Department of Justice, sent on DEQ's behalf in November, which asked the county to update the project's land use compatibility statement. The county approved the land use compatibility statement in March 2008. After the land use compatibility statement was issued, an amendment allowing LNG pipelines in parks and open space zones was made to the county's zoning code, but was then overturned by voters. In their letter, Clatsop County clarified that a portion of the planned pipeline (.7 of a mile) that runs through the parks and open space zones is now not compatible with the acknowledged comprehensive plan because of the voters' action.

In January the Federal Energy Regulatory Commission denied the State's petition for review of the order authorizing the Bradwood Landing facility and pipeline. The State also asked the 9<sup>th</sup> Circuit Court of Appeals to overturn the Federal Energy Regulatory Commission's initial approval of the project because approval was given before some permits were obtained and environmental impacts could be sufficiently analyzed.

#### Oregon LNG:

In October 2008, DEQ received an application for an air emissions permit from the Oregon LNG project. We are currently reviewing the application, but there may be an issue with the local land use compatibility statement that requires clarification from the City of Warrenton. We are consulting with the Oregon Department of Justice, and it is likely that the land use compatibility statement is not adequate and we will not issue a permit. We plan to hold public meetings in Warrenton to share information with community members and hear local concerns and issues.

#### Jordan Cove:

We reviewed and provided comments on a draft environmental impact statement this past fall for the Jordan Cove project. The statement identifies a range of potential environmental impacts, and would involve both land and water quality programs. Critical issues include potential thermal loading, sedimentation and increased turbidity from the pipeline project and potential harm to Coos Bay estuary habitat from the facility and pipeline.

The Jordan Cove project managers have not yet filed any permit applications with DEQ, but they have been working with the Air Quality Division to prepare a Title V permit and recently reevaluated their air emissions at the terminal.

#### **Product Stewardship Legislation**

Senator Jackie Dingfelder (D-Portland) submitted a bill that establishes producer-funded and operated recycling programs for mercury lighting and rechargeable batteries. Rep. Ben Cannon (D-Portland) has agreed to sponsor a companion bill in the House. This program would be similar to the new E-Cycles program and, if passed this session, would be operational by January 2012.

The bills are awaiting numbers and introduction, with hearings on the proposed legislation likely to happen in March. We believe that other non-DEQ product stewardship bills will be introduced this session and would deal with paint, mercury lighting, rechargeable batteries and pharmaceuticals. California and Washington recently introduced product stewardship bills as part of their waste management and climate change legislation, respectively.

### **Recycling Markets Decline**

Land Quality Division staff met with recycling industry representatives in January to discuss the decline in demand for recycled materials. Haulers and processors in Oregon are still able to sell many of their materials, but at lower prices and more slowly than in the past. Materials are being stockpiled rather than sold, and some processors are running out of storage space. Local paper mills are accepting less cardboard and newsprint from local processors, while plastics markets have improved slightly. Recycling industry representatives in Oregon expect the downturn to be longer and more severe than anticipated. We will continue to work with the recycling industry to find solutions that protect the integrity of Oregon's recycling system.

### **Oregon E-Cycles**

Oregon E-Cycles hosted a kick-off event for the new program on February 11<sup>th</sup> at the Salem-Keizer Transfer Station. The event celebrated the success of the many people who worked to develop and implement the program. Senators Jackie Dingfelder (D-Portland) and Frank Morse (R-Albany) noted the bi-partisan support for the bill and said that product stewardship bills enable us to become "better stewards of the things we consume". The Oregon E-Cycles program started strong, with Oregonians recycling an estimated 1,471,493 pounds of e-waste in January. The goal for 2009 is 12.2 million pounds of e-waste recycled rather than sent to landfills.

### **Sustainability**

DEQ is using the Natural Step sustainability framework to help us improve our internal operations and make our policy decisions and regulations more sustainable. Managers were trained in the Natural Step framework at their quarterly managers' conference in January, and a planning team is meeting to determine our long-term sustainability goals and craft an action plan. We will train all staff statewide between June and October of this year. The training will explain the Natural Step process and give staff an opportunity to shape DEQ's sustainability goals and provide input on how to achieve those goals. We will also update our sustainability plan by the end of the 2009.

### **Senate Bill 737**

We have been working with a variety of groups to develop a list of priority persistent pollutants, as mandated by the 2007 Oregon Senate Bill 737. A science workgroup has met monthly since August 2008 to provide technical advice for the list, including how to prioritize pollutants based on available data. The workgroup narrowed the draft list from over 1,200 pollutants to less than 200, and this number could become even smaller after we have received public comments. DEQ will distribute the draft list for public comment March 2<sup>nd</sup> through 27<sup>th</sup> and the project team will

hold public information sessions in Pendleton (March 3), Coos Bay (March 10), Klamath Falls (March 11) and Portland (March 19). A thorough stakeholder and public outreach effort is also underway.

We have gathered a group of laboratory methods experts to study the availability of technical methods for measuring pollutants on the list, and information from this group will be considered when preparing the final list. The final list will be delivered to the Oregon Legislature by June 1, 2009. We plan to start rulemaking in fall 2009 to establish threshold levels for pollutants on the final list.

We are developing an online survey to identify sources of pollutants in Oregon and generate ideas for pollution control strategies. Anyone with substantive technical input can complete the survey, and information gathered will be considered for the final report. We will deliver the final report to the Oregon Legislature by June 1, 2010. The 52 largest municipal wastewater treatment facilities in Oregon will use the report as a basis for creating toxics reduction plans, which must be submitted to DEQ by July 1, 2011.

The project team has coordinated extensively with Water Quality Division Standards Toxics Revision staff and cross-division Toxics Reduction Strategy staff. More information is posted on the project website: [www.deq.state.or.us/wq/SB737](http://www.deq.state.or.us/wq/SB737). Contact Cheryl Grabham in the Water Quality Division with any questions on Senate Bill 737.

#### **Water Quality Standards Toxics Review (formerly known as the Fish Consumption Rate Project)**

The Water Quality Division has formed a stakeholder group to provide input on revisions to water quality standards and National Pollutant Discharge Elimination System regulations based on the revised Oregon fish consumption rate of 175 grams per day. The stakeholder group includes representatives from environmental advocacy organizations, regulated entities, Tribes, Oregon Departments of Agriculture and Forestry, the agricultural and communities, municipalities and the U.S. EPA. The group will also provide input on DEQ's cross-division toxics reduction strategy.

We estimate that this effort will take approximately 18 months, and we anticipate bringing proposed rules to you for consideration in summer 2010. We will provide the EQC with an informational item on this project prior to the public comment period in early fall 2009.

#### **Clean Water State Revolving Fund**

The 2009 American Recovery and Reinvestment Act recently signed by President Obama provides \$4 billion of stimulus funding to states through the Clean Water State Revolving Fund loan program. We anticipate receiving about \$45 million from the U.S. EPA for Oregon's Clean



Water State Revolving Fund loan program. Projects receiving stimulus funding must be under contract or construction by February 16, 2010.

We have determined that a temporary rulemaking is needed to amend specific requirements within Oregon's Clean Water State Revolving Fund program. The act requires that at least 50 percent of the stimulus grant is used for additional subsidization, including the option of principal forgiveness for loans. Our current rules do not allow principal forgiveness and also prescribe how interest rates are computed. The temporary rulemaking would allow DEQ to provide principal forgiveness on up to 50 percent of a loan and offer a zero percent interest rate. The rulemaking would also address other current loan requirements that could impede DEQ's effective implementation of the stimulus funds.

Because of the urgency to obtain and use the stimulus money, this temporary rulemaking is scheduled to come before the EQC in April. A permanent rulemaking is expected this summer to ensure we adequately address the intent of the federal act and follow up on the temporary rules.

#### **Wapato Lake**

The Tualatin Riverkeepers presented information at the December 2008 EQC meeting regarding a possible blue-green algae bloom in the Tualatin River and Wapato Lake irrigation area last summer. They asked the DEQ lab to analyze stored samples from the river, and to create a sampling and toxics management plan for this watershed area in 2009. Water Quality Division staff have been following up on this issue and will bring a full informational item to you at the April meeting.

#### **Total Dissolved Gas**

We received the Army Corps of Engineers and U.S. Fish and Wildlife Service's 2008 total dissolved gas report on January 5, 2009. The total dissolved gas standard is 110 percent and the Army Corps of Engineer's 2007 waiver allowed for 115 percent in the forebay (the holding bay behind the dam) and 120 percent in the tailwater (the area downstream of the spilling dam). These limits were exceeded 251 times in 2008, with 147 cases in the forebay and 104 cases in the tailwater. The cases were due to Army Corps of Engineers' uncertainty when applying spill guidance criteria, and high runoff flows and flood control operations.

The Army Corps of Engineers monitored juvenile salmon and trout for gas bubble trauma at Bonneville and McNary dams two days per week during the fish passage spill period of April 1 to August 31. Of the 6,943 juvenile salmonids monitored, 15 individuals (0.2 percent) had evidence of gas bubble trauma.

Although the total dissolved gas levels exceeded the waiver limits various times, the biological monitoring indicated a low risk of gas bubble trauma to salmonids. We have decided that the Army Corps of Engineers were within the waiver's total dissolved gas limits. We will continue to work with the Army Corps of Engineers to reduce the number times the waiver limits are exceeded during the spill season.

The 2008 Army Corps of Engineers TDG report is available online:  
[http://www.nwd-wc.usace.army.mil/tnt/wq/tdg\\_and\\_temp/2008/](http://www.nwd-wc.usace.army.mil/tnt/wq/tdg_and_temp/2008/)

### **Regional Haze Plan-PGE BART Rulemaking Update**

The public comment period for our proposed Regional Haze Plan and PGE BART rule began December 1, 2008 and closed January 30, 2009. PGE submitted comments and requested an alternative compliance option in addition to our original proposal. PGE's requested alternative would add two decision points that would allow them to either install emission controls as required by our original proposal or close the Boardman coal-fired power plant by 2029.

We extended the original public comment period by two weeks to seek additional public, stakeholder, and Tribal input on PGE's comments and request. We also reconvened our BART rule fiscal advisory committee to discuss the implications of PGE's request.

I'm happy to say that we had very strong public interest in this rulemaking. We have received over sixty letters from a wide array of groups, including EPA, local governments, environmental and business organizations, federal land managers and Tribal nations. We held public hearings in five cities, with a total of 111 people attending and 45 providing testimony. The hearings in Portland, Hermiston and The Dalles were especially well attended. In total, we have received over 1200 public comments through letters and our Web site.

Staff need more time to thoroughly evaluate all the comments and options and develop our recommendation. We plan to bring the regional haze plan and PGE BART rule for your consideration at the June meeting, rather than the April meeting as initially planned.

### **Fine Particulate Nonattainment Areas**

In September 2006, the EPA strengthened federal standards for fine particulate matter and Klamath Falls and Oakridge have been designated nonattainment areas due to violations of the new standard. We are working with the Lane Regional Air Protection Agency and EPA to identify appropriate boundaries for the nonattainment areas, and we will begin working directly with the cities of with Klamath Falls and Oakridge to develop attainment plans. The plans will help identify sources contributing to violations of the standard and include emission reduction strategies to bring the areas into compliance. We anticipate completion of the plans in 2012, and will submit them to you before being incorporated into the EPA's State Implementation Plan.

Our monitoring data identifies more than a dozen other communities at risk from elevated levels of fine particulate matter. We must collect three consecutive years of monitoring data to determine if an area has exceeded the standard and are closely monitoring Lakeview and Burns, each with two years of data, and Prineville, which we started monitoring in 2009.

### **Low Emission Vehicles Update**

In December 2005, you adopted California's standards for new motor vehicles. These standards were designed to reduce greenhouse gas emissions and other air pollutants and the rules went into effect in 2008. Unfortunately, the requirement to reduce greenhouse gas emissions can't be implemented until EPA approves California's waiver under the Clean Air Act. The EPA denied the waiver, and Oregon joined California and several east coast states to sue EPA over this issue.

On February 12<sup>th</sup>, EPA published a notice in the Federal Register requesting comments on the denial. The notice also asked for comments on how much lead time should be provided for manufacturers to come into compliance, which indicates that EPA may grant the waiver. EPA scheduled a public hearing in early March, and the deadline for written comments is April 6<sup>th</sup>. EPA also requested a stay in the court case challenging the denial of the waiver.

### **Greenhouse Gas Reporting Update**

In October 2008, you adopted greenhouse gas emission reporting rules for stationary sources that emit 2500 tons or more per year of greenhouse gases, and the first emission reports are due in early 2010. Members of the Western Climate Initiative are developing their own reporting rules, with initial reports due in early 2011. In order to promote consistency in reporting, we are working with the WCI to develop essential requirements for reporting rules.

On January 6, 2009, the WCI released a background document for public comment. The document outlined general provisions and some of the reporting protocols for estimating greenhouse gas emissions. The comment period ended February 6<sup>th</sup>, and the WCI reporting committee is reviewing and developing responses to the comments received. The WCI committee is also working to complete the remaining emission quantification methods and protocols, and plans to release them for public comment in March.

Once the WCI methods are complete, DEQ will open a public comment period on the proposed reporting methods. We will also need to revise Oregon's reporting rules before 2010 to ensure that they are consistent with the WCI rule and incorporate additional reporting provisions as authorized by the Oregon Legislature. These additional provisions could include expanding reporting to electricity importers and fuels distributors, as well as establishing a fee to fund the reporting program. We plan to propose these revisions for your consideration in late 2009.

### **Federal Air Toxics Standards for Boilers**

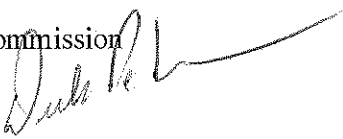
On July 31, 2007, the D.C. Circuit Court of Appeals vacated EPA's National Emission Standards for Hazardous Air Pollutants for boilers and process heaters. The court's action raised a question if a certain Clean Air Act provision had been triggered. This provision, known as the Maximum Achievable Control Technology requirement, requires states to develop case-by-case air toxics standards for boilers and process heaters. The provision usually applies when EPA misses a deadline to issue a National Emission Standard for Hazardous Air Pollutants, but it is not clear if this court decision equals a missed deadline.

We sent letters to 33 facilities informing them about the possible implications of the court ruling and advising them to seek legal counsel to determine if they need to submit a Maximum Achievable Control Technology application. Several sources submitted initial applications, but most responded that they do not believe the case-by-case requirement applies or that they are not subject to the rule.

One source has requested a six-month extension to submit its final application, primarily because EPA has not provided guidance about how to proceed. We plan to grant this extension. EPA has also agreed to publish a proposed new boiler and process heater standard by July 2009. We will closely track EPA's development of the revised standard and further court decisions about the applicability of the Maximum Achievable Control Technology requirement.

State of Oregon  
Department of Environmental Quality

Memorandum

**Date:** February 2, 2009  
**To:** Environmental Quality Commission  
**From:** Dick Pedersen, Director   
**Subject:** Agenda Item D, Informational Item: 2009 Budget and Legislative Agenda Update  
February 26, 2009 EQC Meeting

**Purpose of Item** The purpose of this agenda item is to provide an update to the Environmental Quality Commission on the status of the Department of Environmental Quality's 2009-11 Governor's Request Budget. This presentation includes updates on agency bills and other bills affecting DEQ, and key budget development issues for 2007-09 and 2009-11.

**Background** DEQ staff presented the draft DEQ budget policy packages and legislative concepts for the 2009 legislative agenda at the December EQC meeting. At that meeting, an update was provided regarding the Governor's Recommended Budget for DEQ which was released on December 1, 2008. Updates focused on the reduction options incorporated in the 2009-11 budget and the budget policy packages that that were included. In addition, an update on the Governor's request for all agencies to make 1.1 percent General Fund reductions for the 2007-09 biennium was provided.

#### 2009 Legislative Session

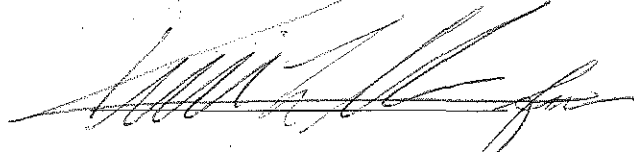
The 2009 Legislative Session started on January 12, 2009. Since then, all the DEQ legislative concepts have been introduced as bills. By early February, over half of these bills had public hearings. A special January revenue forecast revealed more bad news for the General Fund and Lottery Funds and the next full revenue forecast will be released on February 20, 2009. The General Fund and Lottery Fund revenues in this forecast will be used as the basis for the agencies' Ways and Means budget discussions for 2009-11. DEQ's Ways and Means presentations are tentatively scheduled to begin on April 7.

**EQC  
Involvement**

DEQ plans to bring updates on the status of the 2009 bills and budget request at each of the EQC meetings during the 2009 Legislative Session.

Approved:

Section:



Report Prepared By: Gregory K. Aldrich  
Phone: (503) 229-6345

## 2009-11 Budget Reductions

### Background

As part of the biennial budget development process, Oregon law requires state agencies to submit options in their proposed budgets to lower their current budgets by up to 10 percent. The Governor's Recommended Budget took into consideration the concurrent economic condition and reflects a 7.5 percent general fund reduction for DEQ.

After Governor Kulongoski submitted his recommended budget, the Legislature asked state agencies to submit additional reduction options based on worsening economic conditions. Between the governor and the Legislature, reduction options equating to a 20 percent of general and lottery funds have been prepared and submitted.

Since the Governor's Recommended Budget already reflects a 7.5 percent reduction, the Legislature is evaluating additional reduction options of 12.5 percent as they make decisions on DEQ's budget for the coming biennium.

### Reduction options taken in the 2009-11 Governor's Recommended Budget

The 2009-11 Governor's Recommended Budget reflects the elimination of approximately 7.5 percent, or \$3.1 million, of current DEQ activities supported by General Fund.

#### Air Quality

- Lane Regional Air Protection Agency (LRAPA) funding (0 FTE, \$73,690 General Fund)
- Local government outreach (0 FTE, \$41,450 General Fund)
- Small business assistance (.5 FTE, \$132,000 General Fund)
- Clean diesel grants (0 FTE, \$606,045 General Fund)
- Clean diesel outreach (2 FTE, \$458,000 General Fund)
- Ozone and fine particulate monitoring (1.5 FTE, \$308,000 General Fund)
- Fine particulate planning (1 FTE, \$182,000 General Fund)
- Eliminate one air toxic monitoring site (1 FTE, \$218,000 General Fund)

#### Water Quality

- Oregon Plan biomonitoring program (4 FTE, \$860,888 General Fund)

#### Land Quality

- Hazardous waste inspection reduction (1 FTE, \$264,000 General Fund)

### Further Budget Reduction Options

The Legislature is currently considering the following DEQ budget reduction options, which equate to 12.5 percent in additional general and lottery fund cuts.

#### Air Quality

- Air toxics community outreach reduction (.5 FTE, \$101,961 General Fund)

#### Water Quality

- Standards and assessment program (5.5 FTE, \$1,305,000 General Fund)
- Wastewater permitting (5.5 FTE, \$972,000 General Fund)
- TMDL development/revisions (4 FTE, \$1,075,882 Lottery Fund)
- Groundwater protection program (5 FTE, \$1,227,888 General Fund)

#### Land Quality

- Hazardous waste technical assistance (1 FTE, \$242,000 General Fund)
- Hazardous waste data management and development (1 FTE, \$251,000 General Fund)
- Orphan site cleanups – debt repayment (0 FTE, \$657,000 General Fund)
- Hazardous waste policy development and interpretation (0 FTE, \$246,000 General Fund)

The Legislature will decide on DEQ's 2009-2011 budget after the State's next economic forecast in May 2009. Prior to selecting the final reduction options and finalizing DEQ's budget, the Legislature may ask the DEQ to develop different or additional options for consideration.

### Alternative formats

*Alternative formats (Braille, large type) of this document can be made available. Contact DEQ's Office of Communications & Outreach, Portland, at (503) 229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696.*



State of Oregon  
Department of  
Environmental  
Quality

Office of the Director  
811 SW 6<sup>th</sup> Avenue  
Portland, OR 97204  
Phone: (503) 229-5696  
(800) 452-4011  
Fax: (503) 229-6762  
[www.oregon.gov/DEQ](http://www.oregon.gov/DEQ)

*DEQ is a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.*

#### Contacts:

Dick Pedersen  
Director  
(503) 229-5300

Greg Aldrich  
Government Relations  
Manager  
(503) 229-6345

COPY : given to  
Commissioners by  
Janet Gillespie (ACWA)  
February 24, 2009

Senator Bill Morrisette – Chair

Senate Committee on Human Services and Rural Health Policy

State Capitol

Salem, OR 97310

**Re: Oregon Drug Take Back Program**

to: [sen.billmorrisette@state.or.us](mailto:sen.billmorrisette@state.or.us)

Senator Morrisette and Committee Members:

One of the strategic priorities of the Environmental Quality Commission and the Oregon Department of Environmental Quality is **protecting people and the environment from toxics**.

Product stewardship systems that place the responsibility for safe disposal of consumer items with the producer at the end of their useful life are an important tool in meeting this goal. The success of the Oregon Electronic Waste Bill from the 2007 Session is a clear demonstration of the power of product stewardship systems as an effective tool – as of January, 2009, DEQ estimates that 1,471,493 pounds of electronic waste has been recycled under this program.

A bill to require a similar product stewardship –type system - - the Oregon Drug Take Back Bill (SB 598) is pending in your committee. The EQC strongly believes that a product stewardship type system that provides a convenient and effective method for disposal of unwanted and unused pharmaceuticals is needed in Oregon. To reduce toxic pollutants of concern to Oregonians, pollution prevention should always be our first step. The product stewardship program outlined in the bill keeps the program financing directly related to the producers, users, and disposers of medications and allows the private sector to design an efficient and flexible take back system.

The additional public health benefits of instituting an Oregon drug take back system are also compelling. Reducing avoidable poisonings and preventing the misuse of drugs, especially by teenagers, are also important reasons for passing this bill - - in addition to the water quality aspects.

Please let me, or the DEQ staff, know if you or members of the Committee have questions about the importance of instituting a safe and effective system for properly disposing of unwanted medicines.

Very Truly Yours,



Bill Blosser

Chair

Environmental Quality Commission

cc: **Committee Members:**

Senator Jeff Kruse, Vice-Chair [sen.jeffkruse@state.or.us](mailto:sen.jeffkruse@state.or.us)

Senator Laurie Monnes Anderson [sen.lauriemonnesanderson@state.or.us](mailto:sen.lauriemonnesanderson@state.or.us)

Senator Chris Telfer [sen.christelfer@state.or.us](mailto:sen.christelfer@state.or.us)

Senator Joanne Verger [sen.joanneverger@state.or.us](mailto:sen.joanneverger@state.or.us)

EQC members

DEQ Director Dick Pedersen

# Oregon Drug Take Back Program – SB 598

## Product Stewardship Model for Unwanted and Unused Drugs

### WHAT IS THE PROBLEM?

- Avoidable Poisonings

- For the Oregon Poison Center, pharmaceuticals represent the most common category of exposure, resulting in 48% of calls, and represent the most serious poisoning incidents.
- Between 2000 and 2006, the hospitalization rate for Oregon children from unintended poisonings by drugs, medicines and plants increased 60%; much can be attributed to prescription medications .

- Prescription drug abuse, especially in teens

- The number of teens abusing prescription drugs exceeds the number of teens using all other drugs combined, except marijuana and alcohol.
- Compared to the rest of the nation, Oregon ranks among the top ten states for:
  - Annual abuse of prescription drugs for all ages (228,000 persons per year);
  - Past year abuse of prescription drugs by youth 12 to 17 (34,000 persons per year); and,
  - Past year abuse of prescription stimulants (55,000 persons per year).
- Teens get their drugs from friends and family – not the street corner and not the Internet.

- Water quality issues

- US Geological Survey and Oregon DEQ water quality sampling indicates that trace amounts of various pharmaceuticals are found in Oregon's surface water; focused studies have found pharmaceuticals in groundwater.
- The majority of drugs reach water through excretion. However, a 2007 study by the Teleosis Institute in California reported that consumers did not use nearly 45 percent of what they were prescribed.
- Standard wastewater treatment methods are not designed to remove pharmaceuticals or other emerging compounds.
- About one-third of the unwanted drugs are from hospice and long term care; these facilities generally flush unwanted medicines since no effective alternatives exist.

### WHAT IS BEING PROPOSED?

- Drug manufacturers and distributors that serve Oregon would be required to plan, implement, and pay for a convenient way for Oregonians to dispose of unwanted and unused medicines in an environmentally safe manner.

### WHO DEVELOPED THE PROPOSAL?

- A broad stakeholder group: started meeting in the fall of 2006 to examine the problem, including: State agencies (DEQ, Health Division, Oregon State Police, Board of Pharmacy), pharmacy owners, hospital pharmacists, local health officials, environmental public interest groups, local governments, pharmaceutical manufacturers, chain drug store owners, drinking water and wastewater utilities
- Convening meeting: held in June, 2008 – over 125 attendees; product stewardship concept endorsed.
- Recommendations:
  - No additional cost to consumers.
  - Use a product stewardship model: manufacturers and distributors that supply drugs in Oregon craft system to recover and properly dispose of unwanted and unused drugs - consistent with past actions by Oregon Legislature.
    - Continues product stewardship type model similar to electronic waste recycling requirements of SB 737.
    - Drug take back programs are specifically mentioned as one toxic reduction tool that local governments should evaluate
  - Need a convenient system for both rural and urban Oregon.

# Senate Bill 598

Sponsored by COMMITTEE ON HUMAN SERVICES AND RURAL HEALTH POLICY

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Requires drug manufacturers to establish pharmaceutical take-back programs approved and regulated by Department of Human Services. Creates Advisory Committee on Pharmaceutical Take-Back Programs.

Establishes Pharmaceutical Take-Back Program Fund in State Treasury. Continuously appropriates moneys in fund to department for purpose of regulating pharmaceutical take-back programs. Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to pharmaceutical take-back programs; appropriating money; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. As used in sections 1 to 9 of this 2009 Act:**

5 (1) "Drug" has the meaning given that term in ORS 689.005.

6 (2) "Manufacturer" has the meaning given that term in ORS 689.005.

7 (3) "Nonprescription drugs" has the meaning given that term in ORS 689.005.

8 (4) "Pharmaceutical take-back program" means a service that collects and disposes of a  
9 consumer's drugs.

10 (5) "Prescription drug" has the meaning given that term in ORS 689.005.

11 (6) "Retail drug outlet" has the meaning given that term in ORS 689.005.

12 **SECTION 2. (1) A manufacturer of a drug may not sell the drug or allow the drug to be  
13 sold in this state unless the manufacturer operates a pharmaceutical take-back program  
14 approved by the Department of Human Services. The pharmaceutical take-back program  
15 must:**

16 (a) Accept prescription and nonprescription drugs presented to the program by consum-  
17 ers, including residents of long term care facilities and persons enrolled in hospice, palliative  
18 care and home health programs;

19 (b) Accept all prescription and nonprescription drugs sold in this state regardless of  
20 manufacturer;

21 (c) Offer pharmaceutical take-back services at no cost to the consumer, either at the  
22 time of sale of the drug or at the time of collection of the drug;

23 (d) Be convenient and adequate to serve consumers in urban and rural areas;

24 (e) Dispose of collected drugs by incineration or hazardous waste disposal;

25 (f) Include an education and outreach program to inform consumers, retail drug outlets,  
26 health practitioners, county health departments, hospitals, hospice care providers and long  
27 term care facilities of the availability of the program; and

28 (g) Include a method for evaluation and improvement of the program.

29 (2) A manufacturer may operate its pharmaceutical take-back program individually or

NOTE: Matter in boldfaced type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in boldfaced type.

1 collectively with other manufacturers.

2 **SECTION 3.** (1) A manufacturer that sells drugs in this state shall submit a plan de-  
3 scribing the manufacturer's proposed pharmaceutical take-back program to the Department  
4 of Human Services for approval. The plan must:

5 (a) Describe how the program meets the requirements of section 2 of this 2009 Act;

6 (b) Include recovery goals for the first, second and third years of the program, expressed  
7 as pounds per capita, and a plan for action if the recovery goals are not met;

8 (c) Describe the proposed method for disposal of the collected drugs;

9 (d) Describe how the manufacturer will coordinate with other manufacturers to minimize  
10 consumer confusion about different pharmaceutical take-back programs;

11 (e) Meet other requirements established by rule by the Department of Human Services;  
12 and

13 (f) Be accompanied by a fee determined by the department under section 8 of this 2009  
14 Act.

15 (2) The Department of Human Services shall review the disposal proposal in the plan in  
16 consultation with the Department of Environmental Quality.

17 (3) Within 60 days after a manufacturer submits a plan under subsection (1) of this sec-  
18 tion, the Department of Human Services shall approve or reject the plan. If the plan is re-  
19 jected, the department shall provide the manufacturer with a written statement of the  
20 reasons for the rejection, and the manufacturer may submit a revised plan within 60 days  
21 of the date of the written statement of rejection. The department shall approve or reject the  
22 revised plan within 60 days of its submission.

23 (4) A manufacturer shall submit an updated plan to the department annually, on or be-  
24 fore the anniversary of the approval of the original plan. The Department of Human Services  
25 shall review the disposal proposal in the updated plan in consultation with the Department  
26 of Environmental Quality, and shall approve or reject the updated plan as provided in sub-  
27 section (3) of this section.

28 (5) If at the time the plan is due for submission to the Department of Human Services  
29 there is no legal method for a manufacturer to accept all prescription and nonprescription  
30 drugs through the pharmaceutical take-back program, a manufacturer may apply to the de-  
31 partment for an extension of the time to submit the plan. The department may grant an  
32 extension not to exceed one year.

33 (6) The department may withdraw approval of a plan if a manufacturer does not operate  
34 the manufacturer's pharmaceutical take-back program in accordance with the approved plan.  
35 The department shall comply with ORS chapter 183 in withdrawing approval of a plan.

36 **SECTION 4.** The Department of Human Services shall adopt rules requiring retail drug  
37 outlets to post a sign to inform consumers of the availability of pharmaceutical take-back  
38 programs. The department shall make an example of the sign available on the Internet.

39 **SECTION 5.** The Department of Human Services shall establish a full-time position to  
40 oversee pharmaceutical take-back programs described in section 2 of this 2009 Act.

41 **SECTION 6.** In addition to any other liability or penalty provided by law, the Director of  
42 Human Services may impose a civil penalty on a person for violation of sections 2 to 4 of this  
43 2009 Act or of the rules adopted under sections 2 to 4 of this 2009 Act. The director may  
44 impose a penalty of up to \$250 for each violation. Civil penalties under this section shall be  
45 imposed as provided in ORS 183.745.

1       **SECTION 7.** The Pharmaceutical Take-Back Program Fund is established in the State  
2 Treasury, separate and distinct from the General Fund. Interest earned by the Pharmaceu-  
3 tical Take-Back Program Fund shall be credited to the fund. Moneys in the fund are con-  
4 tinuously appropriated to the Department of Human Services for the purpose of regulating  
5 pharmaceutical take-back programs.

6       **SECTION 8.** The Department of Human Services shall adopt rules establishing the appli-  
7 cation fee for submission of a pharmaceutical take-back program plan under section 3 of this  
8 2009 Act. The application fee must be designed to recover the cost to the department of  
9 regulating pharmaceutical take-back programs, including the cost of funding the position  
10 established under section 5 of this 2009 Act.

11       **SECTION 9.** Moneys received under sections 3 and 6 of this 2009 Act shall be paid into  
12 the State Treasury and credited to the Pharmaceutical Take-Back Program Fund.

13       **SECTION 10.** (1) There is created the Advisory Committee on Pharmaceutical Take-Back  
14 Programs, consisting of 11 members appointed by the Director of Human Services.

15       (2) The term of office of each member is three years, but a member serves at the pleas-  
16 ure of the director. Before the expiration of the term of a member, the director shall appoint  
17 a successor whose term begins immediately upon the expiration of the term of the current  
18 member. A member is eligible for reappointment for one additional term.

19       (3) The advisory committee shall advise the Department of Human Services on issues  
20 relating to pharmaceutical take-back programs.

21       (4) A majority of the members of the advisory committee constitutes a quorum for the  
22 transaction of business.

23       (5) Official action by the advisory committee requires the approval of a majority of the  
24 members of the advisory committee.

25       (6) The advisory committee shall elect one of its members to serve as chairperson.

26       (7) If there is a vacancy for any cause, the director shall make an appointment to become  
27 immediately effective.

28       (8) The advisory committee shall meet at least four times per year, at times and places  
29 specified by the call of the chairperson or of a majority of the members of the advisory  
30 committee.

31       (9) The advisory committee may adopt rules necessary for the operation of the advisory  
32 committee.

33       (10) A member of the advisory committee is not entitled to compensation, but in the  
34 discretion of the department may be reimbursed from funds available to the department for  
35 actual and necessary travel and other expenses incurred by the member in the performance  
36 of the member's official duties in the manner and amount provided in ORS 292.495.

37       (11) All agencies of state government, as defined in ORS 174.111, are directed to assist  
38 the advisory committee in the performance of its duties and, to the extent permitted by laws  
39 relating to confidentiality, to furnish such information and advice as the members of the  
40 advisory committee consider necessary to perform their duties.

41       **SECTION 11.** Notwithstanding the term of office specified by section 10 (2) of this 2009  
42 Act, of the members first appointed to the advisory committee:

43       (1) Three shall serve for a term ending June 30, 2011.

44       (2) Four shall serve for a term ending June 30, 2012.

45       (3) Four shall serve for a term ending June 30, 2013.

1       **SECTION 12.** Section 2 of this 2009 Act applies to manufacturers whose drugs are sold  
2 in this state on or after July 1, 2011.

3       **SECTION 13.** (1) Section 3 of this 2009 Act becomes operative January 1, 2010.

4       (2) The Department of Human Services may take any action before January 1, 2010, that  
5 is necessary to enable the department to exercise, on and after January 1, 2010, all the du-  
6 ties, functions and powers conferred on the department by section 3 of this 2009 Act.

7       **SECTION 14.** This 2009 Act being necessary for the immediate preservation of the public  
8 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect  
9 on its passage.  
10

---

March 17, 2008

Oregon Drug Take Back Stakeholders Group  
c/o Janet Gillaspie  
Oregon Association of Clean Water Agencies  
537 SE Ash, Suite 12  
Portland, OR 97214

Dear Ms. Gillaspie:

The Environmental Quality Commission endorses the July 2007 recommendations of the Oregon Drug Take Back Stakeholders Group to establish a product stewardship program for the safe and convenient disposal of unwanted and unused pharmaceuticals.

Oregon needs a convenient and effective method to dispose of unwanted and unused pharmaceuticals in an environmentally sound manner to reduce avoidable poisonings; prevent intentional misuse of drugs, especially by teenagers; and protect water quality. The product stewardship model outlined in the Recommendations, which requests the pharmaceutical industry to institute an effective return program that conveniently serves all Oregonians, is the correct model. This option keeps the program financing directly related to the producers, users, and disposers of medications, and allows the private sector to design an efficient and flexible take back system.

We appreciate your leadership and the work of the Oregon Drug Take Back Stakeholder Group and are pleased to add our support to the Group's Recommendations.

Please contact me or Abby Boudouris in our Solid Waste Program, 503-229-6108, if you have any questions.

Very truly yours,



Lynn Hampton  
Environmental Quality Commission, Chairwoman

State of Oregon

Department of Environmental Quality

Memorandum

**Date:** January 29, 2009

**To:** Environmental Quality Commission

**From:** Dick Pedersen, Director

**Subject:** Agenda Item F: Contested Case No. AQ/OB-WR-07-060 regarding Curtis B. Johnston, February 26, 2009; EQC Meeting

|                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Appeal to EQC</b></p>                     | <p>The Oregon Department of Environmental Quality implements environmental protection laws. Most people voluntarily comply with the laws; however, DEQ may assess civil penalties and orders to compel compliance or create deterrence. When a person or business does not agree with DEQ's enforcement action, they have the right to an appeal and a contested case hearing before an Administrative Law Judge.</p> <p>On July 16, 2007, DEQ issued Curtis Brian Johnston a Notice of Violation, Department Order and Civil Penalty Assessment (Notice, Attachment N, D2) alleging four violations and assessing civil penalties to violations one and two. On July 30, 2007, Mr. Johnston appealed the Notice and Order (Attachment N, D3), and a contested case hearing was held on July 22, 2008. Administrative Law Judge Monica Smith issued a Proposed Order (Attachment H) on October 3, 2008, and on October 31, 2008, Mr. Johnston petitioned the EQC for review of the Proposed Order (Attachment G).</p>                                                                                                                                                                                                                                                                                      |
| <p><b>Background and "Findings of Fact"</b></p> | <p>In the Proposed Order, Administrative Law Judge Smith found that Curtis Johnston owned approximately 60 acres at 11320 SE Lafayette Highway, Dayton, Oregon. The property is in Yamhill County and within three miles of the city limits of Dayton. His property contained a residence, chicken farm, and horse barn with four horses, as well as a dump site with metal barrels, an old stove, a microwave, a bicycle, plastic paint bucket, plastic tarp, auto parts, light bulbs, plastic bottles, petroleum products, rubber products, and other garbage. In the summer of 2006, Mr. Johnston added demolition materials, including sheetrock, insulation, paneling, tile, cabinetry, Hardiplank, furniture, miscellaneous wood, and flooring, to the dump site as a result of a broken water pipe in his home</p> <p>On October 28, 2006, Oregon State Police, the Dayton Fire Department and the McMinnville Fire Department responded to a large fire containing prohibited materials at the dump site on Mr. Johnston's property. There was a burn ban in effect on this date, no one was attending the fire and there was no means present to extinguish the fire. The pile of waste debris at the dump site measured 10 feet high by 30 feet wide by 50 feet long and consisted of 555.56</p> |



|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p>cubic yards of material. Mr. Johnston alleged that he did not know who started the fire.</p> <p>Previously, in July 1999, the McMinnville Fire Department and Oregon State Police responded to a fire of prohibited materials at the dump site on Mr. Johnston's property. As firefighter Chad Cook attempted to extinguish the fire, Mr. Johnston interfered by taking the hose from him and telling the fire fighters to get off his property. The McMinnville Fire Department also responded to a fire containing prohibited materials on Mr. Johnston's property in June 2003. At that fire, there was also no one attending the burn and no means present to extinguish the fire. Mr. Johnston was home, but refused to answer the door.</p> <p>On July 20, 1999, the DEQ mailed a Notice of Noncompliance letter to Respondent informing him of the open burning rules he violated during his July 8, 1999 burn.</p> <p>Mr. Johnston served as a fire board member with the McMinnville Fire Department approximately three years before the date of the contested case hearing. In this position he was informed about open burning rules and knew about the prohibition on burning the types of materials he accumulated on his property. Mr. Johnston was provided with, and was aware of, the DEQ rules on open burning prior to October 28, 2006.</p> |
|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Conclusions of the Administrative Law Judge</b></p> | <p>On October 3, 2008, the Administrative Law Judge issued a Proposed Order (Attachment G). In her Conclusions of Law, the Administrative Law Judge concluded that:</p> <ol style="list-style-type: none"> <li>1. Mr. Johnston allowed or caused to be initiated or maintained the open burning of prohibited materials, in violation OAR 340-264-0060(3) adopted pursuant to ORS 468.020 and ORS 468A.025.</li> <li>2. Mr. Johnston disposed of or authorized the disposal of solid waste at a site for which a solid waste permit has not been issued, in violation of ORS 459.205(1) and OAR 340-093-0040(1).</li> <li>3. Mr. Johnston caused or allowed to be initiated the open burning of demolition debris within three miles of Dayton, in violation of OAR 340-264-0110(4)(b)(E), adopted pursuant to ORS 468.020 and ORS 468A.025.</li> <li>4. Mr. Johnston failed to constantly attend an open burn and failed to have the necessary equipment for extinguishing the fire, in violation of OAR 340-264-0050(2), adopted pursuant to ORS 468.020 and ORS 468A.025.</li> <li>5. Mr. Johnston is subject to a civil penalty assessment in the amount of \$9,024.<sup>1</sup></li> </ol> |
| <p><b>Issues On Appeal:</b></p>                           | <p><u>1. Evidence in the Record</u></p> <p><i>Mr. Johnston's Argument:</i></p> <p>Regarding all of the violations (1-4), Mr. Johnston argues that DEQ did not submit any evidence to meet its burden of proof – by a preponderance of the evidence<sup>2</sup> – that he was responsible for the violations. In his Exceptions and Brief (Attachment E), Mr. Johnston states: "...the record made by the EQC at the July 22, 2008 hearing is totally devoid of any evidence to support the aforesaid burden of proof. The record contains nothing but speculation, supposition and opinion on the question of how the fire was caused or initiated. Not a single piece of substantive evidence was offered to support the State's position that Respondent allowed, caused, or maintained the fire which occurred on October 28, 2006." (Mr. Johnston's Exceptions and Brief, page 1, Attachment E). Thus, Mr. Johnston argues that he is not liable for the</p>                                                                                                                                                                                                                                |

<sup>1</sup> Note that DEQ and Mr. Johnston agreed at the hearing that DEQ would amend Exhibit D2 (Attachment M) regarding the penalty calculation for Violation 1. The amendment changed the "C" factor in the penalty assessment for Violation 1 from a value of 2 to a value of 0. This change resulted in a reduction in the penalty for Violation 1 from \$4,500 to \$4,000.

<sup>2</sup> OAR 340-011-0545

violations.

*DEQ's Argument:*

Regarding the alleged open burning violations, Mr. Johnston misinterprets the evidence required to hold a party liable. Open burning is a strict liability violation, meaning that one's intention or negligence in committing the violation is not relevant in determining if the violation occurred. Further, DEQ does not need to prove who ignited the open burn or precisely how it started. Oregon law states:

"The following persons are *strictly liable* for open burning in violation of this rule:

- (a) Each person who is in ownership, control or custody of the real property on which open burning occurs, including any tenant thereof;
- (b) Each person who is in ownership, control or custody of the material that is burned; and
- (c) Any person who causes or allows open burning to be initiated or maintained." (OAR 340-264-0060(1))

By making open burning of prohibited materials a strict liability violation, the EQC recognized the inherent problem with evidence in an open burning situation. Rarely if ever is an inspector or the fire department present to observe the ignition of an illegal burn. Additionally, the evidence about how the burn started is often mostly or completely burned. Because of the difficulties in proof and because the EQC expects those in possession of real property or burnable materials to be proactive in avoiding fires, the EQC sought to ensure that those who cause or allow illegal burning on their property or who burned materials within their control be held accountable.

The undisputed evidence is: (1) Mr. Johnston is the owner of the property on which the burn occurred; (2) Mr. Johnston is the owner or is in control of the materials which were burned; and (3) the materials which burned include materials which are prohibited from being burned at any time or place in Oregon. Therefore, Mr. Johnston is strictly liable for causing or allowing to be initiated or maintained the open burning of prohibited materials and the Administrative Law Judge was correct in finding that DEQ met its burden of proof by a preponderance of the evidence.

Regarding the alleged solid waste violation, DEQ believes that the preponderance of evidence on the record shows that Mr. Johnston illegally

disposed of solid waste on his property, which is not permitted as a solid waste disposal facility.<sup>3</sup> Mr. Johnston admits that he had a “dump site” on his property which included solid waste materials from his home as well as materials that had been there for approximately twelve years. The solid waste included: metal barrels, an old stove, a microwave, a bicycle, plastic paint bucket, plastic tarp, auto parts, light bulbs, plastic bottles, petroleum products, rubber products, sheetrock, insulation, paneling, tile, cabinetry, Hardiplank, furniture, miscellaneous wood, and flooring and other garbage. Mr. Johnston did not dispute this finding of fact, but clarifies that the metal materials had been there since he bought the property (Attachment E, page 2). Mr. Johnston testified that he knew it was illegal to store solid waste on his property without a permit. Based on the evidence that there was a dump site containing approximately 555 cubic yards of solid waste on Mr. Johnston’s property, some of which had been there for twelve years, and that he is the owner of the property which is not a permitted disposal facility, the Administrative Law Judge was correct in finding that there was substantial evidence on the record to show that Mr. Johnston committed violation two.

2. ORS 468A.030 as a Defense to the Open Burning Violations

*Mr. Johnston’s Argument:*

Regarding violations one, three and four, Mr. Johnston states that he is exempt from liability because ORS 468A.030 exonerates him. ORS 468A.030 states:

“The several liabilities which may be imposed pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B upon persons violating the provisions of any rule, standard or order of the Environmental Quality Commission pertaining to air pollution shall not be so construed as to include any violation which was caused by an act of God, war, strife, riot or other condition as to which any negligence or willful misconduct on the part of such person was not the proximate cause.”

Mr. Johnston states that he did nothing either negligent or willful in his

<sup>3</sup> OAR 340-093-0040(1) No person shall dispose of or authorize the disposal of solid waste except at a solid waste disposal site permitted by the Department to receive that waste, or at a class of disposal site specifically exempted by OAR 340-093-0050(3) from the requirement to obtain a solid waste permit.

conduct surrounding the open burning violation and therefore he is exempt from liability for the open burning of prohibited materials under this statute.<sup>4</sup> Mr. Johnston states in his Exceptions and Brief (page 3, Attachment E) that he did not cause or allow the open burning and therefore presumably did not commit violation three. He also alleges that he was unaware of the fire and therefore presumably had no duty such as those described in violation four (Respondent's Exceptions and Brief, page 4, Attachment E).

*DEQ's Argument:*

DEQ argues that Mr. Johnston incorrectly interprets ORS 468A.030 and contends that the statute is inapplicable to the violations at issue in this appeal. According to DEQ, ORS 468A.030 applies only to situations where there is "an act of God, war strife, riot, or other condition to which any negligence or willful misconduct on the part of such person was not the proximate cause." No act of God, war, strife, riot or other condition akin to these unavoidable conditions occurred, and Mr. Johnston has never argued that one did. Because there was no "condition," the existence or absence of evidence about Mr. Johnston's negligence or willfulness is not relevant to his liability under ORS 468A.030. Because ORS 468A.030 is inapplicable in the present case, Mr. Johnston is responsible for the open burning of prohibited materials on his property (violation one), as well as violations three and four.

DEQ further states that, even if there existed some "condition" akin to an act of God, war, strife or riot, Mr. Johnston's actions were still reckless in allowing the fire. DEQ argues that Mr. Johnston was a former fire board member of the McMinnville Fire Department, that he had been cited for at least two previous illegal fires on his property, that he knew of the open burning regulations, and that his dump contained materials which are prohibited from being burned. With this knowledge, Mr. Johnston placed nine tons of "hot"<sup>5</sup> hay, which he thought might ignite, 40 feet from his 555 cubic yard dump pile, and did not check on the hay again to see if it was cooling or if it was continuing to heat and pose an increasing fire risk. DEQ believes that these facts support the judge's conclusion that Mr. Johnston acted recklessly.

<sup>4</sup> It should be noted that Administrative Law Judge Smith did not address this statute or the defense Mr. Johnston uses. Judge Smith found that Mr. Johnston was reckless in allowing the open burning of prohibited materials and therefore it was unnecessary to address whether or not he was negligent, a lesser metal state.

<sup>5</sup> Under some circumstances, wet or damp hay decomposes generating heat and methane which can spontaneously combust.

|                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                             | <p><u>3. Solid Waste Violation</u></p> <p><i>Mr. Johnston's Argument</i></p> <p>Mr. Johnston argues that he did not dispose of solid waste on his property. He claims that the demolition debris from his house was there temporarily and that he intended to dispose of it at a waste disposal facility when it dried out. He also argues that the rest of the dump site was comprised of waste debris that had been there since he acquired the property twelve years prior.</p> <p><i>DEQ's Argument</i></p> <p>Judge Smith found that DEQ met its burden of proof with evidence on the record that Mr. Johnston disposed of solid waste on his property, a location which is not permitted as a solid waste disposal facility. DEQ does not find this claim that he intended to properly dispose of the demolition waste credible, in part, because the demolition debris was placed on top of his dump pile in July, the dry season, and burned on October 28, 2006, the wet season.<sup>6</sup> Furthermore, DEQ notes that Mr. Johnston stated that he had no intention of disposing of this waste debris at a proper disposal facility despite his testimony that he knew it was illegal to accumulate solid waste on his property without a solid waste disposal facility permit. Therefore, Mr. Johnston is liable for the violation of disposing solid waste at an unpermitted facility and there is no credible, exonerating or mitigating evidence that he had actually intended to not violate.</p> |
| <p><b>EQC Authority</b></p> | <p>EQC has the authority to hear this appeal under OAR 340-011-0575.</p> <p>DEQ's contested case hearings must be conducted by an Administrative Law Judge.<sup>7</sup> The proposed order was issued under current statutes and rules governing the Administrative Law Judge Panel.<sup>8</sup></p> <p>Under ORS 183.600 to 183.690, EQC's authority to change or reverse an Administrative Law Judge's Proposed Order is limited.</p> <p>The most important limitations are as follows:</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

<sup>6</sup> Judge Smith also did not find Mr. Johnston's testimony to be credible as she discussed in the "Credibility Determination" section of the Proposed Order. (Attachment G, page 2-3)

<sup>7</sup> ORS 183.635.

<sup>8</sup> ORS 183.600 to 183.690 and OAR 137-003-0501 to 137-003-0700.

|                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                            | <p>(1) The EQC may not modify the form of the Administrative Law Judge's Proposed Order in any substantial manner without identifying and explaining the modifications.<sup>9</sup></p> <p>(2) The EQC may not modify a recommended finding of historical fact unless it finds that the recommended finding is not supported by a preponderance of the evidence.<sup>10</sup> Accordingly, the EQC may not modify any historical fact unless it has reviewed the entire record or at least all portions of the record that are relevant to the finding.</p> <p>(3) The EQC may not consider any new or additional evidence, but may only remand the matter to the Administrative Law Judge to take the evidence.<sup>11</sup></p> <p>The rules implementing these statutes also have more specific provisions addressing how commissioners must declare and address any <i>ex parte</i> communications and potential or actual conflicts of interest.<sup>12</sup></p> <p>In addition, the EQC has established by rule a number of other procedural provisions, including:</p> <p>(1) The EQC will not consider matters not raised before the Administrative Law Judge unless it is necessary to prevent a manifest injustice.<sup>13</sup></p> <p>(2) The EQC will not remand a matter to the Administrative Law Judge to consider new or additional facts unless the proponent of the new evidence has properly filed a written motion explaining why evidence was not presented to the hearing officer.<sup>14</sup></p> |
| <p><b>Alternatives</b></p> | <p>The EQC may:</p> <ol style="list-style-type: none"> <li>1. As requested by DEQ, issue a Final Order adopting the Administrative Law Judge's Proposed Order.</li> <li>2. Issue a Final Order determining that the findings of fact were not based on a preponderance of the evidence, explain why and amend the Administrative Law Judge's Proposed Order accordingly.</li> <li>3. Issue a Final Order determining that Mr. Johnston was not negligent in the</li> </ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

<sup>9</sup> ORS 183.650(2).

<sup>10</sup> ORS 183.650(3). A historical fact is a determination that an event did or did not occur or that a circumstance or status did or did not exist either before or at the time of the hearing.

<sup>11</sup> OAR 137-003-0655(5).

<sup>12</sup> OAR 137-003-0655(7), referring to ORS Chapter 244; OAR 137-003-0660.

<sup>13</sup> OAR 340-011-0132(3)(a).

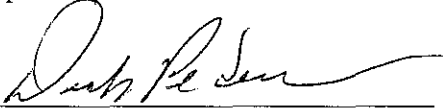
<sup>14</sup> *Id.* at (4).

|                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                           | <p>violation of disposing of solid waste and reduce the mental state factor from 2 to 0, resulting in a reduction of the civil penalty for violation two from \$5,024 to \$4,774.</p> <p>4. Determine that Mr. Johnston was not reckless or negligent in the open burning violations and that the Administrative Law Judge therefore failed to apply the statutory defense and remand the matter with direction to the Administrative Law Judge for further hearing regarding the statutory defense.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p><b>Attachments</b></p> | <p>A. Mr. Johnston's Reply to DEQ's Answering Brief, dated January 5, 2009.<br/>             B. Letter from Stephanie Clark to Mr. Engle, dated December 29, 2008<br/>             C. DEQ's Answering Brief, dated December 29, 2008<br/>             D. Letter from Stephanie Clark to Mr. Engle, dated December 2, 2008<br/>             E. Mr. Johnston's Exceptions and Brief, dated November 25, 2008<br/>             F. Letter from Stephanie Clark to Mr. Engle, dated November 25, 2008<br/>             G. Mr. Johnston's Petition for Review, dated October 30, 2008<br/>             H. Administrative Law Judge's Proposed Order, dated October 3, 2008<br/>             I. DEQ's Response to Mr. Johnston's Closing Argument, dated August 19, 2008<br/>             J. Mr. Johnston's Closing Argument, dated August 11, 2008<br/>             K. DEQ's Closing Argument, dated August 5, 2008<br/>             L. Transcript of the Contested Case Hearing of July 22, 2008<br/>             M. Notice of Hearing and Contested Case Rights, dated April 8, 2008<br/>             N. Exhibits from Hearing of July 22, 2008</p> <ul style="list-style-type: none"> <li>• January 19, 2007 Pre-Enforcement Notice from Dan Fox</li> <li>• July 16, 2007 Notice of Violation, Department Order and Civil Penalty Assessment (Notice)</li> <li>• July 30, 2007 Response to Notice and request for a hearing from Robert Engle</li> <li>• November 3, 2006 Memorandum to File by Dan Fox re: Oct. 28, 2006 fire</li> <li>• December 20, 2006 Photograph Log re: Oct. 28, 2006 fire by Dan Fox</li> <li>• Mr. Johnston Open Burning Photos re: Oct. 28, 2006 fire by McMinnville Fire Department</li> <li>• November 2, 2006 Fire Department Report by former Chief Shannon Thorson re: Oct. 28, 2006 fire</li> <li>• January 3, 2007 Oregon State Police Report re: Oct. 28, 2006 by Senior Trooper Bridgett Taylor</li> <li>• July 8, 1999 Oregon State Police Report re: July 8, 1999 fire by Sr. Trooper Bridgett Taylor</li> </ul> |

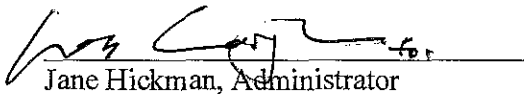


|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <ul style="list-style-type: none"><li>• July 8, 1999 McMinnville Fire Department Report re: July 8, 1999 fire by former Chief Shannon Thorson</li><li>• July 8, 1999 Letter of Statement re: July 8, 1999 fire by Dennis McMillan</li><li>• July 8, 1999 Letter of Statement re: July 8, 1999 fire by Chad Cook</li><li>• July 12, 1999 Special Report re: July 8, 1999 fire by former Chief Shannon Thorson</li><li>• July 8, 1999 Letter of Statement re: July 8, 1999 fire</li><li>• June 20, 2003 McMinnville Fire Department Report Referral re: June 20, 2003 fire by former Chief Shannon Thorson</li><li>• June 19, 2007 Economic Benefit Memorandum by Dave LeBrun</li><li>• January 3, 2008 Economic Benefit Memorandum by Sarah Greenley</li><li>• October 10, 2007 Letter by Mr. Engle to Dan Fox</li><li>• September 4, 2007 Letter by Mr. Engle to Dan Fox with attached receipts</li><li>• July 20, 1999 Warning Letter from Felica D. Sonnenschein</li><li>• DEQ Open Burning Regulations for the Mid-Willamette Valley</li><li>• David LeBrun Affidavit</li></ul> |
|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Approved:



Dick Pedersen, Director



Jane Hickman, Administrator

Report Prepared by:

Leah Koss

Environmental Law Specialist

Phone: (503) 229-6408

Item F: Johnston Contested Case  
February 26, 2009 EQC Meeting  
Attachment A

**ENGLE & SCHMIDTMAN**  
ATTORNEYS AT LAW  
NORTHWOOD OFFICE PARK - 810 GLATT CIRCLE  
WOODBURN, OR 97071

ROBERT L. ENGLE  
E-MAIL: [renglelaw@qwestoffice.net](mailto:renglelaw@qwestoffice.net)

KIRK A. SCHMIDTMAN  
E-MAIL: [schmidtmmanlaw@qwestoffice.net](mailto:schmidtmmanlaw@qwestoffice.net)

TELEPHONE  
(503) 981-0155

FAX  
(503) 981-0158

WEB SITE  
[www.engleschmidmanlaw.com](http://www.engleschmidmanlaw.com)

January 5, 2009

RECEIVED  
JAN. 06 2009  
OFFICE OF COMPLIANCE  
AND ENFORCEMENT  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Oregon Environmental Quality Commission  
c/o Stephanie Clark, Assistant to the Commission  
811 SW Sixth Avenue  
Portland, OR 97204

RE: Curtis B. Johnston Appeal to the Environmental Quality Commission  
Respondent's Reply Brief  
DEQ Case No. AQ/OB-WR-07-060

Members of the Commission:

Please find enclosed the Respondent's Reply Brief in the above matter.

Yours truly,

ROBERT L. ENGLE

RLE: th

Enclosure

cc: Leah Koss ✓  
Curtis B. Johnston



1. The State's first argument beginning in the middle of Page 3 and ending in the middle of Page 5 is that "Mr. Johnston is strictly liable for the violations because Mr. Johnston started or allowed the fire to be ignited or maintained and accumulated the solid waste on his property as the ALJ concluded...(or that) Mr. Johnston's actions were reckless and willful." (Page 3, lines 21 & 22, Page 4, lines 1-3). The Department states that "Mr. Johnston intended to burn and he knew that it was illegal." (Page 4, lines 2 & 3). The Department makes this argument after maintaining that ORS 468A.030 is not applicable to this case although no real reason is given for that conclusion. The Department then argues at Page 4, lines 22 – 23 that Mr. Johnston did not produce evidence to establish that the fire started from some cause other than his own act or negligence. It was not Mr. Johnston's obligation to submit evidence to prove how the fire started since the burden of proof was not his.

Although we are not certain that we fully understand the State's position on this issue, it is infinitely clear that the Oregon Legislature and the Department's supporting Oregon Administrative Rules require a finding by the Administration Law Judge that the person charged *caused, allowed, initiated or maintained* the fire. It is also infinitely clear that ORS 468A.030 excuses from liability those whose conduct did not cause the fire. That statute states that when the fire was "caused" by some "other condition" the property owner is not liable.

The State's sole evidence found in the transcript is that a fire occurred on Mr. Johnston's property on October 28, 2006. The State produced no evidence as to how this fire started and it is absolutely required to produce such evidence if Mr. Johnston is to be found liable and responsible for that fire under State law.

2. Thereafter, the State argues at Pages 5 though line 3 on Page 8 that Mr. Johnston's conduct was either negligent or reckless.

The transcript establishes that the only evidence in the record regarding the source of the material that burned on October 28, 2006 came from Mr. Johnston. He stated that there was some metal materials on the back corner of his property when he purchased it. It was non-combustible. He stated that in the summer of 2006 he added wet wood and sheetrock to the pile of metal with the intent of allowing it to dry and then removing the entire pile to a certified dump. He testified that shortly before the fire occurred he moved a stack of hot hay (potential internal combustion) to a location approximately forty (40) feet from the insulation and wood pile to allow it to cool. He testified that he did not foresee, nor did he have reason to foresee, that a fire would start either in the hay or in the insulation and wood material as a result of that conduct. Although he speculated that the haystack may have ignited, there is no evidence that that is how the fire started. For all we know a trespasser could have ignited the fire either in the hay or the materials in Mr. Johnston's absence which is as likely as combustion within the hay. In any event, none of this conduct can be deemed reckless or negligent unless it was clearly foreseeable that a fire would result from that conduct. There is no evidence that such foreseeability existed.

3. The State argues beginning at Page 8 that Mr. Johnston's testimony was not credible to the Administrative Law Judge. The credibility of Respondent, in the eyes of the Administrative Law Judge, only becomes relevant if the State has produced sufficient evidence to meet its burden of proof or if the Respondent admitted acts that would support a finding that he was responsible for the charges filed against him by the State.

As stated above, it is Respondent's position that the State offered *no* evidence which would meet its burden of proof to establish that the Respondent caused, or allowed to be initiated or maintained the October 28, 2006 fire.

Further, Respondent has consistently denied to Senior Trooper Bridget Taylor of the Oregon State Police and DEQ Representative Dan Fox, and others, that he had any participation whatsoever in this fire. Although he made potential suggestions as to how the fire may have started, he has always denied that he knew how it started or had any reasonable evidence regarding the factors that resulted in the fire.

Whether Administrative Law Judge Smith believed or disbelieved, or liked or disliked Mr. Johnston is totally immaterial unless the State has already met its burden of proof.

The State also argues, under the Credibility heading, that the existence of two past fires on Mr. Johnston's property are substantive and reasonable evidence to use to determine his guilt with respect to the 2006 fire. Respondent contends that any consideration of past fires to determine Respondent's guilt or innocence for the 2006 fire is unlawful and is prejudicial to Respondent in this case and is simply wrong for the following reasons:

(a) The question of whether previous violations are relevant is addressed in ORS 468.130(2)(b). Pursuant to that statute, the consideration of prior violations of a similar nature is only allowed as a factor to be considered in imposing civil penalties once the person has been found responsible for the current violation.

(b) ORS 183.450(1) addresses the evidence that is admissible in contested cases during the consideration of the question of whether or not the Respondent is responsible for the violations charged. That statute states that the standard for the admissibility of evidence is that "all...evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible." Respondent submits that in both a court of law and in the business community, the question of whether or not I am guilty of a previous violation (such as speeding) cannot be used to determine whether I am now guilty of the same violation once again. There must be some other substantial evidence to support my guilt on the present occasion before the judge will consider past violations in assessing my penalty.

(c) Further, the record is clear that although two previous fires occurred on Mr. Johnston's property in prior years, there was never an investigation nor a citation nor a violation for any of those previous fires. On one occasion Mr. Johnston was cited for interfering with a fire official but that charge was subsequently dismissed by the Court. All

that exists in the record is the fact that two previous fires occurred on Mr. Johnston's property, with no evidence, rulings, investigation or findings that Mr. Johnston was responsible for those prior fires. To now rely upon the existence of two prior fires to determine that Mr. Johnston violated the law with regard to the 2006 fire is indisputably wrong. As a matter of fact, Respondent contends that the consideration of those two prior fires is not even admissible with regard to penalties should Mr. Johnston be found responsible for the current fire since the two prior fires did not result in violations, findings or penalties. Those two prior fires have been given great weight by both the Administrative Law Judge and the State's attorney in their ultimate conclusion that Mr. Johnston is responsible for the 2006 fire and those conclusions are simply wrong and in error.

### CONCLUSION

The burden of proving the allegations of the Notice of Violation is on the State. The State has wholly and utterly failed to meet that burden of proof. Not a single substantive piece of evidence has been produced by the State to establish that Mr. Johnston violated the statute. The legislative intent is clear with regard to establishing responsibility for these violations. The State must establish that the accused caused, allowed to be initiated or maintained the fire by a preponderance of the evidence. The Administrative Law Judge's primary two arguments are that she did not find the Respondent credible and that two prior fires had occurred on the Respondent's property. Neither of these findings support a finding that Respondent violated the statutes and Oregon Administrative Rules with which he has been charged.

If the Commission will read the transcript of the hearing before the Administrative Law Judge which Respondent purchased for this purpose, it can reach no other conclusion and that the State's Complaint and Notices of Violation must be dismissed.

DATED, this 5th day of January, 2009.

Respectfully submitted,

ENGLE & SCHMIDTMAN

By \_\_\_\_\_  
ROBERT L. ENGLE, OSB# 660379  
Of Attorneys for Respondent, Curtis B. Johnston

Item F: Johnston Contested Case  
February 26, 2009 EQC Meeting  
Attachment A

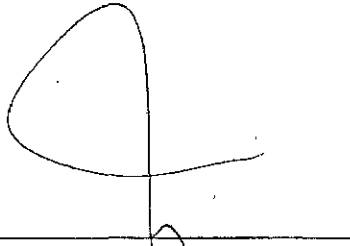
### CERTIFICATE OF MAILING

On January 5, 2009, I mailed the foregoing Respondent's Reply Brief in DEQ Case No. AQ/OB-WR-07-060.

By First Class Mail

Oregon Environmental Quality Commission  
c/o Stephanie Clark, Assistant to the Commission  
811 SW Sixth Avenue  
Portland, OR 97204

Leah Koss  
Dept. of Environmental Quality  
811 SW Sixth Avenue  
Portland, OR 97204

A handwritten signature in black ink, appearing to be 'R. Engle', written over a horizontal line.

Robert L. Engle, OSB# 660379  
Of Attorneys for Respondent  
Curtis B. Johnston

*Curtis B. Johnston Appeal to the Environmental Quality Commission, Respondent's Reply Brief, DEQ Case No. AQ/OB-WR-07-060*

Item F 000016

Oregon

ENVIRONMENTAL  
QUALITY  
COMMISSION

BY CERTIFIED MAIL

December 29, 2008

Robert L. Engle  
Northwood Office Park  
610 Glatt Circle  
Woodburn OR 97071

Re: In the Matter of Curtis B. Johnston  
OAH Case No. 80049  
DEQ Case No. AQ/OB-WR-07-060

Dear Mr. Engle:

The Environmental Quality Commission received an Answering Brief from the Department of Environmental Quality for the Curtis Johnston Appeal in the matter referenced above on December 29, 2008.

You have 20 days from today to file a reply brief, or January 18, 2009. A reply brief is not required, and has no impact on whether the appeal moves forward.

Once all briefs have been filed, this item will be set for Commission consideration at a regularly scheduled Commission meeting, and I will notify you of the date and location by certified mail. If you have any questions about this process, please call me at (503) 229-5301.

Sincerely,



Stephanie Clark  
Assistant to the Commission

Cc: Leah Koss, Oregon Department of Environmental Quality



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







# Oregon

Theodore R. Kulongoski, Governor

## Department of Environmental Quality

Headquarters  
811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696  
FAX (503) 229-6124  
TTY (503) 229-6993

December 29, 2008

The Oregon Environmental Quality Commission  
c/o Stephanie Clark, Assistant to the Commission  
811 SW Sixth Avenue  
Portland, OR 97204

Re: Curtis B. Johnston Appeal to the Environmental Quality Commission  
Department's Answering Brief  
DEQ Case No. AQ/OB-WR-07-060

Chair Blosser and Members of the Commission:

Please find enclosed the Department's Answering Brief for the Curtis Johnston Appeal to the Environmental Quality Commission referenced above.

If you have any questions, please contact me at 503-229-6408.

Sincerely,

Leah Koss  
Environmental Law Specialist  
Office of Compliance and Enforcement

Cc: Robert Engle

Enclosure



BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:  
CURTIS B. JOHNSTON,

) DEPARTMENT'S ANSWERING BRIEF  
) No. AQ/OB-WR-07-060  
)  
)  
)

RESPONDENT.

) YAMHILL COUNTY

The Department of Environmental Quality (Department) submits this Answering Brief to the Environmental Quality Commission (Commission) for its consideration in the appeal of the Administrative Law Judge's (ALJ's) Proposed Order in Notice of Assessment of Civil Penalty No. AQ/OB-WR-07-060 (Notice), filed by Curtis B. Johnston, Respondent.

I. INTRODUCTION

On October 28, 2006, there was a large waste debris fire on Mr. Johnston's property. The Department issued Mr. Johnston Notice of Violation, Department Order and Assessment of Civil Penalty No. AQ/OB-WR-07-060 (Notice) in the amount of \$9,524 on July 16, 2007. Mr. Johnston appealed and a contested case hearing was held before Administrative Law Judge (ALJ) Monica Smith on July 22, 2008. ALJ Smith concluded that Mr. Johnston was liable for all four violations cited and that the Department's penalty was calculated appropriately. The burden of proof in administrative law cases is a "preponderance of the evidence" and ALJ Smith found that the Department met its burden.

II. ADMINISTRATIVE LAW JUDGE'S CONCLUSIONS

The ALJ concluded that: (1) Respondent allowed or caused to be initiated or maintained the open burning of prohibited materials, in violation of OAR 340-264-0060(3) adopted pursuant to ORS 468.020 and ORS 468A.025; (2) Respondent disposed of or authorized the disposal of solid waste at a site for which a solid waste permit has not been issued, in violation of ORS 459.205(1) and OAR 340-093-0040(1); (3) Respondent caused or allowed to be initiated the open burning of demolition debris within three miles of the city of Dayton, in violation of OAR 340-264-0110(4)(b)(E) adopted pursuant to ORS 468.020 and ORS 468A.025; (4) Respondent failed to

1 constantly attend an open burn and failed to have the necessary equipment for extinguishing the fire,  
2 in violation of OAR 340-264-0050(2), adopted pursuant to ORS 468.020 and ORS 468A.025; and  
3 (5) Respondent is subject to a civil penalty in the amount of \$9,024.<sup>1</sup> (Proposed Order, page 4)

### 4 III. COMMISSION ACTION REQUESTED

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

### 7 IV. APPLICABLE LAW AND POLICY

8 It is the policy of the Environmental Quality Commission and the Department to protect  
9 Oregon's air quality from degradation. The Commission and the Department have successfully  
10 reduced the amount of unnecessary air pollution by making it illegal to burn certain materials in  
11 Oregon for the purpose of disposing of solid waste.<sup>2</sup> Oregon law provides that certain materials are  
12 prohibited from being burned at any time or place in Oregon because burning these "prohibited"  
13 materials emits dense, toxic smoke and noxious odors into Oregon's air which can be extremely  
14 harmful to human health and the environment.<sup>3</sup> Oregon law also prohibits burning within Special  
15 Open Burning Control areas to reduce the amount of air pollution in and around areas of larger  
16 population.<sup>4</sup> Further, no matter where burning is taking place, the Department requires that a burn  
17 be constantly attended by a responsible person and that the person must have the necessary  
18

19 <sup>1</sup> Note that the Department and Respondent agreed at the hearing that the Department would amend Exhibit D2  
20 regarding the penalty calculation. The amendment changed the "C" factor in the penalty assessment for Violation  
21 1 from 2 to 0. This amendment reduced the total civil penalty from \$9,524 to \$9,024.

22 <sup>2</sup> OAR 340-264-0020 Policy. In order to restore and maintain the quality of the air resources of the state in a  
23 condition as free from air pollution as is practicable, consistent with the overall public welfare of the state, it is the  
24 policy of the Environmental Quality Commission: (1) To eliminate open burning disposal practices where  
25 alternative disposal methods are feasible and practicable.

26 <sup>3</sup> OAR 340-264-0060(2) No person may cause or allow to be initiated or maintained any open burning that creates a  
27 nuisance or a hazard to public safety.

OAR 340-264-0060(3) No person may cause or allow to be initiated or maintained any open burning of any wet  
garbage, plastic, asbestos, wire insulation, automobile part, asphalt, petroleum product, petroleum treated material,  
rubber product, animal remains, or animal or vegetable matter resulting from the handling, preparation, cooking, or  
service of food or of any other material which normally emits dense smoke or noxious odors.

<sup>4</sup> OAR 340-264-0110(4)(b)(E) (4) Construction and Demolition open burning is allowed outside of special open  
burning control areas, subject to the requirements and prohibitions of local jurisdictions, the State Fire Marshal,  
OAR 340-264-0050, 340-264-0060 and 340-264-0070. Unless authorized pursuant to OAR 340-264-0180,  
Construction and Demolition open burning is prohibited within special open burning control areas, including the  
following: (b) Areas in or within three miles of the corporate city limit of: (E) In Yamhill County, the Cities of  
Amity, Carlton, Dayton, Dundee, Lafayette, McMinnville, Newberg, Sheridan and Willamina.

1 equipment to extinguish the fire.<sup>5</sup> The disposal of solid waste is prohibited in places not permitted  
2 by the Department as Solid Waste Disposal facilities because proper disposal facilities institute  
3 proper precautions to guard against environmental or human health dangers.<sup>6</sup> Finally, if the  
4 Commission modifies the ALJ's Proposed Order or the findings of fact within in any substantial  
5 manner,<sup>7</sup> the Commission must identify the modifications and provide an explanation as to why it  
6 made those modifications. (OAR 137-003-0665(3)) Additionally, the Commission may only  
7 modify a finding of historical fact made by the administrative law judge if the agency determines  
8 that the finding made by the ALJ is not supported by a preponderance of the evidence in the record.  
9 (OAR 137-003-0665(4))

#### 10 V. DISCUSSION

11 Although not considered by ALJ Smith, Mr. Johnston claims that ORS 468A.030  
12 absolves him from all liability in this case. ORS 468A.030 states:

13  
14 The several liabilities which may be imposed pursuant to ORS 448.305, 454.010  
15 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and  
16 ORS chapters 468, 468A and 468B upon persons violating the provisions of any  
17 rule, standard or order of the Environmental Quality Commission pertaining to air  
18 pollution shall not be so construed as to include any violation which was caused  
19 by an act of God, war, strife, riot or other condition as to which any negligence or  
20 willful misconduct on the part of such person was not the proximate cause.  
21 [Formerly 449.825 and then 468.300]

19 However, as discussed below, the Department maintains that this statute does not apply in this  
20 case. The Department argues: (1) ORS 468A.030 does not apply because no act of *force*  
21 *majeure* occurred. Therefore, Mr. Johnston is strictly liable for the violations because Mr.  
22 Johnston started or allowed the fire to be ignited or maintained and accumulated the solid waste  
23

24 <sup>5</sup> OAR 340-264-0050(2) A responsible person, or an expressly authorized agent, must constantly attend all open  
25 burning. This person must be capable of and have the necessary equipment for extinguishing the fire. This person  
26 also must completely extinguish the fire before leaving it.

26 <sup>6</sup> OAR 340-093-0040(1) No person shall dispose of or authorize the disposal of solid waste except at a solid waste  
27 disposal site permitted by the Department to receive that waste, or at a class of disposal site specifically exempted  
28 by OAR 340-093-0050(3) from the requirement to obtain a solid waste permit.

27 <sup>7</sup> ORS 137-003-0665(3): "...any agency modifies proposed order in a "substantial manner" when the effect of the  
28 modifications is to change the outcome or the basis for the order or to change a finding of fact."

1 on his property as the ALJ concluded. (2) Alternatively, ORS 468A.030 does not apply because  
2 Mr. Johnston's actions were reckless and willful. Mr. Johnston intended to burn and he knew  
3 that it was illegal. (3) Alternatively, ORS 468A.030 does not apply because (a) Mr. Johnston  
4 was negligent in creating the combustible pile of solid waste; (b) he has had past fires and failed  
5 to take reasonable precautions to prevent and respond to another fire; and (c) if hot hay  
6 combusting was the cause, he was reckless and placing it near the pile.

7 **A. Respondent's ORS 468A.030 defense is not applicable to this case.**

8 Mr. Johnston does not deny that a fire burning prohibited materials occurred on his  
9 property on October 28, 2006, that the pile that burned was discarded waste, some of which had  
10 been there for 12 years, that he does live within three miles of the corporate city limits of  
11 Dayton; and that he was not attending the fire and did not have equipment with which to  
12 extinguish the fire. Mr. Johnston "accepts, agrees or admits" to every finding of fact that ALJ  
13 Smith made in her Proposed Order, except for number 10,<sup>8</sup> which he states is irrelevant but does  
14 not deny. (Exceptions and Brief, pages 1 and 2) However, Mr. Johnston argues that he should  
15 not be held responsible for any of these violations of Oregon law and the air pollution that  
16 ensued from them. Mr. Johnston argues that there was no evidence he started the fire,  
17 notwithstanding the ALJ's finding to the contrary based on the evidence in the record and that  
18 ORS 468A.030 exonerates him from all responsibility for the fire.

19 Mr. Johnston misconstrues ORS 468A.030 because the purpose of this statute is to  
20 exempt persons from liability in causing air pollution when the violation "was caused by an act  
21 of God, war, strife, riot or other condition." ORS 468A.030 is not applicable to the facts of this  
22 case. There is no evidence that the violation resulted from a *force majeure*<sup>9</sup> of the type  
23 contemplated in the statute. Mr. Johnston has not, in his Exceptions and Brief nor at any other  
24 time since issuance of the Notice, alleged that some "other condition" akin to an act of God, war  
25

26 <sup>8</sup> ALJ Smith states in Finding of Fact No. 10 that "On July 22, 2008, Respondent testified that his children started  
the 1999 fire intentionally per his instructions to burn agricultural debris or 'chick paper.'"

27 <sup>9</sup> As defined in Webster's Dictionary, "*force majeure*" is: (1) superior or irresistible force; (2) an event or effect that  
cannot be reasonably anticipated or controlled – compare to Act of God. (<http://www.merriam-webster.com>)

1 strife or riot occurred which was the cause of the fire. Therefore, the exemption from liability  
2 offered in 468A.030 is not applicable to this case.

3 Mr. Johnston focuses on the part of the statute which states: "as to which any negligence  
4 or willful misconduct on the part of such person was not the proximate cause." This is an  
5 incorrect interpretation of the statute because there must still exist "an act of God, war, strife, riot  
6 or other condition as to which any negligence..." and Mr. Johnston does not allege that any of  
7 these things existed. ALJ Smith did not address ORS 468A.030 as a relevant defense in her  
8 Proposed Order. When conditions are not present that exempt a person from liability for air  
9 pollution, open burning is otherwise a strict liability violation. Any person who is in ownership,  
10 control or custody of the property where the burn occurred or of the material that was burned is  
11 strictly liable for open burning.<sup>10</sup> Respondent admits that he owns the property where the burn  
12 occurred and that the solid waste and prohibited materials which burned belonged to him.

13 **B. Even if evidence of a condition of force majeure had existed, Mr. Johnston's actions**  
14 **were negligent, reckless and willful, and therefore the defense does not apply.**

15 **I. Respondent's reckless<sup>11</sup> management of hot hay on his property**

16 Mr. Johnston testified that he does not know how the fire started but speculated that it  
17 had been caused by hot hay spontaneously combusting. On October 28, 2006, when the fire first  
18 occurred, Senior Trooper Bridget Taylor of the Oregon State Police asked Mr. Johnston why he  
19 was burning. (Exhibit D8) He responded that he did not know how the fire started. He did not  
20 mention hot hay combusting as a possible cause of the fire. Then on December 19, 2006, Mr.  
21 Johnston told Dan Fox of DEQ that hot hay had combusted and started the fire. He stated that "it  
22 caught fire, spread through some dry grass and into our dump." (Exhibit D4, page 5) He then  
23 stated that he didn't know exactly what was in the pile and that it was just stuff from around the  
24

25 <sup>10</sup> OAR 340-264-0060(1) The following persons are strictly liable for open burning in violation of this rule: (a)  
26 Each person who is in ownership, control or custody of the real property on which open burning occurs, including  
27 any tenant thereof; (b) Each person who is in ownership, control or custody of the material that is burned; and (c)  
Any person who causes or allows open burning to be initiated or maintained.

<sup>11</sup> Pursuant to OAR 340-012-0030(17), "reckless" means the respondent consciously disregarded a substantial and  
unjustifiable risk that the result would occur or that the circumstance existed and that disregarding the risk  
constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

1 property. (Exhibit D4, page 5) In Mr. Johnston's Answer to the Department's Notice, he states  
2 that he placed hot hay which had been in his barn and which he thought might combust 40 feet  
3 from the dump pile on his property. (Exhibit D3, page 2)

4 The amount of hay that Mr. Johnston claims he removed from his barn was nine tons. He  
5 told Mr. Fox that he thought this hay might combust so he removed it from the barn to prevent  
6 the barn from catching fire. (Exhibit D4, page 5) He left the hay in three, three-ton stacks and  
7 did not break it apart in any way. He testified that he did not check on the hay again to  
8 determine if it was in fact cooling or if it was continuing to heat and pose a fire risk. The  
9 Department alleges that Mr. Johnston initiated the fire or allowed the fire to be initiated or  
10 maintained. Even if hot hay combusted and started this fire, Mr. Johnston acted negligently and  
11 recklessly in placing nine tons of hay close enough to a 555-cubic yard pile of solid waste,  
12 including prohibited materials, to allow this pile to catch fire.

13 As a former board member of the McMinnville Fire Department (Exhibit D4, page 3), as  
14 a farmer and as a person who has himself baled and stored many tons of hay over the years  
15 (Transcript, page 167), Mr. Johnston acted negligently and recklessly in his storage of the hay  
16 that allegedly combusted. Mr. Johnston knew that his dump included materials which are  
17 prohibited from being burned. (Exhibit D4, page 5). Mr. Johnston's actions were not that of a  
18 reasonable person, and certainly not the expected actions of a person with the knowledge and  
19 background that he has. Mr. Johnston acted with a conscious disregard of the unjustifiable risk  
20 that the large amount of hay, which he determined posed a fire risk, would catch fire. Mr.  
21 Johnston's actions were a gross deviation from the standard of care that a reasonable person  
22 would observe in this situation.

23 ***2. Respondent's negligent<sup>12</sup> and willful accumulation of solid waste on his property***

24 In denying that he improperly disposed of the solid waste on his property, Mr. Johnston  
25 claims in his Answer to the Notice that the only waste disposed on his property was water-

26  
27 <sup>12</sup> Pursuant to OAR 340-012-0030(11), "negligence" means failure to take reasonable care to avoid a foreseeable risk.

1 damaged insulation and lumber removed from his home several months before the fire. (Exhibit  
2 D3, page 2) In his Exceptions and Brief, Mr. Johnston continues to discuss only the debris  
3 removed from his home and that he intended to take it to a dump site once it had dried.<sup>13</sup>  
4 (Exceptions and Brief: Finding of Fact no. 1, page 1 and 2; Respondent's Argument pages 4 and  
5 5) Contrary to Mr. Johnston's assertion, fire fighters and the Oregon State Police arrived at Mr.  
6 Johnston's property on October 28, 2006 to find a 10-foot-tall, 30-foot-wide and 50-foot-long  
7 pile of debris that included plastics, rubber, a bicycle, rusted metal drums, furniture, insulation,  
8 sheet rock, miscellaneous wood products and other prohibited materials burning on Mr.  
9 Johnston's property (Exhibit D7).

10 Mr. Johnston states in his Exceptions and Brief that he knew he could not store discarded  
11 material permanently but that his intent was to dispose of the waste at a dump. (Exceptions and  
12 Brief, page 5) Mr. Johnston, however, testified that all the other debris in the dump pile had  
13 been there since he bought the property in 1994. (Transcript, page 136) Mr. Johnston refers to  
14 the area with all of the waste as the "old dump" and refers to all this stuff in "the dump" on his  
15 property. The "dump" is where he placed the water-damaged material from his house. At  
16 hearing, Mr. Johnston testified he had no intention of ever properly disposing of the debris that  
17 had been there for at least 12 years (Transcript, page 166).

18 Mr. Johnston acted negligently and willfully in accumulating a large amount of waste  
19 material, much of it combustible, on his property. He testified that he knew that permanent  
20 storage was indeed illegal and yet some of this material sat and accumulated at his "dump" for  
21 more than 12 years. Mr. Johnston argues that he did nothing that was even negligent, let alone  
22 reckless, that caused this fire. To the contrary, Mr. Johnston failed to exercise reasonable care in  
23 this situation. Mr. Johnston knew that it was illegal to accumulate solid waste on his property, he  
24 knew it contained combustible materials which are prohibited from being burned, he has had two  
25 previous fires with prohibited materials on his property, and he knew the rules regarding open

26 <sup>13</sup> Note that the debris had been there since at least July according to Mr. Johnston, because he was waiting for it to  
27 dry. Since the fire occurred on October 28, 2006, well into the wet season, this explanation is implausible. Further,  
Mr. Johnston did not produce any corroborating evidence to support his story about the broken pipe (e.g., plumbing  
invoices, material invoices, pictures).



1 burning and that solid wastes are regulated. (Exhibit D4, page 5 and Exceptions and Brief, page  
2 5) Mr. Johnston consciously disregarded an unjustifiable risk, and this was a gross deviation  
3 from the standard of care a reasonable person would observe.

4 **C. Respondent's testimony is not credible.**

5 ***1. ALJ Smith's Findings***

6 In her Proposed Order, ALJ Smith includes a Credibility Determination section regarding  
7 Mr. Johnston's testimony. She finds that Mr. Johnston's testimony was not credible due to his  
8 "repeated denials, explanations, and justifications for the current and past burns on his property"  
9 and therefore his testimony is "unpersuasive." (Proposed Order, page 3). ALJ Smith highlighted  
10 many of Mr. Johnston's conflicting statements in the Proposed Order. Additionally, Mr.  
11 Johnston did not submit any exhibits and did not produce any witnesses at the hearing to  
12 corroborate any of his testimony. Because a determination of credibility can only be made at the  
13 time of the hearing, the credibility determination should not be reviewed by the EQC. This  
14 determination was made while the ALJ had the opportunity to hear Mr. Johnston's testimony  
15 first-hand and had the opportunity to observe his body language and demeanor. ALJ Smith  
16 finally determines that "where Respondent's testimony conflicted with that of Mr. Fox (DEQ)  
17 and others, Respondent's testimony is given lesser weight." (Proposed Order, page, 3) The  
18 Department asks that the EQC consider the evidence, Proposed Order and testimony from the  
19 hearing in light of the ALJ's credibility determination.

20 ***2. Past Fires on Respondent's Property***

21 Mr. Johnston's credibility is also questionable in light of the fact that he has had past fires  
22 on his property. Some people use illegal burning as a means to get rid of waste on their property  
23 rather than paying dump fees. Mr. Johnston has had a "dump" since the day he bought the  
24 property in 1994 and has had three documented fires on his property between the years of 1999  
25 and 2006.<sup>14</sup> ALJ Smith also noted that, despite Mr. Johnston's property consisting of 60 acres,

26 <sup>14</sup> These three fires were documented fires. Additionally, fires have been reported on Mr. Johnston's property on  
27 April 7, 2002, August 30, 2002, September 23, 2002 and October 20, 2006, for a total of seven reported fires on Mr.  
Johnston's property between 1999 and 2006. Senior Trooper Taylor provided this information to Dan Fox on  
December 27, 2006. (Exhibit D4, pages 8-9)

1 "all three fires were basically contained to the illegal dump sites Respondent maintained."  
2 (Proposed Order, page 3) Additionally, all three fires consisted of prohibited materials including  
3 rubber materials, plastics (a paint bucket, a tarp, bottles), petroleum products, furniture, a bike,  
4 insulation, a stove, a microwave, light bulbs, animal remains, sheet rock, metals, miscellaneous  
5 wood debris, paneling, tile, flooring and other garbage. (Proposed Order, Findings of Fact Nos.  
6 1, 3 and 9) Mr. Johnston claims that he does not know how these fires started and/or offers  
7 excuses as to what may have caused the fires. Despite all of the materials found burning on July  
8 8, 1999, Mr. Johnston claims that he instructed his children to burn "chick paper" and that he  
9 doesn't know how everything else caught fire. At the hearing, Mr. Johnston claimed he knew  
10 nothing about the June 2003 fire which was documented by Fire Chief Thorsen and that he had  
11 never heard anything about that fire. (Transcript, pages 154-156) Now, in his Exceptions and  
12 Brief to the Commission, Mr. Johnston admits that there was a fire on his property in June 2003.  
13 (Exceptions and Brief, page 2)

14 During the fire of July 1999, when firefighters from two different fire departments were  
15 trying to extinguish the huge open burn on Mr. Johnston's property, Mr. Johnston, enraged,  
16 swore at them and ripped the fire hose from one firefighter's hands yelling at them to get off of  
17 his property. (See Proposed Order Findings of Fact no. 6, pages 3 and 4) Further, Mr. Johnston  
18 would not let Trooper Taylor talk with anyone working on the property to determine the cause of  
19 the fire. This is not the reaction or conduct of someone surprised or concerned about a fire on his  
20 property. This is the reaction of someone who intends for a fire to occur and has no desire for it  
21 to be extinguished. Mr. Johnston testified that he was angry and that he swore at the firefighters  
22 because he was concerned about the sanitation of his farm and his chickens.

23 Finally, Mr. Johnston, in his Exceptions and Brief, states that the Commission may not  
24 use evidence of prior fires on Mr. Johnston's property, all of which Mr. Johnston now admits to,  
25 as evidence of the fire at issue in this case. (Exceptions and Brief, page 5) This statement is  
26 erroneous and unsupported. The evidentiary rules which govern in administrative law cases is  
27 ORS 137-003-0610, which allows the ALJ and the Commission to use any evidence that would

1 be commonly relied upon by reasonably prudent persons in the conduct of their serious affairs.<sup>15</sup>  
2 Evidence of past illegal fires would be used by a reasonable person in determining the likelihood  
3 that a person allowed another illegal fire on their property and in determining if that person's  
4 testimony is credible.

5 In fact, ALJ Smith allowed all evidence of the past fires into the record and considered all  
6 relevant and material evidence in making her credibility determination, findings of fact and  
7 conclusions of law. Contrary to Mr. Johnston's allegation that evidence of past fires on his  
8 property is irrelevant, she determined that all evidence of past fires was relevant and admissible  
9 into the record.<sup>16</sup> Any reasonable person would give evidence of chronic open burning weight in  
10 determining the likelihood that the same responsible party committed the exact same violation  
11 yet again. The Commission may consider and give full weight to all evidence the ALJ allowed  
12 into the record in reviewing the legal conclusions reached by the ALJ – specifically, that it is  
13 more likely than not that Mr. Johnston was reckless in allowing the fire to occur on his property.

#### 14 VI. CONCLUSION

15 ALJ Smith did not believe Mr. Johnston's excuses and explanations for the fires on his  
16 property and found that the Department had proven that it was more likely than not that Mr.  
17 Johnston committed the violations. Mr. Johnston asks that the Commission deem the fire of  
18 October 28, 2006 akin to "an act of God, war, strife, riot" in using ORS 468A.030 as a defense to  
19 the third documented illegal fire on his property within seven years. As discussed, no condition  
20 existed in this case which renders ORS 468A.030 applicable, and therefore, the open burning in  
21 this case is a strict liability violation. Mr. Johnston does not deny that the fire occurred on his  
22 property and that the solid waste and prohibited materials which burned were his. ALJ Smith did  
23 not even address Mr. Johnston's defense of 468A.030. She found that not only was Mr. Johnston  
24 negligent, but that he was in fact reckless, a greater mental state, in allowing the open burn on his

25 <sup>15</sup> 137-003-0610(1): Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of  
their serious affairs shall be admissible.

26 <sup>16</sup> 137-003-0610(3): All offered evidence, not objected to, will be received by the administrative law judge subject  
to the administrative law judge's power to exclude irrelevant, immaterial, or unduly repetitious matter.

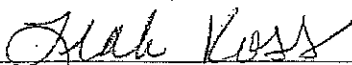
1 property. (Proposed Order, page 10) Therefore, ORS 468A.030 is not appropriately alleged in  
2 this case, but even if it were, Mr. Johnston's actions were reckless, which negates the  
3 applicability of 468A.030 even in a case where it is appropriately used.

4 Mr. Johnston has a background as a farmer, a person who has baled and sold hay, a  
5 former board member with the fire department, and is one with personal experience from at least  
6 two previous illegal fires on his property (and four more reported but not documented) and  
7 notice from the Department that his actions were illegal. Mr. Johnston's actions in allowing the  
8 accumulation of more than 555 cubic yards of waste debris, including materials prohibited from  
9 being burned, as well as his management of hay which he believed was a fire risk, were therefore  
10 unjustifiable risks and were gross deviations from the standard of care a reasonable person would  
11 observe in that situation.

12 For the reasons stated above, DEQ asks the Commission to uphold ALJ Smith's  
13 determination that Mr. Johnston committed the four violations cited in the Notice by the  
14 Department and to uphold the \$9,024 civil penalty.

15  
16  
17 Date

12/29/08

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
  
Leah Koss, Environmental Law Specialist

1 CERTIFICATE OF SERVICE .

2 I hereby certify that I served the Hearing Memorandum within on the 29th day of  
3 December, 2008 by PERSONAL SERVICE upon  
4 The Oregon Environmental Quality Commission  
5 c/o Stephanie Clark, Assistant to the Commission  
6 811 SW Sixth Avenue  
Portland, OR 97204

7 and by upon

8 Robert L. Engle  
9 Engle & Schmidtman  
Northwood Office Park  
10 610 Glatt Circle  
Woodburn, OR 97071

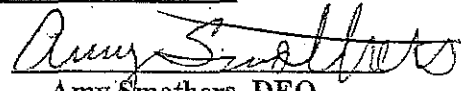
11 by ELECTRONIC MAIL and by mailing a true copy of the above by placing it in a sealed  
12 envelope, with postage prepaid at the U.S. Post Office in Portland, Oregon, on December 29,  
13 2008.

**CERTIFICATE OF SERVICE IN PERSON**

I hereby certify that I served an Answering Brief to the Environmental Quality Commission, re: Curtis B Johnson Case No. AQ/OB-WR-07-060.

Served upon: Stephanie Clark, Assistant to EQC  
811 SW 6<sup>th</sup> Ave  
Portland OR 97204

by delivering in person a true copy of the above on December 29, 2008.

  
Amy Smothers, DEQ

Oregon

ENVIRONMENTAL  
QUALITY  
COMMISSION

December 2, 2008

Robert L. Engle  
Northwood Office Park  
610 Glatt Circle  
Woodburn OR 97071

Re: In the Matter of Curtis B. Johnston  
OAH Case No. 80049  
DEQ Case No. AQ/OB-WR-07-060

Dear Mr. Engle:

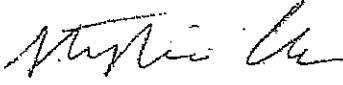
The Environmental Quality Commission (Commission) received your letter of exceptions in the above-referenced matter on November 26, 2008. Your exceptions were filed in a timely manner.

The Proposed Order outlined appeal procedures, including filing of exceptions and briefs. The hearing decision and Oregon Administrative Rules (OAR 340-011-0575) state that a representative of the Department of Environmental Quality may file an answering brief within 30 days from the filing of your exceptions, or December 26, 2008. The Commission may extend any of the time limits contained in OAR 340-011-0575(5) if an extension request is made in writing and is filed with the Commission before the expiration of the time limit.

An answering brief is not required, and has no impact on whether an appeal moves forward. If an answering brief is filed, you will have 20 days from the date of filing to file a reply brief. A reply brief is not required, and has no impact on whether the appeal moves forward.

Once all briefs have been filed, this item will be set for Commission consideration at a regularly scheduled Commission meeting, and I will notify you of the date and location by certified mail. If you have any questions about this process, please call me at (503) 229-5301.

Sincerely,

  
Stephanie Clark  
Assistant to the Commission

Cc: Leah Koss, Oregon Department of Environmental Quality



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

Item F 000032  
DEQ-46



Item G: Johnston Contested Case  
February 26, 2009 EQC Meeting  
Attachment E

**ENGLE & SCHMIDTMAN**  
ATTORNEYS AT LAW  
NORTHWOOD OFFICE PARK - 610 GLATT CIRCLE  
WOODBURN, OR 97071

ROBERT L. ENGLE  
E-MAIL: [renglelaw@qwestoffice.net](mailto:renglelaw@qwestoffice.net)

KIRKA A. SCHMIDTMAN  
E-MAIL: [schmidtmánlaw@qwestoffice.net](mailto:schmidtmánlaw@qwestoffice.net)

TELEPHONE  
(503) 981-0155

FAX  
(503) 981-0158

WEB SITE  
[www.engleschmidtmánlaw.com](http://www.engleschmidtmánlaw.com)

November 25, 2008

Environmental Quality Commission  
c/o Stephanie Clark  
811 S. W. 6th Avenue  
Portland, OR 97204

Re: In the Matter of Curtis B. Johnston  
OAH Case No. 800449  
Agency Case No. AQ/OB-WR-07-060

Dear Ms. Clark:

This office represents the Respondent, Curtis B. Johnston. On October 30, 2008 we filed with the Environmental Quality Commission our Respondent's Petition for Review.

We now submit for filing the Respondent's Exceptions and Brief, together with the original of the transcript of Proceedings relating to the July 22, 2008 Hearing.

It is my understanding that I will be advised by the Commission of the time set for oral arguments. It would be helpful if I could be contacted prior to the actual scheduling of oral arguments with available dates so that I could note any conflicts that might exist with my schedule.

Respectfully submitted,

ENGLE & SCHMIDTMAN

By \_\_\_\_\_  
ROBERT L. ENGLE, OSB# 660379  
Attorneys for Respondent Curtis B. Johnston



BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
STATE OF OREGON

IN THE MATTER OF:

CURTIS B. JOHNSTON, Respondent

) RESPONDENT'S EXCEPTIONS  
) AND BRIEF  
)  
) OAH Case No.: 800449  
) Agency Case No.: AQ/OB-WR-07-060

Respondent, CURTIS B. JOHNSTON, by and through his attorney, Robert L. Engle, submits his EXCEPTIONS AND BRIEF with regard to the PROPOSED AND FINAL ORDER of Administrative Law Judge Monica Smith dated October 3, 2008.

SUMMARY OF RESPONDENT'S POSITION UPON REVIEW

The burden of proving that Respondent allowed or caused to be initiated or maintained the open burning of prohibited material was and is on the EQC.

The burden of proving that Respondent disposed of or authorized the disposal of solid waste at a site for which a solid waste permit was not issued was and is on the EQC.

The burden of proving whether Respondent caused or allowed to be initiated the open burning of demolition within three miles of the city limit of Dayton was and is on the EQC.

The burden of proving that Respondent failed to constantly attend to an open burn and failed to have the necessary equipment for extinguishing the fire was and is on the EQC.

It is Respondent's position that the record made by the EQC at the July 22, 2008 hearing is totally devoid of any evidence to support the aforesaid burden of proof. The record contains nothing but speculation, supposition and opinion on the question of how the fire was caused or initiated. Not a single piece of substantive evidence was offered to support the State's position that Respondent allowed, caused, or maintained the fire which occurred on October 28, 2006.

EXCEPTIONS TO FINDINGS OF FACT

Finding Of Fact No. 1: Respondent accepts Finding of Fact No. 1 but would add that there was additional testimony that the metal materials at the site were there when Respondent acquired the property and the demolition materials added to the site by

Respondent in the summer of 2006 were temporarily placed by Respondent at that location to allow them to dry out. Respondent testified that he intended to remove those materials to a County dumpsite after they were dry. (Tr 139, lines 24-25, Tr 140, lines 1 &2).

Finding of Fact No. 2: Respondent accepts Finding of Fact No. 2.

Finding of Fact No. 3: Respondent agrees that a fire occurred and that certain materials were burning. The Finding omits the fact that hay was also included as a part of the burning material. (Tr 66-67).

Finding of Fact No. 4: Respondent accepts Finding of Fact No. 4.

Finding of Fact No. 5: Respondent agrees that demolition materials temporarily placed on the site as a result of the broken water pipe in his home are materials prohibited from being burned at that time and place.

Finding of Fact No. 6: Although Respondent admits that a fire occurred on his property in July, 1999, Respondent submits that what was said and done at that time is irrelevant and immaterial in considering whether or not Respondent violated the Oregon Administrative Rules which are delineated as "issues" on page 1 of the PROPOSED AND FINAL ORDER. Further, the Finding omits the fact that Respondent had never, prior to the 2006 incident, been cited for anything relating to that fire other than an "interference with an officer" citation which was ultimately dismissed by the Court. (Tr 91-94).

Finding of Fact No. 7: Respondent admits Finding of Fact No. 7.

Finding of Fact No. 8: Respondent admits Finding of Fact No. 8.

Finding of Fact No. 9: Respondent admits that a fire occurred in 2003 on his property but submits that that fact is irrelevant to the 2006 fire for the reason that Respondent was never cited nor charged with any violation arising out of that fire. (Tr 91-94).

Finding of Fact No. 10: The Finding is irrelevant to the issues before this body.

#### EXCEPTIONS TO CONCLUSIONS OF LAW

Exception to Conclusions of Law No. 1: There is absolutely no evidence in the record which would support the State's burden of proof to establish that Respondent allowed or caused to be initiated or maintained the open burning of prohibited materials on October 28, 2006.

Exception to Conclusions of Law No. 2: There is absolutely no evidence in the record which would support the State's burden of proof to establish that Respondent disposed of or authorized the disposal of solid waste on his property. The record indicates that Respondent temporarily placed demolition materials resulting from a broken water pipe

in his home at the subject location with intent to move those materials to a permanent and authorized disposal site after they had dried out. (Tr 139-140). Respondent submits that the phrase "disposed of" and "disposal of" means removal of those materials to a site of permanent and ultimate repose.

Exception to Conclusions of Law No. 3: Respondent excepts to conclusion of law no. 3. There is no evidence in the record to support the State's burden of proof to establish Respondent caused or allowed to be initiated the open burning.

Exception to Conclusions of Law No. 4: It would seem reasonable to assume that Respondent would not have a duty to attend the burn and bring equipment for extinguishing the burn if he was unaware of the existence of the fire until after firefighters arrived.

### RESPONDENT'S ARGUMENT

The administrative law judge, in the opening paragraph of her opinion, correctly acknowledges that the burden of presenting evidence to support a fact or position in a contested case rests on the proponent of that fact or position. ORS 183.450(2). She correctly states that EQC has the burden of proving its allegations by a preponderance of the evidence and acknowledges that a "preponderance of the evidence" requires that "facts" introduced support the ultimate conclusion.

The administrative law judge's language found at the bottom of page 5 and the top of page 6 of her opinion betrays the error and fallacy of her ultimate reasoning. She states:

"Respondent is the owner of the Property where the open burning occurred on October 28, 2006. Included in the burn pile were items that are illegal to burn at any time in Oregon, including automobile parts, petroleum products, rubber products, and plastics. While no one saw Respondent start the fire, he did appear when the McMinnville Fire Department arrived. Respondent is aware of the EQC rules regarding open burning. Respondent also has a history of illegal burning on his property. Therefore, I find it more likely than not that he caused or allowed to be initiated or maintained the open burning of prohibited materials on his property in violation of OAR 340-264-0060(3)."

Not a single word in the above paragraph provides a factual basis of supporting the finding that Respondent caused or allowed to be initiated or maintained the open burning. The fact that a burn pile existed provides no support for that finding. The fact that Respondent was aware of EQC rules provides no support for that finding. The fact that two prior burns in 1999 and 2003 had occurred upon the Respondent's property adds no evidence in support of those findings and would not be evidence, in any event, unless he had been cited and established to have been in violation of the law at those times. In any event, the existence or nonexistence of prior violations is only relevant when considering the

penalty phase of these Proceedings. ORS 468.130(2)(b). The administrative law judge admits there was no evidence submitted that any person knew how the fire actually began.

The same argument applies with regard to Violation No. 3, that is that the Respondent conducted an open burn of demolition waste within three miles of the corporate city limits of Dayton. There is not a single piece of substantive evidence established that the Respondent caused, allowed to be initiated, maintained or conducted the fire which occurred on October 28, 2006.

Further, with regard to Violation No. 4, no evidence exists that the Respondent participated in events which resulted in the fire, in any particular. He cannot be held responsible for attending an open burn and not having equipment available if he was unaware that a fire was happening.

The State only produced two witnesses to establish its case. Witness Dan Fox, a DEQ Inspector, knew nothing of this fire until five days after it occurred and never observed the burn site. (Tr 24-25).

Witness Bridget Taylor, an Oregon State Police Officer, stated that she was at the site of the fire primarily because she remembered a 1999 incident where Mr. Johnston was cited for interfering with a police officer and was concerned about whether personal conflicts might once again occur. She agreed that it was nighttime and dark and only car and truck lights illuminated the area. (Tr 126-127). She obviously was not focusing on the material burning nor the cause of the fire. (see Trooper Taylor's report on October 28, 2006 offered as State's Exhibit 7).

The State failed to produce a single witness to establish the facts necessary to carry its burden of proof. None of the "several fire department's (McMinnville) staff" mentioned in Division Chief Shannon Thorson's report (Exhibit 7) as witnesses to the fire were produced. None of the Dayton Fire Department's staff who were present (Exhibit 7) were produced as witnesses. Officer Greg Kiger (riding with Trooper Taylor) did not testify. Chief Shannon Thorson of the McMinnville Fire Department who referred the incident to DEQ, although included in the State's witness list, did not testify either in person or by phone. The Respondent's testimony was the only direct evidence of the events that occurred and the events that didn't occur on the night of October 28, 2006. Whether the administrative law judge believed or did not believe Mr. Johnston's opinion of how this fire might have started, is irrelevant. That belief and her finding of lack of credibility on the Respondent's part would only be important if there was substantive evidence in the record to establish that the Respondent allowed or caused the fire to be initiated or conducted the fire. Since there is no evidence in the record to support that finding, whether the administrative law judge believed or did not believe the Respondent's personal testimony is not important.

The question of the appropriateness of the FINDINGS OF FACT and CONCLUSIONS OF LAW with regard to Violation No. 2 – Prohibited Disposal – is a closer question and less clear. Although Respondent believes that the FINDINGS and CONCLUSIONS are in error with regard to Violation No. 2, Respondent has clearly

admitted that he removed demolition materials from his home in the late summer of 2006 after incurring water damage to the subject site to allow the water to drain off and evaporate. He testified that he did not want any more weight than necessary to be transported to State or County disposal sites and that he fully intended to move the demolition debris to the appropriate environmental site when it did not weigh so much. (Tr 139-140). If that act of temporarily moving demolition material to the back of his sixty (60) acre property constitutes a violation of OAR 340-093-0040(1) then the finding may be correct.

It is Respondent's position, however, that the words "disposing" and the phrase "dispose of" requires an intent to permanently leave the demolition material at that location. The only evidence in the record regarding the Respondent's intent is that the removal of that material was intended to be temporary only. (Tr 139-140).

If the Commission finds that a technical violation did exist, then the amount of the penalty needs to be considered. The administrative law judge notes on page 11 of the PROPOSED AND FINAL ORDER that the magnitude of this violation was "moderate" and that the base penalty for such a violation is \$1,250. The administrative law judge notes that the "EQC assessed a value of 2 to "M" factor based on an allegation that Respondent acted negligently." Respondent testified that he intended to remove the materials to a certified disposal site because he knew that he could not permanently store those materials on his property. There is no evidence in the record that that was not his intent, therefore a finding that he was "negligent" is neither justified nor supported by the evidence. Further, the economic benefit factor utilized by the State and the administrative law judge is inappropriate. Respondent would have paid the necessary disposal fee when he disposed of the dry demolition materials. In that event, his only benefit would have been the difference in cost between material that was soaking wet and the cost of material that had been allowed to dry when it was taken for disposal.

If the Commission finds a technical violation on Violation No. 2 then the base penalty would be appropriate. However, it is Respondent's position that he did not violate the Oregon Administrative Rules because of the temporary stockpiling of materials while they were allowed to dry.

In summary, the October 28, 2006 fire was simply an unfortunate occurrence. No persons or property were damaged. There is no direct, substantial or convincing evidence of the cause of the fire. The only direct evidence in this case is that Mr. Johnston vehemently denies willfully starting the fire or conducting himself in a manner which could clearly be said to be negligent. Since July 30, 2007 when this attorney first responded to the July 16, 2007 Notice of Violation, (State's Exhibit 3), the Respondent's statutory defense has been ORS 468A.030.

There is substantial evidence in the record that State and local fire district officials overreacted because of prior experiences that they had with Mr. Johnston. Barring a determination that Mr. Johnston had been deemed at fault or responsible for any prior fires, the existence of those fires cannot be used as evidence that he was responsible for this fire.

The FINDINGS and CONCLUSIONS of the administrative law judge are in error and Respondent respectfully requests findings in accordance with this Brief.

DATED, this 25th day of November, 2008.

Respectfully submitted,

ENGLE & SCHMIDTMAN

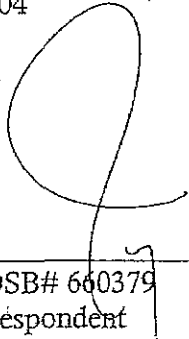
By \_\_\_\_\_  
ROBERT L. ENGLE, OSB# 660379  
Attorneys for Respondent Curtis B. Johnston

CERTIFICATE OF MAILING

On November 25, 2008, I mailed the foregoing Respondent's Exceptions and Brief in OAH Case No. 800449.

By First Class Mail

Leah Koss  
Dept. of Environmental Quality  
811 SW 6th Avenue  
Portland, OR 97204



---

Robert L. Engle, OSB# 660379  
Of Attorneys for Respondent  
Curtis B. Johnston

Oregon

ENVIRONMENTAL  
QUALITY  
COMMISSION

VIA CERTIFIED MAIL

November 25, 2008

Robert L. Engle  
Engle & Schmidtman  
Attorneys at Law  
Northwood Office Park  
610 Glatt Circle  
Woodburn, OR 97071

Re: In the Matter of Curtis B. Johnston  
OAH Case No. 800449  
DEQ Case No. AQ/OB-WR-07-060

Dear Mr. Engle:

The Environmental Quality Commission (Commission) received your petition for review in the above-referenced matter on October 31, 2008. Your petition was filed in a timely manner.

The Proposed Order outlined appeal procedures, including filing of exceptions and briefs. The hearing decision and Oregon Administrative Rules (OAR 340-011-0575) state that you must file exceptions and brief within thirty days from the filing of your request for Commission review, or November 28, 2008. Your exceptions must specify the findings and conclusions in the Proposed Order that you object to, and also include proposed alternative findings of fact, conclusions of law, and an alternative order with specific references to the parts of the record upon which you rely. The brief must include the arguments supporting these alternative findings of fact, conclusions of law and order. Failure to take an exception to a finding or conclusion in the brief waives your ability to later raise that exception. Once your exceptions have been received, a representative of the Department may file an answering brief within thirty days. The Commission may extend any of the time limits contained in OAR 340-011-0575(5) if an extension request is made in writing and is filed with the Commission before the expiration of the time limit. I have enclosed a copy of the applicable administrative rules for your information (note that this section of rules was previously numbered 340-011-0132, but has been renumbered to 340-011-0575).

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



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

Item F 000041

DEQ-46



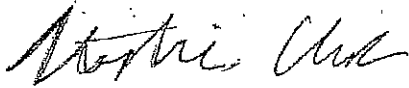


Curtis B. Johnston

November 25, 2008  
Page Two

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

Sincerely,



Stephanie Clark  
Assistant to the Commission

Cc: Leah Koss, Oregon Department of Environmental Quality

Item G: Johnston Contested Case  
February 26, 2009 EQC Meeting  
Attachment G

ROBERT L. ENGLE  
E-MAIL: renglelaw@qwestoffice.net

KIRK A. SCHMIDTMAN  
E-MAIL: schmidtmanlaw@qwestoffice.net

WEB SITE www.engleschmidtmanlaw.com

ENGLE & SCHMIDTMAN  
ATTORNEYS AT LAW  
NORTHWOOD OFFICE PARK - 610 GLATT CIRCLE  
WOODBURN, OR 97071-9500

TELEPHONE  
(503) 981-0155

FAX  
(503) 981-0158

OCT 31 2008

DEPARTMENT OF ENVIRONMENTAL QUALITY  
ENFORCEMENT

October 30, 2008

HAND DELIVERED

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

Re: In the Matter of Curtis B. Johnston, OAH Case No. 800449

Dear Ms. Hallock:

Enclosed is Respondent's Petition for Review in the above matter.

Yours truly,

ROBERT L. ENGLE

RLE:ak

Encls

cc: Leah Koss ✓  
Dept of Environmental Quality

Item F 000043

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
STATE OF OREGON

IN THE MATTER OF: )  
 )  
CURTIS B. JOHNSTON, Respondent )  
 )  
 ) OAH Case No.: 800449  
 ) Agency Case No: AQ/OB-WR-07-060

The respondent CURTIS B. JOHNSTON, by and through his attorney, Robert L. Engle, hereby gives notice of his intent that the Environmental Quality Commission review the Proposed and Final Order of Administrative Law Judge Monica Smith dated October 3, 2008.

Respondent intends to file Exceptions and Brief within 30 days from the date of the filing of this Petition for Review.

DATED, this 30<sup>th</sup> day of October, 2008.

Respectfully submitted

ENGLE & SCHMIDTMAN

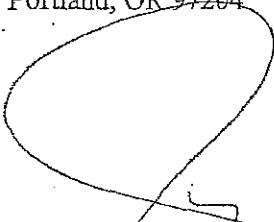
By  
ROBERT L. ENGLE, OSB# 660379  
Attorneys for Respondent Curtis B. Johnston

**CERTIFICATE OF MAILING**

On October 30, 2008, I mailed the foregoing Petition for Review in OAH Case No. 800449.

By: First Class Mail

Leah Koss  
Dept. of Environmental Quality  
811 SW 6th Avenue  
Portland, OR 97204



---

Robert L. Engle, OSB# 660379  
Of Attorneys for Respondent  
Curtis B. Johnston

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

IN THE MATTER OF: ) PROPOSED AND FINAL ORDER  
)  
CURTIS B. JOHNSTON, Respondent ) OAH Case No.: 800449  
) Agency Case No.: AQ/OB-WR-07-060

**HISTORY OF THE CASE**

On July 16, 2007, the Environmental Quality Commission for the State of Oregon (EQC) issued a Notice of Violation, Department Order and Civil Penalty Assessment to Respondent Curtis B. Johnston. On July 30, 2007, Respondent requested a hearing.

On March 20, 2008, the EQC referred the hearing request to the Office of Administrative Hearings (OAH). Administrative Law Judge (ALJ) Monica Smith was assigned to preside at hearing. Prehearing conferences were convened on May 21, 2008 and July 18, 2008.

A hearing was held on July 22, 2008, in Woodburn, Oregon. Respondent appeared with counsel, Robert L. Engle, and testified. Leah E. Koss, Environmental Law Specialist, represented EQC. Jeffery R. Bachman, Environmental Law Specialist for EQC, observed. Dan Fox, Community Air Toxic and Natural Resource Specialist for EQC, and Senior Trooper Bridget Taylor of the Oregon State Police testified on behalf of the EQC. The record remained open until August 19, 2008 for closing arguments. The record closed on August 19, 2008.

**ISSUES**

1. Whether Respondent allowed or caused to be initiated or maintained the open burning of prohibited materials, in violation OAR 340-264-0060(3) adopted pursuant to ORS 468.020 and ORS 468A.025.
2. Whether Respondent disposed of or authorized the disposal of solid waste at a site for which a solid waste permit has not been issued, in violation of ORS 459.205(1) and OAR 340-093-0040(1).
3. Whether Respondent caused or allowed to be initiated the open burning of demolition within three miles of the city limit of Dayton, in violation of OAR 340-264-0110(4)(b)(E) adopted pursuant to ORS 468.020 and ORS 468A.025.
4. Whether Respondent failed to constantly attend to an open burn and failed to have the necessary equipment for extinguishing the fire, in violation of OAR 340-264-0050(2) adopted pursuant to ORS 468.020 and ORS 468A.025.

5. Whether Respondent is subject to a civil penalty assessment and, if so, in what amount.

### EVIDENTIARY RULINGS

Exhibits D1 through D3, D5, D6 and D8, offered by the EQC, were admitted into the record without objection. Exhibits D7, D9 through D11, D15, D16, and D20 through D23, offered by the EQC, were admitted into the record over relevancy and hearsay objections.

### STIPULATION

The parties agreed to the following amendment to Exhibit D2 regarding the penalty calculation. The Administrative Law Judge accepted the stipulation.

The value for "C factor" in Exhibit D2 for the alleged violation one, open burning of prohibited materials (OAR 340-264-0060(3)), shall be changed to "0" rather than "2" in the final penalty calculation. This will result in a penalty of \$4,000 rather than \$4,500 for that violation.

### CREDIBILITY DETERMINATION

Respondent is an interested party in this matter facing a potential financial penalty. There was no credible evidence that Mr. Fox, law enforcement or Fire Department Personnel had any motive to falsely cause Respondent to face EQC penalties. Respondent alleged that Fire Chief Thorsen and Trooper Taylor had personal vendettas against him. However, Respondent offered no persuasive evidence in this regard. Rather, from the evidence presented, the Fire Chief and the trooper simply reported fires they saw on Respondent's property and investigated them according to their business protocols. Trooper Taylor reported the 2006 fire was so large she observed it from one-half mile away and it took two fire departments to put it out. Yet, Respondent testified at the hearing that he had no idea there was a fire burning on his property until the fire department arrived. He made this same claim regarding a fire in 1999. Respondent told law enforcement he was sleeping when the firefighters arrived and that he did not know who was working on his property that day. Respondent would not let Trooper Taylor speak with anyone on his property regarding the 1999 fire.

Mr. Fox testified with the benefit of a written report/memorandum that was written November 3, 2006, six days after the incident. Respondent did not have the benefit of such a memorandum/report to refresh his recollection of the events in question. In addition, Respondent has a prior history of illegal burns on his property. In all three cases, Respondent claimed not to have known how the fires got started. At the July 22, 2008 hearing, Respondent presented two reasons for the 1999 and 2006 fires. Respondent testified he told his children to start the 1999 fire to burn "chick paper" or agricultural debris. Yet, fire department and law enforcement personnel wrote reports documenting how large the fire was and how it included prohibited materials. For the 2006 fire, Respondent alleged he placed nine tons of "hot" hay in three 8 x 8 foot piles near the dump site. He speculates the hay then spontaneously combusted. This story was first presented on December 19, 2006, to Mr. Fox. Mr. Fox said hay in blocks that large would have taken several days to burn and longer if no one was stirring the hay.

Trooper Taylor saw no evidence of hay at the burn site. In addition, while Respondent's property consists of 60 acres, all three fires were basically contained to the illegal dump sites Respondent maintained. I find Respondent's repeated denials, explanations, and justifications for the current and past burns on his property unpersuasive. Therefore, where Respondent's testimony conflicted with that of Mr. Fox and others, Respondent's testimony is given lesser weight.

### FINDINGS OF FACT

1. During the times relevant to this case, Respondent was the owner of approximately 60 acres located at 11320 SE Lafayette Highway, Dayton, Oregon (the Property). The Property contains a residence, chicken farm, and horse barn with four horses. The Property is in Yamhill County and within three miles of the city limits of Dayton, Oregon. On the Property was a site with metal barrels, an old stove, a microwave, a bicycle, plastic paint bucket, plastic tarp, auto parts, light bulbs, plastic bottles, petroleum products, rubber products, and other garbage. In the summer of 2006, Respondent added demolition materials to the dump site as a result of a broken water pipe in his home, including sheetrock, insulation, paneling, tile, cabinetry, Hardiplank, furniture, miscellaneous wood, and flooring, among other things. (Exs. D1, D6, D7, D8; test. of Fox and Johnston.)

2. On October 28, 2006, at approximately 8:08 p.m., Oregon State Police Trooper Taylor observed and reported a large fire at the Property. At approximately 8:19 p.m., the Dayton Fire Department (DFD) responded to an open burn on the Property. DFD requested the assistance of the McMinnville Fire Department because the fire was so large DFD did not have enough water to put it out. Respondent appeared at the scene after the fire department arrived. Respondent told law enforcement personnel he did not know how the fire started. (Ex. D8; test. of Fox, Taylor and Johnston.)

3. The Property contained an open burn pile, approximately 10 feet high by 30 feet wide and 50 feet long, actively burning. Materials actively burning on October 28, 2006 included: Plastics, rubber products, automobile parts, petroleum products, and materials that normally emit dense smoke and noxious odors, including furniture, insulation and miscellaneous wood products. The solid waste consisted of 555.56 cubic yards of materials. Approximately 60 percent of the pile burned. The burn was not attended by anyone. The necessary equipment to extinguish the burn was not present. (Exs. D6, D7, D8, D22; test. of Fox, Taylor and Johnston.)

4. On October 28, 2006, there was an open burning prohibition in effect due to air quality considerations. (Exs. D2, D7, D8; test. of Fox and Taylor.)

5. Approximately 50 percent of the burned debris on the Property on October 28, 2006 consisted of materials that are prohibited from being burned at all times in any place in Oregon. (Exs. D2, D6, D7, D8; test. of Fox and Taylor.)

6. On July 8, 1999, McMinnville firefighters arrived at the Property to put out a fire of prohibited materials at 12:10 p.m. The burn pile was largely metal, plastic rubber and a small amount of agricultural debris. Upon the firefighters' arrival, Respondent yelled at them to, "Get your fucking ass back in your fucking truck and get off my fucking property." As firefighter

Chad Cook was attempting to extinguish the fire on the Property, Respondent interfered by taking the hose and turning it off. Law enforcement personnel arrived and contacted Respondent. Respondent told the law enforcement personnel he was sleeping when the firefighters arrived and that he did not know who was working on his property that day. Respondent would not let Trooper Taylor speak with anyone on his property. (Ex. D9; test. of Respondent and Taylor.)

7. On July 20, 1999, EQC mailed a Notice of Noncompliance letter to Respondent informing him of the open burning rules he violated during his July 8, 1999 burn.

8. Respondent served as a fire board member with the McMinnville Fire Department approximately three years before the date of hearing. In this position he was informed about open burning rules and knew about the prohibition on burning the types of materials he accumulated on his property. Respondent was provided with, and aware of, the EQC rules on open burning prior to October 28, 2006. (Ex. D21; test. of Fox and Johnston.)

9. On June 20, 2003, McMinnville firefighters responded to a burn of prohibited materials on the Property. The burn pile was six feet high, 20 feet long, and 20 feet wide. The materials in the burn pile included plastics, auto parts, animal remains, petroleum products, decomposable garbage, brush, agricultural debris and miscellaneous wood products. There was no one attending the burn and no means to extinguish the fire. Respondent was home, but refused to answer the door. (Ex. D15.)

10. On July 22, 2008, Respondent testified that his children started the 1999 fire intentionally per his instructions to burn agricultural debris or "chick paper." (Test. of Respondent.)

### CONCLUSIONS OF LAW

1. Respondent allowed or caused to be initiated or maintained the open burning of prohibited materials, in violation OAR 340-264-0060(3) adopted pursuant to ORS 468.020 and ORS 468A.025.

2. Respondent disposed of or authorized the disposal of solid waste at a site for which a solid waste permit has not been issued, in violation of ORS 459.205(1) and OAR 340-093-0040(1).

3. Respondent caused or allowed to be initiated the open burning of demolition within three miles of Dayton, in violation of OAR 340-264-0110(4)(b)(E) adopted pursuant to ORS 468.020 and ORS 468A.025.

4. Respondent failed to constantly attend an open burn and failed to have the necessary equipment for extinguishing the fire, in violation of OAR 340-264-0050(2) adopted pursuant to ORS 468.020 and ORS 468A.025.

5. Respondent is subject to a civil penalty assessment in the amount of \$9,024.



## OPINION

"The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position." ORS 183.450(2). Here, the EQC has the burden of proving its allegations by a preponderance of the evidence. *See, Harris v. SAIF*, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position.); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

EQC alleges that Respondent committed four violations of the environmental laws by the open burning of prohibited materials on his property and by improperly disposing of solid waste on his property. EQC had the burden to prove the violations by preponderance of the evidence.

Air Quality is governed by statute and by administrative rules adopted by EQC. ORS 468.020 provides:

(1) In accordance with the applicable provisions of ORS chapter 183, the Environmental Quality Commission shall adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the commission.

ORS 468A.025 provides:

(1) By rule the Environmental Quality Commission may establish areas of the state and prescribe the degree of air pollution or air contamination that may be permitted therein, as air purity standards for such areas.

### *Violation 1: Open burning of prohibited materials.*

EQC first alleges that Respondent violated OAR 340-264-0060(3) on October 28, 2006, when a large fire occurred on his property.

OAR 340-264-0060(3) provides:

No person may cause or allow to be initiated or maintained any open burning of any wet garbage, plastic, asbestos, wire insulation, automobile part, asphalt, petroleum product, petroleum treated material, rubber product, animal remains, or animal or vegetable matter resulting from the handling, preparation, cooking, or service of food or of any other material which normally emits dense smoke or noxious odors.

Respondent is the owner of the Property where the open burning occurred on October 28, 2006. Included in the burn pile were items that are illegal to burn at any time in Oregon,

including automobile parts, petroleum products, rubber products, and plastics. While no one saw Respondent start the fire, he did appear when the McMinnville Fire Department arrived. Respondent is aware of the EQC rules regarding open burning. Respondent also has a history of illegal burning on his property. Therefore, I find it more likely than not that he caused or allowed to be initiated or maintained the open burning of prohibited materials on his property in violation of OAR 340-264-0060(3).

*Violation 2: Prohibited Disposal.*

EQC alleges that Respondent violated OAR 340-093-0040(1) by disposing of solid waste on his property.

ORS 459.205(1) provides:

Except as provided by ORS 459.215, a disposal site shall not be established, operated, maintained or substantially altered, expanded or improved, and a change shall not be made in the method or type of disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit therefor from the Department of Environmental Quality as provided in ORS 459.235.

OAR 340-093-0040(1) provides:

No person shall dispose of or authorize the disposal of solid waste except at a solid waste disposal site permitted by the Department to receive that waste, or at a class of disposal site specifically exempted by OAR 340-093-0050(3) from the requirement to obtain a solid waste permit.

OAR 340-093-0030 provides:

(82) "Solid Waste" means all useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid materials, dead animals and infectious waste.

The McMinnville fire department responded to illegal burns on the Property in July 1999, June 2003 and then again in October 2006. The prohibited disposal rule violation is based on the material burned in the 2006 fire. Respondent violated the "Prohibited Disposal" rules by accumulating solid waste on the Property. Respondent disposed of solid waste on the Property for which a solid waste permit was not issued. This waste included: garbage, paper, useless or discarded demolition, discarded or abandoned vehicles or parts thereof, and discarded home appliances. Respondent did not dispute these factual allegations, but asserted that his role was essentially passive with regard to the non-demolition materials. Respondent presented no valid

defense to this charge. I find he allowed the material to be openly accumulated on its property, and as the owner, violated OAR 340-093-0040(1).

*Violation 3: Open burning within three miles of city limit of Dayton.*

EQC alleges that that Respondent violated the EQC's "open burning" rules. OAR 340-264-0110(4)(b)(E) provides:

(4) Construction and Demolition open burning is allowed outside of special open burning control areas, subject to the requirements and prohibitions of local jurisdictions, the State Fire Marshal, OAR 340-264-0050, 340-264-0060 and 340-264-0070. Unless authorized pursuant to OAR 340-264-0180, Construction and Demolition open burning is prohibited within special open burning control areas, including the following:

\* \* \* \* \*

(b) Areas in or within three miles of the corporate city limit of:

\* \* \* \* \*

(E) In Yamhill County, the Cities of Amity, Carlton, Dayton, Dundee, Lafayette, McMinnville, Newberg, Sheridan and Willamina.

OAR 340-264-0030 provides:

(14) "Demolition Open Burning" means the open burning of demolition waste.

(15) "Demolition Waste" means any material resulting from or produced by the complete or partial destruction or tearing down of any man-made structure, or the clearing of any site for land improvement or cleanup, excluding yard debris (domestic waste) and agricultural waste.

Respondent violated the above-mentioned rule on October 28, 2006, by conducting the open burn of demolition waste within an area of Yamhill County where such open burning is prohibited. Respondent admits he accumulated demolition waste on the Property. The Property sits within three miles of the corporate city limits of Dayton, a "special open burning control area" per OAR 340-264-0110(4). Therefore, on October 28, 2006, when Respondent conducted an open burn of his demolition waste, he violated OAR 340-264-0110(4)(b)(E).

*Violation 4: Unattended open burning.*

EQC alleges that Respondent violated OAR 340-264-0050(2), which provides:

This rule applies to all open burning, unless expressly limited by any other rule, regulation, permit, ordinance, order or decree of the Commission or other agency having jurisdiction:

(1) The following persons are considered a responsible person for open burning in violation of this rule:

(a) Each person who is in ownership, control or custody of the real property on which open burning occurs, including any tenant thereof;

(b) Each person who is in ownership, control or custody of the material that is burned; and

(c) Any person who causes or allows open burning to be initiated or maintained.

(d) For purposes of this rule, a public agency in its official capacity that has issued the permit for burning is not considered a responsible person.

(2) A responsible person, or an expressly authorized agent, must constantly attend all open burning. This person must be capable of and have the necessary equipment for extinguishing the fire. This person also must completely extinguish the fire before leaving it.

Respondent violated section (2) of this rule by not constantly attending to the open burn on October 28, 2006. Oregon State Police observed and reported the fire at approximately 8:08 p.m. Fire Department personnel arrived at approximately 8:19 p.m. Upon arrival, no responsible person was present to attend the burn. Respondent arrived a short time later. Respondent also violated this section by failing to have the necessary equipment to extinguish the fire. DFD, who arrived first at the scene, had to call McMinnville firefighters for assistance because they did not have enough water to put out the large fire.

##### *5. Civil penalty assessment*

EQC calculated the civil penalty in this case under OAR 340-012-0045, which provides in relevant part:

Except as provided in OAR 340-012-0038(3), in addition to any other liability, duty, or other penalty provided by law, the department may assess a civil penalty for any violation. Except for civil penalties assessed under OAR 340-012-0155(2), the department determines the amount of the civil penalty using the following procedures:

(1) The classification of each violation is determined by consulting OAR 340-012-0053 to 340-012-0097;

(2) The magnitude of the violation is determined as follows:

(a) The selected magnitude categories in OAR 340-012-0135 are used.

(b) If a selected magnitude is not specified in OAR 340-012-0135, or if information is not reasonably available to determine which selected magnitude applies, OAR 340-012-0130 is used to determine the magnitude of the violation.

(c) The appropriate base penalty (BP) for each violation is determined by applying the classification and magnitude of each violation to the matrices in OAR 340-012-0140.

(d) The base penalty is adjusted by the application of aggravating or mitigating factors (P = prior significant actions, H = history in correcting prior significant actions, O = repeated or ongoing violation, M = mental state of the violator and C = efforts to correct) as set forth in OAR 340-012-0145.

(e) The appropriate economic benefit (EB) is determined as set forth in OAR 340-012-0150. (2) The results of the determinations made in section (1) are applied in the following formula to calculate the penalty:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$ .

(3) In addition to the factors listed in section (1) of this rule, the director may consider any other relevant rule of the commission in assessing a civil penalty and will state the effect that rule had on the penalty amount.

EQC assessed a civil penalty against Respondent based solely on the first two violations under OAR 340-264-0060(3) and 340-093-0040(1). It did not impose a penalty based on violations under OAR 340-264-0110(4)(b)(E) and 340-264-0050(2). Thus, the amount of the penalty is properly calculated by taking into account only the violations caused by allowing an open burn of prohibited materials and disposing of solid waste without a permit.

#### Violation 1

OAR 340-012-0054(1)(q) provides that maintaining the open burning of prohibited materials is a class I violation. This was a major violation because it involved five or more cubic yards of prohibited material. OAR 340-012-0135(1)(g)(A). The base penalty for this violation is \$2,500, pursuant to OAR 340-012-0140(4)(b)(A)(i) and (4)(a)(C).

EQC found that Respondent has no history of significant prior actions. The violation was therefore entitled to a value of 0 for the "P" (prior significant actions) and "H" (history in correcting prior significant actions) factors in calculating the penalty. EQC appropriately assessed a value of 0 to the "O" (ongoing violation) factor based on the fact that the violation existed for one day or less and did not recur on the same day. Each of these values was supported by the evidence.

EQC assessed a value of 6 to the "M" (mental state of the violator) factor based on an allegation that Respondent acted recklessly.

OAR 340-012-0145(5) provides:

(5) "M" is the mental state of the respondent. For any violation where the findings support more than one mental state, the mental state with the highest value will apply.

(a) The values for "M" and the finding that supports each are as follows:

(A) 0 if there is insufficient information on which to base a finding under paragraphs (5)(a)(B) through (5)(a)(D).

(B) 2 if the respondent's conduct was negligent or the respondent had constructive knowledge (reasonably should have known) that the conduct would be a violation. Holding a permit that prohibits or requires conduct is presumed to constitute at least constructive knowledge and may be actual knowledge depending on the specific facts of the case.

(C) 6 if the respondent's conduct was reckless, or the respondent had actual knowledge that its conduct would be a violation and respondent's conduct was intentional. A respondent that previously received a Notice of Noncompliance, WL, PEN or any FEA for the same violation is presumed to have actual knowledge. Holding a permit that prohibits or requires conduct may be actual knowledge depending on the specific facts of the case.

(D) 10 if respondent acted flagrantly.

The evidence establishes that Respondent acted recklessly. Respondent served on the McMinnville Fire Board approximately three years ago. In this position he was informed about open burning rules and knew about the prohibition on burning the types of materials he accumulated on his property. Respondent was informed with a letter prior to the October 28, 2006 fire of the open burning rules. He has interacted with fire department personnel and law enforcement involving previous illegal burns of prohibited materials on the Property. It is more likely than not that he caused or allowed the fire to be initiated or maintained the open burning of prohibited materials. There is evidence supporting the "M" factor value is 6.

EQC assessed a value of 0 to the "C" (efforts to correct) factor based on the fact that there was insufficient evidence to make a finding. This assessment is appropriate.

EQC did not assess the EB (economic benefit) factor because the economic benefit is being assessed for violation 2. This decision is appropriate.

Using the above values for the various factors results in the following calculation:

$$\begin{aligned} &BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB. \\ &\$2,500 + [0.1 \times \$2,500] \times (0+0+0+6+0) + \$0 \\ &\$2,500 + [\$250 \times 6] + \$0 \\ &\$2,500 + \$1,500 + \$0 \\ &\$4,000 \end{aligned}$$

Respondent is therefore subject to a civil penalty of \$4,000 for this violation.

*Violation 2*

OAR 340-012-0065(1)(c) provides that disposing of solid waste at a site for which a solid waste permit has not been issued is a Class I violation. The magnitude of this violation was moderate pursuant to OAR 340-012-0130(1). There is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to the EQC does not indicate a minor or major magnitude. The base penalty for this violation is \$1,250 pursuant to OAR 340-012-0140(4)(b)(A)(ii) and (4)(a)(A).

Because Respondent has no history of significant prior actions, a value of 0 for the "P" (prior significant actions) and "H" (history in correcting prior significant actions) factors is appropriate. EQC appropriately assessed a value of 4 to the "O" (ongoing violation) factor, based on the fact that the violation existed for more than 28 days and was a continuing violation as of the date of the Notice. Each of these values was supported by the evidence.

EQC assessed a value of 2 to the "M" factor based on an allegation that Respondent acted negligently. EQC believes that given the quantity (555.56 cubic yards), and the nature of the materials (plastics, rubber products, automobile parts and petroleum products), Respondent should have known that he was required to dispose of these materials at a permitted solid waste facility. Respondent admitted he knew he could not store these materials on his property. Respondent should have removed the material in a way that complied with the law, and his failure to do so was negligent. Therefore, a value of 2 is supported by the evidence for the "M" factor.

EQC assessed a value of 0 to the "C" (efforts to correct) factor based on the fact that there was insufficient evidence to make a finding. This assessment is appropriate.

The EQC calculated the EB (economic benefit) factor by using the U.S. Environmental Protection Agency's BEN computer model, as allowed under OAR 340-012-0150(1). The EQC, using the BEN model, assigned a value of \$2,774.00. This is the amount Respondent gained by having an open burn and not spending \$4,532.78 to properly dispose of the solid waste. That economic benefit calculation was reasonable and appropriate.

Using the above values for the various factors results in the following calculation:

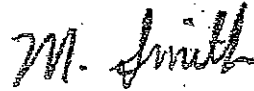
$$\begin{aligned} &BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB. \\ &\$1,250 + [0.1 \times \$1,250] \times (0+0+4+2+2) + \$2,774 \\ &\$1,250 + [\$125 \times 8] + \$2,774 \end{aligned}$$

\$1,250 + \$1,000 + \$2,774  
\$5,024

Respondent is therefore subject to a civil penalty of \$5,024 for this violation. This brings his total penalty to \$9,024 (\$4,000 + \$5,024).

### PROPOSED ORDER

I propose that the EQC issue an order finding that Respondent, Curtis B. Johnston, violated the regulations set forth in the Notice of Violation and is liable for a civil penalty in the amount of \$9,024.



---

Administrative Law Judge  
Office of Administrative Hearings

ISSUANCE AND MAILING DATE: October 3, 2008

### APPEAL RIGHTS

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

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

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

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



**APPENDIX A  
LIST OF EXHIBITS CITED**

- Ex. D1: January 19, 2007 Pre-Enforcement Notice signed by Dan Fox (3 pages)
- Ex. D2: July 16, 2007 Notice of Violation, Department Order and Civil Penalty Assessment (13 pages)
- Ex. D3: July 30, 2007 Response to Notice and request for hearing by Robert Engle (3 pages)
- Ex. D5: December 20, 2006 Photograph Log (1 page)
- Ex. D6: McMinnville Fire Department Open Burning Photos of October 28, 2006 (3 pages)
- Ex. D7: November 2, 2006 Fire Department Report by former Chief Shannon Thorson (3 pages)
- Ex. D8: January 3, 2007 Oregon State Police Report by Senior Trooper Bridget Taylor (3 pages)
- Ex. D9: July 8, 1999 Oregon State Police Report by Senior Trooper Bridget Taylor (6 pages)
- Ex. D10: July 8, 1999 McMinnville Fire Department Report by former Chief Shannon Thorson (1 page)
- Ex. D11: July 8, 1999 Letter by McMinnville Firefighter Dennis McMillan re: July 8, 1999 fire (2 pages)
- Ex. D15: June 20, 2003 McMinnville Fire Department Report Referral by former Chief Shannon Thorson (2 pages)
- Ex. D16: June 19, 2007 Economic Benefit Memorandum by Dave Lebrun (9 pages)
- Ex. D20: Mid-Willamette Valley Open Burning Regulations (2 pages)
- Ex. D21: July 20, 1999 EQC Warning Letter to Respondent (2 pages)
- Ex. D22: June 12, 2007 Sara Urch Economic Benefit Memorandum (1 page)
- Ex. D23: July 21, 2008 Dave LeBrun Affidavit (1 page)

CERTIFICATE OF MAILING

On October 3, 2008, I mailed the foregoing Proposed and Final Order in OAH Case No. 800449.

By: First Class Mail

Robert Engle  
Attorney at Law  
Northwood Office Park  
610 Glatt Circle  
Woodburn OR 97071-9600

Dan Fox  
Dept. of Environmental Quality  
811 SW 6th Avenue  
Portland, OR 97204

Leah Koss  
Dept. of Environmental Quality  
811 SW 6TH Ave  
Portland OR 97204

Carol Buntjer  
Administrative Specialist  
Hearing Coordinator



# Oregon

Theodore R. Kulongoski, Governor

## Department of Environmental Quality

Headquarters  
811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696  
FAX (503) 229-6124  
TTY (503) 229-6993

August 19, 2008

Monica Smith  
Office of Administrative Hearings  
7995 SW Mohawk St.  
Tualatin, OR 97062

Robert L. Engle  
Engle & Schmidtman  
Northwood Office Park  
610 Glatt Circle  
Woodburn, OR 97071

Re: Curtis B. Johnston Hearing  
OAH Case No. 800449  
DEQ Case No. AQ/OB-WR-07-060  
Yamhill County

Dear Judge Smith and Mr. Engle:

Please find enclosed the State's response to Respondent's closing argument memorandum for the Curtis Johnston Hearing referenced above.

If you have any questions, please contact me at 503-229-6408.

Sincerely,

Leah Koss  
Environmental Law Specialist  
Office of Compliance and Enforcement

Enclosure



BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:  
CURTIS BRIAN JOHNSTON,

Respondent.

MEMORANDUM IN RESPONSE  
TO RESPONDENT'S CLOSING  
ARGUMENT

No. AQ/OB-WR-07-060  
YAMHILL COUNTY

This Memorandum in Response to Respondent's Closing Argument is offered in response to Respondent's Closing Argument and in further support of Notice of Violation, Department Order and Civil Penalty Assessment (Notice) No. AQ/OB-WR-07-060, issued July 16, 2007, by the Department of Environmental Quality (the Department or DEQ).

I. RESPONSE TO RESPONDENT'S CLOSING STATEMENTS

Respondent contends the State's evidence is circumstantial. This is not one of the objections to evidence that is considered in a contested case hearing. Regardless, Fire Department reports and State Police reports, signed and which have a foundation laid through testimony, are not circumstantial evidence. Evidence of past illegal fires on the same property owned by the same person is not irrelevant in a hearing regarding the exact same violation of yet another illegal burn. Evidence of these past fires was in fact deemed relevant by ALJ Smith, and therefore the evidence and testimony were admitted into the record.

Respondent's effort to discredit Senior Trooper Taylor's testimony is fruitless and unsupported. Like any other witness in any circumstance, the initial reason for Trooper Taylor's site visit is unimportant - what she witnessed and documented is material to the case and the fire that occurred. Respondent claims he doesn't know anything about how the fire started and had no idea that a huge fire was raging on his property until others came onto the property to extinguish it for him. Respondent's claim that his testimony is the only direct evidence of the fire is completely unsupported by the evidence and testimony of the hearing.

////

1 Similarly, Respondent's attempt to discredit Chief Shannon Thorson is completely  
2 unsupported. Respondent states that Chief Thorson was "disgruntled" and claimed that a bad  
3 relationship somehow caused the Chief to write reports of Mr. Johnston's illegal fires. There is no  
4 evidence of her state of mind in the record whatsoever and Respondent provided absolutely no  
5 evidence that Chief Thorson is in any way incompetent or unprofessional in her former position as  
6 the McMinnville Fire Chief. The fact that Respondent did not get along with Chief Thorson in no  
7 way supports the allegation that her reports are in any way less reliable evidence or inaccurate  
8 business records as offered to prove what she and her staff have witnessed several times at Mr.  
9 Johnston's property.

10 Respondent states that Fire Department and State Police overreacted. While this is  
11 Respondent's opinion of the efforts of the State to put out a raging fire on his property that he  
12 allegedly knew nothing about, it is clearly not a position supported by the evidence. The Fire  
13 Department and State Police have unfortunately had to expend time and resources on multiple  
14 occasions to put out fires on Mr. Johnston's property – this is their job though – to protect citizens.  
15 Although Mr. Johnston may not have wanted the fires on his property extinguished, the Fire  
16 Department and State Police were simply doing their job in putting out a fire and maintaining order  
17 at the site. Mr. Johnston, in his history of screaming expletives at those trying to put out a fire on  
18 his property, and in ripping the hose from a fire fighter's hands, has more than showed the need for  
19 this sort of response. Finally, it is common practice for the Fire Department in any town in the State  
20 of Oregon to refer illegal fires to the Department as they did in this case – this is hardly an  
21 overreaction. State agencies do work together in keeping people safe as well as making sure that  
22 those who allow illegal fires to pollute Oregon's air are deterred in the future.

23 Respondent's Closing Argument states: "There is no direct or material evidence, either  
24 clear or convincing, by preponderance or otherwise, that Mr. Johnston either willfully or negligently  
25 started the fire." (page 4 of 6, lines 16 and 17) It should be noted that Respondent's Closing  
26 Argument often refers to a standard of proof of "clear and convincing evidence." This is not the  
27 proper standard of proof in this case; the standard is a preponderance of the evidence. It should also

1 be noted that the Department does not have to prove that Respondent started the fire. The  
2 Department, by statute and by regulation, only has to prove that Respondent negligently allowed the  
3 fire to be initiated or maintained.<sup>1</sup> The Department has proven this. In promulgating the regulation,  
4 the Environmental Quality Commission was aware that many persons who conduct or allow illegal  
5 burns on their property will simply deny igniting the fire. Therefore, the Commissions made it a  
6 violation to allow to be initiated or maintain a fire on one's property to ensure that those persons  
7 would not avoid liability for air pollution through illegal burning.

8 Mr. Johnston, through his illegal and negligent (and undisputed) accumulation of solid  
9 waste, including materials which are prohibited from being burned, allowed the fire to be initiated  
10 or maintained. Given Mr. Johnston's history of illegal burning and his adversity to those who try to  
11 put out fires on his property, it is unlikely that Mr. Johnston did not in fact initiate this fire on his  
12 property. However, even if it is assumed that he didn't, he was negligent in either letting some  
13 stranger on the property to light the fire (unlikely given Mr. Johnston's reaction to anyone entering  
14 his property), negligent in his lack of management of hay that was ready to combust (unlikely given  
15 no one saw the alleged hay on fire or any remains and Mr. Johnston failed to provide any evidence  
16 of the alleged hay), negligent in placing hay that was about to combust only 40 feet from 555 cubic  
17 yards of solid waste, or completely reckless in allowing the fire to be maintained with his  
18 knowledge. But for this negligent accumulation of solid waste, the violations of burning prohibited  
19 materials would never have happened. Mr. Johnston's negligence was the proximate cause of the  
20 fire. The fire was a foreseeable risk and Mr. Johnston failed to take reasonable care to avoid this  
21 risk.

22 ///

23 ///

24 ///

25 \_\_\_\_\_  
26 <sup>1</sup> OAR 340-264-0060(3) states: "No person may cause or allow to be initiated or maintained any open burning of  
27 any wet garbage, plastic, asbestos, wire insulation, automobile part, asphalt, petroleum product, petroleum treated  
material, rubber product, animal remains, or animal or vegetable matter resulting from the handling, preparation,  
cooking, or service of food or of any other material which normally emits dense smoke or noxious odors."

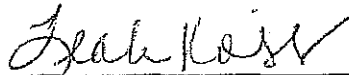
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

III. CONCLUSION

The Department is charged with protecting Oregon's air quality and has promulgated rules and regulations which allow for enforcement when need be. The purpose in enforcement is to deter violators and to be fair to those who choose to follow the law. In terms of solid waste and open burning, most citizens follow the law by properly disposing of solid waste. It would be unfair to law-abiding citizens and inconsistent to allow Mr. Johnston, after three illegal fires, to go without the consequence of a civil penalty as the Department has assessed in this case. Additionally, it surely was not the intent of the Legislature, in allowing an exemption to liability for acts of God, war or other condition which was unrelated to the person's negligence, to excuse those who chose, over and over, to disregard the law. For the reasons cited herein, the Administrative Law Judge should issue a Proposed Order assessing a civil penalty of \$9,024 as calculated in the exhibits attached to the Notice of Assessment of Civil Penalty.

DATED this 19th day of August 2008.

Respectfully submitted,



Leah Koss,  
Environmental Law Specialist  
Department of Environmental Quality

1 CERTIFICATE OF SERVICE

2 I hereby certify that I served the Hearing Memorandum within on the 19th day of August,  
3 2008 upon

4  
5 Monica Smith  
6 Administrative Law Judge  
7 Office of Administrative Hearings  
8 7995 SW Mohawk St.  
9 Tualatin, OR 97062

10 By Electronic Mail and Certified Mail

11 Robert Engle  
12 Attorney at Law  
13 Northwood Office Park  
14 610 Glatt Circle  
15 Woodburn, OR 97071-9600

16 By Electronic Mail and Certified Mail

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

by electronic mail and by mailing a true copy of the above by placing it in a sealed envelope,  
with postage prepaid at the U.S. Post Office in Portland, Oregon, August 19, 2008.

---



### CERTIFICATE OF MAILING

I hereby certify that I served <sup>to letter to -</sup> Robert L. Engle  
Case No. AQ10B-WR-07-060

Served upon:

\_\_\_\_\_ **Engle and Schmidtman** \_\_\_\_\_  
\_\_\_\_\_ **Attn: Robert Engle** \_\_\_\_\_  
\_\_\_\_\_ **610 Glatt Circle** \_\_\_\_\_  
\_\_\_\_\_ **Woodburn, OR 97071** \_\_\_\_\_

by mailing a true copy of the above by placing it in a sealed envelope, with postage  
prepaid, at the U.S. Post Office in Portland, Oregon on 8-19-08

Anna Smother  
Department of Environmental Quality

7006 3450 0000 7001 8979

|                                                                                               |                             |
|-----------------------------------------------------------------------------------------------|-----------------------------|
| <b>U.S. Postal Service™</b>                                                                   |                             |
| <b>CERTIFIED MAIL™ RECEIPT</b>                                                                |                             |
| <i>(Domestic Mail Only; No Insurance Coverage Provided)</i>                                   |                             |
| For delivery information, visit our website at <a href="http://www.usps.com">www.usps.com</a> |                             |
| <b>OFFICIAL USE</b>                                                                           |                             |
| Postage \$                                                                                    | Postmark<br>Here            |
| Certified Fee                                                                                 |                             |
| Return Receipt Fee<br>(Endorsement Required)                                                  |                             |
| Restricted Delivery Fee<br>(Endorsement Required)                                             |                             |
| Total Postage & Fe                                                                            | <b>Engle and Schmidtman</b> |
| Sent To                                                                                       | <b>Attn: Robert Engle</b>   |
| Street, Apt. No.,<br>or PO Box No.                                                            | <b>610 Glatt Circle</b>     |
| City, State, ZIP+4                                                                            | <b>Woodburn, OR 97071</b>   |
| PS Form 3800, August 2008 See Reverse for Instructions                                        |                             |

## CERTIFICATE OF MAILING

I hereby certify that I served a letter to Monica Smith

Case No. AQ/08-WR-07-060

Served upon:

MONICA SMITH  
OFFICE OF ADMIN HEARINGS  
7995 SW MOHAWK STREET  
TUALATIN OR 97062

by mailing a true copy of the above by placing it in a sealed envelope, with postage prepaid, at the U.S. Post Office in Portland, Oregon on 8-19-08

*Darryl Smith*  
Department of Environmental Quality

06 3450 0000 7001 8986

|                                                                                                             |                                 |                  |
|-------------------------------------------------------------------------------------------------------------|---------------------------------|------------------|
| <b>U.S. Postal Service</b>                                                                                  |                                 |                  |
| <b>CERTIFIED MAIL RECEIPT</b>                                                                               |                                 |                  |
| <small>(Domestic Mail Only - No Insurance Coverage Provided)</small>                                        |                                 |                  |
| <small>For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a></small> |                                 |                  |
| <b>OFFICIAL USE</b>                                                                                         |                                 |                  |
| Postage                                                                                                     | \$                              | Postmark<br>Here |
| Certified Fee                                                                                               |                                 |                  |
| Return Receipt Fee<br><small>(Endorsement Required)</small>                                                 |                                 |                  |
| Restricted Delivery Fee<br><small>(Endorsement Required)</small>                                            |                                 |                  |
| To                                                                                                          | <b>MONICA SMITH</b>             |                  |
| Sent                                                                                                        | <b>OFFICE OF ADMIN HEARINGS</b> |                  |
| Street or P.O. Box                                                                                          | <b>7995 SW MOHAWK STREET</b>    |                  |
| City                                                                                                        | <b>TUALATIN OR 97062</b>        |                  |

Item G: Johnston Contested Case  
February 26, 2009 EQC Meeting  
Attachment J

**ENGLE & SCHMIDTMAN**  
ATTORNEYS AT LAW  
NORTHWOOD OFFICE PARK - 810 GLATT CIRCLE  
WOODBURN, OR 97071

ROBERT L. ENGLE  
E-MAIL: [renglelaw@qwestoffice.net](mailto:renglelaw@qwestoffice.net)

KIRKA A. SCHMIDTMAN  
E-MAIL: [schmidtmanlaw@qwestoffice.net](mailto:schmidtmanlaw@qwestoffice.net)

TELEPHONE  
(503) 981-0155

FAX  
(503) 981-0158

WEB SITE  
[www.engeschmidtmanlaw.com](http://www.engeschmidtmanlaw.com)

August 11, 2008

Monica Smith  
Office of Administrative Hearings  
7995 SW Mohawk St.  
Tualatin, OR 97062

Leah Koss  
Environmental Law Specialist  
Department of Environmental Quality  
811 SW Sixth Avenue  
Portland, OR 97204-1390

RE: Curtis B. Johnston  
OAH Case No. 800449  
DEQ Case No. AQ/OB-WR-07-060  
Yamhill County

Dear Judge Smith and Ms. Koss:

Please find enclosed the Respondent's Closing Argument in the above-referenced matter.

If you have any questions, please call me.

Yours truly,

ROBERT L. ENGLE

RLE:th  
cc: Curtis Brian Johnston

Enclosure

RECEIVED  
OFFICE OF ADMINISTRATIVE HEARINGS  
11 AUG 2008  
3800 NE MULTNOMAH ST. PORTLAND, OR 97232

Item F 000068

1  
2  
3  
4  
5  
6  
7  
8  
9  
10

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:  
CURTIS BRIAN JOHNSTON

Respondent.

RESPONDENT'S CLOSING ARGUMENT  
No. AQ/OB-WR-07-060  
YAMHILL COUNTY

COMES NOW Curtis Brian Johnston, by and through his attorney Robert L. Engle, and offers the following Closing Argument to the Administrative Hearing of July 22, 2008.

The July 16, 2007 Notice of Violation charges Mr. Johnston with the following violations:

- (1) Causing or allowing to be initiated or maintained the open burning of prohibited materials – OAR 340-264-0060(3);
- (2) Causing or authorizing the disposal of solid waste at a site for which a solid waste permit has not been issued – OAR 340-093-0040(1);
- (3) Conducting demolition open burning within an area of Yamhill County where such open burning is prohibited – OAR 340-264-0110(4)(b)(E); and
- (4) Failing to constantly attend an open burn and failing to have the necessary equipment for extinguishing fires – OAR 340-264-0050(2).

Respondent denies that he has committed the alleged violations. Although he admits that a fire occurred, he relies upon ORS 468A.030 which states:

"The several liabilities which may be imposed pursuant to (various Oregon statutes) and ORS Chapter 468, 468A and 468B upon persons violating the provisions of any rule, standard or order of the Environmental Quality Commission pertaining to air pollution

1 shall not be so construed as to include any violation which was caused by an act of God,  
2 war, strife, riot or other condition as to which any negligence or willful misconduct on  
3 the part of such person was not the proximate cause."

4 ORS 183.450(2) provides that the burden of presenting evidence to support a fact or position is  
5 on the proponent of the fact or position. ORS 183.450(1) states that irrelevant, immaterial and unduly  
6 repetitious evidence may be excluded. Respondent objected to certain evidence and testimony presented  
7 by the State which was clearly offered as an inference that alleged past violations of DEQ laws by the  
8 respondent proved that he was equally responsible for the alleged violations which are the subject of this  
9 Hearing.

10 The respondent contends that evidence presented by the State to establish that Mr. Johnston  
11 willfully or negligently committed the violations alleged is at the most circumstantial and arguably  
12 irrelevant, immaterial and presented to establish an unreasonable bias toward the respondent.

13 The State only produced two witnesses to establish its case. Witness Dan Fox, a DEQ inspector,  
14 knew nothing of this fire until five (5) days after it occurred and never observed the burn site.

15 Witness Bridgett Taylor, an Oregon State police officer, stated that she was at the site of the fire  
16 primarily because she remembered a 1999 incident when Mr. Johnston was cited for interfering with a  
17 police officer and was concerned about whether personal conflicts might once again occur. She agreed  
18 that it was nighttime and dark and only car and truck lights illuminated the area. She was obviously not  
19 focusing on the material burning nor the cause of the fire. (See Trooper Taylor's report of October 28,  
20 2006 offered as State's Exhibit 7).

21 The State failed to produce a single witness to establish the facts necessary to carry its burden of  
22 proof. None of the "several fire department (McMinnville) staff" mentioned in Division Chief Shannon  
23 Thorson's report (Exhibit 7) as witnesses to the fire were produced. None of the Dayton fire department  
24 staff who were present (Exhibit 7) were produced as witnesses. Witness Greg Kiger (riding with  
25 Trooper Taylor) did not testify. Chief Shannon Thorson of the McMinnville Fire Department who  
26

1 referred the incident to DEQ, although included in the State's witness list, did not testify either in person  
2 or by phone, despite the fact that her report indicates that she believed Mr. Johnston was lying.<sup>1</sup>

3 Mr. Johnston's testimony was the only direct evidence of the events that occurred and that didn't  
4 occur on October 28, 2006.

5 The State's principal argument as expressed in its Hearing Memorandum, is that Mr. Johnston  
6 was a bad guy, had violated open burning laws in the past and therefore surely was guilty of the illegal  
7 conduct alleged on October 28, 2006. The Administrative Law Judge will recall that Mr. Johnston was  
8 never cited for DEQ violations in the past, let alone found responsible for such violations. The only  
9 citation Mr. Johnston ever received was for "obstructing governmental or judicial administration" on  
10 September 20, 1999 (shown on either Exhibit 4 or 9) which charge was dismissed by the Court at the  
11 time of trial.

12 Mr. Johnston produced credible evidence of the following facts:

13 (1) A site containing some metal (some barrels, an old stove and a bicycle) was  
14 located on his farm when he acquired it some years ago. Since it did not contain burnable or hazardous  
15 materials he did not disturb it.

16 (2) In the summer of 2006 Mr. and Mrs. Johnston experienced water damage from a  
17 broken water pipe in their home requiring the removal of material amounts of sheetrock, insulation and  
18 paneling from their residence. This wet material was hauled to the rear of their farm adjacent to the  
19 metal for temporary disposal until it dried out. Mr. Johnston testified that he intended to remove it to a  
20 proper disposal site when it has dried.

21 (3) Mr. Johnston testified that a week or two before October 28, 2006 he removed  
22 three three-ton blocks of hay to a location about forty (40) feet from the temporarily disposed house  
23 material when it was observed to be warm when opened by Mr. Johnston's wife to feed her horses. This

24 ///

25 \_\_\_\_\_  
26 <sup>1</sup>Please recall the testimony of the previous conflict between Mr. Johnston and Chief Thorson resulting  
in an unfavorable personal and professional relationship between the two.

1 was done in response to a call to the Eastern Oregon farmer who had sold the hay to Mr. Johnston  
2 regarding the proper disposal method for hay experiencing internal combustion.<sup>2</sup>

3 (4) A row of brush, small trees and grass lay between the hay and the house debris.

4 Mr. Johnston testified that he does not know what started the fire. What he does know is that  
5 neither he nor anyone for whom he is responsible started the fire. He noted, as an aside, that he would  
6 be crazy to start a fire at night considering his relationship with the fire department.

7 In trying to explain to himself and to others how the fire started, his best guess was that the hay  
8 combusted starting the fire. He explained that he has no evidence of this other than the fact that both the  
9 hay and the house material were destroyed and reduced to ash.

10 It is probably as likely that the fire was started by a trespasser as it is that the hay combusted but  
11 there is no evidence either way. The McMinnville department that would normally have investigated the  
12 cause of the fire but apparently was so sure of Mr. Johnston's guilt because of prior conflict that it failed  
13 to perform normal and usual investigation.

14 Chief Thorson's only action was to make a referral to DEQ for Mr. Johnston's prosecution, not to  
15 investigate the cause of the fire.

16 There is no direct or material evidence, either clear or convincing, by preponderance or  
17 otherwise, that Mr. Johnston either willfully or negligently started the fire. There is evidence that a  
18 disgruntled fire chief, angry at Mr. Johnston for other reasons, chose to use this unfortunate event to  
19 obtain satisfaction for prior perceived affronts. Unfortunately, she apparently changed her mind when it  
20 came time to testify before the Administrative Law Judge.

21 DEQ, once it chose to support the Chief and once it experienced a failure by Mr. Johnston to bow  
22 to its authority, decided to aggressively pursue Mr. Johnston to Hearing in an effort to punish this  
23 failure.

24 ///

25 \_\_\_\_\_  
26 <sup>2</sup>Dan Fox failed to establish a single experience which would qualify him as an expert of internal  
combustion in late cutting alfalfa hay.

1           Unfortunately, the DEQ's conduct in this case in refusing to retract its position when the evidence  
2 was clear that the Notice of Violation was in error, is reminiscent of the Molalla Snowball the deer case  
3 where another State agency chose to pursue an innocent citizen notwithstanding the facts of the case.  
4 (See the attached newspaper clipping).

5           In summary, the October 28, 2006 fire was simply an unfortunate occurrence. No persons or  
6 property were damaged. There is no direct, substantial or convincing evidence of the cause of the fire.  
7 The only direct evidence in this case is that Mr. Johnston vehemently denies willfully starting the fire or  
8 conducting himself in any manner which could clearly be said to be negligent.

9           There is substantial evidence that State and Fire District officials overreacted because of prior  
10 experiences with Mr. Johnston. State Trooper Taylor, remembering the 1999 incident which resulted in  
11 a citation for obstructing a governmental employee, immediately assumed that conflict might result  
12 between Mr. Johnston and fire department personnel. Secondly, Division Chief Thorson, remembering  
13 her prior conflicts with Mr. Johnston on fire board matters, overreacted by referring this matter to the  
14 Department of Environmental Quality for enforcement action rather than investigating the cause of the  
15 fire as her department should have done. Third, the Department of Environmental Quality, first in an  
16 attempt to support Chief Thorson and secondly in an attempt to teach Mr. Johnston a lesson regarding  
17 cooperation with governmental officials, chose to pursue this matter notwithstanding our July 30, 2007  
18 letter of explanation to them.

19           The only conclusion that can be reached based upon the clear and convincing evidence in this  
20 case is that no one knows how this fire started and Mr. Johnston cannot be found responsible based upon  
21 that lack of evidence.

22  
23           DATED this 11th day of August, 2008.

24   ///

25   ///

26   ///



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Respectfully submitted,

ENGLE & SCHMIDTMAN

By  
ROBERT L. ENGLE, OSB# 660379  
Attorneys for Respondent

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

CERTIFICATE OF SERVICE

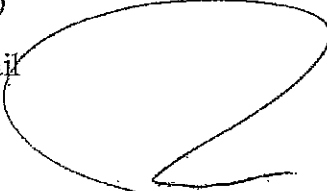
I certify that I served the foregoing Respondent's Closing Argument on the following named persons by depositing a true, full and exact copy thereof in the U. S. Post Office at Woodburn, Oregon, on August 11, 2008, enclosed in a sealed envelope with postage paid, addressed to:

Monica Smith  
Office of Administrative Hearings  
7995 SW Mohawk St.  
Tualatin, OR 97062

By Electronic and First Class Mail

Leah Koss  
Environmental Law Specialist  
Department of Environmental Quality  
811 SW Sixth Avenue  
Portland, OR 97204-1390

By Electronic and First Class Mail



---

Robert L. Engle - OSB# 660379  
Of Attorneys for Respondent



**Oregon**

Theodore R. Kulongoski, Governor

**Department of Environmental Quality**

Headquarters  
811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696  
FAX (503) 229-6124  
TTY (503) 229-6993

August 5, 2008

Robert L. Engle  
Engle & Schmidtman  
Northwood Office Park  
610 Glatt Circle  
Woodburn, OR 97071

Monica Smith  
Office of Administrative Hearings  
7995 SW Mohawk St.  
Tualatin, OR 97062

Re: Curtis B. Johnston Hearing  
OAH Case No. 800449  
DEQ Case No. AQ/OB-WR-07-060  
Yamhill County

Dear Judge Smith and Mr. Engle:

Please find enclosed the State's closing argument memorandum for the Curtis Johnston Hearing referenced above.

If you have any questions, please contact me at 503-229-6408.

Sincerely,

Leah Koss  
Environmental Law Specialist  
Office of Compliance and Enforcement

Enclosure



BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:  
CURTIS BRIAN JOHNSTON,

Respondent.

HEARING MEMORANDUM

No. AQ/OB-WR-07-060  
YAMHILL COUNTY

This Hearing Memorandum is offered in support of Notice of Violation, Department Order and Civil Penalty Assessment (Notice) No. AQ/OB-WR-07-060, issued July 16, 2007, by the Department of Environmental Quality (the Department or DEQ).

I. INTRODUCTION

The evidence entered into the record at hearing establishes the following undisputed facts. Curtis Johnston owns property located at 11320 Lafayette Highway in Dayton, Oregon. On this property, Mr. Johnston operates a poultry farm.

On November 2, 2006, Dan Fox, an air quality inspector for the Department, received a "Fire Department Referral for Open Burning Violations" (Exhibit D7)<sup>1</sup> from the McMinnville Fire Department. The referral stated that the McMinnville Fire Department had responded to an open burn involving one pile approximately ten feet high by thirty feet wide and fifty feet long. The pile included materials such as plastics, automobile parts, furniture, insulation, a bicycle, rubber products, petroleum products, demolition debris, miscellaneous garbage and miscellaneous wood products. (Exhibits D5 and D6 show some of the material in photos and according to the log; Exhibit D7 also describes the materials observed by the Fire Dept.) On that date, when the Fire Dept. and State Police were at Mr. Johnston's property, Mr. Johnston stated to Senior Trooper Bridget Taylor (Taylor testimony and Exhibit D8) that he did not know how the fire started.

On December 19, 2006, Mr. Fox spoke on the phone with Mr. Johnston. During that conversation, Mr. Johnston stated that he put hot hay outside of his barn, "it caught fire, spread

<sup>1</sup> All exhibits referenced and referred to in this memorandum were admitted into the record at the hearing on July 22, 2008.

1 through some dry grass and into our dump.” Mr. Johnston stated that he didn’t know exactly what  
2 was in the pile and that is was just stuff from around the property. (Exhibit D4) During that same  
3 conversation, Mr. Johnston agreed to have Mr. Fox out to the property to see the burn pile – he  
4 stated it was still there – and said that he or his son could show Mr. Fox the burn pile. (Exhibit D4)  
5 At this point, Mr. Johnston said that Mr. Fox would only have to call a couple hours ahead. On  
6 December 21, 2006, Mr. Fox called Mr. Johnston to confirm the appointment that Mr. Fox and Mr.  
7 Johnston had made together for Mr. Fox to come out to the property. Mr. Johnston returned Mr.  
8 Fox’s call and stated that he could not enter the property. Mr. Fox explained that his observing the  
9 burn pile would potentially be beneficial to Mr. Johnston in documenting the cause of the fire.

10 On July 30, 2007, Mr. Engle sent the Department an Answer and Request for a Hearing  
11 (Exhibit R1 and Exhibit D3) which stated that Mr. Johnston put the hay from the barn  
12 approximately 40 feet from the solid waste pile on his property. The Answer also stated that the  
13 material in question was specifically wet insulation and lumber and that it was intended to be moved  
14 once it had dried.

## 15 II. DISCUSSION

16 a. Mr. Johnston negligently accumulated and disposed of solid waste on his property, which is  
17 not a permitted solid waste disposal site.

18 The Notice alleges that Mr. Johnston violated ORS 459.205(1) and OAR 340-093-  
19 0040(1) by disposing of or authorizing the disposal of solid waste at a site for which a solid  
20 waste permit has not been issued. Mr. Johnston admitted through testimony that he did in fact  
21 accumulate solid waste on his property. Some of the accumulated waste had been there for at  
22 least 12 years, or since 1994 and some had been there for at least several months. It goes without  
23 saying that all of this solid waste is under Mr. Johnston’s control and ownership as owner of the  
24 property. Evidence in the record contradicts the Answer statement because: (1) Mr. Johnston  
25 told Mr. Fox in their phone conversation of December 19, 2006 that the waste was “stuff from  
26 around the property;” (2) the Fire Dept. and the State Police identified many more prohibited  
27 solid waste materials in the burn pile than sheet rock and insulation; and (3) in testimony, Mr.

1 Johnston did not dispute in any way that these materials were there and that he accumulated or  
2 allowed them to accumulate in violation of OAR 340-093-0040(1). Mr. Johnston negligently  
3 accumulated and allowed this waste to accumulate for years, some of which, at least, he stated he  
4 had no intention of ever getting rid of properly. Mr. Johnston stated that he made several  
5 attempts to get disposal boxes for the residential solid waste only, yet he provides no evidence of  
6 these attempts – no statements from personnel at Western Oregon Waste as to these attempts or  
7 as to the lack of available boxes for the several months which Mr. Johnston claims they were  
8 unavailable. Mr. Johnston testified that he knew the rules regarding open burning of prohibited  
9 materials. He was aware that certain materials which he was accumulating on his property were  
10 prohibited from being burned in Oregon. Yet, Mr. Johnston negligently accumulated this solid  
11 waste on his property for years anyway.

12 Further, Mr. Johnston had another illegal fire on his property with many of the exact  
13 same materials in July 1999. (Exhibits D10, D11, D13) Despite his testimony that this fire  
14 consisted of only “paper,” the evidence shows that this fire was large and included prohibited  
15 materials which were identified by three different individuals of the State Police and the Fire  
16 Dept. Mr. Johnston’s testimony that the fire merely consisted of paper is not credible in light of  
17 the reports of these three other people. It cannot be reasonably deduced that three separate  
18 individuals with the Fire Dept. and State Police wrote false reports regarding this fire. Mr.  
19 Johnston learned, based on the 1999 fire, that burning certain materials is prohibited in Oregon,  
20 and therefore, Mr. Johnston acted at least negligently in allowing these same materials to  
21 accumulate on his property once again. But for this negligent accumulation of solid waste, the  
22 violations of burning prohibited materials would never have happened. But for the negligent  
23 accumulation of solid waste on his property, Mr. Johnston would not have any of the four  
24 violations alleged against him in the Department’s Notice. (Exhibit D2)

25 ///

26 ///

27 ///

1 b. Mr. Johnston's excuse that hot hay started the fire is not credible and even if accepted as the  
2 cause of the fire, he managed the hot hay recklessly.

3 Mr. Johnston first told the Fire Dept. and the State Police that he did not know how the  
4 fire started. The Fire Dept. and the State Police did not observe or document any evidence of a  
5 second pile burning or hay burning or any hay on the property at all. Mr. Johnston later, nearly  
6 two months after the fire, told Dan Fox that the fire was caused by hot hay combusting and  
7 catching "our dump" on fire. Mr. Johnston's testimony at the hearing then suggested that he  
8 does not know how the fire started, but merely suspects it was the hot hay. Three different  
9 stories have been presented by Mr. Johnston regarding the cause of the fire. He eventually  
10 testified that the hot hay theory was just that – mere speculation – and that he claims to not know  
11 how the fire got started. Mr. Johnston's rendition of the story is inconsistent and thus has  
12 limited credibility. Meanwhile the Fire Department and State Police have consistently stated that  
13 they did not see hay on the property at all and that they only observed one burn pile.

14 Even if Mr. Johnston's testimony that the hot hay combusting caused the fire was  
15 accepted as plausible, it was not proven by a preponderance of the evidence. Mr. Johnston  
16 alleges that hot hay combusting was the cause of the fire but offers no proof of this assertion as  
17 an affirmative defense. Mr. Johnston failed to provide any evidence to prove that hay had caused  
18 the fire. Mr. Johnston could have provided receipts for the purchase of the hay; he could have  
19 provided a notarized statement from the person he claimed told him to remove the hay from the  
20 barn because it was hot; he could have provided a notarized statement from his wife regarding  
21 the alleged hot hay.

22 It is unreasonable to assume that no one from the Fire Department or the State Police  
23 would have seen nine tons of hay burning that evening and leading to the burn pile which they  
24 did find. It is unreasonable to assume that this hay would have been completely burned to  
25 nothing when they arrived on scene so that no debris could be seen. Mr. Johnston states in his  
26 Answer that the hay was placed 40 feet from the solid waste pile. It is not reasonable to assume  
27 that with light from a giant burning fire and lights from a police car and fire trucks would not

1 have illuminated a 9-ton pile of hay enough for them to take note of it. Mr. Johnston later  
2 testified that he even witnessed a debris pile from the alleged burnt hay the next day that was  
3 approximately a few feet tall. It is unreasonable to assume that the Police or Fire Dept.  
4 personnel would not have noticed this or that they were operating in the complete pitch dark.  
5 Again, even if this was true, Mr. Johnston provided no evidence to support the fact that he saw a  
6 burnt hay pile – no pictures, no affidavits from anyone else who witnessed this second burnt pile  
7 – only his testimony which has been vague on the issue at best.

8 Further, if Mr. Johnston's testimony that hot hay caused the fire is accepted, Mr. Johnston  
9 still managed the hot hay recklessly according to his own testimony. Mr. Johnston testified that  
10 he has, for many years, consistently had bails of hay in large quantities on his property for  
11 horses. Yet, Mr. Johnston claims he has never dealt with hot hay before. He also claims that he  
12 knew the hay was hot enough to combust, but thought it was enough to merely take the 3-ton  
13 stacks out of the barn without breaking them up. Instead, a reasonable person would have  
14 handled the hay by breaking it up to cool off. Mr. Fox testified that in his experience, it would  
15 take nine tons of hay several days to completely burn. No evidence or testimony was presented  
16 to the contrary. For these reasons, even if Mr. Johnston's affirmative defense that hot hay caused  
17 the fire on October 28, 2006 is taken as plausible, Mr. Johnston still caused the fire by acting  
18 negligently in placing it a mere 40 feet from materials which he knew were illegal to burn and by  
19 not breaking it down so that the hay could cool.

20 c. Mr. Johnston has demonstrated a complete lack of credibility in his statements.

21 Mr. Johnston stated at the hearing that he wasn't home when the fire was burning or  
22 when the Fire Dept. showed up, but he told Mr. Fox that he saw the lights fly by on his property  
23 and that is how he knew there was a fire. (Exhibit D4) Mr. Johnston told Mr. Fox that hot hay  
24 combusting caused the fire, but he did not tell the Fire Dept. or State Police this when they asked  
25 him about the fire. Mr. Johnston, as demonstrated by the Department's evidence at the hearing,  
26 has a history of illegal open burns on his property. He testified that the 1999 fire was merely  
27 paper, in direct contradiction to the fire and police reports. He testified that he did not even



1 know about the fire on his property in June 2003. Mr. Johnston testifies that he is extremely  
2 careful and conscious of the condition of his property and of who enters his property because his  
3 livelihood depends on this level of care. However, Mr. Johnston has recklessly allowed three  
4 illegal fires on his property which he states he has no idea how they started. Additionally, he did  
5 not break up hay that he believes may spontaneously combust in order to avoid this result. Mr.  
6 Johnston has not provided any evidence at all to corroborate all of the conflicting testimony that  
7 he offers and further has not proved any evidence to show that the Fire Dept. and State Police  
8 testimony and evidence should not be given more weight than his testimony.

9 Mr. Johnston had opportunities to tell the Fire Dept., the State Police and DEQ that he  
10 did not cause this fire, but that hot hay combusting, or some other unknown factor did. He did  
11 not take the opportunity to tell the Fire Dept. what he thought was the cause; he did not take the  
12 opportunity to tell the State Police what he thought was the cause; he did not respond to the  
13 Department's Pre-Enforcement Notice telling him to contact the Department if any of the  
14 violations were in error; and he did not take the opportunity to present any evidence  
15 corroborating his testimony at the hearing. Mr. Johnston is not a credible witness and therefore,  
16 nothing he says can be taken as credible, probative evidence.

17 d. Civil Penalty Calculation

18 The Notice assessed a \$9,524<sup>2</sup> civil penalty pursuant to OAR 340-012-0045. The  
19 regulation sets forth the method for calculating a penalty using a matrix to establish a base  
20 penalty and then applying specific numeric aggravating and mitigating factors to the base penalty  
21 to arrive at a final penalty.

22 The base penalty for Violation 1 in Exhibit No. 1 of the Notice is \$2,500 pursuant to  
23 OAR 340-012-0140(4)(a)(C).<sup>3</sup> To this base penalty, the Department applied one aggravating  
24 factor to arrive at the final amount of \$4,000.<sup>4</sup>

25 <sup>2</sup> Note that the Department has reduced the entire civil penalty assessed from \$9,524 to \$9,024 by way of  
26 the stipulation agreed to by the Department and Respondent. (Also see Footnote 4.)

27 <sup>3</sup> OAR 340-012-0054(1)(q) states that causing or allowing to be initiated or maintained the open burning  
of materials which normally emit dense smoke or noxious odors is a Class I violation. OAR 340-012-

1 OAR 340-012-0145(5)(a)(C) states that the "M" factor in the calculation will be assigned  
2 a value of 6 if the cause of the violation was Respondent's reckless conduct. Reckless is defined  
3 in OAR 340-012-0030(17) as "the respondent consciously disregarded a substantial and  
4 unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of  
5 such a nature and degree that disregarding that risk constituted a gross deviation from the  
6 standard of care a reasonable person would observe in that situation." In this case, Mr. Johnston  
7 was aware of what materials were illegal to burn in Oregon and yet he illegally accumulated  
8 these materials on his property and allegedly placed hot hay which was likely to combust near  
9 these materials. In doing this, Mr. Johnston consciously disregarded a substantial and  
10 unjustifiable risk that the burn would occur. Mr. Johnston further did not take the care to break  
11 up the hot hay so that it would cool off and he did not monitor the hay's temperature. Mr.  
12 Johnston's actions constituted a gross deviation from the standard of care that a reasonable  
13 person would observe in that situation.

14 The base penalty for Violation 2 in Exhibit No. 2 of the Notice is \$1,250 pursuant to  
15 OAR 340-012-0140(4)(a)(A).<sup>5</sup> To this base penalty, the Department applied two aggravating  
16 factors and economic benefit to arrive at the final amount of \$5,024.

17 OAR 340-012-0145(5)(a)(B) states that the "M" factor in the calculation will be assigned  
18 a value of 2 if the cause of the violation was Respondent's negligent conduct. Negligence is  
19 defined in OAR 340-012-0030(12) as "the respondent failed to take reasonable care to avoid a

20  
21 0135(1)(g)(A) states that initiating or allowing the initiation of open burning of ... 5 or more cubic yards  
22 of prohibited materials is of major magnitude. OAR 340-012-0140(4)(b)(A)(i) states the base penalty for  
a Class I, major magnitude violation is \$2,500.

23 <sup>4</sup> The Department originally assessed a penalty of \$4,500 for Violation 1 in Exhibit No. 1 of the Notice.  
24 At the hearing on July 22, 2008, the parties stipulated to changing the "C" factor in the exhibit from a  
value of 2 to a value of 0, in Mr. Johnston's favor, thereby reducing the penalty for Violation 1 from  
\$4,500 to \$4,000. This reduces the entire civil penalty from \$9,524 to \$9,024.

25 <sup>5</sup> OAR 340-012-0065(1)(c) states that disposing of or authorizing the disposal of solid waste at a location  
26 other than a solid waste disposal site permitted by the Department is a Class I violation. OAR 340-012-  
0130(1) states that the magnitude shall be moderate if there is no selected magnitude for the violation and  
27 the information reasonably available to the Department does not indicate a minor or major magnitude.  
OAR 340-012-0140(4)(b)(A)(ii) states the base penalty for a Class I, moderate magnitude violation is  
\$1,250.

1 foreseeable risk of conduct constituting or resulting in a violation.” In this case, Mr. Johnston  
2 illegally accumulated solid waste on his property for at least 12 years prior to the October 28,  
3 2006 fire. Given the quantity of material of 555 cubic yards, and that approximately 50% of  
4 these materials were prohibited from being burned, Mr. Johnston failed to take reasonable care to  
5 avoid the foreseeable risk that the violation would occur.

6 OAR 340-012-0145(4)(a)(D) states that the “O” factor in the calculation will be assigned  
7 a value of 4 if the violation existed or occurred on more than 28 days, which need not be  
8 consecutive. Mr. Johnston accumulated solid waste on his property for more than 28 days.

9 No civil penalty was assessed for Violations 3 and 4 in the Notice. Mr. Johnston did not  
10 dispute these violations except for the affirmative defense that he was not negligent in allowing  
11 the fire on his property to occur.

### 12 III. CONCLUSION

13 Mr. Johnston does not dispute the violations alleged in the Notice. He asserts only that  
14 he did not act negligently. Mr. Johnston did not meet his burden of proof (a preponderance of  
15 the evidence) in asserting his affirmative defense that he did not act negligently in his actions  
16 leading to the October 28, 2006 fire. For the reasons cited herein, the Administrative Law Judge  
17 should issue a Proposed Order assessing a civil penalty of \$9,024 as calculated in the exhibits  
18 attached to the Notice of Assessment of Civil Penalty.

19 DATED this 5th day of August 2008.

21 Respectfully submitted,

22  
23 

24 Leah Koss,  
25 Environmental Law Specialist  
26 Department of Environmental Quality  
27

1 CERTIFICATE OF SERVICE

2 I hereby certify that I served the Hearing Memorandum within on the 5<sup>th</sup> day of

3 August, 2008 upon

4 ✓  
5 Monica Smith  
6 Administrative Law Judge  
7 Office of Administrative Hearings  
8 7995 SW Mohawk St.  
9 Tualatin, OR 97062

10 By Electronic Mail and Certified Mail

11 Robert Engle  
12 Attorney at Law  
13 Northwood Office Park  
14 610 Glatt Circle  
15 Woodburn, OR 97071-9600

16 By Electronic Mail and Certified Mail

17 by electronic mail and by mailing a true copy of the above by placing it in a sealed envelope,  
18 with postage prepaid at the U.S. Post Office in Portland, Oregon, August 5, 2008.

19 Deborah Nesbit, Admin Assistant, DEQ

1 CERTIFICATE OF SERVICE

2 I hereby certify that I served the Hearing Memorandum within on the 5<sup>th</sup> day of

3 August, 2008 upon

4  
5 Monica Smith  
6 Administrative Law Judge.  
7 Office of Administrative Hearings  
8 7995 SW Mohawk St.  
9 Tualatin, OR 97062

10 By Electronic Mail and Certified Mail

11  Robert Engle  
12 Attorney at Law  
13 Northwood Office Park  
14 610 Glatt Circle  
15 Woodburn, OR 97071-9600

16 By Electronic Mail and Certified Mail

17 by electronic mail and by mailing a true copy of the above by placing it in a sealed envelope,  
18 with postage prepaid at the U.S. Post Office in Portland, Oregon, August 5, 2008.

19 Deborah Nesbitt, Admin. Assistant, DEQ

**Naegeli Reporting**  
"The Deposition Experts"

National (800) 528-3335  
[www.NaegeliReporting.com](http://www.NaegeliReporting.com)

Portland, OR  
(503) 227-1541

Seattle, WA  
(206) 622-3376

Spokane, WA  
(509) 838-6000

Coquille, OR  
(541) 667-1165

Court Reporting

Videography

Trial Presentation

Videoconferencing

Item G: Johnston Contested Case  
February 26, 2009 EQC Meeting  
Attachment L

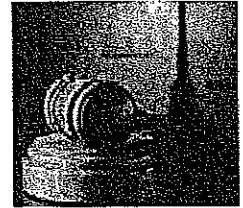
**CONDENSED**

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
FOR THE ENVIRONMENTAL QUALITY COMMISSION**

IN THE MATTER OF:

CURTIS B. JOHNSTON,  
Respondent.

OAH Case No.: 800449  
Agency Case No.: AQ/OB-WR-07-060



Hearing Before Judge Monica Smith  
July 22, 2008



Item F 000087

|   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2 | <p>1 APPEARANCES</p> <p>2</p> <p>3 Administrative Law Judge Monica Smith:</p> <p>4</p> <p>5 Attorney for Respondent:</p> <p>6 Robert L. Engle</p> <p>7</p> <p>8 Attorney for Environmental Quality Commission:</p> <p>9 Leah Koss</p> <p>10 Jeffrey R. Bachman</p> <p>11</p> <p>12 Community Air Toxic and</p> <p>13 Natural Resource Specialist:</p> <p>14 Daniel Fox</p> <p>15</p> <p>16 Oregon State Police Senior Trooper:</p> <p>17 Bridget Taylor</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>                                                                                                                                                                                                     | 4 | <p>1 Hearing Before Judge Monica Smith.</p> <p>2 July 22, 2008</p> <p>3</p> <p>4 JUDGE SMITH: We're going to go ahead and</p> <p>5 go on the record in the matter of Curtis B.</p> <p>6 Johnston. I'm Judge Smith. I'm an attorney. I</p> <p>7 don't work for DEQ and that's so you have an</p> <p>8 independent person hearing your case. Present in</p> <p>9 the room with me is Curtis B. Johnston and his</p> <p>10 attorney. And that would be Mr. Engle, Robert</p> <p>11 Engle. I also have Leah Koss. I have Dan Fox who's</p> <p>12 going to be one of her witnesses. And then</p> <p>13 observing, I have Jeff Bachman.</p> <p>14 How we're going to proceed is we'll first</p> <p>15 be discussing the exhibits that we had previously</p> <p>16 discussed in the pre-hearing conference call and</p> <p>17 I'll be listening to Mr. Engle's objections and</p> <p>18 ruling on that. Then, I'll hear any opening</p> <p>19 comments the attorneys have and then we'll be taking</p> <p>20 testimony. And of course, the State will go first</p> <p>21 and then I'll hear from Mr. Johnston. When</p> <p>22 everyone's finished presented their evidence, I'll</p> <p>23 let you do closing comments and then we'll end the</p> <p>24 hearing. And my decision will be issued, I think,</p> <p>25 within 35 days, whatever the time line is.</p> |
| 3 | <p>1 INDEX</p> <p>2 Examination of Page</p> <p>3 MR. FOX</p> <p>4 DIRECT EXAMINATION BY MS. KOSS 19</p> <p>5 CROSS EXAMINATION BY MR. ENGLE 88</p> <p>6 REDIRECT EXAMINATION BY MS. KOSS 108</p> <p>7</p> <p>8 RE-REDIRECT EXAMINATION 174</p> <p>9 RE-RECROSS EXAMINATION BY MR. ENGLE 177</p> <p>10 REBUTTAL EXAMINATION BY MS. KOSS 179</p> <p>11 CROSS-EXAMINATION BY MR. ENGLE 123</p> <p>12</p> <p>13 RESPONDENT</p> <p>14 DIRECT EXAMINATION BY MR. ENGLE 129</p> <p>15 CROSS EXAMINATION BY MS. KOSS 164</p> <p>16 RECROSS EXAMINATION OF RESPONDENT 179</p> <p>17</p> <p>18 REBUTTAL EXAMINATION BY MR. ENGLE 182</p> <p>19 CROSS-REBUTTAL EXAMINATION BY MS. KOSS 185</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | 5 | <p>1 MS. KOSS: I do have one preliminary</p> <p>2 request. A lot of times in these hearings, we</p> <p>3 request to leave the record open and submit a</p> <p>4 written closing statement, if that would be all</p> <p>5 right with you and within whatever time frame you</p> <p>6 would like, maybe a week or two to submit a closing</p> <p>7 statement and then a week or two for you to review</p> <p>8 those.</p> <p>9 JUDGE SMITH: Sure. Yeah, we can discuss</p> <p>10 that at the end. I have no problem with that.</p> <p>11 MS. KOSS: Okay.</p> <p>12 JUDGE SMITH: Any other preliminary</p> <p>13 matters, Mr. Engle?</p> <p>14 MR. ENGLE: Not that I know of.</p> <p>15 JUDGE SMITH: Okay.</p> <p>16 MS. KOSS: One more is we do have the</p> <p>17 stipulation that we had talked about, as well. I</p> <p>18 have that for you to sign.</p> <p>19 MR. ENGLE: You were going to interlineate</p> <p>20 or -- okay.</p> <p>21 MS. KOSS: So, if you want to --</p> <p>22 MR. ENGLE: Okay, that's fine. What are</p> <p>23 we doing, has to do with the formula (sounds like)</p> <p>24 and the penalties?</p> <p>25 MS. KOSS: Yes. This is -- we talked</p>                                                                                                                                                                                     |

**Naegeli**  
**REPORTING**  
 CORPORATION

800.528.3335  
 www.NaegeliReporting.com  
 503.227.7123 FAX

|                                |                               |                               |                                     |
|--------------------------------|-------------------------------|-------------------------------|-------------------------------------|
| Portland, OR<br>(503) 227-1544 | Seattle, WA<br>(206) 622-3376 | Spokane, WA<br>(509) 838-6000 | Coeur d'Alene, ID<br>(208) 667-1163 |
| Court Reporting                | Trial Presentation            | Videography                   | Videoconferencing                   |

Item F-000088

6

1 about just changing the C factor from zero to two in  
2 Exhibit No. 1. So, I suppose we'll probably make a  
3 photocopy of this for you, --  
4 JUDGE SMITH: Okay.  
5 MS. KOSS: -- so you have a signed copy.  
6 But, well, let me actually just sign this and you  
7 can --  
8  
9 JUDGE SMITH: And this is the stipulation  
10 that we talked about on the phone, where there was a  
11 mistake in the penalty --  
12 MS. KOSS: Correct.  
13 JUDGE SMITH: -- and it turned out to be a  
14 financial benefit to Mr. Johnston?  
15 MS. KOSS: Correct, yeah. It reduces the  
16 penalty for Exhibit No. 1 from \$4,500 to \$4,000.  
17 JUDGE SMITH: Okay.  
18 MR. ENGLE: Assuming that there's any  
19 reason to assess a penalty when we get done here.  
20 JUDGE SMITH: Right, based on that  
21 assumption, correct. I'm just describing for the  
22 record what we're talking about. So, you'll -- the  
23 secretary can make a copy of that for me, before I  
24 leave, so I have that in the file?  
25 MR. ENGLE: We will do it.

8

1 well?  
2 MR. ENGLE: Yes.  
3 JUDGE SMITH: Okay. So, yeah, we don't  
4 have to -- yeah, then we can do it that way.  
5 MS. KOSS: That might be easier that way.  
6 JUDGE SMITH: Okay. I do have just for  
7 your -- I mean, I've got Exhibits 1 through 19 and I  
8 do have them marked, --  
9 MS. KOSS: Okay.  
10 JUDGE SMITH: -- your Exhibits 1 through  
11 19. And then I have your exhibit marked as well.  
12 MR. ENGLE: Okay.  
13 MS. KOSS: Okay.  
14 JUDGE SMITH: So, we can talk about that  
15 as we're going through; that's fine, --  
16 MS. KOSS: Okay, thank you.  
17 JUDGE SMITH: -- unless you want to move  
18 to admit yours, Mr. Engle. Or do you want do it the  
19 same way she's doing it?  
20 MR. ENGLE: Let's just do it the same way  
21 --  
22 JUDGE SMITH: Okay.  
23 MR. ENGLE: -- that she's doing it. I  
24 think that's great.  
25 JUDGE SMITH: All right. Then, so did you

7

1 JUDGE SMITH: Okay. So, if you both are  
2 ready, I'm going to go ahead and go through the  
3 exhibits now.  
4 MR. ENGLE: They don't seem to be in  
5 order.  
6 MS. KOSS: No, see, I, I didn't know we  
7 would be going through those --  
8 MR. ENGLE: I have trouble finding some of  
9 them, yeah.  
10 MS. KOSS: -- in the beginning. I thought  
11 they would be ruled on as we admitted them. So,  
12 we're actually not submitting all of the exhibits --  
13 JUDGE SMITH: Okay.  
14 MS. KOSS: -- that were originally sent to  
15 you. But nothing new that has not been sent is  
16 included.  
17 JUDGE SMITH: Okay. Well, if you prefer,  
18 I can definitely wait and have you establish your  
19 foundation and move to admit them as you're  
20 discussing each one. I don't have a problem with  
21 that. (speaking simultaneously - inaudible)  
22 MR. ENGLE: I would like to see that  
23 happen. That would be good.  
24 MS. KOSS: That's okay.  
25 JUDGE SMITH: That's your preference as

9

1 want to do an opening comment, Ms. Koss?  
2 MS. KOSS: I would, please. On July 16,  
3 2007, DEQ assessed a civil penalty of \$9,524 against  
4 Mr. Johnston. The penalty was assessed on two of  
5 four violations that the Department alleged in its  
6 notice to Mr. Johnston.  
7 The first violation was for open burning  
8 of prohibited materials, for which the Department  
9 assessed a penalty of \$4,500. That is what we just  
10 stipulated to, to reduce to \$4,000. The second  
11 violation was for disposing of solid waste at a site  
12 without a waste disposal permit from the Department,  
13 for which the Department assessed a civil penalty of  
14 \$5,024. The third violation was for conducting  
15 demolition burning within an area of Yamhill County,  
16 where such open burning is prohibited. And the  
17 fourth violation was for failing to constantly  
18 attend the open burn and failing to have the  
19 equipment necessary to extinguish the fire. The  
20 third and fourth violations were not assessed a  
21 penalty.  
22 The facts are that Mr. Johnston owns  
23 property, upon which he accumulated a large amount  
24 of solid waste. This solid waste was in a pile that  
25 measured approximately 10 feet high by 30 feet wide

**Naegeli**  
**REPORTING**  
**CORPORATION**

**800.528.3335**  
**www.NaegeliReporting.com**  
**503.227.7123 FAX**

Portland, OR (503) 227-1544  
Seattle, WA (206) 622-3376  
Spokane, WA (509) 838-6000  
Coeur d'Alene, ID (208) 666-0893  
Court Reporting Trial Presentation Videography Videoconferencing



|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">10</p> <p>1 by 50 feet long and consisted of demolition debris,<br/>2 such as plastics, automobile parts, furniture,<br/>3 petroleum products, rubber products, insulation,<br/>4 sheet rock and garbage. As this material was solid<br/>5 waste, Mr. Johnston was operating an illegal, non-<br/>6 permitted solid waste disposal site, for which the<br/>7 Department assessed the penalties.<br/>8 As the property owner, he did have the<br/>9 legal obligation to remove and properly dispose of<br/>10 this solid waste. Instead, he burned or allowed to<br/>11 be burned, much of this material on October 28,<br/>12 2006. Because these materials emit dense smoke and<br/>13 noxious odors when burned, they may not be burned<br/>14 anywhere in Oregon at any time or place. Oregon law<br/>15 states that each person who is in ownership, control<br/>16 or custody of real property on which open burning<br/>17 occurs or the material that is burned, is liable for<br/>18 illegal opening burning on that property. This is<br/>19 because of the difficulty in showing how a fire<br/>20 started, as a general matter. Neither the fire<br/>21 department nor DEQ inspectors are present when<br/>22 someone starts a fire.<br/>23 The facts show that Mr. Johnston did burn<br/>24 the materials. He has a history of burning<br/>25 materials in the past. He intended to discard the</p> | <p style="text-align: right;">12</p> <p>1 to human health and the environment and often occurs<br/>2 when landowners decide that it's cheaper to burn<br/>3 solid waste than to pay the cost of proper disposal.<br/>4 That is what happened on Mr. Johnston's property, as<br/>5 the evidence will show. Thank you.<br/>6 JUDGE SMITH: Okay, thank you, Ms. Koss.<br/>7 Mr. Engle?<br/>8 MR. ENGLE: Mr. Johnston's defense is<br/>9 based upon ORS 468A.030. Ms. Koss states in her<br/>10 opening statement that the mere fact that it burned<br/>11 caused liability and that's absolutely not true. The<br/>12 statute says unless you have willful conduct or<br/>13 negligence, and negligence is defined in Chapter<br/>14 183, that you're not responsible. So, if you have<br/>15 no negligence as defined and if you have no willful<br/>16 misconduct, then it's an absolute defense, as<br/>17 provided by Oregon statute. So, it's just simply<br/>18 not so that the mere fact that a burn occurred<br/>19 caused Mr. Johnston to be responsible.<br/>20 Further, if you look at ORS 183.450,<br/>21 evidence in contested cases, you see in subsection 2<br/>22 that the burden of presenting evidence to support a<br/>23 fact or position in a contested case rests on the<br/>24 proponent of the fact. Now, the allegations of the<br/>25 petition in violation, the alleged violations 1, 3</p>                                                   |
| <p style="text-align: right;">11</p> <p>1 useless debris, trash and garbage he staged (sounds<br/>2 like) in a pile, which itself is illegal under the<br/>3 solid waste rules, and the pile did burn.<br/>4 Mr. Johnston may argue that the hot hay,<br/>5 which he placed near solid waste, ignited by itself<br/>6 and this, in turn, ignited the pile of discarded<br/>7 materials. The Department has seen no evidence that<br/>8 hay was even on the property or that it actually<br/>9 combusted.<br/>10 Assuming that Mr. Johnston believes that<br/>11 this exonerates him from the burn, please note that<br/>12 this is an affirmative defense, on which Mr.<br/>13 Johnston has the burden of proof. Assuming for the<br/>14 moment that the garbage did catch fire from the<br/>15 alleged pile of hot hay, this theory (sounds like)<br/>16 does not exonerate him. It is common knowledge in<br/>17 the farming community that hot hay may catch on<br/>18 fire. Indeed, that is why it was removed from the<br/>19 barn. By staging the hot hay close enough to the<br/>20 pile of garbage, he created a foreseeable risk that<br/>21 dry grass would ignite and in turn burn the garbage.<br/>22 Failing to take reasonable care to avoid the<br/>23 violation shows that Mr. Johnston was at least<br/>24 negligent in causing or allowing the fire to burn.<br/>25 Open burning in rural Oregon is a threat</p>            | <p style="text-align: right;">13</p> <p>1 and 4, say that he did affirmative acts. He<br/>2 conducted, he caused or allowed to be disposed of,<br/>3 he failed to do this or he failed to do that. Those<br/>4 are affirmative allegations and that's the State's<br/>5 obligation to establish that he did those things.<br/>6 And it seems to me from looking at the<br/>7 evidence and the exhibits that were presented, that<br/>8 Ms. Koss intends to establish because there was one<br/>9 alleged prior violation - we'll talk about that<br/>10 more, if we get to that point - that she's using<br/>11 that type of evidence to establish that Mr. Johnston<br/>12 is likely to have caused (inaudible) she's saying<br/>13 he's lying (sounds like) based upon one previous<br/>14 violation. And we said he will testify that this<br/>15 was totally an accidental thing. He used reasonable<br/>16 conduct in moving hot hay out in the field where<br/>17 it's supposed to cool off, not supposed to catch<br/>18 fire, and he did nothing either negligent or willful<br/>19 to cause this to happen.<br/>20 And it's her burden of proof, not ours, to<br/>21 establish this, because that's what the allegations<br/>22 of the petition say. So, our position, our<br/>23 evidence, our witness, excuse me, our exhibit is my<br/>24 July 30, 2007 letter, which we wrote immediately<br/>25 after this complaint was filed. And this sets forth</p> |

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |    |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 14 | <p>1 the allegations of what our defense is going to be<br/>2 in this case and the position of the facts. And Mr.<br/>3 Johnston will testify about those. I appreciate<br/>4 that, thank you.<br/>5 JUDGE SMITH: Sure. Are you ready to call<br/>6 your first witness, Ms. Koss?<br/>7 MR. BACHMAN: Actually, Judge, can I ask a<br/>8 question?<br/>9 JUDGE SMITH: Sure.<br/>10 MR. BACHMAN: Usually in these hearings,<br/>11 before we move into our testimony and so forth, the<br/>12 ALJ will sort of admit the foundational documents<br/>13 into the record.<br/>14 JUDGE SMITH: I'm sorry, the what?<br/>15 MR. BACHMAN: The foundational documents,<br/>16 the penalty assessment, the answer, the notice of<br/>17 hearing rights and responsibilities, --<br/>18 JUDGE SMITH: Okay.<br/>19 MR. BACHMAN: -- the notice of hearing and<br/>20 so forth. So, I don't know if you want to do that<br/>21 now before we start or --<br/>22 JUDGE SMITH: Yeah, I can. I usually<br/>23 receive those not as exhibits, but just they're part<br/>24 of the pleading record.<br/>25 MR. BACHMAN: Okay.</p>             | 16 |
| 15 | <p>1 JUDGE SMITH: But, I mean, we can<br/>2 definitely discuss them.<br/>3 MR. BACHMAN: No, I just want to make sure<br/>4 that they get into the record. And ALJs can do it<br/>5 any way they so desire.<br/>6 JUDGE SMITH: I know.<br/>7 MR. ENGLE: Well, and certainly all these<br/>8 notices and the violation, the complaint, so to<br/>9 speak, those are all part of the record. We have no<br/>10 objections to those.<br/>11 JUDGE SMITH: Yeah, those are part of the<br/>12 hearing record. Were those ones that you had<br/>13 mentioned as exhibits or are they -- ?<br/>14 MS. KOSS: I think in my original exhibit<br/>15 list, I had those as exhibits, but I --<br/>16 JUDGE SMITH: Like the Pre-Enforcement --<br/>17 I'm talking about, like, there's Exhibit 1, a Pre-<br/>18 Enforcement Notice signed by Dan Fox.<br/>19 MS. KOSS: No (sounds like).<br/>20 JUDGE SMITH: There's a Notice of<br/>21 Violation, --<br/>22 MS. KOSS: Yes.<br/>23 JUDGE SMITH: -- Exhibit 2, July of 2007.<br/>24 MS. KOSS: That's what he's referring to,<br/>25 that and then Mr. Engle's response to that, those</p> | 17 |

**Naegeli**  
**REPORTING**  
CORPORATION

800.528.3335  
www.NaegeliReporting.com  
503.227.7123 FAX

Portland, OR (503) 227-1544  
Seattle, WA (206) 622-3376  
Spokane, WA (509) 838-6000  
Coeur d'Alene, ID (208) 667-1163  
Court Reporting Trial Presentation Videography Videoconferencing

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 18 | <p>1 JUDGE SMITH: It's attached to the Notice<br/>2 of Hearing.<br/>3 MR. ENGLE: I think I did.<br/>4 MR. BACHMAN: Okay.<br/>5 MR. ENGLE: If I didn't, I've read it.<br/>6 MR. BACHMAN: Just making all the t's are<br/>7 dotted and the t's are crossed, procedurally, if<br/>8 that's okay.<br/>9 MR. ENGLE: That's fine. I don't intend<br/>10 to object to that one anyway.<br/>11 JUDGE SMITH: Yeah, and it's in the file<br/>12 and it shows that it was, you know, mailed by First<br/>13 Class Mail to Robert Engle, Dan Fox, Leah Koss,<br/>14 along with the hearing notice.<br/>15 MS. KOSS: Thank you.<br/>16 JUDGE SMITH: So, does that -- are you<br/>17 satisfied, Mr. Bachman?<br/>18 MR. BACHMAN: That's fine, thank you.<br/>19 JUDGE SMITH: Okay, no problem. So, we<br/>20 were talking about your first witness?<br/>21 MS. KOSS: Yes.<br/>22 JUDGE SMITH: Would that be Mr. Fox?<br/>23 MS. KOSS: Yes.<br/>24<br/>25 DANIEL ROBERT FOX, called as a witness by the State,</p>                                                                                                                                                                                                                                                                                                                           |
| 19 | <p>1 having been first duly sworn, was examined and<br/>2 testified as follows:<br/>3<br/>4 BY JUDGE SMITH:<br/>5 Q. State your full name for the record.<br/>6 A. Daniel Robert Fox.<br/>7 Q. And your occupation?<br/>8 A. I'm Community Air Toxic Specialist for the<br/>9 Department of Environment Quality.<br/>10 Q. Okay. I'm going to have you say that<br/>11 again, because it's not on your card.<br/>12 A. Okay.<br/>13 Q. Community what?<br/>14 A. Air Toxic Specialist.<br/>15 JUDGE SMITH: Okay. All right, go ahead,<br/>16 Ms. Koss.<br/>17 MS. KOSS: Thank you.<br/>18 DIRECT EXAMINATION OF MR. FOX<br/>19 BY MS. KOSS:<br/>20 Q. Obviously preliminary, but Mr. Fox, could<br/>21 you please tell us who you're employed by?<br/>22 A. Sure. Department of Environmental<br/>23 Quality.<br/>24 Q. And what is your position with the<br/>25 Department?</p>                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 20 | <p>1 A. I'm the Community Air Toxic Specialist,<br/>2 currently. At the time of the incident, I was the<br/>3 Open Burning Specialist, but I've since been<br/>4 promoted (Inaudible) position.<br/>5 Q. Approximately how long were you in the<br/>6 position as the Open Burning Specialist?<br/>7 A. From about February 2006 to March 2008.<br/>8 Q. Okay. And can you tell me a little bit<br/>9 about your job responsibilities, as they related to<br/>10 the open burning regulations, in that position?<br/>11 A. Sure. To provide technical assistance to<br/>12 the public, local jurisdictions such as the fire<br/>13 departments, go to the Fire Defense Board Meetings<br/>14 and meet with chiefs to discuss ways they would like<br/>15 to see things handled, to explain the open burning<br/>16 rules to them, also updating open burning fact<br/>17 sheets, receiving referrals from fire department and<br/>18 acting upon those, whether it be a warning letter or<br/>19 sending it to the Office of Compliance and<br/>20 Enforcement for a civil penalty referral.<br/>21 Q. And what do you know about the open<br/>22 burning regulations and how do you have this<br/>23 knowledge?<br/>24 A. The open -- what I know about them, I know<br/>25 all the open burning rules for Benton, Polk,</p> |
| 21 | <p>1 Yamhill, Marion, Lincoln and Linn Counties. I<br/>2 believe that's six counties. I might have missed<br/>3 one. I'm not sure.<br/>4 Q. Okay.<br/>5 A. So, what was the other part of the<br/>6 question?<br/>7 Q. Just how you obtained this knowledge.<br/>8 A. I'm obtained the knowledge from -- my<br/>9 previous position before the Department of<br/>10 Environmental Quality was working in the smoke<br/>11 management program at the Oregon Department of<br/>12 Agriculture and then since then, working in Open<br/>13 Burning Specialist positions and (Inaudible) to know<br/>14 what the Oregon Administrative Rules are for that.<br/>15 Q. All right. Have you investigated many<br/>16 illegal fires that were referred to the Office of<br/>17 Compliance and Enforcement?<br/>18 A. Yes. Probably, of the ones referred,<br/>19 probably about a dozen.<br/>20 Q. Are you familiar with the property located<br/>21 at 11320 NE (sic) Lafayette Highway in Dayton?<br/>22 A. Yes, I am.<br/>23 Q. Why are you familiar with that property?<br/>24 A. That's the property owned by Mr. Johnston<br/>25 and because I received the referral from the fire</p>                                                                                                                                          |

**Naegeli**  
**REPORTING**  
CORPORATION

800.528.3335  
www.NaegeliReporting.com  
503.227.7123 FAX

Portland, OR (503) 227-1544  
Seattle, WA (206) 622-3376  
Spokane, WA (509) 838-6000  
Coeur d'Alene, ID (208) 667-1163  
Item F 000092

Court Reporting Trial Presentation Videography Videoconferencing

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 22 | <p>1 department that an illegal burn had occurred there.<br/>2 MS. KOSS: Okay. I'm going to introduce<br/>3 our first exhibit. And that exhibit is the fire<br/>4 department report from former Chief Shannon Thorson<br/>5 regarding the incident at issue in this case. So,<br/>6 I've labeled that as D1 for Department --<br/>7 JUDGE SMITH: Okay. How does that<br/>8 correspond with your hearing exhibit list? Do you<br/>9 know which one it is on there?<br/>10 MS. KOSS: Sure, yeah.<br/>11 JUDGE SMITH: Because that's how I have<br/>12 them marked.<br/>13 MS. KOSS: Oh, I see. Yeah, sorry, that -<br/>14 - they're in different order and like I said, we're<br/>15 not admitting all of those.<br/>16 JUDGE SMITH: Okay.<br/>17 MS. KOSS: But, that would correspond to<br/>18 No. 7.<br/>19 JUDGE SMITH: Okay.<br/>20 MS. KOSS: I apologize for the confusion<br/>21 with the --<br/>22 JUDGE SMITH: That's all right. It just<br/>23 helps me find that in my files. That's how I have<br/>24 it organized. Okay. So, I'm going to mark that,<br/>25 then, as D1 instead of 7. And then the first three</p>                                      |
| 24 | <p>1 JUDGE SMITH: -- because it's already<br/>2 listed that way. I already have it marked that way.<br/>3 MR. ENGLE: So, we're going to call it No.<br/>4 7?<br/>5 MS. KOSS: So, we'll make this No. 4?<br/>6 Does that make sense or --?<br/>7 JUDGE SMITH: No. I want to make it --<br/>8 what would be easier for me is to follow this<br/>9 hearing exhibit list that you've already submitted.<br/>10 MS. KOSS: Okay.<br/>11 MR. ENGLE: So, we'll call it 7?<br/>12 JUDGE SMITH: No. 7, yeah.<br/>13 MR. ENGLE: Okay, that's fine.<br/>14 MS. KOSS: Okay. And a copy of this for<br/>15 you to refer to when it's established.<br/>16 THE WITNESS: Okay, thank you.<br/>17 Q. Mr. Fox, do you recognize this document?<br/>18 A. Yes.<br/>19 Q. Who sent you this report?<br/>20 A. This was sent by Division Chief Shannon<br/>21 Thorson, with the McMinnville Fire Department.<br/>22 Q. Does this document appear to be a true and<br/>23 accurate copy?<br/>24 A. Yes, it is.<br/>25 Q. Did you receive this document during the</p>                                                                                                                     |
| 23 | <p>1 that we've already admitted, how did you have those<br/>2 marked? They were 1 through 3 on your --<br/>3 MS. KOSS: Right. I didn't even have --<br/>4 oh --<br/>5 JUDGE SMITH: These would be the Pre-<br/>6 Enforcement Notice, the Notice of Violation and the<br/>7 Response.<br/>8 MS. KOSS: Yeah. The Pre-Enforcement<br/>9 Notice I was going to be admitting later into the<br/>10 record, when I have questions for Mr. Fox about<br/>11 that. The Notice of Violation and Mr. Engle's<br/>12 Answer, I didn't have marked as exhibits. I thought<br/>13 those were kind of, as Mr. Bachman was saying, sort<br/>14 of preliminary things that we just enter into the<br/>15 record, not necessarily as exhibits.<br/>16 JUDGE SMITH: Okay.<br/>17 MS. KOSS: So, but we can completely<br/>18 change how I've marked, you know, that exhibit. We<br/>19 can make that whatever number works for you. If you<br/>20 want to do the Pre-Enforcement as No. 1, the Notice<br/>21 as No. 2, Mr. Engle's Answer as No. 3, --<br/>22 JUDGE SMITH: That would be easier for me,<br/>23 --<br/>24 MS. KOSS: Let's do that.<br/>25 MR. ENGLE: That's fine.</p> |
| 25 | <p>1 normal course of your employment with the<br/>2 Department?<br/>3 A. Yes, I did.<br/>4 Q. Do you know why Chief Thorson sent you<br/>5 this report?<br/>6 A. Because she observed illegal burning going<br/>7 on.<br/>8 MR. ENGLE: Objection. We're talking<br/>9 about hearsay. Now, it's my understanding you're<br/>10 not calling her as a witness. Is that right?<br/>11 MS. KOSS: I'm not.<br/>12 MR. ENGLE: Okay.<br/>13 MS. KOSS: Hearsay is admissible in<br/>14 administrative law hearings.<br/>15 MR. ENGLE: I know the Oregon -- under the<br/>16 Chapter 183, (inaudible) cross-examining witnesses<br/>17 that testify.<br/>18 MS. KOSS: Right.<br/>19 MR. ENGLE: And unless I have an<br/>20 opportunity to cross-examine her, you can't just<br/>21 offer in evidence a report that she's filed. I<br/>22 object.<br/>23 JUDGE SMITH: And did you want to say<br/>24 anything else before I rule on his objection?<br/>25 MS. KOSS: I would just respond that it's</p>                                                                                                                                                                       |

**Naegeli**  
**REPORTING**  
CORPORATION

800.528.3335  
www.NaegeliReporting.com  
503.227.7123 FAX  
Portland, OR (503) 227-1544  
Seattle, WA (206) 622-3376  
Spokane, WA (509) 838-6000  
Coeur d'Alene, ID (208) 667-1163  
Item # 000093  
Court Reporting Trial Presentation Videography Videoconferencing

26

1 a business record that Mr. Fox received during the  
2 normal course of his business with DEQ.  
3 JUDGE SMITH: Right, okay.  
4 MR. ENGLE: Well, I've read this document,  
5 Your Honor. And this document and its allegations,  
6 particularly in her case, are just, we deem,  
7 basically untrue. And I need the right to cross-  
8 examine her, if we're going to do that. And if this  
9 document is submitted in evidence and you read it,  
10 and I haven't had a chance to cross-examine her,  
11 then we're in violation of 183.450, I believe.  
12 JUDGE SMITH: Okay. Anything else, Ms.  
13 Koss?  
14 MS. KOSS: No.  
15 JUDGE SMITH: Okay. I am going to  
16 overrule the objection. I do understand why you're  
17 making the objection and I will give the evidence  
18 the weight it deserves.  
19 MR. ENGLE: Okay.  
20 JUDGE SMITH: You may go ahead with your  
21 questions, Ms. Koss.  
22 Q. Let's see, I think we were -- I'm sorry,  
23 I'm going to (inaudible) at the last question. I  
24 think we were maybe in the middle of an answer. Do  
25 you know why Chief Thorson sent you this report?

27

1 A. Sure, because she observed some burning  
2 going on there at Mr. Johnston's property. And when  
3 fire departments go out and respond to illegal  
4 burns, they have an option to fill out an Open  
5 Burning Referral and send it to the Department to  
6 take further action.  
7 Q. Okay. So, have you had an opportunity to  
8 speak with Chief Thorson about the burn that took  
9 place on October 28, 2006?  
10 A. Yes, I have.  
11 Q. Were those conversations consistent with  
12 the fire department report?  
13 A. (inaudible) review.  
14 MR. ENGLE: Again, I would object to any  
15 hearsay discussion with her, outside of the report.  
16 I mean, you've admitted the report, but I don't want  
17 to hear any other, from my point of view, any  
18 discussions that he may have had with her, if she's  
19 not here to testify.  
20 JUDGE SMITH: Right. And your objection  
21 is noted for the record and my other overrule still  
22 stands.  
23 MR. ENGLE: Okay.  
24 MS. KOSS: I'll also note that if I ask  
25 Mr. Fox questions about his conversations with Ms.

28

1 Thorson, he has documented those on his own and they  
2 are his own record, which can be submitted as an  
3 exhibit, as well.  
4 JUDGE SMITH: Okay.  
5 Q. Does this document state that the fire  
6 occurred at Mr. Johnston's property at 11320 NE  
7 Lafayette Highway?  
8 A. Yes, it says that.  
9 Q. What sort of materials burned on October  
10 28, 2006?  
11 A. According to this referral from the fire  
12 department, there were plastics, automobile parts,  
13 petroleum products, furniture, rubber products and  
14 miscellaneous wood products in the fire.  
15 Q. About what were the dimensions of this  
16 pile?  
17 A. The pile was noted as being approximately  
18 10 feet high by 30 feet wide by 50 feet long.  
19 Q. Why are these materials that are listed  
20 here considered prohibited materials?  
21 A. Because when they're burned, they can  
22 produce toxic smoke and noxious odors. Plastics,  
23 for instance, can produce dioxins when they're  
24 burned, from incomplete (sounds like) combustion of  
25 carbon and chlorine (sounds like) atoms, molecules,

29

1 stuff that's really harmful to health when they're  
2 burned.  
3 Q. Okay. According to Oregon law, can these  
4 materials be burned at any time or place in Oregon?  
5 A. No, besides the miscellaneous wood  
6 products. Lumber if it was a clean, untreated piece  
7 of lumber, then it could be burned outside of a  
8 special burning control area.  
9 Q. But, none of the other products that are  
10 listed here?  
11 A. No. Those can't be burned at any time in  
12 the state of Oregon.  
13 Q. Is it legal according to Oregon law to  
14 dispose of solid waste, such as these materials on  
15 Mr. Johnston's property?  
16 A. No.  
17 Q. Why not?  
18 A. Because the landfills that are permitted  
19 in the state of Oregon take the proper precautions  
20 to guard against any environmental or human health  
21 problems. There's controls in effect in landfills.  
22 Q. Okay. How do you know that it was  
23 disposed of waste?  
24 A. Mr. Johnston told me that it was material  
25 from -- I believe he had a flood problem in his home

**Naegeli**  
**REPORTING**  
CORPORATION

800.528.3335  
www.NaegeliReporting.com  
503.227.7123 FAX

Portland, OR (503) 227-1544  
Seattle, WA (206) 622-3376  
Spokane, WA (509) 838-6000  
Coeur d'Alene, ID (208) 667-1163  
Court Reporting Trial Presentation Videography Videoconferencing

Item # 000094

30

1 and so, it was materials that he had renovated  
2 (sounds like) from that.  
3 Q. Do the materials listed in this referral,  
4 in your opinion, sound like materials that come out  
5 of one's home?  
6 A. No, not automobile parts or, I believe  
7 there were some metal barrels and such. (inaudible  
8 words).  
9 Q. To your knowledge, has Mr. Johnston ever  
10 disputed that this pile was in fact discarded waste  
11 material?  
12 A. No.  
13 Q. Back to the fire department referral, does  
14 this document state anything about Mr. Johnston's  
15 comments to Assistant Chief Giddings (sp) who  
16 responded to the burn?  
17 A. It's mentioned here, "The violator said to  
18 Assistant Chief Giddings he was unaware of the  
19 rules. However, we have cited him several times  
20 before." And she also mentioned that he used to be  
21 a Fire Board member and was well aware of the rules.  
22 Q. When the fire department responds to an  
23 illegal burn, in your knowledge and experience, how  
24 do they make a person or entity aware of the open  
25 burn rules?

31

1 A. Every fire department I've talked to, I  
2 believe, when they're on a site, they have DEQ open  
3 burn fact sheets that they provide to the violator  
4 at the site.  
5 MS. KOSS: I'd like to admit another  
6 exhibit. And then, I want to defer to you, ALJ  
7 Smith, on how this is best numbered. This is an  
8 exhibit that I sent yesterday.  
9 JUDGE SMITH: I got that on the email --  
10 MS. KOSS: Yes.  
11 JUDGE SMITH: -- that you sent to myself  
12 and Mr. Engle.  
13 MS. KOSS: Correct. So, you know, it  
14 could be either Exhibit (inaudible) any number.  
15 JUDGE SMITH: It's not listed on your Pre-  
16 Hearing (speaking simultaneously - inaudible).  
17 MS. KOSS: Right.  
18 JUDGE SMITH: So, we would have to make a  
19 new one. The last one would be 19, so we could make  
20 it 20.  
21 MS. KOSS: Sure.  
22 JUDGE SMITH: Okay. And what is it again?  
23 MS. KOSS: This is the open burning  
24 regulations for the Mid-Willamette Valley. And I'll  
25 give that to you.

32

1 JUDGE SMITH: Did you get that, Mr. Engle,  
2 yesterday, on your email?  
3 MR. ENGLE: I did. They were only talking  
4 about the two-page document (inaudible).  
5 JUDGE SMITH: We're just talking about the  
6 front and back sides of two pages.  
7 MS. KOSS: Correct.  
8 MR. ENGLE: Open burning regulations, two  
9 pages, okay.  
10 JUDGE SMITH: Right.  
11 MS. KOSS: Yes.  
12 MR. BACHMAN: Pardon me, can you answer a  
13 process (sounds like) question?  
14 JUDGE SMITH: Sure.  
15 MR. BACHMAN: I (inaudible words) the  
16 process (inaudible words). Did you actually admit  
17 D7?  
18 JUDGE SMITH: I have not. She hasn't  
19 moved for me to admit that yet.  
20 MR. BACHMAN: Okay.  
21 JUDGE SMITH: She was simply handing it to  
22 me.  
23 MR. BACHMAN: Okay.  
24 JUDGE SMITH: Did you want to move to  
25 admit that?

33

1 MS. KOSS: Thank you. I'd like to move to  
2 admit D7.  
3 JUDGE SMITH: Okay. Mr. Engle, any  
4 objection to D7, which is a --  
5 MR. ENGLE: Note that I made my objection  
6 and you overruled my objection, so --  
7 JUDGE SMITH: I thought that you were  
8 talking about your hearsay objection to -- I didn't  
9 know we were talking about the exhibit. I thought  
10 we were talking about the question she was asking  
11 him, which was hearsay about what this lady said to  
12 him, during testimony. Did you want -- was your  
13 (inaudible) --  
14 MR. ENGLE: My, my, my objection was to  
15 the report itself by Shannon Thorson, --  
16 JUDGE SMITH: Oh.  
17 MR. ENGLE: -- not being here. I have a  
18 right to cross-examine her under Chapter 183.  
19 JUDGE SMITH: Okay.  
20 MR. ENGLE: This makes allegations that we  
21 deem to be untrue. I have no right to cross-  
22 examine her with regard to those.  
23 JUDGE SMITH: Okay.  
24 MR. ENGLE: And that's why I believe that  
25 report should be inadmissible. And I thought you

**Naegeli**  
**REPORTING**  
**CORPORATION**

**800.528.3335**  
**www.NaegeliReporting.com**  
**503.227.7123 FAX**

Portland, OR (503) 227-1544  
Seattle, WA (206) 622-3376  
Spokane, WA (509) 838-6000  
Coeur d'Alene, ID (208) 667-1163  
Court Reporting Trial Presentation Videography Videoconferencing

Item # 000095

34

1 made a ruling on that, so --  
2 JUDGE SMITH: No. Well, I will now. I  
3 thought -- I misunderstood you. I thought you were  
4 objecting to her question and the hearsay coming  
5 through testimony, so --  
6 MR. ENGLE: And I objected to the hearsay  
7 when he started to testify about the report.  
8 JUDGE SMITH: Okay.  
9 MR. ENGLE: But, the report itself  
10 contains simply inaccurate information and I have no  
11 opportunity to do anything, but have Mr. Johnston  
12 testify. I can't cross-examine her.  
13 JUDGE SMITH: I understood the nature of  
14 your objection.  
15 MR. ENGLE: Okay, okay.  
16 JUDGE SMITH: So, now, I'm glad you  
17 brought this up, Mr. Bachman. So, yeah, I am  
18 overruling the objection that he has to Exhibit D7,  
19 based on it being hearsay. Hearsay is allowed in  
20 these hearings, if it's reliable and other such  
21 things we have that (inaudible words). But, I  
22 didn't understand that's what we were talking about,  
23 because I didn't actually hear her move to have this  
24 admitted. I thought she was just asking him a  
25 question. So, I am going to receive it. I will

35

1 give it the weight it deserves, understanding Mr.  
2 Engle's objection.  
3 MR. ENGLE: Thank you.  
4 JUDGE SMITH: Okay. So, now, we're  
5 talking about D20?  
6 MS. KOSS: Correct.  
7 JUDGE SMITH: Okay. And are you moving to  
8 admit this right now?  
9 MS. KOSS: I am.  
10 JUDGE SMITH: Okay. And Mr. Engle, what  
11 is your position on D20, which is the Open Burning  
12 Regulations?  
13 MR. ENGLE: I probably don't have any  
14 objection, but I would be interested in what the  
15 relevancy of this statement is.  
16 JUDGE SMITH: And why is D20 relevant, Ms.  
17 Koss?  
18 MS. KOSS: As Mr. Fox just stated, it is a  
19 document that is given out by the fire department,  
20 when they respond to illegal open burns.  
21 JUDGE SMITH: Okay, so --  
22 MR. ENGLE: Was this given to Mr.  
23 Johnston? Is that what you're saying?  
24 MS. KOSS: Yes.  
25 MR. ENGLE: By Shannon Thorson?

36

1 MS. KOSS: Yes.  
2 JUDGE SMITH: Well, I don't think that the  
3 fact that she's moving to have this admitted is  
4 proving that. But, I can, you know, admit it for --  
5 MR. ENGLE: That's the purpose that I  
6 object. If it's not, it's the (inaudible words) --  
7 JUDGE SMITH: Right.  
8 MR. ENGLE: -- for what it's worth.  
9 JUDGE SMITH: Okay. I'm receiving it for  
10 what it is, Exhibit D20, Open Burning Regulations  
11 for the Mid-Willamette Valley.  
12 MR. ENGLE: Okay.  
13 JUDGE SMITH: Okay?  
14 MS. KOSS: Thank you.  
15 MR. ENGLE: But, this is not being  
16 admitted to establish that Shannon Thorson gave this  
17 to Mr. Johnston.  
18 MS. KOSS: Correct.  
19 MR. ENGLE: Is that correct?  
20 MS. KOSS: Correct.  
21 MR. ENGLE: Okay, all right. That's  
22 (inaudible).  
23 Q. Mr. Fox, do you recognize this document?  
24 A. Yes.  
25 Q. Is it a true and accurate copy?

37

1 A. Yes. We have other forms similar to this  
2 that have the same information on them, yes.  
3 Q. Okay. Is this document authored by the  
4 Department and available on the Department's  
5 website?  
6 A. I know it's authored by the Department.  
7 Is it on its website, I'm not (inaudible words).  
8 (inaudible words) website, so I don't know if it's  
9 on there or not.  
10 Q. Okay, that's all right. Is this the fact  
11 sheet that the fire department gives to persons when  
12 they respond to an illegal open burn?  
13 A. Normally, yes. They would normally give  
14 these sheets to them or one similar to this that has  
15 the open burning rules on it. Sometimes the fire  
16 department may have their own specific requirements  
17 and regulations and put it into a form.  
18 MR. ENGLE: Well, you know, I, I'm sorry.  
19 I'm being -- I don't mean to be directing (sounds  
20 like) you, but to have a DEQ representative testify  
21 to what the McMinnville Fire Department normally  
22 does and gives out at fire sites is an incredible  
23 statement. I mean, how does he know? I object to  
24 that testimony. That's -- if we could just limit  
25 his testimony to what he saw or what he knows -- he

38

1 even states it's speculative. That's incredible  
 2 testimony. I object to it.  
 3 JUDGE SMITH: Okay.  
 4 MS. KOSS: And I would just say that in  
 5 the normal course of Mr. Fox's employment with DEQ,  
 6 he regularly talks to all -- a lot of these people  
 7 at the fire department and does have personal  
 8 knowledge of their procedures, their standard  
 9 procedures when responding to an illegal burn.  
 10 JUDGE SMITH: Okay. So, understanding Mr.  
 11 Engle's objection, I am going to go ahead and allow  
 12 you to proceed and then I'll give it the weight that  
 13 it deserves, since it is not coming from you  
 14 directly, but is hearsay. But, it is allowable and  
 15 admissible.  
 16 MR. ENGLE: It's not even hearsay, Your  
 17 Honor. He's saying what normally happens in the  
 18 McMinnville Fire Department. That isn't even  
 19 hearsay.  
 20 JUDGE SMITH: But it's based on --  
 21 MR. ENGLE: Okay (speaking simultaneously  
 22 - inaudible).  
 23 JUDGE SMITH: -- his conversations with --  
 24 MR. ENGLE: I'm sorry, go ahead.  
 25 Q. Mr. Fox, what does this document explain?

40

1 conversation.  
 2 THE WITNESS: Is that possible, to look at  
 3 the memo --  
 4 JUDGE SMITH: Yes.  
 5 THE WITNESS: -- where I documented the  
 6 conversation?  
 7 MS. KOSS: This is Mr. Fox's own work  
 8 product. I can -- I don't personally feel the need  
 9 to admit it as an exhibit, but I'm happy to, if that  
 10 would be more standard procedure.  
 11 JUDGE SMITH: Was it something that was  
 12 included in your original list of exhibits, because  
 13 there's a memo to file by Dan Fox, October 28, 2006,  
 14 --  
 15 MS. KOSS: Yes.  
 16 JUDGE SMITH: -- Exhibit 4?  
 17 MS. KOSS: That's it, yes.  
 18 JUDGE SMITH: Is that what you're talking  
 19 about?  
 20 MS. KOSS: Um hmm.  
 21 JUDGE SMITH: Okay. So, it's already been  
 22 provided to -- okay.  
 23 MS. KOSS: Okay. So, I can move to admit  
 24 it, if that's cleaner.  
 25 JUDGE SMITH: I don't need to see it --

39

1 A. It basically explains what is not allowed  
 2 to be burned in the state of Oregon and what special  
 3 open burning control areas are. And it lists some  
 4 of the towns in the Willamette Valley, judging the  
 5 distance (sounds like), for instance, if a town's  
 6 between 1,000 and 45,000 in population, then there's  
 7 a three-mile boundary. If the town has over 45,000  
 8 people, there's a six-mile boundary. So, it tells  
 9 what these boundaries are and inside those  
 10 boundaries that only yard debris is allowed to be  
 11 burned, or agricultural products (sounds like)  
 12 Q. Does this fact sheet discuss anything  
 13 specifically about any restrictions in Dayton?  
 14 A. Yes. It has a three-mile special --  
 15 there's a three-mile boundary around the city of  
 16 Dayton. It's considered a Special Open Burning  
 17 Control Area.  
 18 MS. KOSS: Okay. I did already move to  
 19 admit that.  
 20 JUDGE SMITH: Yes.  
 21 Q. In your conversations with Chief Thorson  
 22 on December 6th, did she mention any other  
 23 indicators that Mr. Johnston was aware of the open  
 24 burning rules in Oregon?  
 25 A. I believe I'd have to look at that

41

1 MS. KOSS: Okay.  
 2 JUDGE SMITH: -- have it admitted, if  
 3 you're just handing it to him to refresh his  
 4 recollection.  
 5 MS. KOSS: Yes.  
 6 JUDGE SMITH: Yeah.  
 7 Q. I believe your conversation with her  
 8 started here and continued.  
 9 A. Okay.  
 10 Q. So, the question was, you know, did she  
 11 mention any other indicators that Mr. Johnston was  
 12 aware of the open burning rules.  
 13 A. (inaudible words) review (sounds like).  
 14 Q. Sure.  
 15 A. One question I asked her, the fire  
 16 department referrals for open burning violations  
 17 states that Mr. Johnston used to be a Fire Board  
 18 member. I asked, which fire department and how long  
 19 ago that was and what was his role. Her comment  
 20 was, about three years ago, Mr. Johnston was a Fire  
 21 Board member with the McMinnville Fire Department.  
 22 It was an elected position that met quarterly. I  
 23 believe his role was to review financial contracts.  
 24 He was definitely around the fire department  
 25 environment enough to know what was allowed to be



|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 42 | <p>1 burned.</p> <p>2 Q. In your conversations with Mr. Johnston,</p> <p>3 did you ask him if he was aware of the open burning</p> <p>4 rules?</p> <p>5 A. I'll have to find that. "I asked him</p> <p>6 specifically, have you ever been informed about the</p> <p>7 DEQ open burning rules before. He said, yes, that's</p> <p>8 why I haven't done it since. That was about four to</p> <p>9 five years ago."</p> <p>10 Q. Did you ask him if as a Fire Board member,</p> <p>11 he was aware of the rules?</p> <p>12 A. Yeah. "So, as a Fire Board member, you</p> <p>13 were well aware of the open burning rules? He</p> <p>14 stated, yes."</p> <p>15 Q. Okay. I'm won't be referring to that</p> <p>16 document anymore at this time. In your experience</p> <p>17 with open burn incidents and referrals, is it normal</p> <p>18 for law enforcement, such as the State Police, to be</p> <p>19 on the scene with the fire department?</p> <p>20 A. I've only seen that a couple of times.</p> <p>21 It's usually if there had been previous incidents</p> <p>22 there or if they're specifically called to the</p> <p>23 scene.</p> <p>24 Q. Okay. Were the State Police at the scene</p> <p>25 on October 28, 2006?</p> | 44 | <p>1 Here, I can do these separately.</p> <p>2 JUDGE SMITH: A letter from --</p> <p>3 MS. KOSS: Letter.</p> <p>4 JUDGE SMITH: -- Dennis McMillan?</p> <p>5 MS. KOSS: Correct.</p> <p>6 JUDGE SMITH: Okay. Yeah, I have that</p> <p>7 marked as 11.</p> <p>8 MS. KOSS: Okay. I would like to move to</p> <p>9 admit these into the record.</p> <p>10 JUDGE SMITH: No. 10 and No. 11?</p> <p>11 MS. KOSS: Correct.</p> <p>12 JUDGE SMITH: Okay, Mr. Engle?</p> <p>13 MR. ENGLE: Okay, I've got No. 10. What's</p> <p>14 No. 11?</p> <p>15 JUDGE SMITH: And No. 11 is the very next</p> <p>16 one. It's a single-spaced letter from a Dennis</p> <p>17 McMillan.</p> <p>18 MS. KOSS: Yes, okay, yeah, that's it.</p> <p>19 JUDGE SMITH: So that -- so No. 11 is two</p> <p>20 pages and No. 10 is one page.</p> <p>21 MR. ENGLE: Now, this 10 is a report from</p> <p>22 June -- July 8th of 1999. Correct?</p> <p>23 MS. KOSS: Correct.</p> <p>24 MR. ENGLE: It has nothing to do with the</p> <p>25 October 2006 incident. Correct?</p>                                                                                                                                                                                                                       |
| 43 | <p>1 A. The day of the burn, October 28 -- ?</p> <p>2 Q. Yes.</p> <p>3 A. Okay, yes.</p> <p>4 Q. Do you know why?</p> <p>5 A. I believe that State Trooper Bridget</p> <p>6 Taylor saw the fire. She observed it as she was</p> <p>7 driving by and called the fire department. And she</p> <p>8 had been there previously for another open burning</p> <p>9 incident and so, she decided to go, I don't know, as</p> <p>10 backup or just to be there.</p> <p>11 MS. KOSS: I'd like to introduce my next</p> <p>12 exhibit. Let me just coordinate with (inaudible</p> <p>13 words), so we can label this for you properly.</p> <p>14 JUDGE SMITH: Okay.</p> <p>15 MS. KOSS: This will be for your</p> <p>16 reference.</p> <p>17 JUDGE SMITH: I have that, I think, marked</p> <p>18 as No. 10. Is this the McMinnville Fire Department</p> <p>19 report?</p> <p>20 MS. KOSS: This is actually the -- yes, I</p> <p>21 think you are right on top of that. Yes, this is</p> <p>22 the July 8, '99 McMinnville --</p> <p>23 JUDGE SMITH: I have it marked as No. 10.</p> <p>24 MS. KOSS: Yeah, that's it. And attached</p> <p>25 to that is -- I think I actually have this as 11.</p>                                           | 45 | <p>1 MS. KOSS: Correct.</p> <p>2 MR. ENGLE: I object to No. 10 only.</p> <p>3 Prior incidents are registered (sounds like) under</p> <p>4 the penalty provision of the --</p> <p>5 JUDGE SMITH: Right.</p> <p>6 MR. ENGLE: -- statute and the Oregon</p> <p>7 Administrative Rules. (inaudible words) finding</p> <p>8 first that Mr. Johnston did anything wrong before</p> <p>9 you can consider past incidents. If (inaudible</p> <p>10 words) to prove that he's lying about what happened,</p> <p>11 totally inadmissible. If (inaudible words) right</p> <p>12 now to prove that you should assess a penalty,</p> <p>13 totally inadmissible, until you've made a ruling</p> <p>14 that he, in fact, is guilty or had, in fact,</p> <p>15 violated something in 2006. So, this may be</p> <p>16 admissible after you've made a finding of</p> <p>17 responsibility, but this should not be read or</p> <p>18 reviewed by you until a fact-finding has been made.</p> <p>19 I object to it.</p> <p>20 JUDGE SMITH: Right. And we -- I</p> <p>21 understand --</p> <p>22 MR. ENGLE: And that rides (sounds like)</p> <p>23 with Exhibit 11. I have the same objection.</p> <p>24 JUDGE SMITH: Okay. Did you want to</p> <p>25 respond before I rule?</p> |

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 46 | <p>1 MS. KOSS: Please, yeah. Mental state is<br/>2 one of the State's prima facie elements that it has<br/>3 to prove in its case. And Mr. Johnston has disputed<br/>4 this case solely on mental state alone in his Answer<br/>5 and thereby made the evidence of negligence through<br/>6 prior knowledge the most relevant part of this case.<br/>7 The definition of negligence talks about failing to<br/>8 take reasonable care to avoid a foreseeable risk.<br/>9 And prior knowledge gives a person ability to avoid<br/>10 foreseeable risks of having the same violation.<br/>11 JUDGE SMITH: Okay. Do you want to say<br/>12 anything else?<br/>13 MR. ENGLE: That's not what the statute<br/>14 says. The statute allows prior knowledge, prior<br/>15 incidents to be considered only in regard to<br/>16 penalties. And penalties can only be assessed after<br/>17 a finding of responsibility for the current<br/>18 allegation.<br/>19 JUDGE SMITH: Okay.<br/>20 MS. KOSS: I believe you may be talking<br/>21 about prior significant actions being considered in<br/>22 determination of the penalty amount, which, you<br/>23 know, we do have a provision for that in the<br/>24 exhibit. It was the P factor. And Mr. Johnston did<br/>25 not receive anything, any aggravating -- an</p> | 48 | <p>1 JUDGE SMITH: Okay. Well, I think we're<br/>2 getting off the actual objection to the two exhibits<br/>3 that she's proposed, which are 10 and 11. So, I<br/>4 need to go ahead and rule on those. We discussed<br/>5 this already, actually, in the phone conversation.<br/>6 And I said I would give you an opportunity to make<br/>7 your objection once we're at the hearing, which<br/>8 you've done. It's on the record. I understand the<br/>9 nature of your objection. Because we're in an<br/>10 administrative proceeding, I am going to go ahead<br/>11 and receive 10 and 11 and I will only be considering<br/>12 those once we get to the penalty phase, --<br/>13 MR. ENGLE: All right.<br/>14 JUDGE SMITH: Go ahead. -- assuming we<br/>15 get to the penalty phase.<br/>16 MR. ENGLE: Thank you. I do appreciate<br/>17 that.<br/>18 JUDGE SMITH: So, 10 and 11 are received.<br/>19 MS. KOSS: Okay.<br/>20 JUDGE SMITH: Did you want to ask him<br/>21 questions about them?<br/>22 MS. KOSS: I do, yes.<br/>23 JUDGE SMITH: Okay.<br/>24 MR. ENGLE: I would object to that,<br/>25 because the documents speak for themselves. And how</p>                                 |
| 47 | <p>1 aggravating factor for that, because a prior<br/>2 significant action is defined as one where we have<br/>3 assessed a penalty in the past, which is not what<br/>4 we're talking about here. This is simply an<br/>5 incident, --<br/>6 MR. ENGLE: Okay.<br/>7 MS. KOSS: -- not a prior significant<br/>8 action that establishes mental state, which is an<br/>9 element of my case.<br/>10 MR. ENGLE: If I may just ask you a<br/>11 question. Where in the statute or the Oregon<br/>12 Administrative Rules is the mental intent factor to<br/>13 be considered on whether or not Mr. Johnston is<br/>14 guilty of this violation?<br/>15 MS. KOSS: Well, actually, your Answer<br/>16 specifically states that his mental state is<br/>17 completely what exonerates him or not, based on<br/>18 468A.030.<br/>19 MR. ENGLE: No, my Answer simply says he<br/>20 didn't do what he's accused of doing. He did not do<br/>21 it.<br/>22 MS. KOSS: Because he was not negligent,<br/>23 which is what the statutes say.<br/>24 MR. ENGLE: (inaudible words) negligent or<br/>25 willful (inaudible).</p>                                                                                                                                                                                               | 49 | <p>1 can you only consider them, if you hear testimony at<br/>2 this point in time? I mean, the documents speak for<br/>3 themselves.<br/>4 JUDGE SMITH: Right. But, we don't have --<br/>5 -- the reason I'm doing that is because we're not<br/>6 going to have a separate penalty phase hearing, like<br/>7 we would in a Circuit Court. We're taking care of<br/>8 this all in one proceeding. And so, I have the<br/>9 ability, based on 20 years of experience as an<br/>10 attorney, to separate this out.<br/>11 Q. Mr. Fox, do you -- I'm starting to give<br/>12 you the whole thing back -- do you recognize this<br/>13 document?<br/>14 A: Yes, I do.<br/>15 Q. Who sent this document to you?<br/>16 MR. ENGLE: Are we looking at 10, now?<br/>17 MS. KOSS: I'm sorry, yes, we are looking<br/>18 at D10. And I will go ahead and give you the<br/>19 exhibit.<br/>20 A. This was sent to me by Division Chief<br/>21 Shannon Thorson of the McMinnville Fire Department.<br/>22 It was actually sent beforehand. This was sent to<br/>23 the Department and then a copy of this was sent to<br/>24 me, when investigating this.<br/>25 Q. To your knowledge, is this a true and</p> |

50

1 accurate copy?  
2 A. Yes.  
3 Q. Did you receive this document during the  
4 normal course of your employment with the  
5 Department?  
6 A. Yes.  
7 Q. Is this the same form that the fire  
8 department usually sends referrals to you on, this  
9 particular fire department?  
10 A. This one or a similar one that's been  
11 updated, but it has the same information. Some fire  
12 departments still use this one.  
13 Q. Okay. Was the purpose of this report to  
14 document the fire that occurred on July 8, 1999?  
15 A. Yes, it is.  
16 Q. Does it state that the fire occurred at  
17 Mr. Johnston's property?  
18 A. Yes, it does.  
19 Q. Did the fire include prohibited materials,  
20 which are not allowed to be burned in Oregon at any  
21 time, --  
22 A. I'd have to read the --  
23 Q. -- according to the report?  
24 A. Right there, yes, it does. It states,  
25 plastics, tires, petroleum products and rubber

51

1 products were burned.  
2 Q. According to this report, was anyone  
3 attending the fire?  
4 A. No.  
5 Q. Was there a water source at the fire to  
6 extinguish it?  
7 A. I have to review this for a moment.  
8 Q. Sure.  
9 A. I don't see where it indicates one way or  
10 another on here, if there was a water source.  
11 Q. Okay. Okay, we can exclude that question.  
12 Moving on to D11, can you please read the  
13 highlighted portion of Mr. McMillan's statement that  
14 is attached to this fire report?  
15 A. Sure, just down at the bottom of the page,  
16 here? Or it's on the backside, too.  
17 Q. Just to the end of the sentence there.  
18 A. End of the sentence, okay. It says, "At  
19 this point and quite enraged, the landowner went  
20 over to Firefighter Cook and forcibly took his hose  
21 line from him and using profanity, again told us all  
22 we had better leave now or we would be in serious  
23 trouble. During the time that Firefighter Cook was  
24 relieved of his hose line, he went to the brush rig  
25 to call for police assistance from YCOM dispatch."

52

1 MS. KOSS: I'd like to introduce my next  
2 exhibit. I believe we'll enter this as D21. This  
3 is again, an exhibit that I sent to you both  
4 yesterday.  
5 JUDGE SMITH: Okay.  
6 MS. KOSS: It's the 1999 warning letter  
7 sent by the Department to Mr. Johnston. So, I'll  
8 mark that as D21.  
9 JUDGE SMITH: Sent by what department?  
10 MS. KOSS: Department of Environmental  
11 Quality.  
12 JUDGE SMITH: Okay.  
13 MR. ENGLE: Same objection, 1999 incident.  
14 JUDGE SMITH: Okay. And your objection is  
15 noted for the record and overruled.  
16 MS. KOSS: If it's okay, I'm going to let  
17 Mr. Fox refer to that before I hand --  
18 JUDGE SMITH: Fine.  
19 MS. KOSS: -- the document to you.  
20 JUDGE SMITH: I have a copy, so that's  
21 fine.  
22 MS. KOSS: Okay.  
23 Q. Mr. Fox, do you recognize this document?  
24 A. Yes, I do.  
25 Q. How did you obtain this document?

53

1 A. It's in our open burning file and at our  
2 Salem office, DEQ.  
3 Q. Okay. Is this a true and accurate copy?  
4 A. Yes.  
5 Q. Did you obtain this document during the  
6 normal course of your employment with the  
7 Department?  
8 A. Yes, I did.  
9 Q. This is a typical example of a warning  
10 letter that is sent to persons that the Department  
11 believes are responsible for a violation?  
12 A. Yes.  
13 Q. What violations did the Department cite  
14 Mr. Johnson for, in this document?  
15 A. In this incident, open burning was not  
16 constantly attended by a responsible person until  
17 extinguished. The second violation was open  
18 burning, which created a private or public nuisance  
19 or a hazard to public safety. The third one was the  
20 open burning of prohibited material, such as  
21 garbage, plastic, tires, rubber products, petroleum  
22 products, asphaltic materials, wire insulation,  
23 automobile parts, animal remains and food waste or  
24 any material, which emits dense smoke or noxious  
25 odors. The fourth one was open burning of any

54

1 material on a day or at a time when all such open  
2 burning was prohibited. And the fifth one was the  
3 open burning of domestic waste other than yard  
4 debris within the City of Dayton Special Open  
5 Burning Control Area.  
6 Q. Are these the same violations for which  
7 the Department cited Mr. Johnston in the 2006  
8 incident?  
9 A. I believe the garbage burning -- I'd have  
10 to look at the 2006 one to see exactly what was  
11 cited on that, but --  
12 Q. I can clarify that. Would you say that  
13 number one, three and five are the same violations  
14 for which we cited Mr. Johnston in the 2006  
15 incident?  
16 A. Yes. I'm not sure on number five, if five  
17 was a specific one or not.  
18 Q. That's fine. In this warning letter, did  
19 the Department notify Mr. Johnston that open burning  
20 was illegal under Oregon law?  
21 A. Yes, the types of open burning that were  
22 illegal.  
23 MS. KOSS: I'd like to admit -- let's see,  
24 I'm sorry -- I'd like to move to have this warning  
25 letter, D21, admitted to the record.

55

1 JUDGE SMITH: That's already been  
2 admitted.  
3 MS. KOSS: Okay. I'd like to admit June  
4 20, 2003 fire department report by Division Chief  
5 Shannon Thorson.  
6 JUDGE SMITH: You have that as No. 15?  
7 MS. KOSS: Correct.  
8 JUDGE SMITH: Okay.  
9 MS. KOSS: And I'll move to admit that.  
10 JUDGE SMITH: Okay, Mr. Engle?  
11 MR. ENGLE: No. 15 is -- this is before or  
12 after 11?  
13 JUDGE SMITH: It would be after 11,  
14 because it's 15.  
15 MR. ENGLE: And that's --  
16 JUDGE SMITH: It looks like the date on  
17 this one is June of 2003.  
18 MR. ENGLE: You're offering that?  
19 MS. KOSS: Yes.  
20 MR. ENGLE: Okay, same objection, prior  
21 incident.  
22 JUDGE SMITH: Okay. So, this is a two-  
23 page document, a fire department referral for open  
24 burning violations dated 6/20/2003. Mr. --  
25 MR. ENGLE: -- Engle.

56

1 JUDGE SMITH: -- Engle. I don't know why  
2 I keep wanting to call you Eldon. I think Elder,  
3 Eldon, sorry.  
4 MR. ENGLE: That's close enough. I'll  
5 answer to anything.  
6 JUDGE SMITH: I'm going to have to write  
7 it down somewhere. Okay, your objection is noted  
8 for the record, Mr. Engle. I am going to overrule  
9 it and receive it into evidence. I will give it the  
10 weight it deserves, so D15.  
11 Q. Mr. Fox, do you recognize this document?  
12 A. Yes, I do.  
13 Q. Who sent this document to you?  
14 A. This was sent by Division Chief Shannon  
15 Thorson of the McMinnville Fire Department.  
16 Q. Is this a true and accurate copy, to the  
17 best of your knowledge?  
18 A. Yes, it is.  
19 Q. And did you receive this document during  
20 the normal course of your employment with the  
21 Department?  
22 A. Yes.  
23 Q. Was the purpose of this report to document  
24 the fire that occurred on June 20, 2003?  
25 A. Yes.

57

1 Q. Does it state that the fire occurred at  
2 Mr. Johnston's property?  
3 A. Yes, it does.  
4 Q. And so, the fire included prohibited  
5 materials, which are not allowed to be burned in  
6 Oregon at any time?  
7 A. Yes. It says decomposable garbage,  
8 plastics, auto parts, animal remains and petroleum  
9 products were burned in that and also miscellaneous  
10 wood products and brush, but brush is (sounds like)  
11 allowed to be burned.  
12 Q. Okay. According to this report, was  
13 anyone attending the fire?  
14 A. No.  
15 Q. And according to this report, was there a  
16 water source available to extinguish it?  
17 A. This states there was no means to  
18 extinguish the fire.  
19 Q. What other comments did Chief Thorson make  
20 in that document, in the highlighted portion?  
21 A. In the highlighted portion she provided  
22 other comments: "This resident has been cited by law  
23 enforcement for reckless burning in the past. There  
24 were no means to extinguish the fire and the fire  
25 was unattended."

58

1 Q. Thank you. I'm finished with that  
2 document. Back to the fire incident in this case,  
3 October 28, 2006, when you receive a referral from  
4 the fire department regarding an illegal burn and  
5 you determine that it's one that you'll be referring  
6 to the Office of Compliance and Enforcement, would  
7 you normally do a site visit?  
8 A. I have all of them but this one.  
9 Q. Okay. So, you did not inspect Mr.  
10 Johnston's property?  
11 A. I wasn't allowed access on the property.  
12 Q. Okay. Did he eventually allow you access  
13 to the property?  
14 A. Yes, after we did the informal (sounds  
15 like), I was allowed to go visit where the burn  
16 location was.  
17 Q. Was this site visit helpful in determining  
18 how the fire was started?  
19 A. Not on how it was started, no.  
20 Q. Okay. Why not?  
21 A. Everything had been cleaned up. There  
22 wasn't really any indication that there had been a  
23 fire there at that location.  
24 MS. KOSS: Okay. Next, I'd like to move  
25 to admit what would be Exhibit No. 6, which are the

59

1 photos of the October 28, 2006 fire.  
2 MR. ENGLE: These are the ones you  
3 furnished (sounds like) me?  
4 MS. KOSS: Correct.  
5 MR. ENGLE: No objection.  
6 JUDGE SMITH: Okay, we'll go ahead and  
7 receive Exhibit No. 6.  
8 MS. KOSS: And I'll let you refer to these  
9 before I give them to ALJ Smith.  
10 Q. And do you recognize these photos, Mr.  
11 Fox?  
12 A. Yes, I do.  
13 Q. And who sent these photos to you?  
14 A. These were sent by the McMinnville Fire  
15 Department.  
16 Q. Do these appear to be true and accurate  
17 copies?  
18 A. Yes, they do.  
19 Q. Did you receive these photos during the  
20 normal course of your employment with the  
21 Department?  
22 A. Yes, I did.  
23 MS. KOSS: At the same time, I'd like to  
24 go ahead and admit the photo log and that would be  
25 Exhibit No. 5.

60

1 JUDGE SMITH: Mr. Engle, any objection to  
2 No. 5? That's -- yeah, you've got it.  
3 MR. ENGLE: This was prepared by --  
4 MS. KOSS: -- Mr. Fox.  
5 MR. ENGLE: -- Mr. Fox. Dealing with  
6 these pictures right here?  
7 MS. KOSS: Correct.  
8 MR. ENGLE: Okay, yeah, no objection.  
9 JUDGE SMITH: Okay, No. 5 is received.  
10 Q. And, Mr. Fox, do you recognize that  
11 document?  
12 A. Yes, I do.  
13 Q. Did you create that document?  
14 A. Yes, I did.  
15 Q. Does this appear to be a true and accurate  
16 copy?  
17 A. Yes.  
18 Q. And did you create this log during the  
19 normal course of your employment with the  
20 Department?  
21 A. Yes, I did.  
22 Q. And for the record, in looking at these  
23 photos and going through them, each photo, can you  
24 essentially just tell us what's visible in terms of  
25 statewide prohibited materials?

61

1 A. Sure.  
2 Q. You're welcome to refer to your own  
3 photograph log.  
4 A. Okay. In the first photograph, there  
5 appears to be sheetrock or Hardi-board (sounds  
6 like), cement boards. I'm not really certain. It's  
7 definitely building materials. I see what appears  
8 to be a 55-gallon metal drum in this and various  
9 sheet metals, which are piled up towards the back.  
10 The second photo --  
11 JUDGE SMITH: Before you move on to the  
12 second one, are you saying that all these things  
13 you've mentioned, the sheet rock, Hardiplank, metal  
14 drums, sheet metal, building materials are all the  
15 substances that she talked about that are not  
16 allowed to be burned? Is that the first question  
17 you asked?  
18 MS. KOSS: Yes, correct, yeah, in  
19 statewide prohibited materials, meaning those which  
20 are not allowed to be burned at any time in Oregon.  
21 JUDGE SMITH: Okay.  
22 A. And those may not be specifically  
23 indicated, because they're materials that we  
24 consider to emit dense smoke and noxious odors when  
25 burned. The second photograph, I see lots of metal

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 62 | 1 in there. I'm not really for certain what it is.<br>2 MR. ENGLE: Excuse me.<br>3 MS. KOSS: Okay.<br>4 MR. ENGLE: Let's label these A, B and C<br>5 or something, so I know which one you're looking at.<br>6 JUDGE SMITH: So, we're on Exhibit No. 6<br>7 and --<br>8 MR. ENGLE: I got the first number.<br>9 JUDGE SMITH: -- the first picture would<br>10 be --<br>11 MR. ENGLE: No. 6.<br>12 JUDGE SMITH: -- right there. So, we're<br>13 going to say that's -- let's see, this is labeled as<br>14 D6.<br>15 MR. ENGLE: Is that on the back of my --<br>16 MS. KOSS: Um hmm.<br>17 JUDGE SMITH: So, it can be "a" or little<br>18 "i."<br>19 MR. BACHMAN: 6a or 6b, 6c.<br>20 JUDGE SMITH: D6a, then, would be the one<br>21 we've referred to.<br>22 MS. KOSS: Okay.<br>23 MR. ENGLE: So, this one right here is<br>24 "a"?<br>25 JUDGE SMITH: That's D6a, yeah, little                                                                                          |
| 64 | 1 have we got "c" and "d"?<br>2 JUDGE SMITH: No, see, you're looking at<br>3 the thing that says, Mr. Johnston open burning<br>4 (speaking simultaneously - inaudible)?<br>5 MS. KOSS: Exactly, yes.<br>6 JUDGE SMITH: So, you're saying this is<br>7 "a"?<br>8 MS. KOSS: Yes.<br>9 JUDGE SMITH: Okay.<br>10 MS. KOSS: Thank you. I apologize for any<br>11 confusion.<br>12 JUDGE SMITH: All right. That's okay.<br>13 So, that's "a"?<br>14 MS. KOSS: Yeah, and then the next one<br>15 would be "b."<br>16 MR. ENGLE: Okay.<br>17 MS. KOSS: And then, (speaking<br>18 simultaneously - inaudible).<br>19 JUDGE SMITH: "b" would be the red truck,<br>20 --<br>21 MS. KOSS: Right.<br>22 JUDGE SMITH: -- where you can see the red<br>23 truck?<br>24 MS. KOSS: And then, the second page would<br>25 be what I think you guys were originally looking at                                                                                                              |
| 63 | 1 "a." Okay? And then, the one below that would be -<br>2 -<br>3 MR. ENGLE: No, see, these are the back of<br>4 my pages. You're not looking -- that's not, that's<br>5 not the right one. You're right here, aren't you?<br>6 MS. KOSS: Okay, yes, I'm sorry, yes. Oh,<br>7 yes, so D6a starts with the title page, yeah.<br>8 MR. ENGLE: So, "a" is up here. "b" has<br>9 got the red vehicle in the back?<br>10 MS. KOSS: Correct. So that would be D --<br>11 MR. ENGLE: See, those are the back of<br>12 those pages.<br>13 MS. KOSS: Oh, I see. I think we --<br>14 MR. ENGLE: I think yours is backward the<br>15 same.<br>16 JUDGE SMITH: Maybe I'm backwards, too?<br>17 MR. ENGLE: Yeah, you are. I'm sorry, I<br>18 think you are.<br>19 JUDGE SMITH: Yeah, I am.<br>20 MR. ENGLE: Okay.<br>21 JUDGE SMITH: Okay.<br>22 MR. ENGLE: Okay, so, --<br>23 JUDGE SMITH: I'm looking at the wrong<br>24 thing, too.<br>25 MR. ENGLE: -- on the back of those pages, |
| 65 | 1 as your first page.<br>2 MR. ENGLE: Right here.<br>3 MS. KOSS: Yeah.<br>4 MR. BACHMAN: Yes.<br>5 MS. KOSS: Correct. So, that'll be D6c, -<br>6 -<br>7 MR. ENGLE: Trying to label all these.<br>8 MS. KOSS: -- "d."<br>9 JUDGE SMITH: Thank you.<br>10 MR. ENGLE: And then, we go to the<br>11 barrels?<br>12 MS. KOSS: Correct.<br>13 MR. ENGLE: And that's "e"?<br>14 JUDGE SMITH: And these barrels would be<br>15 "e"?<br>16 MS. KOSS: Correct. And "f" and that's<br>17 the end of them.<br>18 JUDGE SMITH: Okay.<br>19 MR. ENGLE: Okay.<br>20 JUDGE SMITH: All right.<br>21 MS. KOSS: Yeah, thank you for clarifying<br>22 that.<br>23 Q. Okay. So, let's move on to D6c, the third<br>24 picture.<br>25 A. In this picture, I see a lot of, again,                                                                                                                                                                                                               |

66

1 lots of metal that's unidentifiable, just crumpled  
2 together, looks like either a water heater or a  
3 barrel and over here on the left, I'd say a lot of  
4 insulation up on top. And there's another barrel in  
5 the background and that's either straw or hay on top  
6 on the left-hand side here, also.  
7 Q. Okay.  
8 A. I'm sorry, you were just looking for  
9 prohibited?  
10 Q. Yes.  
11 A. Okay. So, the straw and hay (speaking  
12 simultaneously - inaudible).  
13 Q. That's okay.  
14 A. In "d," I just see a large pile of  
15 insulation kind of strewed (sounds like) together  
16 with dirt.  
17 JUDGE SMITH: So, I didn't hear in "c,"  
18 what you were saying was prohibited materials that  
19 you saw. Would it just have been the barrel, the  
20 metal?  
21 THE WITNESS: The metal.  
22 JUDGE SMITH: You said the hay was okay?  
23 MS. KOSS: I believe he also mentioned  
24 insulation.  
25 THE WITNESS: Insulation, yeah, insulation

67

1 and metal. And hay is okay in certain situations.  
2 "d," did I -- I did "d", insulation?  
3 JUDGE SMITH: That was the insulation.  
4 THE WITNESS: Okay. "d," I see two metal  
5 barrels, a bicycle, other metal parts. Right in  
6 front of this metal drum, it looks like a plastic  
7 five-gallon paint bucket.  
8 MR. ENGLE: Are you on "e"?  
9 JUDGE SMITH: Yes, sir.  
10 THE WITNESS: And I see insulation to the  
11 right.  
12 MR. ENGLE: Right there.  
13 MS. KOSS: Okay.  
14 JUDGE SMITH: Did you say that a bike was  
15 part of the hazardous material?  
16 THE WITNESS: Yes, probably because  
17 there's tires on there, the rubber products and --  
18 MS. KOSS: -- painted metal.  
19 THE WITNESS: -- painted metal.  
20 JUDGE SMITH: Okay.  
21 THE WITNESS: And in 6, it's definitely  
22 difficult to tell what's in there. It looks like a  
23 blue, plastic tarp from the --  
24 MR. ENGLE: You mean "f"?  
25 JUDGE SMITH: You mean "f."

68

1 THE WITNESS: "f," I'm sorry. I'm sorry,  
2 6 over here.  
3 JUDGE SMITH: That's okay.  
4 THE WITNESS: So, that's the only thing I  
5 noticed in here. There's other small debris strewed  
6 in, but it's hard to tell from the pictures here.  
7 MS. KOSS: Okay.  
8 Q. Mr. Fox, in your opinion, are items like  
9 rusty drums, bicycles, discarded metal equipment and  
10 garbage things that would be included in residential  
11 materials removed from a house after water damage?  
12 A. No.  
13 Q. Did you receive any photos of burned  
14 remains of hay?  
15 A. No. There's something, it could be straw  
16 or hay on the piles in here. But that's the only  
17 photographs I have of that.  
18 Q. Did you receive any photos of a charred  
19 area or any sort of trail where dry grass might have  
20 been burned?  
21 A. No. These are the only photographs I  
22 received from that incident.  
23 Q. Okay. When did you first hear of the  
24 theory that hot hay combusting was the reason for  
25 this fire?

69

1 A. During, I believe it was during our  
2 informal (sounds like). I don't know the date of  
3 that exactly.  
4 Q. Was it --  
5 A. (inaudible words)  
6 Q. That's okay. Was it possible that Mr.  
7 Johnston mentioned that to you during a discussion  
8 that you had with him?  
9 A. Oh, it could be in the memo. You've got  
10 the memo here.  
11 Q. Okay.  
12 A. Yeah, actually, it wasn't, it wasn't  
13 during the informal. It was during the discussions,  
14 I remember.  
15 Q. And just quickly for ALJ Smith, what is  
16 the informal?  
17 A. The informal is a chance where the party  
18 who has an alleged violation against them has a  
19 chance to come and provide new evidence to the  
20 Department, outside of the formal testimony.  
21 Q. Okay, thanks. So --  
22 JUDGE SMITH: Before you -- if you're done  
23 with D5 and D6, I never did get those.  
24 MS. KOSS: I'm sorry.  
25 THE WITNESS: I'm sorry.

70

1 JUDGE SMITH: Thank you.  
2 THE WITNESS: And the photo log is the --  
3 MS. KOSS: Yeah. I've given you some  
4 stuff you can keep and some stuff you can't.  
5 THE WITNESS: Yeah, okay (inaudible) refer  
6 to.  
7 JUDGE SMITH: And for the record, Mr. Fox  
8 is referring to what was marked as No. 4, but hasn't  
9 been admitted.  
10 Q. I believe your conversation started here.  
11 So, basically, I believe the question I was asking  
12 at that time was, when did you first hear of the  
13 theory that hot hay combusting was the reason for  
14 the fire?  
15 A. On Tuesday, December 19, 2006.  
16 Q. Okay. But, prior to this conversation,  
17 you had read all of the reports from the fire  
18 department and us about this incident already. Is  
19 that correct?  
20 A. Yes.  
21 Q. Did any of those reports say that the fire  
22 was or might have been caused by hot hay combusting?  
23 A. No.  
24 Q. So, to your knowledge, did Mr. Johnston  
25 tell the police or the fire department that the

71

1 cause of the fire was hot hay combusting, according  
2 to those reports?  
3 A. Not to my knowledge, according to those  
4 reports.  
5 Q. In speaking with Chief Thorson of the  
6 McMinnville Fire Department, did she ever mention  
7 that she had heard or been told that the fire was  
8 started by hot hay combusting?  
9 A. No, she -- I believe she told me that she  
10 would ask around at the fire department to see if  
11 anybody else had been informed that.  
12 Q. And did she ever get back to you at a  
13 later date to tell you that another firefighter had  
14 been told that that was the cause?  
15 A. No.  
16 Q. So, was Mr. Johnston given any sort of  
17 notice that the Department had concluded that an  
18 illegal fire had occurred on his property prior to  
19 the Notice of Violation and Penalty being sent out?  
20 A. I had sent a Pre-Enforcement Notice out.  
21 MS. KOSS: Okay. I'd like to -- I believe  
22 we were chatting about that at the beginning. The  
23 Pre-Enforcement Notice would be Exhibit No. 1.  
24 JUDGE SMITH: Right. And we admitted  
25 that.

72

1 MS. KOSS: Okay. We admitted that?  
2 JUDGE SMITH: Yeah, 1, 2 and 3 were  
3 already -- those are the pleadings?  
4 MS. KOSS: Yes, okay.  
5 Q. So, I'll give you that to refer to. Do  
6 you recognize this document, Mr. Fox?  
7 A. Yes, I do.  
8 Q. Is it a true and accurate copy?  
9 A. Yes, it is.  
10 Q. And did you create this document during  
11 the normal course of your employment with the  
12 Department?  
13 A. Yes, I did.  
14 Q. Did you send this Pre-Enforcement Notice  
15 or hereafter PEN to 11320 NE Lafayette Highway?  
16 A. Yes.  
17 Q. How many violations did you notify Mr.  
18 Johnston that he was initially cited with?  
19 A. Initially, just on this here?  
20 Q. Yes, on that.  
21 A. Two.  
22 Q. And can you -- excuse me for just a  
23 second. I meant to highlight Mr. Fox's copy. Can  
24 you please read the highlighted portion of the Pre-  
25 Enforcement Notice aloud?

73

1 A. Sure. "If you believe any of the facts in  
2 this Pre-Enforcement Notice are in error, you may  
3 provide written information to me at the address  
4 shown at the top of the letter. The Department will  
5 consider new information you submit and take  
6 appropriate action."  
7 Q. Did Mr. Johnston ever reply to this PEN to  
8 tell you about the theory that hot hay caused the  
9 fire on his property?  
10 A. No.  
11 Q. Did Mr. Engle or any other representative  
12 of Mr. Johnston ever send you a response to the  
13 PEN?  
14 A. A response to the PEN? Is that when the  
15 informal --  
16 Q. No. Response to this.  
17 A. Oh, new evidence, no.  
18 JUDGE SMITH: Just for the record, I want  
19 to just say that PEN must be your acronym for Pre-  
20 Enforcement Notice?  
21 MS. KOSS: Correct, thank you.  
22 Q. Did Mr. Johnston ever call you in response  
23 to this Pre-Enforcement Notice to explain his  
24 version of the facts?  
25 A. No.

**Naegeli**  
**REPORTING**  
CORPORATION

800.528.3335  
www.NaegeliReporting.com  
503.227.7123 FAX

Portland, OR (503) 227-1544  
Seattle, WA (206) 622-3376  
Spokane, WA (509) 838-6000  
Coeur d'Alene, ID (208) 667-1163  
Court Reporting Trial Presentation Videography Videoconferencing



74

1 Q. Have you received any evidence at all that  
2 hot hay combusted and caused this fire?  
3 A. No.  
4 Q. Mr. Fox, do you have some knowledge and  
5 experience regarding hot hay?  
6 A. Yes.  
7 Q. Can you just tell me briefly how you have  
8 that knowledge and experience?  
9 A. Okay. Well, I grew up on a farm, where  
10 we'd harvest alfalfa. Also, in college, I obtained  
11 a degree in agricultural business management. And  
12 since then, I've worked in open burning, so I have  
13 dealt with or talked to people about this. And  
14 also, in the course of getting my degree, it was  
15 mentioned periodically throughout the classes. It's  
16 basically common knowledge and I'm dealing with it  
17 growing up on a farm.  
18 Q. Okay. Can you tell us just briefly a  
19 little bit about how hot hay reaches the combustion  
20 point?  
21 A. Sure. It's -- when it's cut, it sometimes  
22 still contains moisture in it. As the biological  
23 process is still going on, it can generate more heat  
24 from being compacted. And with that excess  
25 moisture, it can spontaneously combust.

75

1 Q. Okay. Do you know approximately what the  
2 harvest season is for hay?  
3 A. In the Willamette Valley? Roughly, from  
4 the first of June until middle September, middle,  
5 beginning (sounds like) September.  
6 Q. Okay. And does hay -- the Respondent is  
7 alleging that hay combusted on his property and that  
8 it combusted in October. So, would that cause you  
9 to believe that it must have been baled near the end  
10 of the season?  
11 A. It's possible that it could have been  
12 baled during the end of the season or was stored  
13 away wet.  
14 Q. Okay. Would it seem odd that hay would be  
15 baled too wet, if it was done at the end of the  
16 harvest season?  
17 A. I guess typically, I guess in the spring  
18 it has more water, but, it's possible still.  
19 Q. Okay. Do you know of any uses for hay at  
20 a poultry farm?  
21 A. I'm not a poultry farmer, but I have  
22 raised some chickens and stuff. But, I can't -- I  
23 know that straw should be used out there, but he's  
24 the expert on this. So, I don't know as far as hay,  
25 why hay would be used on a poultry farm.

76

1 Q. Okay. When you determine that hay is hot  
2 and may combust, what should you do?  
3 A. Remove it from the barn immediately, --  
4 Q. Okay.  
5 A. -- take it out and spread it out, use it  
6 as compost (speaking simultaneously - inaudible).  
7 Q. So, in your opinion, does breaking nine  
8 tons of hay into three three-ton stacks, breaking it  
9 up enough to let it cool?  
10 A. I wouldn't say so, no.  
11 Q. Would you say that this is common  
12 knowledge among farmers or anyone who deals with  
13 large loads of hay?  
14 A. Dealing with hot hay, yes, it's common  
15 knowledge. And when you're unfortunate to have that  
16 hot hay there, they take it out and spread it out.  
17 Q. If, for some reason, Mr. Johnston did not  
18 possess this common knowledge of most farmers to  
19 know what to do with hot hay, are there resources  
20 that he could have turned to for advice?  
21 A. Sure. There's resources, such as the  
22 Oregon State University Extension Service, other  
23 farmers and I'm sure there's local co-ops he could  
24 call and ask advice from.  
25 Q. In your opinion, is it at least negligent

77

1 to not seek help or advice in an attempt to avoid  
2 the foreseeable risk of fire from hot hay  
3 combusting?  
4 A. I'm sorry, could you repeat the question?  
5 Q. Sure. In your opinion, is it at least  
6 negligent to not seek help or advice in an attempt  
7 to avoid the foreseeable risk of a fire from hot hay  
8 that might combust?  
9 MR. ENGLE: I've got to object to this, as  
10 not being qualified for an expert on this area, just  
11 because he grew up on a farm. He's being asked to  
12 give expert testimony on hot hay. That's -- there's  
13 no evidence that he has that knowledge.  
14 MS. KOSS: I asked about Mr. Fox's opinion  
15 and he did state that he has a degree in  
16 agriculture.  
17 MR. ENGLE: In hot hay.  
18 JUDGE SMITH: Okay. I'm going to overrule  
19 the objection and I'll give the testimony of the  
20 witness based on the expert testimony -- or not the  
21 expert, but based on the foundation that you've  
22 established, I'll give it the weight it deserves.  
23 MS. KOSS: Okay.  
24 Q. In your opinion, is it reckless to place  
25 hot hay anywhere where it could lead to burning

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 78 | <p>1 prohibited materials?<br/>2 A. Yes.<br/>3 Q. If the pile of solid waste was not on Mr.<br/>4 Johnston's property, would the Department have cited<br/>5 a violation for burning prohibited materials?<br/>6 A. No, not if there was nothing there to<br/>7 burn.<br/>8 Q. Okay. So, but for Mr. Johnston illegally<br/>9 accumulating a solid waste pile on his property at<br/>10 an unpermitted site, this violation would not have<br/>11 occurred?<br/>12 A. Correct.<br/>13 Q. Had the pile not caught on fire, would<br/>14 there be any of the violations cited for burning?<br/>15 A. No.<br/>16 Q. So, but for recklessly managing the<br/>17 alleged hot hay, which Mr. Johnston (inaudible)<br/>18 combust, if it is proven that that is what happened,<br/>19 these violations would not have occurred?<br/>20 A. No, I wouldn't put it in dry grass. I<br/>21 would not put it in dry grass where it could catch<br/>22 fire.<br/>23 Q. Are you convinced, based on all the<br/>24 evidence that you've seen, that Mr. Johnston did not<br/>25 ignite the fire, as opposed to hot hay spontaneously</p>                                 | 80 | <p>1 you. I think it would be cleaner to do it<br/>2 separately. So, we'll maybe give this D22, if<br/>3 that's okay. This is a Department memorandum.<br/>4 JUDGE SMITH: What's the date on it?<br/>5 MS. KOSS: It's June 12, 2007.<br/>6 MR. ENGLE: So, it was attached where?<br/>7 MS. KOSS: Sorry, yeah, it was originally<br/>8 attached to Exhibit 16, on your list.<br/>9 MR. ENGLE: That's June 19th, Economic<br/>10 Benefit Memorandum.<br/>11 MS. KOSS: Right. So, it's attached to<br/>12 that. And I think it would be best to separate<br/>13 these two exhibits, --<br/>14 JUDGE SMITH: Okay.<br/>15 MS. KOSS: -- if that's all right. So,<br/>16 you'll find it as a memorandum to Dave Lebrun from<br/>17 Sarah Urch on the bottom of Exhibit 16. I'll give<br/>18 you one of these to look at.<br/>19 MR. ENGLE: Show us what it looks like.<br/>20 MS. KOSS: This is what it looks like. It<br/>21 should be on the last page of your Exhibit 16, I'm<br/>22 hoping. If not, we can make copies.<br/>23 JUDGE SMITH: Yeah, I don't have it.<br/>24 MS. KOSS: Oh, okay.<br/>25 JUDGE SMITH: No, I go from Exhibit 16 to</p> |
| 79 | <p>1 combusting?<br/>2 A. I'm sorry, what was that question again?<br/>3 Q. Are you convinced, based on the evidence<br/>4 that you have seen, that Mr. Johnston did not ignite<br/>5 the fire, as opposed to hot hay spontaneously<br/>6 combusting?<br/>7 A. No, I'm not convinced that's how it<br/>8 started.<br/>9 Q. I'd like to move on to the topic of<br/>10 economic benefits. Mr. Fox, in the course of your<br/>11 work on referrals for open burning violations to my<br/>12 office, do you regularly determine the amount of<br/>13 economic benefit that a person or entity receives in<br/>14 committing the violation?<br/>15 A. Yes.<br/>16 Q. Did you determine the amount of economic<br/>17 benefit obtained by Mr. Johnston in accumulating<br/>18 those solid wastes at a non-permitted site and<br/>19 burning it rather than taking it to the local<br/>20 landfill and incurring the cost to dispose of the<br/>21 material legally?<br/>22 A. Yes.<br/>23 MS. KOSS: I'm going to introduce -- okay,<br/>24 I do not have this -- I have it attached to another<br/>25 exhibit in my initial list, so it's not numbered for</p> | 81 | <p>1 17, which is the January 3rd economic benefit<br/>2 summary.<br/>3 MS. KOSS: Okay. Mr. Engle, why don't I<br/>4 give you a chance to look at this and see if you<br/>5 have any objections? It's an inter-Department memo<br/>6 from one DEQ employee to another (inaudible words)<br/>7 you to refer to. You might want to, also it might<br/>8 help to look at your memo, too.<br/>9 MR. ENGLE: (Inaudible words)?<br/>10 MS. KOSS: Yeah, it might help.<br/>11 JUDGE SMITH: We're going to go off the<br/>12 record for a little restroom break.<br/>13 MS. KOSS: Okay.<br/>14 JUDGE SMITH: So, I'm turning the tape<br/>15 recorder off and we'll go back on soon.<br/>16 MS. KOSS: I apologize that I didn't have<br/>17 that. I thought it was attached to the --<br/>18 (break)<br/>19 JUDGE SMITH: Okay, yeah, we're back on<br/>20 the record now. So, you go ahead, Ms. Koss. And<br/>21 we're in the middle of looking in the exhibits.<br/>22 MR. ENGLE: So, you're offering this<br/>23 exhibit?<br/>24 MS. KOSS: Correct.<br/>25 JUDGE SMITH: And you marked that, again,</p>                                               |

82

1 as, what was it, D21? Let me see, we have D21  
2 already, so it'd have to be D22.  
3 MS. KOSS: D22.  
4 MR. ENGLE: Okay. Understanding how this  
5 goes, I still need to -- I need to point out that  
6 this is establishing economic benefit according to  
7 tons of material. And what they're doing is taking  
8 the cubic yards and they're assuming that one cubic  
9 yard, I guess, equals one ton, because they've got  
10 an estimated 55.56 tons, 555.56 cubic yards. This  
11 material was never weighed. So, I would simply ask  
12 you to view this exhibit with great caution, because  
13 it's making assumptions that simply don't -- are not  
14 consistent with the facts. Mr. Johnston will  
15 testify that he's the one that got rid of the  
16 material. He's the one who had it hauled off to the  
17 dump. It was never weighed. The amount of cubic  
18 yards of hay and other burned material has nothing  
19 to do with the weight. So, I object to the document  
20 as being irrelevant and inconsistent. If you admit  
21 it, please review it carefully before you assume  
22 that it has anything to do with this case.  
23 JUDGE SMITH: Do you want me to mark it as  
24 D22?  
25 MS. KOSS: Please.

83

1 JUDGE SMITH: So, I will admit D22. Did  
2 you want him to look at that?  
3 MS. KOSS: He's got one there, too.  
4 (Inaudible words)  
5 JUDGE SMITH: Okay.  
6 Q. Mr. Fox, can you explain who Sarah Urch,  
7 the author of this memo, is, and her previous role  
8 with this case?  
9 A. Sure. I believe she was an environmental  
10 -- she was an intern with the agency through the  
11 summer.  
12 Q. Correct.  
13 A. And she was an Environmental Law  
14 Specialist intern.  
15 Q. Okay. So, was her role with this case  
16 that she was -- was she drafting this case, based on  
17 information that you sent to her?  
18 A. Yes.  
19 Q. Did she write this memo to Dave LeBrun at  
20 that time, using information that you provided her  
21 regarding the economic benefit obtained in  
22 committing the violation?  
23 A. Let's make sure we're looking at -- is it  
24 the same one?  
25 Q. I can give you my copy. (Inaudible words)

84

1 A. Oh, okay, thank you.  
2 Q. I apologize.  
3 A. No problem. What was the question?  
4 Q. Sure. Is this memo that she wrote, did  
5 she use information that you provided to her  
6 regarding the economic benefit, --  
7 A. Yes.  
8 Q. -- in order to come up with these  
9 calculations on this memo?  
10 A. Yes.  
11 Q. Okay. And do you recognize the figures  
12 there as those that you gave to her to calculate the  
13 economic benefit?  
14 A. Double-check and make sure. Yeah, it  
15 appears to be so.  
16 Q. How did you go about making the  
17 determination of the economic benefit in this case?  
18 If you could just kind of describe, you know, how  
19 you come up with these figures.  
20 A. Sure. The way we look at this, because it  
21 is different (sounds like), because there's no way  
22 to measure it, there's the EPA statement that says  
23 that roughly 200 pounds equals one cubic yard of  
24 material. And I guess that's because there's so  
25 many different types of materials that could be

85

1 there. So, I used that estimate there and so, took  
2 the calculations of how much material was burned  
3 based on cubic yards and converted that into tons.  
4 I contacted the closest disposal facility and found  
5 out what their costs would be to have the material  
6 hauled off. So, that's how I calculated based on  
7 that amount of material, how much it would take to  
8 haul that off.  
9 Q. Okay. Is that method typical in how you  
10 would calculate economic benefit in (tape skip)?  
11 A. Yes. And sometimes I'll also include  
12 mileage charge on there also. But, I didn't on this  
13 one (Inaudible words).  
14 Q. Okay. And what is the total figure that  
15 you and Ms. Urch came up with to submit to Mr.  
16 LeBrun for the calculation there?  
17 A. Figured total economic benefit is  
18 \$4,532.78.  
19 MS. KOSS: I'd like to admit what is  
20 marked as Exhibit No. 16, on your list. And in  
21 order to establish the foundation for that, I have  
22 an affidavit by Mr. LeBrun, which I can mark as D23.  
23 JUDGE SMITH: Okay.  
24 MS. KOSS: That was also sent to you  
25 yesterday.

86

1 JUDGE SMITH: Right. That was part of the  
2 three-page email or three-document email yesterday,  
3 the affidavit from Dave LeBrun?  
4 MS. KOSS: Correct.  
5 JUDGE SMITH: Okay.  
6 MS. KOSS: I just thought I'd give you  
7 that affidavit.  
8 MR. ENGLE: What are we doing? Is that  
9 23?  
10 JUDGE SMITH: That's the one that was on  
11 email.  
12 MR. ENGLE: Oh, I remember it.  
13 JUDGE SMITH: Okay. That's No. 23. And  
14 then No. -- I think she's also moving to admit No.  
15 16, which is the memo that Mr. LeBrun prepared.  
16 MR. ENGLE: Object to 23 on the basis that  
17 I have no right to cross-examination (inaudible  
18 words).  
19 JUDGE SMITH: Okay. And then 16, any  
20 objection, Mr. Engle? 16 is the actual memo that  
21 Mr. LeBrun prepared.  
22 MR. ENGLE: Same objection.  
23 JUDGE SMITH: Okay. Objections are noted  
24 to 16 and 23 and they're overruled and 16 and 23 are  
25 received. I don't have 16. I have 23.

87

1 MS. KOSS: Oh, okay. I will hand --  
2 JUDGE SMITH: Are you still asking him  
3 questions about it?  
4 MS. KOSS: Yes.  
5 JUDGE SMITH: Okay.  
6 MS. KOSS: Thank you.  
7 Q. Mr. Fox, does this memo from Dave LeBrun  
8 indicate that he entered the figure of \$4,532.78  
9 that you and Ms. Urch came up with, into the BEN  
10 model?  
11 A. Yes.  
12 Q. And can you tell us what amount the BEN  
13 model, the EPA's BEN model, assessed with the  
14 economic benefit gained by Mr. Johnston in failing  
15 to properly dispose of the solid waste from his  
16 property?  
17 A. The final economic benefit was \$2,774.  
18 MS. KOSS: Okay. At this time, I have no  
19 more questions for Mr. Fox.  
20 JUDGE SMITH: Okay. Just on that last  
21 question, what does the BEN stand for, B E-N?  
22 MS. KOSS: It actually doesn't stand for  
23 anything, believe it or not.  
24 MR. BACHMAN: I think it's a shortened  
25 term for benefit.

88

1 MS. KOSS: Yeah, yeah, even though it's  
2 all caps.  
3 JUDGE SMITH: Okay.  
4 MS. KOSS: And that memo I should  
5 indicate, ALJ Smith, the memo is mostly admitted  
6 because it explains the EPA BEN model.  
7 JUDGE SMITH: Okay, just a second. I'm  
8 going to -- are you giv-, is this mine?  
9 MS. KOSS: Yes.  
10 JUDGE SMITH: Okay. All right, Mr. Engle,  
11 questions for Mr. Fox?  
12 CROSS EXAMINATION OF MR. FOX  
13 BY MR. ENGLE:  
14 Q. Mr. Fox, let's go to the photographs, 6,  
15 Exhibit 6. I've heard you say on a number of  
16 occasions that people said that they were auto, auto  
17 body or auto parts or something. Tell me something  
18 in this that establishes there were any auto parts  
19 in this photograph.  
20 A. Okay, I'm sorry, now which photograph was  
21 it?  
22 Q. Any of them. I -- we, we -- now, you  
23 didn't see auto parts in this burn, because you  
24 weren't there, correct?  
25 A. I'm going off information --

89

1 Q. Okay, so you're --  
2 A. -- from the fire department.  
3 Q. -- you're going on what other people  
4 reported to you and the photographs that you were  
5 furnished as to what was in this burn. Is that  
6 right?  
7 A. Correct.  
8 Q. Okay. Show me a picture of auto parts. I  
9 see a metal barrel and I see an old bicycle. But,  
10 show me something that could be construed as an auto  
11 part. I, I don't see it. And I'm asking you this,  
12 because Mr. Johnston is going to deny that there  
13 were any auto parts in that whole pile. And I just  
14 need you to point out what made you believe there  
15 were, other than what Shannon Thorson may have told  
16 you.  
17 THE WITNESS: Is there a copy of that  
18 photo log that might indicate -- ? Thank you.  
19 MR. ENGLE: That's my copy, so look at it  
20 and then give it back to me.  
21 THE WITNESS: Sure, no problem.  
22 MS. KOSS: Here, Dan, (inaudible words)  
23 for you.  
24 THE WITNESS: Okay, thank you.  
25 A. I guess basically, because it's so

90

1 commingled all the metal there, it could be possible  
2 there's auto parts on there.  
3 Q. But, there's nothing in here about auto  
4 parts, either in your photo log or, or in the  
5 pictures that you can at least identify for me as  
6 being auto parts, is there?  
7 A. Not that I notice (sounds like).  
8 Q. Now, as I understand your testimony, one  
9 of these reports from somebody who's not here at  
10 least indicated that Mr. Johnston said it was a fire  
11 burn, a hot hay that started this thing. That was  
12 back pretty early in either Shannon Thorson's report  
13 or the State Police report. You agree with that,  
14 don't you?  
15 A. That the hot hay --  
16 Q. That it was hot hay.  
17 A. That's what Mr. Johnston had told me.  
18 Q. Okay, all right. Okay, since we've talked  
19 about several past times that Mr. Johnston was  
20 apparently cited for various things, I guess I need  
21 to examine you about that. We've seen a 1999  
22 incident here. Was Mr. Johnston assessed any civil  
23 penalty, based upon the 1999 incident?  
24 A. Not that I'm aware of.  
25 Q. Okay. There was a letter or, or at least

91

1 a notice. You've given us that as an exhibit. But,  
2 the Department apparently felt no need to assess any  
3 civil penalties or proceed on a civil matter. Is  
4 that accurate?  
5 A. Which is a common with a first  
6 (inaudible).  
7 Q. Do you know what Mr. Johnston -- was he  
8 cited criminally for anything?  
9 A. On which incident?  
10 Q. For the 1999 incident.  
11 MS. KOSS: Objection. Mr. Fox was not  
12 with the Department in 1999. I'm not sure he can  
13 answer questions based on the Department's choices  
14 at that time.  
15 JUDGE SMITH: Okay, well, he can testify  
16 whether he can answer it or not.  
17 Q. From all of the hearsay reports that  
18 you've read in here, what happened to Mr. Johnston  
19 as a result of that 1999 incident?  
20 A. Was that the incident where the State  
21 Police were called or was that the 2003 incident?  
22 Q. I wasn't there either. You've offered  
23 evidence of Mr. -- you testified that he, he was  
24 cited several times before. That was your -- that  
25 was what I wrote down, your exact testimony. And I

92

1 want to know about these several times he was cited  
2 before, because I don't think he was. So, tell me  
3 about what you know about the 1999 incident. Was he  
4 cited at that time?  
5 A. Well, the 1999 --  
6 Q. That's 2003, I think. We'll talk about  
7 that (inaudible words). Isn't that 2--  
8 A. It's 1999.  
9 Q. Okay, I'm sorry. Go ahead.  
10 A. Yes, he was cited.  
11 Q. What was he cited for?  
12 A. I believe it was interfering with -- I  
13 don't have the citation here in front of me. I did  
14 see it somewhere, but it was issued from the State,  
15 Oregon State Police.  
16 Q. Interfering with a police officer, wasn't  
17 it?  
18 A. A firefighter, I believe.  
19 Q. Okay. It had nothing to do with illegal  
20 burns or anything else, did it?  
21 A. I would say because they were -- that's  
22 why they were there.  
23 Q. That's why they were there. But he was  
24 not cited for an illegal burn or for failing to  
25 maintain equipment or for failing to maintain water,

93

1 --  
2 A. No.  
3 Q. -- or the things that he's cited for right  
4 now.  
5 A. No.  
6 Q. Okay. Do you know what happened to that,  
7 that interfering with a police officer citation, in  
8 court? Do you know about that?  
9 A. No.  
10 Q. Okay. What do you know about the 2003  
11 incident? Was he cited?  
12 A. The fire department showed up for that and  
13 I believe they filled out a referral and sent it to  
14 the DEQ.  
15 Q. What did DEQ do about it?  
16 A. On that incident, I'm not -- I don't know,  
17 because I wasn't (inaudible).  
18 Q. They didn't really do anything about it,  
19 did they?  
20 A. It could have been at that time there was  
21 some that weren't -- stuff wasn't done, because the  
22 person in that position was out (speaking  
23 simultaneously - inaudible).  
24 Q. To your knowledge, DEQ took no action  
25 based upon that referral, did they?

94

1 A. To my knowledge, no.  
2 Q. And that referral, again, was by Shannon  
3 Thorson, wasn't it?  
4 A. Yes.  
5 Q. Okay. Do you happen to have any knowledge  
6 of the relationship between Curt Johnston and  
7 Shannon Thorson and why she might be saying all  
8 these nasty things that she said?  
9 MS. KOSS: Objection, relevance. I don't  
10 think their relationship has anything to do with the  
11 incidents that occurred.  
12 MR. ENGLE: I think it does. We're  
13 talking a lot of motivations here. I mean, that's  
14 your argument. Like I said, it would be my case, as  
15 well, motivation.  
16 JUDGE SMITH: Okay. I'm going to have you  
17 re-ask the question and then I'll rule on her  
18 objection as to whether or not it's relevant.  
19 Q. Do you have any knowledge of the  
20 relationship between Mr. Johnston and Shannon  
21 Thorson, yes or no?  
22 A. No.  
23 JUDGE SMITH: And I didn't hear the last  
24 part of -- you were answering the question about  
25 whether DEQ cited him for anything (audio skip)

95

1 because the person that was working at that time --  
2 and I couldn't hear what else you said.  
3 THE WITNESS: The person that was in that  
4 position at the time was out on medical leave, so  
5 there were a few referrals that were sent to the  
6 office that due to the dates of when they were  
7 actually reviewed and when they occurred, the  
8 Department chose not to issue any citations on  
9 those.  
10 MR. ENGLE: Were you a part of that  
11 decision?  
12 THE WITNESS: No, I wasn't.  
13 MR. ENGLE: It's just what you heard?  
14 THE WITNESS: That's what I've been  
15 informed.  
16 Q. Your Pre-Enforcement Notice, Exhibit No.  
17 1, I think you said there were two violations. And  
18 the way I look at it, you've got five or -- five  
19 violations alleged in this.  
20 JUDGE SMITH: I'm sorry, you're referring  
21 to which exhibit, Mr. Engle?  
22 MR. ENGLE: Exhibit No. 1.  
23 JUDGE SMITH: No. 1. So, that would be  
24 the Pre-Enforcement Notice?  
25 MR. ENGLE: I think so, yes.

96

1 JUDGE SMITH: Okay.  
2 Q. You testified there were two violations  
3 alleged, but there are five.  
4 JUDGE SMITH: That's not the right  
5 document, I don't think, because my end of page two  
6 looks different. Mine has 3.5 on the back. That  
7 one doesn't appear to have the same thing.  
8 THE WITNESS: Oh, that's -- okay.  
9 MR. ENGLE: That's what I'm looking at,  
10 too.  
11 THE WITNESS: Yeah, I didn't have this  
12 copy right there.  
13 MS. KOSS: If I may, I realize you have a  
14 faulty copy.  
15 JUDGE SMITH: I do.  
16 MS. KOSS: Mr. Fox does, so --  
17 JUDGE SMITH: This is the right -- mine is  
18 the right copy referring to the --  
19 MS. KOSS: Yes. Possibly, if it's alright  
20 with Mr. Engle, Mr. Fox could refer to ALJ Smith's  
21 copy, if he has further questions on the Pre-  
22 Enforcement Notice.  
23 Q. Was the final Notice of Violation  
24 identical to your Pre-Enforcement Violation Notice?  
25 A. Identical in writing?

97

1 Q. No, identical as to the alleged  
2 violations.  
3 A. (inaudible) the final notice that was sent  
4 to -- no.  
5 Q. Okay. Why did you change your mind on  
6 what violations to charge him with and when did you  
7 do that?  
8 A. That's not my decision on which ones to  
9 charge him with. I just wrote down which violations  
10 from the fire department -- from their information  
11 provided, I wrote down which violations there were.  
12 Q. So, you didn't make the decision to change  
13 the nature of the violations when you sent out the  
14 final notice to Mr. -- when the Department sent out  
15 the final notices to Mr. Johnston? Is that what  
16 you're telling me?  
17 A. I'm not part of that. I wasn't part of  
18 that decision.  
19 Q. Okay, okay. And you were not part of the  
20 discussions or anything else to decide --  
21 A. No.  
22 Q. -- to modify or change the nature of the  
23 violations?  
24 A. No.  
25 Q. Okay. Okay, you established yourself, I

**Naegeli**  
**REPORTING**  
**CORPORATION**

**800.528.3335**  
**www.NaegeliReporting.com**  
**503.227.7123 FAX**

Portland, OR (503) 227-1544  
Seattle, WA (206) 622-3376  
Spokane, WA (509) 838-6000  
Coeur d'Alene, ID (208) 767-1163  
Court Reporting Trial Presentation Videography Videoconferencing

98

1 guess, as an expert in hot hay. How many times have  
2 you --  
3 MS. KOSS: Objection. I think we  
4 established that we created a foundation for  
5 knowledge, but not expert testimony.  
6 MR. ENGLE: Is that what we established?  
7 I don't remember it quite that way, but maybe we  
8 did.  
9 JUDGE SMITH: Yeah, I think she was just  
10 trying to ask him some questions about hot hay, but  
11 before she asked the questions, she did try and give  
12 us some education on why he could even talk about  
13 it. But, I did not write down that he was  
14 established as an expert.  
15 Q. Okay. How many hot hay cases, how many  
16 internal combustion matters with hot hay have you  
17 been involved with in your lifetime?  
18 A. Only a few.  
19 Q. Oh, okay. Well, tell me about the last.  
20 Where was it and when?  
21 MS. KOSS: Objection, relevance.  
22 JUDGE SMITH: I'm going to go ahead and  
23 allow it.  
24 A. The last one, when we noticed there was  
25 hot hay in our barn, there were only a couple few

100

1 you?  
2 A. Yes.  
3 Q. Okay. Have you ever had hay internally  
4 combust and burn, actually light on fire?  
5 A. I've seen it happen, but not with ours.  
6 Q. Is it within the range of your experience  
7 to say that bales that are not broken apart may  
8 either cool off or may internally combust?  
9 A. I'm sorry, what?  
10 Q. Is it within your experience to be able to  
11 say that bales that do have heat in them, because  
12 they're baled green may either cool off where they  
13 are or may internally combust, I mean, one or the  
14 other?  
15 A. Yes.  
16 Q. Okay. How long have you been with DEQ,  
17 Mr. Fox?  
18 A. I believe since February 2006, so roughly  
19 two and a half years.  
20 Q. Okay. Was that your first professional  
21 job with any of the state organizations?  
22 A. No. I worked for the Oregon Department of  
23 Agriculture.  
24 Q. Okay, (inaudible words). When demolition  
25 materials, which is what did come out of Mr.

99

1 bales where the rod (sounds like) was hot. And so,  
2 we pulled those out and spread those out.  
3 Q. Where were you? Where was your barn and  
4 what -- in Oregon?  
5 MS. KOSS: Objection. This line of  
6 questioning is not relevant to proving or disproving  
7 the violations alleged in the notice, which is the  
8 scope of this hearing.  
9 MR. ENGLE: This man was --  
10 JUDGE SMITH: All right, I'm going to  
11 overrule and allow them, because this is something  
12 that you allowed this person to testify about and  
13 I'd like more information.  
14 MS. KOSS: Okay.  
15 Q. I'm sorry, where was the barn, in Oregon?  
16 A. In Oregon.  
17 Q. Where in Oregon?  
18 A. Outside of Brooks, Oregon.  
19 Q. Okay. And that's where you grew up? Is  
20 that what you -- is this a farm that you and your  
21 parents lived on?  
22 A. It's the family farm.  
23 Q. Okay. What did you do with those bales?  
24 A. Broke them apart and spread them around.  
25 Q. You moved them out of the barn, didn't

101

1 Johnston's house, when those are hauled off to DEQ  
2 or, excuse me, to a permitted disposal site, are you  
3 telling us they weigh them by weight or by volume in  
4 a container? Which one?  
5 A. To my experience, it's been by weight.  
6 Q. Is that what they told you when you called  
7 them?  
8 A. I believe they charge by the ton.  
9 Q. Okay. And you don't believe that they  
10 charge per container for demolition materials that  
11 are moved to a permitted disposal site?  
12 A. They may.  
13 Q. Explain to me again how you got 55 tons of  
14 material out of a bunch of ashes that you never saw.  
15 I'm not understanding that.  
16 A. I took the measurements that were provided  
17 by the fire department and took the percentage of  
18 what they said. Well, I calculated out how many  
19 cubic yards that pile would be from the measurements  
20 they provided. And then, they told me what  
21 percentage of that pile was burned. And so, I  
22 multiplied it by that percentage there, to figure  
23 out how much was actually burned.  
24 Q. What kind of materials were you  
25 calculating to get that weight?

**Naegeli**  
**REPORTING**  
CORPORATION

800.528.3335  
www.NaegeliReporting.com  
503.227.7123 FAX

Portland, OR (503) 227-1544  
Seattle, WA (206) 622-3376  
Spokane, WA (509) 838-6000  
Coeur d'Alene, ID (208) 667-1163  
Item F-000112  
Court Reporting Trial Presentation Videography Videoconferencing

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 102 | <p>1 MS. KOSS: Objection. Mr. Fox already<br/>2 explained how he gets the weight. The standard is<br/>3 200 pounds per cubic yard, the standard measurement<br/>4 used in calculating economic benefit.<br/>5 JUDGE SMITH: He can go ahead and testify<br/>6 about it again. I don't remember hearing it.<br/>7 A. Okay. The amount -- I'm sorry, the<br/>8 question was how did I determine the weight?<br/>9 Q. How do you determine the weight of some<br/>10 material that is as diverse as you claim this was?<br/>11 A. It's based on an estimate provided. The<br/>12 EPA has the same. It's 200 pounds per cubic yard.<br/>13 And so, I used that calculation to determine --<br/>14 Q. The bottom line is this 55 tons is totally<br/>15 an estimate and totally speculative, isn't it?<br/>16 A. It is an estimate.<br/>17 Q. It's totally speculative, isn't it?<br/>18 MS. KOSS: Mr. Fox answered the question.<br/>19 MR. ENGLE: Yes or no.<br/>20 JUDGE SMITH: He answered part of the<br/>21 question. He needs to answer the rest of it.<br/>22 A. Yes, based on the information provided, it<br/>23 was the best estimate I had.<br/>24 Q. It's a speculation, isn't it?<br/>25 A. Yes.</p> | 104 | <p>1 A. First cutting.<br/>2 Q. Hmm?<br/>3 A. First cutting.<br/>4 Q. First cutting is the skimpiest. When's<br/>5 the best cutting?<br/>6 A. Well, first cutting has quite a bit of<br/>7 protein in it.<br/>8 MS. KOSS: Objection, relevance. I'm not<br/>9 sure why we're discussing good hay or bad hay.<br/>10 JUDGE SMITH: I'm going to have to<br/>11 overrule it. He can ask about the hay, because this<br/>12 witness testified about the hay and when it's baled<br/>13 and the time period, so --<br/>14 Q. Your testimony, Mr. Fox, was that<br/>15 initially, when you asked to go out to Mr.<br/>16 Johnston's ranch to inspect, that you were denied<br/>17 access. Is that correct?<br/>18 A. Not initially.<br/>19 Q. I'm sorry, were you denied access<br/>20 initially or not? I'm not understanding your<br/>21 answer.<br/>22 A. Initially, he gave -- granted me<br/>23 permission. Then on the day when I went -- that we<br/>24 scheduled for me to come out there, I called him up<br/>25 to remind him I was coming out there, and he denied</p> |
| 103 | <p>1 Q. Okay. Is it your testimony that the only<br/>2 animals or livestock that Mr. Johnston has on his<br/>3 farm is chickens? Is that your testimony?<br/>4 A. No.<br/>5 Q. What other animals or livestock are you<br/>6 aware of that may have had the use of hay?<br/>7 A. I'm not aware of any. I just know that it<br/>8 was a poultry farm, is what I was told.<br/>9 Q. So, you were aware --<br/>10 A. I was just informed that it was a poultry<br/>11 farm, so I'm not aware if he has any others.<br/>12 Q. Okay. So, you don't really know if Mr.<br/>13 Johnston had a use for hay or not, at this point, do<br/>14 you? You don't --<br/>15 A. No.<br/>16 Q. -- know anything about chickens' use of<br/>17 hay, but there could have been horses or cattle and<br/>18 what have you that you'd have had hay there.<br/>19 A. It's possible.<br/>20 Q. How many cuttings of hay do the farmers<br/>21 normally take off of a field during the course of a<br/>22 year?<br/>23 A. Roughly three.<br/>24 Q. Okay. You've got at least three cuttings.<br/>25 The best hay is when, first, second or third?</p>                                                                                | 105 | <p>1 me access then.<br/>2 Q. Did he say why?<br/>3 A. He didn't see a need for it.<br/>4 Q. That was his only explanation as to why he<br/>5 didn't want you out there?<br/>6 A. I don't believe that was the only one.<br/>7 Q. What was the other one?<br/>8 A. Because it was a chicken farm.<br/>9 Q. Okay. Did he explain why a chicken farm<br/>10 has to be careful for access?<br/>11 A. Yes.<br/>12 Q. What did he tell you?<br/>13 A. Due to contamination --<br/>14 Q. Okay.<br/>15 A. -- concerns.<br/>16 Q. Do you understand what kind of chickens<br/>17 Mr. Johnston raises? Are these egg layers? Are<br/>18 these fryers? What are they?<br/>19 A. I don't know.<br/>20 Q. Do you understand why contamination is a<br/>21 problem with a chicken operation?<br/>22 A. Basically, yes.<br/>23 Q. What do you understand it to be?<br/>24 A. That birds --<br/>25 MS. KOSS: Objection, relevance.</p>                                                                                                                                                     |

**Naegeli**  
**REPORTING**  
CORPORATION

800.528.3335  
www.NaegeliReporting.com  
503.227.7123 FAX  
Portland, OR (503) 227-1544  
Seattle, WA (206) 622-3376  
Spokane, WA (509) 838-6000  
Coeur d'Alene, ID (208) 667-1153  
Court Reporting Trial Presentation Videography Videoconferencing

Item F 006113



106

1 JUDGE SMITH: I'm going to allow it.  
2 A. Just from my understanding, I've -- I'm  
3 not an expert on it, but I've heard that humans and  
4 birds can share some of the same similar diseases  
5 and so --  
6 Q. Very good.  
7 A. -- it's to prevent contamination.  
8 Q. Very good. One of these four violations  
9 that Mr. Johnston's been charged with has to do with  
10 storing demolition waste or disposing of demolition  
11 waste on the property, correct?  
12 A. Correct (sounds like).  
13 Q. That's number two. Mr. Johnston's going  
14 to tell you that he put some of this demolition  
15 waste from the house on the property as a temporary  
16 matter. Well, define, define dispose for me. How is  
17 the definition of dispose used by the Department of  
18 Environmental Quality? Does it require a permanent  
19 intent to dispose or can it be a temporary intent?  
20 What -- where are we on that?  
21 A. I don't have that definition in front of  
22 me, so I, I don't know.  
23 Q. Okay. You, you don't know?  
24 A. No.  
25 Q. Was that -- when you learned that Mr.

107

1 Johnston intended to let this soaking wet demolition  
2 material dry out and then take it to a disposal  
3 site, did that make any difference in your decision  
4 on whether he should be cited for that?  
5 A. No.  
6 Q. So, your position is even a temporary  
7 placing of demolition material for whatever purpose  
8 would be a violation of the statute and the  
9 Administrative Rule. Is that your position?  
10 A. I believe because he informed me that it  
11 was at his dump site.  
12 Q. If you would have believed him that he was  
13 going to take that to the dump as soon as it dried  
14 out to some extent, would that have made a  
15 difference in your citing him for that violation, if  
16 you would have believed him? I know you don't  
17 believe him, but if you would have believed him?  
18 A. Without the proof of it, I don't --  
19 Q. If you would have believed him, would that  
20 have made a difference in that particular violation?  
21 A. No.  
22 MR. ENGLE: Take a minute with my client  
23 please?  
24 JUDGE SMITH: Yes. I'm going to go off  
25 the record while you do that.

108

1 (break)  
2 MR. ENGLE: Thank you, Mr. Fox. I have no  
3 further questions.  
4 THE WITNESS: Thank you.  
5 JUDGE SMITH: Okay, we're back on the  
6 record and Mr. Engle's back from his break and  
7 indicates he has no other questions for Mr. Fox.  
8 So, any other questions for him, Ms. Koss?  
9 MS. KOSS: Just a quick couple on  
10 redirect.  
11 JUDGE SMITH: Okay.  
12 MR. ENGLE: Why do we attorneys always say  
13 that, just a quick couple? And half an hour later -  
14 - just to be brief, Your Honor. But, attorneys are  
15 never brief.  
16 REDIRECT EXAMINATION OF MR. FOX  
17 BY MS. KOSS:  
18 Q. I just want to clarify, Mr. Fox, that the  
19 first time that you heard that hot hay was the cause  
20 -- that combusting was the cause of the fire, was in  
21 your first conversation with Mr. Johnson?  
22 A. I'd have to look at the first  
23 conversation. I believe it -- (inaudible words)  
24 which page is which here.  
25 JUDGE SMITH: Are you looking at that

109

1 informal, when you had that informal with him and  
2 then the --  
3 MS. KOSS: It was a conversation.  
4 Q. You did testify before that it was your  
5 first conversation with him on December 19th. And I  
6 just want to clarify whether or not that is the  
7 first time that you heard the theory that hot hay  
8 caused the fire.  
9 A. Yes.  
10 Q. So, you did not see in any of the State  
11 Police reports or fire reports regarding this  
12 incident anything about the cause of the fire being  
13 hot hay?  
14 A. No.  
15 Q. Okay. And the day that you did finally go  
16 out to Mr. Johnston's property, did you observe any  
17 animals other than chickens on the property?  
18 A. I didn't even see chickens on the  
19 property.  
20 Q. Okay. And regarding also going onto the  
21 property, you testified that you first -- at first  
22 Mr. Johnston said it would be fine for you to come  
23 out. And then, so, is it true that you set the date  
24 in advance, for you to do that site visit initially?  
25 A. Yes.

110

1 Q. So, you called that day regarding this  
2 date that you had both planned for you to come out  
3 to the property. You had set that date together.  
4 This wasn't a date that you set on your own?  
5 A. No.  
6 Q. And could you testify a little bit about  
7 your conversation with him that morning? And I'd  
8 like to have you read aloud your memo regarding that  
9 specific conversation that day, if you could please  
10 read the exchange between you and Mr. Johnston about  
11 the site visit.  
12 MR. ENGLE: Object. I think this is  
13 improper redirect. I think this is a new area,  
14 rather than what we talked about, unless it has to  
15 do with the fire. It would have to do with hot hay.  
16 JUDGE SMITH: What does it have to do  
17 with, Ms. Koss?  
18 MS. KOSS: Well, you asked Mr. Fox --  
19 MR. ENGLE: Right.  
20 MS. KOSS: -- about the reason that he was  
21 denied access that morning.  
22 MR. ENGLE: I did. I did. And that's  
23 what this is about?  
24 MS. KOSS: Correct.  
25 MR. ENGLE: Okay, I withdraw the

112

1 little amount of people out there as possible, so I  
2 don't want you coming on the property.' I replied,  
3 'Well, I guess that decision is up to you, but it  
4 could benefit you, if your story is correct.' Mr.  
5 Johnston then replied, 'If I thought I could sell  
6 you my story, then I would allow you to come out  
7 here. I just don't see any purpose for you to be  
8 out here. You already got all the information you  
9 need, so I don't want you coming here. Sorry, I  
10 can't help you out.'  
11 MS. KOSS: I have no more questions on  
12 redirect.  
13 JUDGE SMITH: Other questions, Mr. Engle?  
14 MR. ENGLE: Nothing, nothing further.  
15 JUDGE SMITH: There was one thing that you  
16 were starting to say and I don't know if you  
17 completed saying it. So, let me just see if I can  
18 find it. Okay, this is when you were talking about  
19 the hot hay issue and you were saying that it can  
20 spontaneously combust and that the hay season, you  
21 said, was from June 1 to 9/1. Is that what you  
22 said?  
23 THE WITNESS: Roughly, yes.  
24 JUDGE SMITH: Okay. But, it's possible  
25 that the hay was baled late, because you said it was

111

1 objection.  
2 A. "At 10:47 I called and left a message for  
3 Mr. Johnson to call me back on the day that I was  
4 going to do the inspection. At 11:01 a.m., Mr.  
5 Johnston called me. Mr. Johnston stated that he  
6 called his processor to ask him permission for me to  
7 come out to the property. Mr. Johnston stated that  
8 his processor asked him, what's the point. Mr.  
9 Johnston stated that he did not have an answer for  
10 that question.  
11 "I explained to Mr. Johnston that it could  
12 be beneficial to him if I come out and take some  
13 photographs and look to see if I could determine how  
14 the fire started. Mr. Johnston stated that the pile  
15 looks completely different now than what it did in  
16 October. He stated that the reason for this is  
17 because the McMinnville Fire Department had tried to  
18 put the fire out for three days and was unsuccessful  
19 at it. Mr. Johnston said that he had some of his  
20 workers move around the burn pile so much with a  
21 bucket and tractor that the pile was not the same as  
22 it was when it started.  
23 "Mr. Johnston stated, 'There has been some  
24 major disturbances to the area and I see no point  
25 for you to come out there. The processor wants as

113

1 October?  
2 THE WITNESS: It's possible it was baled  
3 late.  
4 JUDGE SMITH: Okay. And then, you were  
5 saying that, you know, if it's stored away wet, it  
6 could get hot and that it is appropriate to remove  
7 it from the barn and spread it out. And then you  
8 said something about if it was clumped (sounds like)  
9 or something and you didn't un bale it or didn't  
10 spread it out. I thought I heard something of that  
11 nature.  
12 THE WITNESS: It was in three-ton blocks,  
13 I believe. I don't know if I stated that.  
14 JUDGE SMITH: So, in your experience, you  
15 were saying he should have spread it out more or  
16 undid, undo the bales or what?  
17 THE WITNESS: I would have. I would have  
18 spread it out more, taken a piece of equipment out  
19 there and spread it out.  
20 JUDGE SMITH: Okay. And did you respond  
21 to Ms. Koss's question that he was negligent not to  
22 do that or not to seek help in finding out how to do  
23 that? Was that your opinion?  
24 THE WITNESS: Yes.  
25 JUDGE SMITH: All right. What other

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 114 | <p>1 questions did you have for him? Nothing?<br/>2 MR. ENGLE: None.<br/>3 JUDGE SMITH: Ms. Koss, anything else?<br/>4 MS. KOSS: No.<br/>5 JUDGE SMITH: Okay. Did you want to call<br/>6 your next witness? Let's see what time it is, 11?<br/>7 MS. KOSS: Yes.<br/>8 JUDGE SMITH: Okay. And that would be?<br/>9 MS. KOSS: Senior Trooper Bridget Taylor.<br/>10 JUDGE SMITH: Is she here?<br/>11 MS. KOSS: She is going to be testifying<br/>12 by phone.<br/>13 JUDGE SMITH: Oh, okay. So, --<br/>14 MR. ENGLE: She's going to be what?<br/>15 MS. KOSS: Testifying by phone.<br/>16 MR. ENGLE: Okay.<br/>17 JUDGE SMITH: So, the problem with that,<br/>18 and it may not be a problem, if you know how to do<br/>19 this, is we already have one call on the line, so<br/>20 we'd have to conference her in.<br/>21 MS. KOSS: Ahh, I'll leave that to you.<br/>22 MR. ENGLE: With just one call, I didn't<br/>23 know we needed to do anything different anyway.<br/>24 JUDGE SMITH: Okay. So, I might be able<br/>25 to do it by having her call into our conference</p> | 116 | <p>1 Q. I'll need you to state your full name.<br/>2 A. My full name is Bridget Taylor, T-A-Y-L-O-<br/>3 R.<br/>4 Q. Okay. And is Bridget with two t's?<br/>5 A. No, it's B-R-I-D-G-E-T.<br/>6 Q. Okay, one t. All right. And what is your<br/>7 occupation?<br/>8 A. I'm employed by the Oregon State Police.<br/>9 JUDGE SMITH: All right. I'm going to let<br/>10 Ms. Koss question you now.<br/>11 THE WITNESS: Okay, Your Honor.<br/>12 DIRECT EXAMINATION OF TROOPER TAYLOR<br/>13 BY MS. KOSS:<br/>14 Q. Hi, Trooper Taylor, thanks for calling in<br/>15 today.<br/>16 A. You're welcome.<br/>17 Q. What is your position with the Oregon<br/>18 State Police?<br/>19 A. I'm in Patrol Division.<br/>20 Q: And how long have you been in this<br/>21 position?<br/>22 A. I've been in -- with the OSP for over 10<br/>23 years now.<br/>24 Q. Okay. And what are your main job<br/>25 responsibilities in this position?</p>                                                                                                                                                                                                                   |
| 115 | <p>1 bridge.<br/>2 MS. KOSS: Oh, okay.<br/>3 JUDGE SMITH: So, let me see if I can<br/>4 remember how to do that. 1-8 -- let's see, what<br/>5 number did I dial, first of all? Okay, so what she<br/>6 needs to dial is 37 -- is she in Salem?<br/>7 MS. KOSS: I've got her cell number. It's<br/>8 a 971.<br/>9 JUDGE SMITH: All right. She can dial 503<br/>10 and then 667048525. I think that's right. Okay,<br/>11 we're going to go off the record while I figure out<br/>12 what numbers need to be called. So, I'm going to<br/>13 turn this off.<br/>14 (break)<br/>15 JUDGE SMITH: All right, is that you, Ms.<br/>16 Taylor?<br/>17 MS. TAYLOR: Yes, it is.<br/>18 JUDGE SMITH: All right, I do have the<br/>19 tape -- we are recording. And again, I'm Judge<br/>20 Smith. I'll be placing you under oath now.<br/>21 MS. TAYLOR: Yes, Your Honor.<br/>22 BRIDGET TAYLOR, called as a witness by the<br/>23 State, having been first duly sworn, was examined<br/>24 and testified as follows:<br/>25 BY JUDGE SMITH:</p>                                         | 117 | <p>1 A. My main job is to patrol. I also<br/>2 reconstruct the serious injury and fatal crashes and<br/>3 collisions. I'm a Level One Truck Inspector. And<br/>4 I'm the Northwest Region Post Truck Crash Inspector.<br/>5 Oh, and I also am the Weapons of Mass Destruction<br/>6 instructor and with the Disaster Response Team also.<br/>7 Q. Are you familiar with the property located<br/>8 at 11320 NE Lafayette Highway in Dayton?<br/>9 A. Yes, I am.<br/>10 Q. Why are you familiar with that property?<br/>11 A. I responded to that property twice for<br/>12 illegal fires.<br/>13 Q. And I'm going to introduce Exhibit D9,<br/>14 which is Exhibit 9 on your exhibit list. And<br/>15 Trooper Taylor, you have this exhibit. This is your<br/>16 citation and report from July 8, 1999.<br/>17 A. Yes, I have it in front of me.<br/>18 Q. Okay. I'll be referring to that document.<br/>19 Do you recognize this document?<br/>20 A. Yes, I do.<br/>21 Q. Is this a true and accurate copy?<br/>22 A. Yes, it is.<br/>23 Q. And did you draft this document in the<br/>24 normal course of your employment?<br/>25 A. Yes, I did.</p> |

**Naegeli**  
**REPORTING**  
CORPORATION

800.528.3335  
www.NaegeliReporting.com  
503.227.7123 FAX

Portland, OR (503) 227-1544  
Seattle, WA (206) 622-3376  
Spokane, WA (509) 838-6000  
Coeur d'Alene, ID (208) 667-1163  
Item F000116  
Court Reporting Trial Presentation Videography Videoconferencing

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 118 | 1<br>MS. KOSS: Okay, I'd like to --<br>2 JUDGE SMITH: -- admit No. 9?<br>3 MS. KOSS: Yes.<br>4 JUDGE SMITH: Mr. Engle, what is your<br>5 position on No. 9? It should be her citation and<br>6 then -- should be No. 9.<br>7 MR. ENGLE: Oh, I was looking at that.<br>8 That's to Shannon Thorson. Here we go.<br>9 MS. KOSS: That's it.<br>10 JUDGE SMITH: And so, it's -- let me just<br>11 count -- one, two, three, four, five, six pages.<br>12 MR. ENGLE: No. Same objections I had<br>13 before regarding the 1999 incident.<br>14 JUDGE SMITH: Is this for a 1999 incident?<br>15 MS. KOSS: It is.<br>16 JUDGE SMITH: Oh, okay. That's fine. I<br>17 understand why you're offering it and why he's<br>18 objecting. And I'll go ahead and receive it.<br>19 Q. All right, Trooper Taylor, was the purpose<br>20 of this report to document the fire that occurred on<br>21 July 8, 1999?<br>22 A. Yes.<br>23 Q. And does your report state that the fire<br>24 occurred at Mr. Johnston's property?<br>25 A. Yes. | 120 | 1 Q. Okay. Did he tell the firefighters that<br>2 he knew how the fire started?<br>3 A. On this one, no, I do not.<br>4 Q. Did you ask him questions to investigate<br>5 how the fire started?<br>6 A. Yes, I did.<br>7 Q. Did you ask him about how the fire might<br>8 have started or who might have started it?<br>9 A. Mr. Johnston was unhelpful. He would not<br>10 let me talk to anybody on the property.<br>11 Q. Okay. Well, then, I'd like to direct your<br>12 attention back to the October 28, 2006 fire incident<br>13 that you responded to at --<br>14 A. Yes.<br>15 Q. -- Mr. Johnston's property. Is that the<br>16 second incident you were referring to when you said<br>17 you were out there twice?<br>18 A. Yes.<br>19 Q. And why were you at his property again,<br>20 that day?<br>21 A. On October 28, 2006, about 8:08 p.m., I<br>22 was traveling southbound on Highway 233 near<br>23 milepost 6, when I observed a very large fire east<br>24 of that location. I notified YCOM to send out a<br>25 fire department and I was going to search for the |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 119 | 1 Q. Generally, can you just tell me a little<br>2 bit about, you know, just very generally why you<br>3 were there and what you observed that day?<br>4 A. On July 8, 1999, at about 12:37 p.m., I<br>5 was notified by the Yamhill County communications<br>6 that the fire department needed assistance at 11320<br>7 Lafayette Highway for an illegal burn. And I<br>8 responded to the scene and talked to two<br>9 firefighters that were on the scene waiting for me.<br>10 And they informed me that Mr. Johnston had<br>11 interfered with their attempt to put out an illegal<br>12 burn.<br>13 Q. Were you there while the burn was actually<br>14 taking place?<br>15 A. I was -- I arrived after they had<br>16 extinguished the fire.<br>17 Q. Okay.<br>18 A. I, I did go back onto the property<br>19 afterwards, though.<br>20 Q. Okay. According to your report, did Mr.<br>21 Johnston admit to igniting this fire?<br>22 A. I do not believe so. Oh, I'm sorry, did<br>23 you say admitted starting a fire?<br>24 Q. Correct.<br>25 A. No. | 121 | 1 exact location of the fire in that area. I located<br>2 the fire, which was behind the residence of 11320 SE<br>3 Lafayette Highway.<br>4 Q. Approximately how far away were you when<br>5 you first saw this fire that you called in about?<br>6 A. Easily a half mile.<br>7 Q. Okay. So, did this appear to be a rather<br>8 large fire to you?<br>9 A. A very large fire, yes.<br>10 Q. I'd like to introduce Exhibit D8. Trooper<br>11 Taylor, this is the other exhibit that I sent to<br>12 you, which is your report from the October 28, 2006<br>13 incident.<br>14 A. Yes.<br>15 Q. Do you recognize this document?<br>16 A. Yes. This is my report that I wrote.<br>17 Q. Is this a true and accurate copy?<br>18 A. Yes.<br>19 Q. And did you draft this document during the<br>20 normal course of your employment with the Oregon<br>21 State Police?<br>22 A. Yes.<br>23 MS. KOSS: Okay, I'd like to admit Exhibit<br>24 D8 into the record, please.<br>25 MR. ENGLE: No objection. |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 122 | <p>1 JUDGE SMITH: Okay. I'm going to go ahead<br/>2 and receive D8.<br/>3 Q. Trooper Taylor, was the purpose of this<br/>4 report to document that the fire occurred on October<br/>5 28, 2006?<br/>6 A. Yes.<br/>7 Q. And does it state that the fire occurred<br/>8 on Mr. Johnston's property?<br/>9 A. Yes.<br/>10 Q. In this report, did you ask Mr. Johnston<br/>11 about how the fire started?<br/>12 A. If I asked him how the fire started? Yes,<br/>13 I did.<br/>14 Q. Okay. And if I can direct you, I think<br/>15 it's towards the very last couple sentences of your<br/>16 report. Could you just read those aloud?<br/>17 A. "I talked to the homeowner identified by<br/>18 his Oregon drivers license as Curtis Johnston, date<br/>19 of birth of 10/9/50 and I asked Mr. Johnston why he<br/>20 was burning. Mr. Johnston said he did not know how<br/>21 it got started."<br/>22 Q. Did Mr. Johnston tell you that hot hay<br/>23 combusting was the cause of the fire?<br/>24 A. No.<br/>25 Q. Did you see any hay or burned hay or</p>                                                                                                                                                      | 124 | <p>1 patrol. I cannot tell you exactly how long I was on<br/>2 the scene.<br/>3 Q. And you got there at what time?<br/>4 A. I do not recall the time I got there. I<br/>5 located the fire about 8:08 p.m. and then I located<br/>6 - or saw the fire. Then I went to locate the exact<br/>7 location of it. So, I can't tell you exactly what<br/>8 time I got on scene.<br/>9 Q. So, you saw it at 8:08 p.m. at night and<br/>10 (audio skip) some time thereafter?<br/>11 THE WITNESS: Hello?<br/>12 JUDGE SMITH: Are you still there, Ms.<br/>13 Taylor?<br/>14 THE WITNESS: I didn't hear his question,<br/>15 Your Honor.<br/>16 JUDGE SMITH: We still hear you. We can<br/>17 still hear you.<br/>18 THE WITNESS: Okay. I didn't hear his<br/>19 question.<br/>20 JUDGE SMITH: Ms. Taylor, are you there?<br/>21 THE WITNESS: Yes.<br/>22 JUDGE SMITH: Okay, we can still hear you.<br/>23 THE WITNESS: I, I could not hear Mr. -<br/>24 the - Mr. - I can't - don't know his name - his<br/>25 question. I missed it.</p>                                                                                                                     |
| 123 | <p>1 remains of hay on the property, Trooper Taylor?<br/>2 A. I don't recall seeing any hay at all.<br/>3 Q. Did you see anything burned at all, aside<br/>4 from the large pile of solid waste that was burning<br/>5 and the trees that were also burning?<br/>6 A. No. I just saw that pile and that was the<br/>7 only thing I saw burning besides the trees that they<br/>8 were inside of.<br/>9 Q. Did Mr. Johnston say anything to you at<br/>10 all about hay or anything else causing the fire?<br/>11 A. No, he did not.<br/>12 MS. KOSS: Those are the only questions I<br/>13 have for Trooper Taylor, at this time.<br/>14 JUDGE SMITH: All right. So, Mr. Engle,<br/>15 did you want to ask Trooper Taylor any questions?<br/>16 CROSS-EXAMINATION OF TROOPER TAYLOR<br/>17 BY MR. ENGLE:<br/>18 Q. Trooper Taylor, how long were you there in<br/>19 October of 2006? How long were you there that<br/>20 evening?<br/>21 A. I don't recall how long exactly I was<br/>22 there. I stayed there while they were putting out<br/>23 the fire and then they called the Fire Marshal and<br/>24 did some video of it. And Mr. Johnston was<br/>25 cooperating, so at that time, I continued on my</p> | 125 | <p>1 MR. ENGLE: You can call me anything you<br/>2 want, Ms. - Trooper Taylor.<br/>3 Q. So, you first observed the fire around a<br/>4 little after 8:00 at night from your patrol car and<br/>5 you say some time expired before you actually<br/>6 arrived at the scene. Is that what you just told<br/>7 me?<br/>8 A. That is correct. I drove down Lafayette<br/>9 Highway and went back up - or I'm sorry, 233, cut<br/>10 around the back side and went back up Lafayette<br/>11 Highway until I located the address it was at.<br/>12 Q. Okay.<br/>13 A. So, it could have been a few minutes. I<br/>14 can't tell you exactly how long.<br/>15 Q. When you arrived at the scene, what was<br/>16 the status of the fire? Was it still as high<br/>17 as you'd originally seen it? Had it burned down?<br/>18 What, what did you observe when you arrived there?<br/>19 A. It was in the very back. It was still<br/>20 burning, visible and I waited for the fire<br/>21 department to get there.<br/>22 Q. So, you did or did not go back to the fire<br/>23 initially?<br/>24 A. No. I waited for the fire department -<br/>25 Q. Okay.</p> |

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 126 | <p>1 A. -- to arrive on scene and go back onto the</p> <p>2 property, due to the fact that I had problems with</p> <p>3 Mr. Johnston last time this occurred.</p> <p>4 Q. How long did you wait for the fire</p> <p>5 department to get there, approximately?</p> <p>6 A. They came from Dayton, so I'm not exactly</p> <p>7 sure how long it took them to get there.</p> <p>8 Q. Are you talking half an hour, --</p> <p>9 A. I don't have their time.</p> <p>10 Q. -- five minutes, an hour, what are we</p> <p>11 talking?</p> <p>12 A. Probably less than 10 minutes. I'm not</p> <p>13 for sure. It wasn't that long. They were a couple</p> <p>14 of miles away.</p> <p>15 Q. When the fire department arrived, did you</p> <p>16 then go back to the location or site of the fire</p> <p>17 with them?</p> <p>18 A. Yes, I did.</p> <p>19 Q. Okay. What was the state or status of the</p> <p>20 fire at that time? Was it, was it burned down or</p> <p>21 was it still in full, full force?</p> <p>22 A. It probably was burned down a little, but</p> <p>23 it was still a pretty large fire.</p> <p>24 Q. Okay. Was it -- it was, it was nighttime</p> <p>25 then. It was, it was dark at that time, wasn't it?</p> | 128 | <p>1 Q. -- or were you able to see that?</p> <p>2 A. -- the trees were on fire.</p> <p>3 Q. The entire tree line?</p> <p>4 A. No. The area in which the burn was, was</p> <p>5 burning, the trees I could see were on fire.</p> <p>6 Q. Okay. How many trees would that be and</p> <p>7 for what distance from the actual site of the burn?</p> <p>8 A. The burn pile was within the tree line.</p> <p>9 Q. Okay.</p> <p>10 A. And I don't recall how many trees. I just</p> <p>11 remember seeing some trees on fire. I did not count</p> <p>12 them.</p> <p>13 MR. ENGLE: Okay, appreciate your help.</p> <p>14 Thank you very much. That's all.</p> <p>15 JUDGE SMITH: Ms. Koss, anything else for</p> <p>16 her?</p> <p>17 MS. KOSS: I don't think so, no.</p> <p>18 JUDGE SMITH: All right. Trooper Taylor,</p> <p>19 I believe that's all we have for you. I want to</p> <p>20 thank you for your time and you are free to hang up.</p> <p>21 THE WITNESS: Okay. Thank you, Your</p> <p>22 Honor.</p> <p>23 JUDGE SMITH: Any other witnesses for you,</p> <p>24 Ms. Koss?</p> <p>25 MS. KOSS: No.</p> |
| 127 | <p>1 A. Yes, it was.</p> <p>2 Q. So, the only observable light that you had</p> <p>3 would have been the fire itself. Is that an</p> <p>4 accurate statement?</p> <p>5 A. And my headlights from my vehicle, yes,</p> <p>6 the fire and my headlights.</p> <p>7 Q. Did you have your headlights trained on</p> <p>8 the entire -- on the, on the burning material itself</p> <p>9 or did you shut them off?</p> <p>10 A. No. I had my car facing towards the burn</p> <p>11 pile, with my headlights on.</p> <p>12 Q. Were you able to identify the materials</p> <p>13 that you saw burning, by the time you finally</p> <p>14 arrived at the scene?</p> <p>15 A. While I was there, I observed some</p> <p>16 insulation, light bulbs, bicycles and plastic</p> <p>17 bottles being burned, as well as the trees. That's</p> <p>18 the only thing I could see, due to the smoke. And I</p> <p>19 video- recorded it on my camera.</p> <p>20 Q. So, how far away was this tree from the,</p> <p>21 the site of the burn?</p> <p>22 A. The burning pile was in the tree line.</p> <p>23 Q. Okay. Had the, had the tree line itself</p> <p>24 burned --</p> <p>25 A. The tree, --</p>                                           | 129 | <p>1 JUDGE SMITH: Okay. Did you want to call</p> <p>2 your witness?</p> <p>3 MR. ENGLE: I do.</p> <p>4 CURTIS BRIAN JOHNSTON, called as a witness by</p> <p>5 the Respondent, having been first duly sworn, was</p> <p>6 examined and testified as follows:</p> <p>7 BY JUDGE SMITH:</p> <p>8 Q. State your full name for the record.</p> <p>9 A. Curtis Brian Johnston.</p> <p>10 Q. And spell your last name.</p> <p>11 A. J-O-H-N-S-T-O-N.,</p> <p>12 DIRECT EXAMINATION OF RESPONDENT</p> <p>13 BY MR. ENGLE:</p> <p>14 Q. Your address?</p> <p>15 A. 11320 SE Lafayette Highway, Dayton, Oregon</p> <p>16 97114.</p> <p>17 Q. At that location is what, how many acres,</p> <p>18 and what (inaudible)?</p> <p>19 A. Approximately 60 acres, chicken barn,</p> <p>20 home, hired (sounds like) man's home, horse barn.</p> <p>21 Q. How long have you lived there?</p> <p>22 A. Since 1994.</p> <p>23 JUDGE SMITH: I'm sorry, '84 or '94?</p> <p>24 THE WITNESS: '94.</p> <p>25 JUDGE SMITH: '94.</p>                                                                                                  |

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 130 | <p>1 MR. ENGLE: Why don't you sit right over<br/>2 here so you can be heard well. Now, she won't be<br/>3 able to hear me.<br/>4 JUDGE SMITH: I can hear you.<br/>5 MR. ENGLE: Okay.<br/>6 Q. When you lived there, what improvements<br/>7 did you make to the -- when you moved there in 1994,<br/>8 what improvements did you make to the property?<br/>9 A. Renovated the -- it was a bankrupt (sounds<br/>10 like) turkey farm. I renovated the buildings and<br/>11 turned them into poultry, four of the eight.<br/>12 Q. Okay. Describe fairly briefly your<br/>13 poultry operation. What is it that you do and how<br/>14 long does it take to do it? And explain to the<br/>15 Judge what, what you do there.<br/>16 A. We raise approximately 6 million pounds of<br/>17 poultry a year. It's changed dramatically just in<br/>18 the last few years now that we're organic. We no<br/>19 longer use antibiotics and so on, so bio- security.<br/>20 Q. You're talking to her, not me.<br/>21 A. Bio-security and avian influenza has<br/>22 become a huge thing since the, the outbreak in<br/>23 Vietnam and Asian countries. And so, our contract<br/>24 states right in it no one's allowed on the place<br/>25 except for the employees. And we have huge signs</p> | 132 | <p>1 A. Correct.<br/>2 Q. And then you sell it to a (speaking<br/>3 simultaneously - inaudible)?<br/>4 A. We don't sell it, because we never owned<br/>5 it, as opposed to the processor. He comes and gets<br/>6 it, brings a crew in and loads them and takes them<br/>7 away.<br/>8 Q. And who's currently your processor?<br/>9 A. Draper Valley Farms out of Mt. Vernon,<br/>10 Washington.<br/>11 Q. Draper Valley? And were they, were they<br/>12 the processor in 2006?<br/>13 A. They were.<br/>14 Q. Okay. Now, was this the first opera--<br/>15 poultry operation you've ever run in your life?<br/>16 A. No, it's not.<br/>17 Q. How many others have you had?<br/>18 A. Two.<br/>19 Q. And where were they located?<br/>20 A. St. Paul, Oregon and Onalaska, Washington.<br/>21 Q. Okay. So, you set up the operation. You<br/>22 ended up selling it. You moved to another one. You<br/>23 set up an operation, sell it and then this is your<br/>24 third operation?<br/>25 A. Correct.</p> |
| 131 | <p>1 right by the driveway that state that also. And we<br/>2 can lose our contract if we violate that.<br/>3 Q. How many square foot of barns do you have<br/>4 under cover for the poultry operation?<br/>5 A. The poultry operation covers 120,000<br/>6 square feet.<br/>7 Q. Okay. And you may have said this. I<br/>8 didn't hear you. What are these chicks, chickens<br/>9 like when you bring them in? How old are they?<br/>10 A. Day old. They were hatched that morning.<br/>11 Q. Okay.<br/>12 A. They come to us within a few hours of<br/>13 being hatched.<br/>14 Q. Okay. And, and you bring them in. You<br/>15 put them under cover. You feed them.<br/>16 A. Brooders.<br/>17 Q. Brooders, heat.<br/>18 A. Right. Put down their litter for them, --<br/>19 Q. Okay.<br/>20 A. -- heat, food.<br/>21 Q. Okay.<br/>22 A. We're basically a paid babysitter. We<br/>23 don't own the chick and we don't own the feed.<br/>24 We're just a paid babysitter.<br/>25 Q. The chicken gets to be a fryer.</p>                                                                                                                                                                                                                                                           | 133 | <p>1 Q. All right, okay. You mentioned horse<br/>2 barns. What, what's the deal with horses?<br/>3 A. My wife is into barrel racing.<br/>4 Q. You and your family are a big deal in the<br/>5 St. Paul Rodeo Association. Is that right?<br/>6 A. Right.<br/>7 Q. In fact, your daughters have been queens<br/>8 and what have you (inaudible words).<br/>9 A. Right.<br/>10 Q. And, and what's your wife's name?<br/>11 A. Sally.<br/>12 Q. And Sally likes to barrel race. How long<br/>13 has she done that?<br/>14 A. 40 years.<br/>15 Q. How many horses does she have --<br/>16 A. Five.<br/>17 Q. -- now. Five? How many did she have in<br/>18 2006?<br/>19 A. Four.<br/>20 Q. Okay. And these are all barrel racing<br/>21 horses?<br/>22 A. Yes.<br/>23 Q. You love those horses, do you?<br/>24 A. Yeah, my wife.<br/>25 Q. This is what, this is what his wife likes</p>                                                                                                                         |

134

1 to do. This is what your wife likes to do, right?  
2 A. Correct.  
3 Q. All right, okay. What do you feed horses?  
4 A. Hay.  
5 Q. Okay. Did you have hay on the property in  
6 the fall of 2006, before the October fire?  
7 A. We did.  
8 Q. Okay. Do you always keep hay on the  
9 property?  
10 A. Always.  
11 Q. All right. This particular batch of hay  
12 was, was acquired where and when?  
13 A. It came from Carl Zweifel (sp). He hauls  
14 hay into a lot of area dairies and horse people out  
15 in Madras and K Falls and so on. This hay had to  
16 come from Madras.  
17 Q. Okay. This is first, second, third  
18 cutting hay, what?  
19 A. This was third cutting.  
20 Q. Okay.  
21 A. And it was orchard grass.  
22 Q. And what's the deal with third cutting  
23 hay?  
24 A. Well, third cutting's always a little bit  
25 iffier, because of the season.

135

1 Q. Okay.  
2 A. They try and push it, because it's a rainy  
3 (sounds like) day kind of thing or whatever, but not  
4 always. It just depends on the fall.  
5 Q. So, when did you acquire this particular  
6 load of hay?  
7 A. Early October.  
8 Q. Okay. And you put it in the barn. Are  
9 these, are these the typical 100-pound bales or are  
10 these the (speaking simultaneously - inaudible).  
11 A. These are three-tie 100-pound bales. But,  
12 they're in a 56-bale block.  
13 Q. Okay. So, three-tie 100-pound bales.  
14 They're the ones a man can --  
15 A. Yeah, that's correct.  
16 Q. -- pick up and unload. And they're in a  
17 block. And how do you move them?  
18 A. With a hay squeeze.  
19 Q. Okay. Do you own a hay squeeze?  
20 A. We do.  
21 Q. Because you move a lot of hay?  
22 A. Well, actually, the reason we own a hay  
23 squeeze is because we use straw for all of our  
24 chicken bedding, because we're sustainable  
25 agriculture.

136

1 Q. This particular hay was being used for  
2 what purpose, --  
3 A. Horses.  
4 Q. -- was there for what purpose?  
5 A. Horses.  
6 Q. Okay. There is a -- the site where this  
7 fire occurred is where on the 60-acre farm?  
8 A. At the back, far corner.  
9 Q. Can you see it from the house?  
10 A. No.  
11 Q. Okay.  
12 A. It's obscured by chicken barns.  
13 Q. Before -- you're going to tell me you  
14 moved the hay out there. Before you moved the hay  
15 out there, what was there?  
16 A. It was an old dump that was there prior to  
17 us buying the place.  
18 Q. Okay. We've had -- we've heard evidence  
19 and you'd agree that there were some barrels and a  
20 bicycle and some metal there. How'd that metal get  
21 there?  
22 A. It's all stuff that was there in this dump  
23 prior to us owning the place.  
24 Q. Okay. Was that all that was there before  
25 you -- not -- we're going to talk about the

137

1 demolition in a minute, but before you put the  
2 demolition out there, was that all that was --  
3 A. Prior to the demolition.  
4 Q. -- there, just some old metal?  
5 A. Right.  
6 Q. Nothing burnable?  
7 A. No, all rusty stuff that had been out  
8 there forever.  
9 Q. Okay. At some point, you moved some  
10 demolition material out there. I want you to tell  
11 the judge about that and why you did it and when.  
12 A. In July -- I can't remember the exact date  
13 -- but in July, we had a house flood via a broken  
14 pipe. And we had to take out all of our floor,  
15 which included all the cabinetry. Everything that  
16 sat on the floor had to come out to (inaudible).  
17 So, therefore, it was, you know, and basically there  
18 was a tile, tile floor. So, it was tile Hardirock  
19 and tongue and groove lumber that was under that.  
20 And we had to remove all that. At the time we  
21 called Western Oregon Waste, they didn't have any  
22 dump boxes available. So, we loaded it on a farm  
23 wagon and took it out back and put it in a pile to  
24 store it.  
25 Q. Okay. You haven't mentioned insulation.



138

1 Was insulation involved?  
2 A. Yes, because the underfloor was all  
3 insulated, so all of it had to come out, tob.  
4 Q. So, you put it on a farm wagon and you  
5 moved it out there, for what purpose?  
6 A. Well, until we had time, because we were  
7 busy. We were in the middle of harvest season. We  
8 were busy at the time and, like I say, we couldn't  
9 get dumpsters from Western Oregon and we had to get  
10 it out of there, because it was destroying the rest  
11 of the house because of the wetness and the mold  
12 that was growing.  
13 Q. So, you said you were in the middle of  
14 harvest season. What are you doing in the middle of  
15 -- what's harvest season to you? You're a chicken  
16 man.  
17 A. Well, harvest season's also shipping  
18 chickens, --  
19 Q. Okay.  
20 A. -- which is -- and chickens are 24/7.  
21 Q. Okay.  
22 A. You just can't leave the place. You  
23 don't.  
24 Q. Okay. So, when you bring in all these  
25 baby chicks, there's a time period before you, --

139

1 A. Right.  
2 Q. -- you move them out. How long?  
3 A. Anywhere between 46 and 49 days, --  
4 Q. Okay.  
5 A. -- depending whether they take them for a  
6 deli (sounds like) bird or a broiler.  
7 Q. So, they get to be a fryer or, or broiler,  
8 or whatever in 49 days?  
9 A. 46 typically and sometimes (inaudible  
10 words).  
11 Q. Okay. So, why couldn't you get dump  
12 boxes?  
13 A. They didn't have enough. We had the same  
14 problem this fall, when we went to demolish a mobile  
15 home.  
16 Q. All right.  
17 A. It happens. They have times where you  
18 just don't.  
19 Q. Why, why did you take them out to this  
20 back pit (sounds like) area?  
21 A. To get it out of the way.  
22 Q. Okay. What was your intent with regard to  
23 that demolition waste?  
24 A. When we had time in the fall, we'd get  
25 dump boxes and load it in with our trackhoe (sounds

140

1 like) and haul it to McMinnville, Western Oregon,  
2 Western Oregon Waste.  
3 Q. Were you aware that you can't just  
4 maintain a solid waste dump in the back of your  
5 property?  
6 A. I was not.  
7 Q. Hmm?  
8 A. I was not.  
9 Q. I mean, a permanent solid waste.  
10 A. Oh, yeah, yeah.  
11 Q. Okay. I'm not talking about temporary.  
12 I'm talking were you aware you could not maintain a  
13 permanent solid waste disposal --  
14 A. Yes.  
15 Q. -- area in the back of your property.  
16 How were you aware of that?  
17 A. (tape skip) (inaudible words).  
18 Q. You were a Fire Board member at one time?  
19 A. Yeah, but that really had nothing to do  
20 with having a dump. That would have been -- as a  
21 Fire Board member, all we did was budgetary stuff.  
22 It had nothing to do with rules, regulations.  
23 Q. So, how much material, how much demolition  
24 waste did you move out there on the farm truck, on  
25 the farm wagons?

141

1 A. Oh, approximately six wagons worth. And  
2 our wagons are eight feet by 12 feet long by four  
3 foot size.  
4 Q. And again, it was the Hardiboard wood,  
5 insulation?  
6 A. Yeah, right. And the insulation actually  
7 would have been a lot larger, but we ran it through  
8 our hay baler and compacted it into a small amount,  
9 small area, just to be able to handle it, because  
10 the insulation was a horrible mess.  
11 Q. Okay.  
12 A. And it was soaking wet.  
13 Q. How long thereafter did, did you move this  
14 hay into the barn? Did you buy the (speaking  
15 simultaneously - inaudible)?  
16 A. The hay came in early October, like  
17 around, somewhere around the 10th, the 14th. I  
18 don't know the exact date.  
19 Q. Did you subsequently discover something  
20 about this hay in the barn that made you want to get  
21 it out, or what was it?  
22 A. My wife, you know, had broken open a bale  
23 and it was warm. And so, I called the guy that  
24 delivered it and he said he'd make it right, just  
25 get it out of the building. And so, we did. We

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 142 | <p>1 took the hay squeeze and picked the blocks up and<br/>2 took them out back. I asked him at the time and he<br/>3 said, if you take them outside and they should cool<br/>4 down. The reason they were heating up is because<br/>5 they were inside in close quarters and stacked next<br/>6 to each other.<br/>7 Q. So, you took the hay squeeze?<br/>8 A. Picked each block up and drove them out<br/>9 back and set them down.<br/>10 Q. Okay. Now, where with regard -- in<br/>11 relationship to the place you'd temporarily stored<br/>12 the demolition, the demolition material, where did<br/>13 you stack these hay bales?<br/>14 A. Oh, about 40, 60, 80 feet away on the edge<br/>15 of the field, edge of the dirt.<br/>16 Q. And how many days before the fire do you<br/>17 think you did that, if you have any idea?<br/>18 A. I don't know, a few. I can't tell you<br/>19 exactly.<br/>20 Q. Had you gone back and looked at the hay<br/>21 again?<br/>22 A. I had just driven by it, just because I<br/>23 farm and work there daily.<br/>24 Q. Okay. On the night of October --<br/>25 A. -- 28th.</p> | 144 | <p>1 are, you know, they're at 8 or whatever, apparently.<br/>2 But, I get home at 9 and I see all the fire truck<br/>3 lights and everything in the back part. And I drove<br/>4 back there. And Bridget Taylor came at me,<br/>5 literally, and just livid and started chewing on me<br/>6 and, and I never said a word. I never spoke to her.<br/>7 And then, she wanted to see my driver's license. I<br/>8 got it out of my vehicle and gave it to her. And<br/>9 still I never spoke to her. I never spoke to<br/>10 anybody, because, like I say, she was just livid and<br/>11 I didn't know, and then -- until the next morning,<br/>12 when it was daylight. I was able to go out there.<br/>13 And then, I could see that the stacks of hay were<br/>14 all gone, you know. And I couldn't -- in the dark,<br/>15 I had no idea what was what yet, or anything. All I<br/>16 could see was the fire from the debris from the<br/>17 house. And so, that's all I knew, you know, until<br/>18 the next day I surmised that it started in the hay,<br/>19 because there was none of it left or to be even put<br/>20 out, versus there was a lot of the debris left from,<br/>21 from the house. Of course, a lot of it was not<br/>22 burnable, from the insulation to the tile to the<br/>23 Hardirock. None of it burned. So, it was all still<br/>24 there, as the picture showed.<br/>25 Q. So, the next day, you observed that the</p> |
| 143 | <p>1 Q. -- 28th, thank you, 2006, this stuff back<br/>2 there caught fire. Where were you?<br/>3 A. I was coming home from Hood Canal. I'd<br/>4 gone up there to go crabbing at a friend's place.<br/>5 Q. Okay.<br/>6 A. We happened to have shipped chickens and<br/>7 we had about three days to (inaudible words), so I'd<br/>8 gone up there.<br/>9 Q. Between these groups of chickens --<br/>10 A. Right.<br/>11 Q. -- that you bring in, is when you had some<br/>12 time --<br/>13 A. Right.<br/>14 Q. -- to do something. So, you'd gone up<br/>15 there to go crabbing. Did you get some crabs?<br/>16 A. Yeah, I did.<br/>17 Q. Okay. Do you absolutely know how that<br/>18 fire started?<br/>19 A. No, I do not.<br/>20 Q. Tell the judge what, what you think<br/>21 happened or what may have happened or just give her<br/>22 your take on how that fire (speaking simultaneously<br/>23 - inaudible).<br/>24 A. When I got home that night, it was, it was<br/>25 probably 9:00. I mean, these guys (sounds like)</p>                                                                                       | 145 | <p>1 hay, at least, was gone.<br/>2 A. Right. And I guess I assumed, because I'd<br/>3 moved it out back to cool it off, that maybe it<br/>4 didn't cool off and that's what started it. But, I<br/>5 have no way to prove it one way or the other. I<br/>6 mean, for all I know, kids had come along and<br/>7 decided to throw a match to it. But, I can't prove<br/>8 any of that, one way or the other.<br/>9 Q. Did you, Mr. Johnston, in any way<br/>10 participate in lighting that fire?<br/>11 A. No, not whatsoever.<br/>12 Q. Did anybody in your family --<br/>13 A. No.<br/>14 Q. -- in any way participate in lighting that<br/>15 fire?<br/>16 A. Not that I know of, no.<br/>17 Q. Okay. I mean, who else is out there but<br/>18 you?<br/>19 A. Salty and I.<br/>20 Q. Okay and your son (inaudible).<br/>21 A. Yeah, right, but he wouldn't have been.<br/>22 He was living over --<br/>23 Q. He what?<br/>24 A. He lived in McMinnville.<br/>25 Q. Okay, all right. So, somehow, somehow the</p>                                                                                                                                                                                                                                                                                                                                                                                                                                   |

146

1 fire got started. It either started through the  
 2 combustion of the hay or somebody tossed a match on  
 3 it, but how'd the fire get from the hay, which is  
 4 40, 60, 80 feet away, over to this demolition pile?  
 5 A. It was stacked by a -- it's kind of a  
 6 tree-lined and a tree lining that there's a little  
 7 swale where you can't farm, because it's too wet  
 8 ground. So, it's some just scrub, scrub trees, you  
 9 know, like poplars or whatever and dry grass that  
 10 normally grows. And, you know, it, it obviously  
 11 could have gone either way. If somebody would have  
 12 started the fire, it could have gone to the hay or  
 13 vice versa. But, obvious-- from my assumptions and  
 14 actually in looking at it, it spread via the dry  
 15 grass. It happened to be a dry October and it  
 16 spread in the dry grass along --  
 17 Q. -- this tree line?  
 18 A. Right, this tree line.  
 19 Q. And this is the tree line Bridget Taylor  
 20 was talking about, --  
 21 A. Correct.  
 22 Q. -- (speaking simultaneously - inaudible)  
 23 trees. So, how long is this tree line between where  
 24 the hay was and where the (inaudible)?  
 25 A. The tree line's 600 feet total, which --

147

1 Q. Between the hay and the demolition,  
 2 temporary demolition site?  
 3 A. 80 feet.  
 4 Q. Okay. And all those trees were burned?  
 5 A. No, no, just one tree dead, some partial  
 6 burning.  
 7 Q. The grass?  
 8 A. Yeah.  
 9 Q. It was burned?  
 10 A. Right.  
 11 Q. Okay. I think probably the key here, Mr.  
 12 Johnston, I mean, you said there was no willful  
 13 conduct on your part when you did this. So, the  
 14 argument's probably going to be negligence. Tell the  
 15 judge why you think you were or were not negligent  
 16 in not doing -- in doing what was not reasonably  
 17 necessary to do with this hay. I mean, (speaking  
 18 simultaneously - inaudible).  
 19 A. I guess I felt like I took the precautions  
 20 of moving it outside and I, in talking to the guy  
 21 that delivered it, he explained to me that once I  
 22 set it outside even in the blocks, that it would  
 23 cool down and not continue to, to heat up and  
 24 combust. So, I, I assumed that I'd taken enough  
 25 precaution that it wasn't an issue. And obviously -

148

1 - I mean, I and I still can't prove that that is  
 2 what caused it. So, maybe it is a moot point.  
 3 Maybe I did, in fact, take all the precautions I  
 4 needed to. You know, obviously, hindsight, if I knew  
 5 what I knew today, yeah, we'd have chopped it up and  
 6 spread it out on a field or whatever. But, at the  
 7 time, you know, it didn't, didn't cross our minds  
 8 that it was going to be an issue. It's the first  
 9 time (inaudible words), if that's what caused it.  
 10 JUDGE SMITH: He can keep going, but my --  
 11 for some reason, it's blinking, so let's --  
 12 MR. BACHMAN: Is the battery down?  
 13 JUDGE SMITH: It's either the battery or  
 14 this one tape has run out. I just need to put a new  
 15 one in. So, I'm not sure. Let's try that. Hold  
 16 on. I'm just going to try a new tape and if this  
 17 still blinks, I'll put a battery.  
 18 (break)  
 19 JUDGE SMITH: Okay, we're back on the  
 20 record and it seems to be -- oh, I see, it's saying  
 21 -- what are you going to do? Do it? No. Okay,  
 22 it's not going to do anything else for me, it looks  
 23 like. That's fine. We still have the phone going,  
 24 so I think we can just continue. Yeah, it's not  
 25 going to do anything else.

149

1 Q. All right, let's talk about the -- let's  
 2 talk about Bridget Taylor first. You said, you said  
 3 she, when you showed up at the scene about 9:00 or  
 4 so, that she was all upset at you for some reason.  
 5 What -- tell me what --  
 6 A. She accused me of having an illegal burn  
 7 and just making lots of accusations and literally  
 8 screaming at me.  
 9 Q. Why?  
 10 A. I would assume based on the prior  
 11 incident.  
 12 Q. Okay. Was that the 1999 or the 2003  
 13 incidents?  
 14 A. '99.  
 15 Q. Okay. Tell, tell the judge about the 1999  
 16 incident. I normally wouldn't bring this up at this  
 17 point, but everybody else has brought it up, so I  
 18 guess I'll bring it up.  
 19 A. 1999, the fire department -- I was asleep.  
 20 I'd shipped chickens the night before. Typically,  
 21 when we ship chickens, I have to be up all night.  
 22 Not typically, that is the way it is, because we  
 23 always ship at night. I had been asleep all night,  
 24 up the day before, asleep all night and the kids  
 25 came running in the house and said the fire

150

1 department just blew past the bio-security. So, I  
2 jumped in (audio skip) back there. And I'd just been  
3 woken up so, yes, I was testy and yes, I did get  
4 into a verbal battle with them. They lied to me and  
5 said, no, they stopped there and in fact, they  
6 didn't, you know, and so on. But, anyway, I told  
7 them to roll up their hoses and get out of there.  
8 We'd take care of the fire, which was the size of a  
9 barbecue, at best, at that time. And what the kids  
10 had done -- when we get chick deliveries and  
11 shipments, they come in little papers under the  
12 crates. They'd taken them back there where this  
13 stuff was that we always burn the chick papers,  
14 which we assume (tape skip) items and they burned  
15 them. (audio skip) So, anyway, long story short, I  
16 did get into it with a fireman. I turned off his --  
17 took the fire hose from him, turned it off, handed  
18 it back to him, told him to get out, using  
19 profanity.  
20 Q. And Bridget Taylor was involved. She was  
21 at least there (speaking simultaneously -  
22 inaudible)?  
23 A. They then called her later --  
24 Q. They called her, okay.  
25 A. -- to come cite me, because they don't

152

1 with the, the vet and everybody to do a news  
2 article. And all the news stations covered it, when  
3 avian influenza was a hot item, to try and impress  
4 upon people how critical it is. They just don't --  
5 they don't see how critical it is and that it's my  
6 living and how it can happen. They -- (inaudible.  
7 words). I don't know what their reason is. But,  
8 anyway, we finally did that and it's helped. But,  
9 people still have no regard for bio-security or  
10 don't understand it, so they -- and then they  
11 realized what they'd done, so they lied about it  
12 and, you know, human nature being what it is, and I  
13 got into it with them. It's that simple.  
14 Q. When you said you couldn't use  
15 antibiotics, that's because you're organic?  
16 A. Versus what they call sustainable, so that  
17 when -- all chicken's just so natural. It can't  
18 have any antibiotics in the --  
19 Q. So, if Dan Fox, for example, would have  
20 come out to look at the site and come onto the farm,  
21 and you would have let him on, what, what  
22 precautions would you have taken?  
23 A. Boots, coveralls, gloves and hair net.  
24 Q. And anybody who comes on and visits the  
25 operation, and including the producer himself --

151

1 have the ability to cite you.  
2 Q. Okay.  
3 A. And they were later -- those charges were  
4 later dismissed.  
5 Q. Why were you all upset about the fire  
6 department blowing by? What's this bio-diversity  
7 thing?  
8 A. They're, they're breaching my bio-  
9 security, which --  
10 Q. Security.  
11 A. -- if I have any problems whatsoever, I  
12 can't use antibiotics to stop any problem they may  
13 bring on my farm. And I, and it's my living. I  
14 mean, that's -- my entire living is by raising these  
15 chickens. And the other problem is if the processor  
16 happens to see them do it and I don't control it and  
17 let them do it, then I lose my contract. And, and  
18 obviously, if I lose my contract with one, the other  
19 one's not going to give me a contract, because I've  
20 failed to perform the duties that are prescribed in  
21 our contract to raise chickens. And people don't  
22 realize, and Bridget Taylor doesn't -- you can read  
23 all of her information -- they don't realize how  
24 critical bio-security is. The Oregon Department of  
25 Agriculture just came out two years ago to my farm

153

1 A. That's right, even -- yeah, absolutely,  
2 him more than anybody, because you know he's been to  
3 another chicken farm. But, everybody has to follow  
4 that precaution.  
5 Q. What about, what about the boots? What do  
6 you do with the boots?  
7 A. We, we dispose of them.  
8 Q. Okay. Are they sprayed or anything?  
9 A. Oh, yeah, absolutely. Everybody's  
10 disinfected coming in and going out.  
11 Q. Okay. So, it's a big deal.  
12 A. It's huge, yeah.  
13 Q. Okay.  
14 A. It's critical.  
15 Q. Okay. All right. So, in 1999, did you  
16 get cited by the Department of Environmental  
17 Quality? Any civil penalties, anything happen?  
18 A. None.  
19 Q. None. The only cite you got was for  
20 interfering with a police officer?  
21 A. Correct.  
22 Q. And how did that get handled?  
23 A. It was dismissed.  
24 Q. In fact, my son, who's a --  
25 A. Correct.

154

1 Q. -- criminal defense lawyer in Portland  
 2 represented you on that?  
 3 A. Right, correct.  
 4 Q. Okay, I don't do criminal defense. All  
 5 right. And that's that citation that's (speaking  
 6 simultaneously - inaudible)  
 7 A. Correct, right.  
 8 Q. But no DEQ civil penalties assessed?  
 9 A. None.  
 10 Q. No viola-, no, no citations or violations?  
 11 A. None.  
 12 Q. Okay. So, all this stuff about all these  
 13 past citations is nonsense?  
 14 A. I'd have to see a copy of any one of them.  
 15 I've never --  
 16 Q. Okay, tell me about 2003. What happened  
 17 in 2003?  
 18 A. It was news to me until it came up today.  
 19 So, I don't know, to be honest with you. I don't  
 20 even know what we're talking about in 2003.  
 21 MR. ENGLE: Well, we've got Exhibit 15,  
 22 right?  
 23 JUDGE SMITH: Yes, sir.  
 24 Q. What Shannon Thorson says is that this  
 25 resident has been cited by law enforcement for

155

1 reckless burning in the past, which is dead wrong,  
 2 right?  
 3 A. Right, untrue, never.  
 4 Q. "There were no means to extinguish the  
 5 fire." And you don't know what fire we're talking  
 6 about?  
 7 A. No, I don't. I mean, did the DEQ cite  
 8 anything or send any paperwork at that time?  
 9 Q. "The fire was located next to the brushy  
 10 area, with risk that the fire would spread. The  
 11 fire was unattended and it is our understanding that  
 12 the property owner, Curt Johnston, was home, but  
 13 that he would not answer the door." Is that all --  
 14 A. Not so. I don't even know what we're -- I  
 15 -- you know, again, just today is the first I've  
 16 heard of it.  
 17 Q. Well, this is a fire department referral  
 18 for open burning signed by Shannon Thorson.  
 19 A. Is this the one that Mr. Fox testified  
 20 earlier that that's the only piece of paper that  
 21 existed and that he never did anything about because  
 22 somebody was on sick leave?  
 23 MS. KOSS: Are we asking questions or -- ?  
 24 JUDGE SMITH: Just question and answer,  
 25 please.

156

1 Q. (speaking simultaneously - inaudible) so,  
 2 we will probably hear about that on cross  
 3 examination. So, you don't, you don't know what  
 4 this is about?  
 5 A. No, not at all.  
 6 Q. Were you cited, were you cited in 2003 by  
 7 -- for civil penalties --  
 8 A. No.  
 9 Q. -- by the Department of Environmental  
 10 Quality?  
 11 A. No.  
 12 Q. Were you getting a criminal citation at  
 13 that time for anything?  
 14 A. No.  
 15 Q. Okay. So, the only times that you've been  
 16 cited by anybody for anything relating to a fire on  
 17 your property is when you got an interfering with a  
 18 police officer citation?  
 19 A. Correct, other than what we're here for  
 20 now.  
 21 Q. Other than this, other than this. Okay.  
 22 Okay, tell us about Shannon Thorson, just briefly.  
 23 I don't want to dwell on this, but is she your  
 24 friend? Tell me. Tell me how --  
 25 A. No.

157

1 Q. -- you know her and what happened there.  
 2 A. No, Shannon --  
 3 MS. KOSS: Objection, relevance.  
 4 MR. ENGLE: (inaudible words) very  
 5 relevant.  
 6 JUDGE SMITH: Okay, go ahead and make your  
 7 argument and then I'll rule. That's it? Just that  
 8 it's not relevant?  
 9 MS. KOSS: I don't see how respondent's  
 10 relationship with Shannon Thorson goes to proving or  
 11 disproving the violations that are alleged in the  
 12 notice that is the scope of this hearing.  
 13 JUDGE SMITH: Okay. I'm going to allow  
 14 it.  
 15 MR. ENGLE: Thank you. Every one of  
 16 these, every one of these referrals has come from  
 17 Shannon Thorson.  
 18 Q. Okay, go ahead.  
 19 A. Shannon Thorson, being a fire marshal -- I  
 20 sat on the ESD board, Educational Service District  
 21 Board, in McMinnville, or for Yamhill County. I  
 22 unwittingly got involved in a -- not an argument,  
 23 but a dispute with Shannon Thorson, being on the ESD  
 24 Board. The ESD had taken what was a warehouse area  
 25 for a printing shop and turned it into a classroom

158

1 illegally, because its exits weren't adequate. I  
 2 didn't know that at the time, but because I sat on  
 3 the rural fire board, the superintendent came to me  
 4 and kind of in an odd way, duped me into getting a  
 5 meeting with Shannon Thorson, because they wanted to  
 6 get the okay to have this classroom there, because  
 7 they just plain didn't have enough space.  
 8 Q. And she was the Fire Marshal?  
 9 A. She was the Fire Marshal at the time and  
 10 she would have done the inspection and given the  
 11 okay.  
 12 Q. And you were both on ESD and you were also  
 13 on the fire board at the same time?  
 14 A. She was just a fire marshal. I was on the  
 15 ESD board.  
 16 Q. Okay, go ahead.  
 17 MS. KOSS: Are you providing testimony or  
 18 asking questions?  
 19 MR. ENGLE: Just like you did, I'm leading  
 20 my witness, just very similar to the way you ask  
 21 questions.  
 22 A. Okay, so, I'm in ESD. We have a special  
 23 meeting, have Shannon there to try and get  
 24 permission to, to create this classroom in this  
 25 storage area. They had already tangled with her and

159

1 I did not know that. They'd actually already done  
 2 the classroom. Shannon told them not, because she  
 3 came there with fire department printing to have it  
 4 done in the printing shop, which a lot of government  
 5 agencies do. So, she already knew about it.  
 6 Unbeknownst to me, this had all been done behind her  
 7 back and without her blessing. She knew it. I  
 8 didn't know it. We were in this meeting. Long  
 9 story short, when the superintendent presented this,  
 10 she blew up, literally blew up. (tape skip)  
 11 meeting's over. Everybody got up and walked out. I  
 12 was upset, because I sat on the fire board. I went  
 13 down and saw Chief (inaudible). Shannon lost her  
 14 cool. We want to work this out. Well, Jay said  
 15 that can't be. Shannon wouldn't do that. Well, long  
 16 story short, he did talk to Shannon. Shannon  
 17 admitted that she blew up. The ESD would never have  
 18 been allowed to come do an inspection. It came to  
 19 be a (tape skip), you know, caught in the middle of  
 20 it, because I sat there on the board. I have  
 21 nothing (tape skip) putting this classroom there or  
 22 okay it or whatever. It was up to the  
 23 superintendent to do it. But, Shannon had had an ax  
 24 to grind with that, and more than just this stuff.  
 25 Q. Did the relationship ever get any better

160

1 with her?  
 2 A. She's retired now and actually, she does  
 3 wave to me and smile when she sees me on the street,  
 4 so I don't know.  
 5 JUDGE SMITH: And just for clarification,  
 6 you're saying that this whole dispute with the  
 7 classroom and stuff, happened when?  
 8 THE WITNESS: When I was sitting on the  
 9 rural — so 19 — when I sat on the rural fire  
 10 board, so 2000, 2001, '99. I don't know.  
 11 JUDGE SMITH: Okay.  
 12 THE WITNESS: No, it happened prior to  
 13 '99. (inaudible words), so '98, it happened, —  
 14 JUDGE SMITH: Okay.  
 15 THE WITNESS: — because ESD has since  
 16 merged with Marion County, Marion and Polk County.  
 17 Q. So, what you're telling us is that on one  
 18 occasion back in '99, the boys had lit the chicken  
 19 papers and, and that shouldn't have been done?  
 20 A. Yeah, absolutely.  
 21 Q. And you've never participated in an  
 22 illegal burn thereafter, as far as you — ?  
 23 A. No.  
 24 Q. Okay, all right.  
 25 A. That's, I guess, the sad part about this

161

1 whole thing is that if — which I, after this '99  
 2 episode never happened again, I would never go out  
 3 in the middle of the night and light one, where  
 4 everybody in the world could drive by and see it.  
 5 That's what's so bizarre about this whole situation.  
 6 Q. Were there any auto parts out there?  
 7 A. None that I've ever seen.  
 8 Q. There were some old barrels that were  
 9 there before you got there.  
 10 A. The barrels have been there before I even  
 11 —  
 12 Q. And that old bicycle?  
 13 A. It was there before I even (speaking  
 14 simultaneously - inaudible).  
 15 Q. Other than that, this was all your  
 16 demolition stuff that you took --  
 17 A. Correct.  
 18 Q. — (speaking simultaneously - inaudible)  
 19 A. The insulation you see, the Hardrock, the  
 20 tile.  
 21 Q. So, if it's illegal to temporarily place  
 22 demolition waste on that site, then, then you're  
 23 guilty of that?  
 24 A. Correct.  
 25 Q. Okay, but, you inten— okay. But, the

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 162 | <p>1 other, the other things about intentionally or<br/>2 willfully or negligently going out and starting a<br/>3 fire -- Mr. Fox is claiming there was, I think, 55<br/>4 tons of material that you (inaudible words) when you<br/>5 cleaned up that site. What -- how do you respond to<br/>6 that?<br/>7 A. I believe I gave you the tickets (sounds<br/>8 like) for everything that I hauled off. And then<br/>9 you passed them on to DEQ.<br/>10 Q. I did (sounds like)<br/>11 A. I can't remember anymore. But, it was<br/>12 maybe 10 tons maximum.<br/>13 Q. (inaudible words)?<br/>14 A. Right.<br/>15 Q. Okay.<br/>16 A. One total cleanup from everything that had<br/>17 been there from previous years, too, prior to me.<br/>18 Q. The barrels and stuff that were --<br/>19 A. Gone.<br/>20 MS. KOSS: I misheard that. I'm sorry.<br/>21 Did you just ask him if it was just ash?<br/>22 MR. ENGLE: I said that included the<br/>23 barrels and, and bicycle stuff, the stuff that was<br/>24 there before. And that's what he just (inaudible).<br/>25 He cleaned up everything.</p>                                                                                                                                                              |
| 163 | <p>1 THE WITNESS: I, I totally cleaned it up.<br/>2 MS. KOSS: Oh, okay.<br/>3 THE WITNESS: It's grass from end to the<br/>4 other, period.<br/>5 MR. ENGLE: Anything else you want to say?<br/>6 THE WITNESS: (inaudible)<br/>7 MR. ENGLE: Okay, your witness. Did you<br/>8 intend to take a noon break? I mean, we're about<br/>9 done here, but --<br/>10 JUDGE SMITH: Yeah, I don't, I don't have<br/>11 any problem just finishing up. That's fine with me.<br/>12 MR. ENGLE: Okay. Are you okay with that?<br/>13 MS. KOSS: Yeah, I think we're going to be<br/>14 -- yeah, I can't imagine taking too much longer. I<br/>15 would like to request -- my watch says 12:10 -- just<br/>16 a 10 minute bathroom and conference break.<br/>17 JUDGE SMITH: Before you question him?<br/>18 MS. KOSS: Yes, --<br/>19 JUDGE SMITH: Okay.<br/>20 MS. KOSS: -- if that's all right.<br/>21 JUDGE SMITH: Yeah, that's fine.<br/>22 (break)<br/>23 JUDGE SMITH: We are already back on the<br/>24 record. So, are you ready to get started again, Ms.<br/>25 Koss?</p>                                                                                                                                                                                                |
| 164 | <p>1 MS. KOSS: Yes.<br/>2 JUDGE SMITH: Okay. And did you want to<br/>3 ask Mr. Johnston some questions?<br/>4 MS. KOSS: I would like to.<br/>5 JUDGE SMITH: Go ahead.<br/>6 CROSS EXAMINATION OF RESPONDENT<br/>7 BY MS. KOSS:<br/>8 Q. So, Mr. Johnston, you testified that a lot<br/>9 of the debris that was in the pile had been there<br/>10 since before '94, when you moved on it. Is that<br/>11 correct?<br/>12 A. Correct.<br/>13 Q. Okay. So, how many piles of debris were<br/>14 on your property when you moved onto that property?<br/>15 A. One pile.<br/>16 Q. Just one. So, you know, from past<br/>17 testimony and evidence at this hearing today, you<br/>18 know, it sounds like there was a debris pile with<br/>19 similar materials that was burned on that date in<br/>20 1999. Is it that debris pile that burned in 1999?<br/>21 A. No.<br/>22 Q. Was it -- so it was a different debris<br/>23 pile that burned in 1999?<br/>24 A. No, in 1999 -- when the chicks are<br/>25 delivered, there's a paper in the bottom of every</p>                                                                                                                                                                                                    |
| 165 | <p>1 chick tray. There's 150,000 chicks delivered, so<br/>2 there's -- then there's 100 chicks in a crate. So,<br/>3 that would be 15,000 pieces of this paper that are<br/>4 probably three times the size of this yellow legal<br/>5 pad. They obviously, have chicken poop on them,<br/>6 because the baby chicks are put in them. From the<br/>7 hatchery, they come to us and we dump the chicks<br/>8 around the brooders and feed and then, we go dispose<br/>9 of those papers. And we always disposed of them by<br/>10 burning them.<br/>11 Q. Okay. So, is it your testimony that the<br/>12 1999 fire was only paper?<br/>13 A. Correct, right. My kids started that fire<br/>14 and it was only chick paper.<br/>15 Q. Okay. So, you know, we heard Dan testify<br/>16 as to Chief Thorson's report and Bridget Taylor's<br/>17 report about the 1999 fire. So, are those reports<br/>18 untrue, when they claim that they included plastics,<br/>19 petroleum products, tires and rubber products in<br/>20 that fire?<br/>21 A. Yes, they're incorrect.<br/>22 Q. And is it your testimony that you have no<br/>23 idea what fire they're talking about, in 2003?<br/>24 A. That's correct.<br/>25 Q. So, if they were indeed on your property,</p> |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">166</p> <p>1 documenting a fire in 2003, you had no idea that<br/>2 they were there?<br/>3 A. Correct. I don't remember it. I have no<br/>4 - I don't remember anything in 2003.<br/>5 Q. So, that dump pile that was there since<br/>6 before 1994, this is all part of a pile that you<br/>7 consider a temporary disposal?<br/>8 A. No.<br/>9 Q. So, did you have any intention of cleaning<br/>10 up that pile that was there for 17 (sounds like)<br/>11 years?<br/>12 A. The one that was there prior to me moving<br/>13 on there? No, -<br/>14 Q. Um hmm.<br/>15 A. - no, it was there prior to me moving<br/>16 there. Didn't know there was - you know, it wasn't<br/>17 my doing. Somebody else put it there and I didn't -<br/>18 - there was just metal, rusty metal.<br/>19 Q. Well, you did purchase the property in<br/>20 '94?<br/>21 A. Correct, not knowing that was there,<br/>22 obviously.<br/>23 Q. It's your property?<br/>24 A. Correct. Well, I've come to find out<br/>25 since then -- they just did a survey and it turns</p>                                                  | <p style="text-align: right;">168</p> <p>1 hot inside and - ?<br/>2 A. No, I just -- we have a probe that's about<br/>3 so long and it has a button on it you push that's<br/>4 for moisture. It doesn't tell you temperature.<br/>5 Q. Okay.<br/>6 A. But, typically, one comes with the other.<br/>7 Q. Okay, okay. So, you -- just to clarify<br/>8 the October 28 event, so, you some days before -- we<br/>9 don't know how many days -- is that correct --<br/>10 before the event that you moved the hay from the<br/>11 barn?<br/>12 A. Correct (inaudible).<br/>13 Q. Okay. And so, what led you to remove it<br/>14 from the barn? Can you just explain how you knew<br/>15 that it was hot or was it hot?<br/>16 A. My wife, my wife had gone to feed a bale<br/>17 of it and came to me and said it smelled bad.<br/>18 Q. Oh, I see, okay.<br/>19 A. So, I went out and checked it and stuck my<br/>20 arm down in, in between the bales. And it, it<br/>21 wasn't hot, but it was warm, which -- so, then, I<br/>22 called the guy that delivered it from Madras. And he<br/>23 said if it's warm, it could get, continue to get hot<br/>24 and that I should get it outside and it'd cool off.<br/>25 So, I did.</p> |
| <p style="text-align: right;">167</p> <p>1 out it's not on my property. It's on my neighbor's<br/>2 property. But that's a whole another point. At the<br/>3 time, I believed it to be on my property. It's a<br/>4 moot point. It's all cleaned up and gone now.<br/>5 Q. So, it sounds like -- you, you said that<br/>6 you always have hay on your property?<br/>7 A. Correct.<br/>8 Q. And so, you're pretty familiar with --<br/>9 A. I am?<br/>10 Q. -- hay. Do you purchase, --<br/>11 A. Well, my wife is, but, yeah.<br/>12 Q. -- do you purchase the hay from someone<br/>13 else?<br/>14 A. We've baled it ourselves and we've<br/>15 purchased. We've done --<br/>16 Q. Oh, okay, so you've done both. So, you're<br/>17 pretty experienced with baling and when it's too<br/>18 green or too wet and when, you know the --<br/>19 A. Correct, yeah. We have a moisture meter.<br/>20 We give it a test for moisture.<br/>21 Q. Oh, okay. You've got a moisture meter and<br/>22 -- ?<br/>23 A. Yes, we do.<br/>24 Q. Okay. And then, do you have one of those<br/>25 probes where you can test to see if it's, you know,</p> | <p style="text-align: right;">169</p> <p>1 Q. Okay. So, you knew that, you know, based<br/>2 on your experience with hay and the fact that this<br/>3 was hot, that it had a potential to combust?<br/>4 A. Right. He said if I took it outside, it<br/>5 would cool down and would not combust and wouldn't<br/>6 be a problem, so --<br/>7 Q. Okay.<br/>8 A. -- that's what we did.<br/>9 Q. How did you remove the hay from the barn?<br/>10 Is it in -- just explain to me a little bit -- like<br/>11 in, like, a 100 pound bale? Do you remove, you<br/>12 know, one at a time? Or, like, how do you get it<br/>13 out of there?<br/>14 A. They're a block. And each block has seven<br/>15 layers. Each layer has eight bales, tied<br/>16 differently in each layer, so that the block stays<br/>17 tied together.<br/>18 Q. Okay.<br/>19 A. The top bale is being tied with twine from<br/>20 the outside bale to outside bale, so that when you<br/>21 pick it up with a hay squeeze, it's an eight foot by<br/>22 eight foot square block.<br/>23 Q. Okay.<br/>24 A. (inaudible words). So, our hay squeeze<br/>25 comes in and squeezes the entire eight-foot block,</p>                                                |



|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 170 | <p>1 by the bottom bales, squeezes the bottom layer and<br/>2 takes it out and the rest are riding on top of the<br/>3 bottom layer. And then, you drive it to wherever<br/>4 you're going with it, set it down, unsqueeze it, -<br/>5<br/>6 Q. Oh, I see.<br/>7 A. - back away from it and it sits wherever<br/>8 you leave it.<br/>9 Q. Okay. So, how much -- there was nine tons<br/>10 of hay in the barn. Correct?<br/>11 A. Roughly -- seven times eight is 56, so<br/>12 roughly 56 bales per block at 100 pounds per bale,<br/>13 three blocks.<br/>14 Q. Okay.<br/>15 A. So, whatever that would -- if you want<br/>16 exact, that would be --<br/>17 Q. So, you removed --<br/>18 A. - three eight-foot by eight-foot by<br/>19 eight-foot blocks of hay.<br/>20 Q. I understand. Okay, thank you. Are you -<br/>21 - so, are you submitting any evidence today that<br/>22 shows when you purchased this hay that combusted?<br/>23 A. No.<br/>24 Q. No? Did you ever call the fire department<br/>25 or the police department and let them know how you</p> | 172 | <p>1 and I just backed away and left.<br/>2 Q. Were you pretty shocked that there was a<br/>3 fire going on, on your property?<br/>4 A. Yeah. Wouldn't you be, in the middle of<br/>5 the night?<br/>6 Q. I definitely would, yeah. So, you were<br/>7 probably glad that they were there, --<br/>8 A. Yeah, absolutely.<br/>9 Q. - taking care of that fire, huh?<br/>10 A. Absolutely, yeah.<br/>11 Q. Were you interested in helping Bridget<br/>12 Taylor investigate how it started, considering it<br/>13 could be, you know, somebody else that, you know, --<br/>14 A. Sure, I'd be glad to.<br/>15 Q. - illegally came on your property or --<br/>16 ?<br/>17 A. Would have been glad to. Nobody ever<br/>18 asked or wanted to, so --<br/>19 MS. KOSS: I need just a second.<br/>20 JUDGE SMITH: Okay.<br/>21 Q. You talked about -- or you testified about<br/>22 the solid waste that you removed from your home and<br/>23 that it was temporarily stored out there after you<br/>24 had the water damage.<br/>25 A. Correct.</p> |
| 171 | <p>1 thought this fire started?<br/>2 A. No.<br/>3 Q. Or did you talk to them when they were<br/>4 there and say that -- ?<br/>5 A. No.<br/>6 Q. Okay. And you, you saw the fire, right?<br/>7 A. No.<br/>8 Q. Oh, you didn't?<br/>9 A. No. When I got home, all there was were<br/>10 fire trucks back there.<br/>11 Q. Oh, so, you weren't home at all while --<br/>12 A. No.<br/>13 Q. -- this fire was occurring?<br/>14 A. No.<br/>15 Q. Did you go back there to --<br/>16 A. I did.<br/>17 Q. -- just kind of check out what -- ?<br/>18 A. Yeah, well, obviously, why are all these<br/>19 fire trucks here?<br/>20 Q. Yeah.<br/>21 A. (inaudible words) chicken house on fire.<br/>22 I didn't know.<br/>23 Q. So, did you notice that your hay was gone?<br/>24 A. It was dark, very dark, couldn't see<br/>25 anything. And that's when Bridget Taylor came at me</p>                                                                                                                                                                                        | 173 | <p>1 Q. And you said that you had called, you<br/>2 called -- can you remind me? You called one person.<br/>3 A. Western Oregon Waste (inaudible).<br/>4 Q. Oh, okay. And they told you that they<br/>5 were not able to remove it?<br/>6 A. They did not have dumpsters available.<br/>7 Q. And when was that?<br/>8 A. When we had the flood in July.<br/>9 Q. In July. So, did you call anywhere else?<br/>10 A. You can't. It's a protected area or<br/>11 whatever. So, you can't go to Newberg and get one<br/>12 from Newberg, because McMinnville has the, whatever<br/>13 it is, territory.<br/>14 Q. So, did you call them in August and find<br/>15 out if they could then bring --<br/>16 A. No.<br/>17 Q. -- come and remove it?<br/>18 A. No.<br/>19 Q. Or did you call them in September or --<br/>20 A. I did not.<br/>21 Q. - October?<br/>22 A. I did in October, yes.<br/>23 Q. In October you called them?<br/>24 A. Yeah, right. They still had none<br/>25 available. I didn't do it in August or September,</p>         |

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 174 | <p>1 because I was busy farming at the time.<br/>2 MS. KOSS: Okay, I'd like to recall Dan<br/>3 Fox, if that is all right with ALJ Smith.<br/>4 JUDGE SMITH: Well, when we're -- are you<br/>5 done with Mr. Johnston?<br/>6 MS. KOSS: I am.<br/>7 JUDGE SMITH: Okay. Do you want ask any<br/>8 redirect?<br/>9 MR. ENGLE: No redirect, no redirect.<br/>10 JUDGE SMITH: Okay. So, you're still<br/>11 under oath.<br/>12 RE-REDIRECT EXAMINATION OF MR. FOX<br/>13 BY MS. KOSS:<br/>14 Q. So, Mr. Fox, we've heard that there were<br/>15 nine tons of hay on the property in three-ton<br/>16 stacks. And you have at least some experience, based<br/>17 on your degree and personal knowledge, of hay<br/>18 burning and when hot hay combusts. So, I'd like to<br/>19 ask you, in your experience, how quickly do you<br/>20 think nine tons of hay could burn down to completely<br/>21 nothing, no residue, no remnants?<br/>22 A. I -- well, there are certain variables<br/>23 between -- you know, humidity, wind, temperature.<br/>24 Those all play into effect. But, usually something<br/>25 that size -- I know, it really is back to straw,</p>                                                            | 176 | <p>1 were putting out a fire that was the solid waste<br/>2 debris pile?<br/>3 A. Correct, yes.<br/>4 Q. Does it even seem possible to you that<br/>5 after a night, the next morning, that nine tons of<br/>6 hay would be completely burned to completely nothing<br/>7 left?<br/>8 A. No.<br/>9 MS. KOSS: I have no further questions.<br/>10 JUDGE SMITH: What's the difference<br/>11 between hay and straw, straw and hay?<br/>12 THE WITNESS: Straw is basically the<br/>13 stubble that's left over after harvesting a crop off<br/>14 of it. Hay still has the leafy material on there for<br/>15 forage (sounds like). Straw is basically like, for<br/>16 instance, in a grassy field, what's left over after<br/>17 all the feed has been taken off of it. And that<br/>18 straw is baled up.<br/>19 JUDGE SMITH: Okay. So, in your<br/>20 testimony when you're talking about you know for<br/>21 sure that straw takes however many days to burn,<br/>22 what would be the difference with hay, since it has<br/>23 all the leafy stuff? Are you saying it would take<br/>24 longer or less time?<br/>25 THE WITNESS: I, I don't know, because</p> |
| 175 | <p>1 because a straw stack burning is something we<br/>2 regulated at the Department of Agriculture. So,<br/>3 we'd issue permits for people to burn that. And<br/>4 typically, one of those straw stacks, it would take<br/>5 days to finish, complete, to be completely burned.<br/>6 So, nine tons, I, I think would definitely take a<br/>7 few days. They'd be stirring it and making sure to<br/>8 keep the fires going pretty good.<br/>9 Q. Do you think it's in any way possible that<br/>10 this nine tons of hay could not have been burning<br/>11 when the fire department or police showed up?<br/>12 A. Is it possible that --<br/>13 Q. That same evening that the fire started,<br/>14 is it possible that within minutes or an hour that<br/>15 nine tons of hay completely burned to nothing, so<br/>16 that they didn't see it?<br/>17 A. No. It would -- either it would be still<br/>18 on fire or it'd still be there (inaudible) burned.<br/>19 Q. Did anything in the police or fire reports<br/>20 indicate that they also had to put out a separate<br/>21 fire of hot hay --<br/>22 A. No.<br/>23 Q. -- that was stacked?<br/>24 A. No.<br/>25 Q. So, the reports only indicated that they</p> | 177 | <p>1 I've never seen anybody that's going to take --<br/>2 stick hay bales out and intentionally burn them.<br/>3 Usually it's straw they burn to dispose of, when<br/>4 they have an excess amount. So, I would assume that<br/>5 it would burn basically the same, maybe take a<br/>6 little longer, because there's more green material<br/>7 in hay. But, my experience is from seeing straw<br/>8 burning.<br/>9 JUDGE SMITH: Okay. All right, anything<br/>10 else for him, Ms. Koss?<br/>11 MS. KOSS: No, nothing else for Dan Fox.<br/>12 And I apologize. I'd like to ask just a couple more<br/>13 questions of Mr. Johnston, if that's okay.<br/>14 JUDGE SMITH: Well, after Mr. Engle has a<br/>15 chance to question Mr. --<br/>16 MS. KOSS: Certainly.<br/>17 JUDGE SMITH: -- Fox, we'll do that.<br/>18 MS. KOSS: Okay.<br/>19 RE-RE-CROSS EXAMINATION OF MR. FOX<br/>20 BY MR. ENGLE:<br/>21 Q. Mr. Fox, you do understand that these were<br/>22 three piles of -- three tons of hay, not a solid<br/>23 nine tons of hay?<br/>24 A. Yes.<br/>25 Q. Okay. So, it's going to take less time</p>                                                  |

178

1 for a three-ton stack to burn than it is a solid  
2 nine-ton stack, isn't it?  
3 A. Yes.  
4 Q. Okay. In your opinion here, must -- you  
5 must have some idea when this, when this fire  
6 started. We're not talking about -- well, let's say  
7 it was internal combustion. Mr. Johnston has said  
8 he's not even sure it was internal combustion.  
9 Somebody could have lit a match to it. But, the hay  
10 was burned the next day. So, when did the fire  
11 start?  
12 A. I don't --  
13 Q. You don't know, do you?  
14 A. No.  
15 Q. No. That fire could have started -- I  
16 mean, he was off crabbing. It could have started  
17 early in the afternoon in that hay and not gotten to  
18 the fence row until after dark, when the big fire  
19 started, couldn't it?  
20 A. That's possible.  
21 MR. ENGLE: Okay. Well, I'm not going to  
22 argue with you anymore about it, so I'll stop right  
23 there.  
24 JUDGE SMITH: Okay. So, anything else for  
25 Mr. Fox?

179

1 REBUTTAL EXAMINATION OF MR. FOX  
2 BY MS. KOSS:  
3 Q. Your testimony is that it would take that  
4 much hay days to burn, as in plural, or one day or  
5 less?  
6 A. I would be very surprised to see it burn  
7 up in one day. So, I, I guess if conditions were  
8 just right and it was spread out, then maybe a day.  
9 But, I find that unlikely. It would probably be --  
10 Q. Spread out more than three-ton stacks?  
11 A. The more compact, then it's going to take  
12 longer to burn.  
13 MS. KOSS: Nothing further for Mr. Fox.  
14 JUDGE SMITH: All right.  
15 MR. ENGLE: Nothing further.  
16 JUDGE SMITH: We'll call Mr. Johnston  
17 then.  
18 MS. KOSS: Thank you.  
19 RE-CROSS EXAMINATION OF RESPONDENT  
20 BY MS. KOSS:  
21 Q. Just a couple more things. So you have  
22 the moisture meter and that allows you to check on  
23 the moisture of the hay and in turn kind of let you  
24 know how much risk you're at for combustion. Is that  
25 correct?

180

1 A. No. Typically a moisture meter is to,  
2 when you're in the field, you bale a bale or two,  
3 check the moisture. If it -- there's lines on the  
4 meter that show you where you want to be, but  
5 typically, we want to be under 11 percent moisture -  
6 -  
7 Q. Okay.  
8 A. -- before we would continue to bale it.  
9 Otherwise, we'd bale the whole thing and ruin it.  
10 But, that's why we have (inaudible words). And  
11 we've also baled straw, which he's talked about, for  
12 export to Korea (sounds like), which is also used  
13 for feed. But, it's like (inaudible words) grass  
14 fields and we'd also have to have it under certain  
15 moisture, because obviously it gets compressed into  
16 tinier bales and gone on containers and shipped to  
17 Asian countries. And we have to, obviously, have it  
18 under six percent moisture.  
19 Q. If you just had to give your best  
20 recollection or best estimate as to how much time  
21 elapsed between when you removed the hay from the  
22 barn and the October 28th fire, what would that be?  
23 A. A few days, like I testified earlier.  
24 Q. Okay. So, after removing it from the  
25 barn, precisely what precautions did you take

181

1 between that day and October 28th?  
2 A. None. I didn't feel like I had to. I was  
3 told by the guy that brought it in from Madras that  
4 if I moved it outside, it should not get any hotter.  
5 It's the way it builds up heat and typically, the  
6 combustion part is when it's stacked tight in a  
7 building and builds up heat in a building. And I  
8 was -- it was explained to me that once it's  
9 outside, that it should cool off. And, in fact, it  
10 may have. I don't have any proof that this thing  
11 internally combusted, none whatsoever.  
12 MS. KOSS: Okay, no further questions.  
13 JUDGE SMITH: I'm going to let you ask  
14 some more in just a second, Mr. Engle, but I just  
15 need one for clarification.  
16 MR. ENGLE: Sure.  
17 JUDGE SMITH: Just so I make sure we're  
18 talking about the same things, you said that when  
19 you took it out of your hay feed (sounds like) in  
20 three-ton stacks, you just set it down. You didn't  
21 do anything else. You didn't open it up --  
22 THE WITNESS: Correct.  
23 JUDGE SMITH: -- or separate out the  
24 stacks or anything.  
25 THE WITNESS: Right.

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 182 | <p>1 JUDGE SMITH: So, you've got three stacks<br/>2 there of three tons each.<br/>3 THE WITNESS: Correct. Eight by eight by<br/>4 eight.<br/>5 JUDGE SMITH: Okay. And that's what this<br/>6 person who you bought it from told you to do?<br/>7 THE WITNESS: Correct.<br/>8 JUDGE SMITH: Okay, I understand. Mr.<br/>9 Engle?<br/>10 REBUTTAL EXAMINATION OF RESPONDENT<br/>11 BY MR. ENGLE:<br/>12 Q. I think you told us on direct that, that<br/>13 you didn't even know that the hay had burned that<br/>14 night when you were there, because you were dealing<br/>15 with --<br/>16 A. Well, it was dark.<br/>17 Q. -- Deputy Taylor.<br/>18 A. It was dark.<br/>19 Q. So, it wasn't until the next morning that<br/>20 you went out there and saw anything?<br/>21 A. Correct.<br/>22 Q. What did you see out there the next<br/>23 morning when you went out? What, what was the<br/>24 condition then of where the hay had been, where the<br/>25 fence row had been and where the demolition pile had</p>                                                                                                                                                        | 184 | <p>1 after it was stacked. (speaking simultaneously -<br/>2 inaudible).<br/>3 Q. What's your take on how long it would take<br/>4 to burn a three-ton block of -- three three-ton<br/>5 blocks of just what you had out there?<br/>6 A. Well, what he was testifying to was, was<br/>7 the same way that we used to do it when we put a<br/>8 block. It was a huge block. We would take our hay<br/>9 stacker. We would set them two wide so they'd be 16<br/>10 feet wide and anywhere from 100 to 200 feet long.<br/>11 And yes, if we lit them when the DEQ told us to,<br/>12 which was usually dependent on prevailing winds,<br/>13 eight hours later, they were long gone. I mean,<br/>14 there would be maybe some smoldering ash or<br/>15 whatever. A smaller pile, again, like he said,<br/>16 depending on conditions, from wind or -- but,<br/>17 typically, we only got to burn when the wind was<br/>18 right so that the smoke didn't wind up in Eugene.<br/>19 That was always the -- that's been 15 years ago. I<br/>20 don't think anybody's burned stacks for a long time.<br/>21 Q. Well, is what you saw the next morning<br/>22 consistent with these three stacks, three three-ton<br/>23 stacks burning the day before, the night before,<br/>24 whatever?<br/>25 A. Yeah, I would say. I mean, again, it's</p> |
| 183 | <p>1 been?<br/>2 A. Where the demolition pile was, the fire<br/>3 department put it out. So, it was still there, with<br/>4 the insulation and all the articles that you see in<br/>5 the pictures, just as you see in the pictures.<br/>6 Q. Okay.<br/>7 A. And where the hay was, it was black<br/>8 squares of ash that was two, three feet deep. And<br/>9 it was still smoldering also, from the fire<br/>10 department putting it out.<br/>11 Q. Okay. What about the fence row?<br/>12 A. The fence row had no fire in it or<br/>13 anything. It was basically green. So, the only<br/>14 reason it had anything burning it was from the sheer<br/>15 heat of the fire, I think. They were charred, you<br/>16 know, the trees. The leaves were, you know, fried<br/>17 off of the trees.<br/>18 Q. Mr. Fox has told us what would happen if<br/>19 you were trying to burn nine-ton blocks or three-<br/>20 ton blocks, whatever. Do you have, do you have any<br/>21 experience in all your years of hay of --<br/>22 A. We used to bale it and stack it to burn<br/>23 it.<br/>24 Q. -- hay or straw burning?<br/>25 A. Yeah, back when they burned the straw</p> | 185 | <p>1 from 8:00 on that morning until 7 or 8:00 the next<br/>2 morning, when I looked at it. And I don't know,<br/>3 because I had not been there at all during the day,<br/>4 so I don't know, I have no idea when it started.<br/>5 Q. Kit, your son who works with you lives in<br/>6 McMinnville, so he wasn't out there.<br/>7 A. Right. Because at the time we were, you<br/>8 know -- we had shipped chickens. So we were<br/>9 (inaudible).<br/>10 MR. ENGLE: Nothing else.<br/>11 JUDGE SMITH: Okay. Anything else for Mr.<br/>12 Johnson, Ms. Koss?<br/>13 CROSS-REBUTTAL EXAMINATION OF RESPONDENT<br/>14 BY MS. KOSS:<br/>15 Q. You just said that you did actually see<br/>16 hay residue the next morning and a few foot tall<br/>17 pile of ash where the hay had been --<br/>18 A. Right.<br/>19 Q. -- and that the fire department did put<br/>20 that out?<br/>21 A. They had to have. Well, I assume they<br/>22 did. It was out. Or it burned itself out before<br/>23 they even got there. I don't have a clue. I know<br/>24 they came back later that day, because we were still<br/>25 having trouble with the debris pile. And we finally</p>                                                                                                                                                                    |

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 186 | <p>1 took a tractor and (inaudible) and tore it apart, so<br/>2 we could get it out. But not, that was not the case<br/>3 with the straw pile --<br/>4 Q. So, --<br/>5 A. -- or the ashes, I guess. It was no<br/>6 longer a hay pile. It was ashes.<br/>7 Q. So, it would seem logical that if there is<br/>8 in fact a burned pile of hay residue there, that's<br/>9 pretty obvious that that must have caused the fire.<br/>10 And you would probably tell the fire department--<br/>11 A. Why?<br/>12 Q. -- what caused the fire.<br/>13 A. Why would I do that?<br/>14 Q. Wouldn't that be logical?<br/>15 A. No. Why would it seem logical?<br/>16 Q. Well, --<br/>17 A. Why could it not be a --<br/>18 Q. -- to make sure they understood that you<br/>19 hadn't ignited it yourself.<br/>20 A. It never even crossed my mind that they<br/>21 would think I ignited it myself, because what kind<br/>22 of idiot would ignite a fire in the middle of the<br/>23 night in the dark that everybody in the world could<br/>24 see driving by?<br/>25 Q. Well, --</p> | 188 | <p>1 MS. KOSS: It is.<br/>2 JUDGE SMITH: Okay. So, Mr. Engle?<br/>3 MR. ENGLE: I'm happy to do it either way.<br/>4 JUDGE SMITH: Okay. Well, since she's<br/>5 going to be doing it in writing, it would probably<br/>6 be preferable to have you do it the same way. But,<br/>7 I'm willing to let you do yours now, if that's what<br/>8 you want to do.<br/>9 MR. ENGLE: No, if she's going to submit<br/>10 something in writing, I need to have the opportunity<br/>11 to respond, so --<br/>12 JUDGE SMITH: Okay. So, we need to set<br/>13 some time frames, then. When did you think you<br/>14 could submit your closing argument?<br/>15 MS. KOSS: I'd like to have two weeks.<br/>16 JUDGE SMITH: Two weeks from today?<br/>17 MS. KOSS: That'd be fine, yeah.<br/>18 JUDGE SMITH: So, would that be August the<br/>19 1st? What is today? August the 20 --<br/>20 MR. BACHMAN: Today's the 22nd.<br/>21 JUDGE SMITH: I think that's August the<br/>22 1st, isn't it?<br/>23 MS. KOSS: The 1st is a Friday, I think.<br/>24 JUDGE SMITH: You're right. It is a<br/>25 Friday.</p> |
| 187 | <p>1 A. So, why -- it never even crossed my mind,<br/>2 other than --<br/>3 Q. -- unless you wanted to get rid of the<br/>4 (inaudible words).<br/>5 A. At night? Well, whatever, I mean, the<br/>6 reality of it is, it is what it is.<br/>7 Q. Doesn't it seem odd that it was not in<br/>8 their report anywhere that there was also a charred<br/>9 pile of hay debris?<br/>10 A. No.<br/>11 MS. KOSS: I have no further questions.<br/>12 JUDGE SMITH: Okay.<br/>13 MR. ENGLE: (inaudible words).<br/>14 JUDGE SMITH: Okay. Any other witnesses<br/>15 you'd like to present, Mr. Engle?<br/>16 MR. ENGLE: No.<br/>17 JUDGE SMITH: Any other testimony to<br/>18 present, Ms. Koss?<br/>19 MS. KOSS: No.<br/>20 JUDGE SMITH: Okay. You mentioned earlier<br/>21 that maybe you would not like to do the closing<br/>22 argument in person, that you'd rather submit it in<br/>23 writing.<br/>24 MS. KOSS: Correct.<br/>25 JUDGE SMITH: Is that still your position?</p>                                                                                                | 189 | <p>1 MS. KOSS: I just realized --<br/>2 JUDGE SMITH: So, July 31st would be<br/>3 Thursday and July 30th would be Wednesday.<br/>4 MS. KOSS: But, that's one week. Is two<br/>5 weeks okay?<br/>6 JUDGE SMITH: Sure, if that's what you<br/>7 need.<br/>8 MS. KOSS: Yeah, I have actually another<br/>9 hearing on Friday. So, two weeks would be great.<br/>10 JUDGE SMITH: Does someone have a calendar<br/>11 (inaudible words)?<br/>12 MR. BACHMAN: I'm just trying to get<br/>13 (inaudible words).<br/>14 JUDGE SMITH: All right.<br/>15 MR. ENGLE: I can go downstairs and get a<br/>16 calendar, if we need one.<br/>17 MR. BACHMAN: I've almost got it. Okay,<br/>18 so, two weeks from today would be the 5th.<br/>19 JUDGE SMITH: August the 5th?<br/>20 MR. BACHMAN: Correct.<br/>21 JUDGE SMITH: Thank you. So, what I'll do<br/>22 -- okay, let's see. Are you going to want, like, a<br/>23 couple days after she submits hers to submit your<br/>24 closing argument or are you going to do it at the<br/>25 same time or -- ?</p>                                           |

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |     |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| 190 | <p>1 MR. ENGLE: No, I'd, I'd like to respond</p> <p>2 to hers.</p> <p>3 JUDGE SMITH: Okay.</p> <p>4 MR. ENGLE: So, if she gets two weeks,</p> <p>5 give me a week.</p> <p>6 JUDGE SMITH: Okay.</p> <p>7 MR. ENGLE: I, I'm semi-retired anymore,</p> <p>8 so, I'm not sure when I'm -- we're coming and going,</p> <p>9 so give me a week and if I find I've got a problem,</p> <p>10 I'll let somebody know. But, I think --</p> <p>11 JUDGE SMITH: All right.</p> <p>12 MR. ENGLE: -- I'll probably respond in a</p> <p>13 day or two after I get it. But, give me a week to</p> <p>14 respond, yeah.</p> <p>15 JUDGE SMITH: Just in case, I'll give you</p> <p>16 until August the 12th.</p> <p>17 MR. ENGLE: Okay.</p> <p>18 JUDGE SMITH: Okay, so --</p> <p>19 MR. ENGLE: And then we're shutting it off</p> <p>20 right there?</p> <p>21 JUDGE SMITH: Yes, sir.</p> <p>22 MR. ENGLE: Okay. August the 12th?</p> <p>23 JUDGE SMITH: So -- yeah. I'll leave it</p> <p>24 ope-, I'll leave it ope-, the record open until</p> <p>25 August the 12th, with the understanding that by</p> | 192 |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |     |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| 191 | <p>1 August the 5th, you'll have your closing argument in</p> <p>2 and at the very latest, he'll have his in by August</p> <p>3 the 12th.</p> <p>4 MR. ENGLE: Sounds good.</p> <p>5 JUDGE SMITH: But he'll probably have it</p> <p>6 in sooner than that.</p> <p>7 MR. ENGLE: Yeah.</p> <p>8 JUDGE SMITH: So, as soon as I have his,</p> <p>9 then the record will close. And I'll be issuing my</p> <p>10 decision within the time frames I gave you earlier.</p> <p>11 I think it's like 30 or 35 days from when the record</p> <p>12 closes. Was there anything else we needed to cover,</p> <p>13 Ms. Koss, before we end the hearing today?</p> <p>14 MS. KOSS: I don't think so. I can make a</p> <p>15 copy of the signed --</p> <p>16 MR. ENGLE: Yes.</p> <p>17 MS. KOSS: -- stipulation here.</p> <p>18 MR. ENGLE: Yes.</p> <p>19 MS. KOSS: We'll do that and then I'll</p> <p>20 provide you a copy.</p> <p>21 MR. ENGLE: Yes, absolutely. We can walk,</p> <p>22 we can walk down together when (inaudible words).</p> <p>23 MS. KOSS: Okay, great. That's all I</p> <p>24 have.</p> <p>25 JUDGE SMITH: Okay. So, then, we'll go</p> | 193 |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|

1 CERTIFICATE

2

3 I, Priscilla Ditewig, do hereby certify that the

4 matter herein mentioned on the preceding title page

5 was transcribed. I transcribed all requested audio in

6 its entirety in the foregoing matter; and that the

7 foregoing transcript pages constitute a full, true and

8 correct record of such audio.

9

10

11 IN WITNESS HEREOF, I have hereunto set my hand this

12 16th day of November, 2008.

13

14

15

16

17

18 /Signed

19 Priscilla Ditewig

20

21

22

23

24

25



800.528.3335  
www.NaegeliReporting.com  
503.227.7123 FAX

Portland, OR (503) 227-1544  
Seattle, WA (206) 622-3376  
Spokane, WA (509) 838-6000  
Coeur d'Alene, ID (208) 765-1353

Court Reporting Trial Presentation Videography Videoconferencing

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

IN THE MATTER OF: ) NOTICE OF PREHEARING CONFERENCE  
)  
CURTIS B JOHNSTON ) OAH Case No.: 800449  
) Agency Case No.: AQ/OB-WR-07-060

PLEASE TAKE NOTICE that a prehearing conference has been scheduled in the above matter before the Office of Administrative Hearings.

Prehearing Date: May 21, 2008 Prehearing Time: 1:00 pm

Location: By Telephone: Prehearing Phone Numbers and Access Code:

- Local (Salem) call - 503-378-5680
- Toll Free - 1-866-498-2718
- ACCESS CODE - 7100449

RECEIVED  
APR 06 2008

**IMPORTANT PREHEARING PHONE INSTRUCTIONS**

At the date and time of your prehearing conference you **must**:

1. Call the local or toll free prehearing phone number listed above.
2. When asked for the Access Code, enter the code listed above followed by the # key.
3. If the administrative law judge is not already on the line, remain on the line for ten (10) minutes past the prehearing time.
4. If you fail to call within fifteen (15) minutes after the time set for the prehearing, you will be held in default and the prehearing may proceed without you.
5. If you have any trouble connecting to the hearing or are on hold more than ten (10) minutes past the hearing start time, call the Office of Administrative Hearings immediately at (503) 947-1579.
6. **ONLY** call the prehearing phone number to attend your prehearing.

OFFICE OF ADMINISTRATIVE HEARINGS  
AND ENVIRONMENTAL QUALITY  
DEPARTMENT OF ENVIRONMENTAL QUALITY

The following may be addressed at the prehearing conference: identification of issues, motions, preliminary rulings, documentary and testimonial evidence (if known), exchange of witness lists (if known), procedural conduct of the hearing, date, time and location of the hearing, and other matters relating to the hearing. Failure to participate in the prehearing will not preclude the Administrative Law Judge from making decisions on issues raised during the prehearing. (OAR 137-003-0575)

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

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

Monica Smith  
Office of Administrative Hearings  
7995 SW Mohawk St.  
Tualatin, OR 97062  
Fax: (503) 612-4340

OAR 137-003-0520 requires a copy of any correspondence, exhibits or other filings to be provided to all parties and the agency at the same time they are provided to the ALJ. Please use the OAH case number above on all correspondence and filings.

A request for reset of the hearing must be submitted in writing prior to the hearing. A postponement request will only be granted on a showing of good cause and with the approval of the administrative law judge.

**If you are hearing impaired, need a language interpreter or require another type of accommodation to participate in or attend the hearing, immediately notify the Office of Administrative Hearings at (503) 947-1579 or TDD at 1-800-735-1232 to make the appropriate arrangements. The Office of Administrative Hearings can arrange for an interpreter at the hearing. Interpreters must be certified or qualified in order to participate in a contested case hearing and may not have a conflict of interest with the hearing participants.**

You are required to notify the Office of Administrative Hearings at (503) 947-1579 immediately if you change your address or telephone number prior to a decision in this matter.



CERTIFICATE OF MAILING

On April 7, 2008, I mailed the foregoing NOTICE OF PREHEARING CONFERENCE in OAH Case No. 800449.

By: First Class Mail

Robert Engle  
Attorney at Law  
Northwood Office Park  
610 Glatt Circle  
Woodburn OR 97071-9600

Leah Koss  
Dept. of Environmental Quality  
811 SW 6TH Ave  
Portland OR 97204

Dan Fox  
Dept. of Environmental Quality  
811 SW 6<sup>th</sup> Ave  
Portland OR 97204

Carol Buntjer for Pam Arcari  
Administrative Specialist  
Hearing Coordinator

DEPARTMENT OF ENVIRONMENTAL QUALITY HEARINGS  
IMPORTANT INFORMATION FOR PREPARING FOR YOUR HEARING  
NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Under ORS 183.413(2), you must be informed of the following:

1. Law that applies. The hearing is a contested case and it will be conducted under ORS Chapter 183 and Oregon Administrative Rules of the Department of Environmental Quality, Chapters 137 and 340.
2. Rights to an attorney. You may represent yourself at the hearing, or be represented by an attorney or an authorized representative, such as a partner, officer, or an employee. If you are a company, corporation, organization or association, you must be represented by an attorney or an authorized representative. Prior to appearing on your behalf, an authorized representative must provide a written statement of authorization. If you choose to represent yourself, but decide during the hearing that an attorney is necessary, you may request a recess. About half of the parties are not represented by an attorney. DEQ will be represented by an Assistant Attorney General or an Environmental Law Specialist.
3. Administrative law judge. The person presiding at the hearing is known as the administrative law judge. The administrative law judge is an employee of the Office of Administrative Hearings under contract with the Environmental Quality Commission. The administrative law judge is not an employee, officer or representative of the agency.
4. Appearance at hearing. If you withdraw your request for a hearing, notify either DEQ or the administrative law judge that you will not appear at the hearing, or fail to appear at the hearing, a final default order will be issued. This order will be issued only upon a prima facie case based on DEQ's file. No hearing will be conducted.
5. Address change or change of representative. It is your responsibility to notify DEQ and the administrative law judge of any change in your address or a withdrawal or change of your representative.
6. Interpreters. If you have a disability or do not speak English, the administrative law judge will arrange for an interpreter. DEQ will pay for the interpreter if (1) you require the interpreter due to a disability or (2) you file with the administrative law judge a written statement under oath that you are unable to speak English and you are unable to obtain an interpreter yourself. You must provide notice of your need for an interpreter at least 14 days before the hearing.
7. Witnesses. All witnesses will be under oath or affirmation to tell the truth. All parties and the administrative law judge will have the opportunity to ask questions of all witnesses. DEQ or the administrative law judge will issue subpoenas for witnesses on your behalf if you show that their testimony is relevant to the case and is reasonably needed to establish your position. You are not required to issue subpoenas for appearance of your own witnesses. If you are represented by an attorney, your attorney may issue subpoenas. Payment of witness fees and mileage is your responsibility.

8. Order of evidence: A hearing is similar to a court trial but less formal. The purpose of the hearing is to determine the facts and whether DEQ's action is appropriate. In most cases, DEQ will offer its evidence first in support of its action. You will then have an opportunity to present evidence to oppose DEQ's evidence. Finally, DEQ and you will have an opportunity to rebut any evidence.

9. Burden of presenting evidence. The party who proposes a fact or position has the burden of proving that fact or position. You should be prepared to present evidence at the hearing which will support your position. You may present physical, oral or written evidence, as well as your own testimony.

10. Admissible evidence. Only relevant evidence of a type relied upon by reasonably prudent persons in the conduct of their serious affairs will be considered. Hearsay evidence is not automatically excluded. Rather, the fact that it is hearsay generally affects how much the Commission will rely on it in reaching a decision.

There are four kinds of evidence:

- a. Knowledge of DEQ and the administrative law judge. DEQ or the administrative law judge may take "official notice" of conclusions developed as a result of its knowledge in its specialized field. This includes notice of general, technical or scientific facts. You will be informed should DEQ or the administrative law judge take "official notice" of any fact and you will be given an opportunity to contest any such facts.
- b. Testimony of witnesses. Testimony of witnesses, including you, who have knowledge of facts may be received in evidence.
- c. Writings. Written documents including letters, maps, diagrams and other written materials may be received in evidence.
- d. Experiments, demonstrations and similar means used to prove a fact. The results of experiments and demonstrations may be received in evidence if they are reliable.

11. Objections to evidence. Objections to the consideration of evidence must be made at the time the evidence is offered. Objections are generally made on one of the following grounds:

- a. The evidence is unreliable;
- b. The evidence is irrelevant or immaterial and has no tendency to prove or disprove any issue involved in the case;
- c. The evidence is unduly repetitious and duplicates evidence already received.

12. Continuances. There are normally no continuances granted at the end of the hearing for you to present additional testimony or other evidence. Please make sure you have all your evidence ready for the hearing. However, if you can show that the record should remain open for additional evidence, the administrative law judge may grant you additional time to submit such evidence.

13. Record. A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This will be done by tape recorder. This tape and any exhibits received in the record will be the whole record of the hearing and the only evidence considered by the administrative law judge. A copy of the tape is available upon payment of a minimal amount, as established by DEQ. A transcript of the record will not normally be prepared, unless there is an appeal to the Court of Appeals.

14. Proposed and Final Order. The administrative law judge has the authority to issue a proposed order based on the evidence at the hearing. The proposed order will become the final order of the Environmental Quality Commission if you do not petition the Commission for review within 30 days of service of the order. The date of service is the date the order is mailed to you, not the date that you receive it. The Department must receive your petition seeking review within 30 days. See OAR 340-011-0132.

15. Appeal. If you are not satisfied with the decision of the Commission, you have 60 days from the date of service of the order, to appeal this decision to the Court of Appeals. See ORS 183.480 *et seq.*



# Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality  
Western Region - Salem Office  
750 Front St. NE, Ste. 120  
Salem, OR 97301-1039  
(503) 378-8240  
(503) 378-3684 TTY

JANUARY 19, 2007

EXHIBIT # 01

Mr. Curtis Johnston  
11320 NE Lafayette Hwy.  
Dayton, OR 97114

RE: **Pre-Enforcement Notice**  
Curtis Johnston  
PEN - ENF-AQ-OB-WRS-06-248  
YAMHILL COUNTY

Dear Mr. Johnston:

On Thursday, November 2, 2006, the Department of Environmental Quality (DEQ) received information from McMinnville Fire Department regarding an open burning incident. According to the information provided by the fire department, on Saturday, October 28, 2006 at 8:19 p.m., an illegal open burn occurred on the property located at 11320 Lafayette Hwy, Dayton, Oregon. The open burn consisted of demolition waste from your property. Demolition open burning is prohibited within Special Open Burning Control Areas. The waste pile was approximately 10 feet high, by 30 feet wide and 50 feet long. Materials that were observed in the pile include; plastics, automobile parts, furniture, rubber products, petroleum products, miscellaneous wood products, 55 gallon drums, a bicycle, insulation, a microwave, and lots of various pieces of metal. Also, the fire was burning on a day and at a time when all open burning was prohibited and the fire was not being attended.

Based upon the information collected from this incident, the Department has concluded that Mr. Curtis Johnston is responsible for the following violations of Oregon environmental law:

VIOLATIONS:

- (1) OAR 340-264-0060(3); "No person may cause or allow to be initiated or maintained any open burning of any wet garbage, plastic, asbestos, wire insulation, automobile part, asphalt, petroleum product, petroleum treated material, rubber product, animal remains, or animal or vegetable matter resulting from the handling, preparation, cooking, or service of food or of any other material which normally emits dense smoke or noxious odors" - (Class I).  
[The prohibited materials that were identified in the burn pile consisted of the following materials: plastics, rubber products, automobile parts, petroleum products, materials that normally emit dense smoke and noxious odors including furniture, insulation, and miscellaneous wood products. The burning of these materials is prohibited throughout the state and they may not be burned at any time or in any place.]
- (2) OAR 340-264-0110(4); "Construction and Demolition open burning is allowed outside of special open burning control areas, subject to the requirements and prohibitions of local jurisdictions, the State Fire Marshal, OAR 340-264-0050, 340-264-0060 and 340-264-0070.

Mr. Curtis Johnston  
January 19, 2007  
Page 2 of 3

Unless authorized pursuant to OAR 340-264-0180, Construction and Demolition open burning is prohibited within special open burning control areas, including the following: (b) Areas in or within three miles of the corporate city limit of: (E) In Yamhill County, the Cities of Amity, Carlton, Dayton, Dundee, Lafayette, McMinnville, Newberg, Sheridan and Willamina? – (Class II).

[The property where the burning occurred is within three miles of the corporate city limits of McMinnville, which is a Special Open Burning Control Area. Demolition waste is prohibited to burn inside of Special Open Burning Control Areas.]

- (3) OAR 340-264-0060(4); "No person may cause or allow to be initiated or maintained any open burning of any material in any part of the state on any day or at any time if the Department has notified the State Fire Marshall that such open burning is prohibited because of meteorological or air quality conditions pursuant to OAR 340-264-0070" – (Class II).  
[Based on air quality considerations, no burning was allowed on October 28, 2006.]

- (4) OAR 340-264-0050(2); "A responsible person, or an expressly authorized agent, must constantly attend all open burning. This person must be capable of and have the necessary equipment for extinguishing the fire. This person also must completely extinguish the fire before leaving it." – (Class II)  
[When the McMinnville Fire Department arrived at the burn, no one was attending the fire and the necessary equipment to extinguish the burn was not present. Under this rule, all fires must be constantly attended and have the necessary equipment available to extinguish the burn.]

- (5) OAR 340-264-0060(2); "No person may cause or allow to be initiated or maintained any open burning that creates a nuisance or a hazard to public safety." – (Class II)  
[The open burning of any prohibited material can create a nuisance or a hazard to public safety.]

Class I violations are the most serious violations; Class III violations are the least serious. The open burning of prohibited material creates smoke and noxious odors, which are a nuisance and may present a health hazard for the young, the elderly, and those with respiratory diseases. In some cases, toxic levels of chemical exposure can result from the open burning of these materials. In addition to causing a localized nuisance, each illegal burn contributes to the cumulative amount of pollution in the atmosphere. A fact sheet which explains the open burning rules and Special Open Burning Control Areas is enclosed for your information. The Department requests your cooperation in complying with these rules.

The violation(s) cited above caused significant environmental harm or posed the risk of significant environmental harm and the matter is being referred to the Department's Office of Compliance and Enforcement for formal enforcement action. Formal enforcement action may result in assessment of civil penalties and/or a Department order. A formal enforcement action may include a civil penalty assessment for each day of violation.

Mr. Curtis Johnston  
January 19, 2007  
Page 3 of 3

The Department's actions are independent of any actions that may be taken by the local fire department or other agencies for cost recovery or other purposes, including fines or penalties.

This Pre-Enforcement Notice does not require you to implement pollution prevention. However, the Department strongly recommends that you consider pollution prevention options, where applicable, to prevent the violation(s) outlined in this notice from recurring. Pollution prevention may also enable you to reduce environmentally driven costs, operating costs, and regulatory requirements or fees.

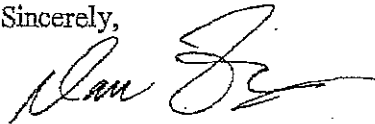
Pollution prevention can include:

- Recycle, reuse or donate materials instead of burning
- Get curbside pick-up or haul trash yourself to your local transfer station
- Some material may be composted for soil amendments

If you believe any of the facts in this Pre-Enforcement Notice are in error, you may provide written information to me at the address shown at the top of the letter. The Department will consider new information you submit and take appropriate action.

The Department endeavors to assist you in your compliance efforts. Should you have any questions about the content of this letter, feel free contact me in writing or by phone at (503) 378-5408.

Sincerely,



Dan Fox  
Natural Resource Specialist  
Western Region - Salem

Cc: McMinnville Fire Department  
Yamhill County Code Enforcement  
Oregon State Trooper Bridgett Taylor  
Christina Humphries  
File  
Office of Compliance and Enforcement, DEQ Headquarters

Enc: Open Burning Fact Sheet



# Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality  
811 SW Sixth Avenue  
Portland, OR 97204-1390  
503-229-5696  
TTY: 503-229-6993

EXHIBIT # 22

July 16, 2007

CERTIFIED MAIL No. 7006 0100 0002 8261 6496

Mr. Curtis Brian Johnston  
11320 NE Lafayette Hwy.  
Dayton, OR 97114

Re: Notice of Violation, Department Order and Civil Penalty Assessment  
Case No. AQ/OB-WR-07-060  
Yamhill County

On October 31, 2006, the Department of Environmental Quality (Department) received a notice from the McMinnville Fire Department (Fire Department) regarding an open burn of solid waste, which the Fire Department responded to on October 28, 2006 at 8:19 p.m., on property you own located at 11320 NE Lafayette Highway in Dayton, Oregon (the Property). There, Fire Department personnel discovered an open burn pile actively burning, that measured approximately ten feet high by thirty feet wide and fifty feet long. The Fire Department estimated that 60% of the pile was burned and that approximately 50% of the burned debris was materials which are prohibited from being burned at all times in any place in Oregon. The Department estimates that the other 50% consisted of demolition waste. The burn was not attended by a responsible person and the necessary equipment to extinguish the burn was not present. Fire department personnel observed the following materials in the burn pile: plastics, rubber products, automobile parts, petroleum products, and materials that normally emit dense smoke and noxious odors including furniture, insulation, and miscellaneous wood products. When Department staff requested an inspection of the Property, you denied access. Therefore, the Department has no evidence that you have properly disposed of the solid waste remaining from the open burn.

Open burning materials such as plastics, automobile parts, petroleum products, rubber products, furniture, insulation and other miscellaneous wood products which normally emit dense smoke or noxious odors is prohibited at all times and at all locations in Oregon. Burning these materials creates a nuisance and poses a threat to the environment and public health. The young, the elderly, and those with respiratory conditions are especially at risk. Toxic levels of chemical exposure can result from burning these materials.

In addition, open burning demolition waste is prohibited within special open burning control areas. This burn occurred within three miles of the corporate city limits of McMinnville in Yamhill County, where demolition burning is prohibited in order to minimize the impacts of open burning on populated or congested areas. Finally, the burn occurred on October 28, 2006, when all open burning was prohibited due to air quality considerations.



Curtis Brian Johnston  
Case No. AQ/OB-WR-07-060  
Page 2

Under Oregon environmental law, disposal of solid waste must take place at a waste disposal site permitted by the Department to receive that waste. Your property is not a permitted waste disposal site, and therefore, your accumulation of solid waste on the Property is illegal. Accumulation of solid waste may be detrimental to water quality and wildlife. Contamination from chemicals or metals associated with the accumulated materials can pollute groundwater or runoff during rainstorms. Disposing of solid waste at a permitted facility ensures the proper handling and disposal of the waste materials.

In the enclosed Notice of Violation, Department Order and Civil Penalty Assessment (Notice and Order), the Department has assessed a civil penalty of \$4,500 for causing or allowing to be initiated or maintained the open burning of materials which normally emit dense smoke or noxious odors, in violation of OAR 340-264-0060(3), and a civil penalty of \$5,024 for disposing of or authorizing the disposal of solid waste at a location other than a solid waste disposal site permitted by the Department, in violation of OAR 340-093-0040(1). The penalty was determined as set forth in Oregon Administrative Rule (OAR) 340-012-0045. The Department's findings and civil penalty determination are attached to the Notice as Exhibit Nos. 1 and 2.

Also included in Section IV is an Order requiring you to properly dispose of the solid waste and to provide the Department with evidence (such as disposal receipts) of such disposal within 30 days of the date of this Notice and Order.

The steps you must follow to request a review of the Department's allegations and determinations in this matter in a contested case hearing are set forth in Section VI of the enclosed Notice and Order and in OAR 340-011-0530. You need to follow the rules to ensure that you do not lose the opportunity to dispute the enclosed Notice of Violation and Order.

If you wish to dispute the Notice and Order, you must send a written request for a contested case hearing, including a written response that admits or denies all of the facts alleged in Sections II and III of the enclosed Notice and Order. The written response should also allege all affirmative defenses and explain why they apply in this matter. You will not be allowed to raise these issues at a later time, unless you can show good cause for that failure.

If the Department does not receive a request for a contested case hearing within **twenty calendar days** from the date you receive the enclosed documents, the Department will issue a Default Order and the civil penalty assessment and Order will become final and enforceable. You can fax a request for a contested case hearing to the Department at 503-229-5100 or mail it to the address stated in Section VI of the Notice.

If you wish to discuss this matter with the Department, or believe there are mitigating factors that the Department might not have considered in assessing the civil penalty or issuing the enclosed Order, you may include a request for an informal discussion in the request for a contested case hearing. If you request an informal discussion, you still have the right to a contested case hearing.

Item G: Johnston Contested Case  
February 26, 2009 EQC Meeting  
Attachment N

Curtis Brian Johnston  
Case No. AQ/OB-WR-07-060  
Page 3

I look forward to your cooperation in complying with Oregon environmental law in the future. If, however, any additional violations occur, you may be assessed additional civil penalties.

Copies of referenced rules are enclosed. Also enclosed is a description of the Department's policy allowing partial mitigation of the civil penalty upon the completion of a Supplemental Environmental Project (SEP) approved by the Department. If you are interested in having a portion of the civil penalty fund an SEP, you should review the policy.

If you have any questions about the Notice and Order, please contact Sara Urch with the Department's Office of Compliance and Enforcement in Portland at 503-229-6792, or toll-free at 1-800-452-4011, extension 6792.

Sincerely,



Dick Pedersen  
Deputy Director

Enclosures

cc: Shannon Thorson, Division Chief, McMinnville Fire Department  
Dan Fox, Western Region Office, DEQ  
Cheryl Hutchens, Western Region Office, DEQ  
Keri Nelson, Western Region Office, DEQ  
Air Quality Division, HQ, DEQ  
Larry Knudsen, Oregon Department of Justice, Portland Office  
U. S. Environmental Protection Agency  
Yamhill County District Attorney

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF: )  
CURTIS BRIAN JOHNSTON, )  
an individual, )  
Respondent. )  
NOTICE OF VIOLATION,  
DEPARTMENT ORDER AND  
CIVIL PENALTY ASSESSMENT  
NO. AQ/OB-WR-07-060  
YAMHILL COUNTY

I. AUTHORITY

This Notice of Violation, Department Order and Civil Penalty Assessment (Notice and Order) is issued to Respondent, Curtis Brian Johnson, an individual, by the Department of Environmental Quality (Department) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS 459.995; ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 093, and 264.

II. FINDINGS

1. As of October 28, 2006, Respondent Curtis Brian Johnston held legal title to the property located at 11320 NE Lafayette Highway in Dayton, Oregon (the Property).
2. On or about October 28, 2006, at 8:19 p.m., the McMinnville Fire Department (Fire Department) responded to an open burn on the Property.
3. Fire Department personnel observed an open burn pile, approximately ten feet high by thirty feet wide and fifty feet long, actively burning.
4. Approximately 60% of the pile was burned.
5. The burn was not attended by a responsible person.
6. The necessary equipment to extinguish the burn was not present.
7. Materials observed actively burning included: plastics, rubber products, automobile parts, petroleum products, and materials that normally emit dense smoke and noxious odors including furniture, insulation, and miscellaneous wood products.

////



1 4. On or about October 28, 2006, Respondent violated OAR 340-264-0050(2), adopted  
2 pursuant to ORS 468.020 ORS 468A.025, by failing to constantly attend an open burn and by  
3 failing to have the necessary equipment for extinguishing the fire. Specifically, the fire on the  
4 Property was observed and reported by the Oregon State Police at 8:08 p.m. When the  
5 McMinnville Fire Department arrived at the burn at 8:19 p.m., no capable person was present to  
6 attend the burn. In addition, the necessary equipment to extinguish the burn was not present.  
7 According to OAR 340-012-0054(2)(j), this is a Class II violation.

8 IV. DEPARTMENT ORDER

9 Based upon the foregoing FINDINGS AND VIOLATIONS, Respondent is hereby  
10 ORDERED TO:

11 1. Immediately initiate actions necessary to correct all of the above-cited violations  
12 and come into full compliance with Oregon's statutes and regulations.

13 2. Within 30 days of the date of this Notice and Order, dispose of all solid waste  
14 located on the Property at an authorized disposal site and submit written documentation which  
15 demonstrates Respondent's full compliance with this Notice and Order.

16 3. All submittals must be made to: Dan Fox, Department of Environmental Quality,  
17 Western Region – Salem Office, 750 Front St., NE, Ste. 120, Salem, OR 97301-1039.

18 V. CIVIL PENALTY ASSESSMENT

19 The Department imposes civil penalties for the violations cited in Section II, paragraphs 1  
20 and 2 as follows:

| <u>Violation</u> | <u>Penalty Amount</u> |
|------------------|-----------------------|
| 1                | \$4,500               |
| 2                | \$5,024               |

24 Respondent's total civil penalty is \$9,524. The findings and determination of Respondent's  
25 civil penalty, pursuant to OAR 340-012-0045, are attached and incorporated as Exhibit Nos. 1 and

26 2.

27 ////

1 VI. OPPORTUNITY FOR CONTESTED CASE HEARING

2 Respondent has the right to have a contested case hearing before an administrative law  
3 judge regarding the matters contained in this Notice and Order, provided Respondent files a  
4 written request for a contested case hearing **within twenty (20) calendar days from the date of**  
5 **service of this Notice.** The request for a contested case hearing must be received by the  
6 Department within twenty (20) calendar days from the date of service of this Notice. Pursuant to  
7 OAR 340-011-0530(4), if Respondent fails to file a timely request for a hearing, the late filing  
8 will not be allowed unless the late filing was beyond Respondent's reasonable control.

9 The request for a hearing must include a written response to this Notice and Order that  
10 admits or denies all factual matters alleged in this Notice and Order. In the written response,  
11 Respondent must also allege any and all affirmative defenses and explain the reasoning in  
12 support of each affirmative defense. The contested case hearing will be limited to those issues  
13 raised in this Notice and Order and in Respondent's request for a contested case hearing. Unless  
14 Respondent is able to show good cause:

- 15 1. Factual matters not denied in a timely manner will be considered admitted;
- 16 2. Failure to timely raise a defense will waive the ability to raise that defense at a  
17 later time;
- 18 3. New matters alleged in the request for a hearing are denied by the Department  
19 unless admitted in subsequent stipulation by the Department.

20 Send the request for hearing and answer to: **Deborah Nesbit, Oregon Department of**  
21 **Environmental Quality, 811 S.W. 6<sup>th</sup> Avenue, Portland, Oregon 97204, or via fax at 503-**  
22 **229-5100.** Following the Department's receipt of a request for a contested case hearing,  
23 Respondent will be notified of the date, time and place of the contested case hearing.

24 If Respondent fails to file a timely request for a contested case hearing, Respondent may  
25 lose the right to a contested case hearing, and the Department may enter a Default Order for the  
26 relief sought in this Notice and Order.

27 ////

1 Failure to appear at a scheduled contested case hearing may result in an entry of a Default  
2 Order.

3 The Department's case file at the time this Notice and Order was issued will serve as the  
4 record for purposes of entering a Default Order.

5 VII. OPPORTUNITY FOR INFORMAL DISCUSSION

6 In addition to filing a request for a contested case hearing, Respondent may also request  
7 an informal discussion with the Department by including such a request in the request for a  
8 contested case hearing. Respondent's request for an informal discussion does not waive  
9 Respondent's right to a contested case hearing.

10 VIII. PAYMENT OF CIVIL PENALTY

11 The civil penalty is due and payable ten (10) days after the Order imposing the civil  
12 penalty becomes final by operation of law or on appeal. Respondent may pay the penalty before  
13 that time. Respondent's check or money order in the amount of \$9,524 should be made payable  
14 to "State Treasurer, State of Oregon" and sent to the Business Office, Department of  
15 Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

16  
17  
18 Date

7/16/07


  
Dick Pedersen  
Deputy Director

EXHIBIT NO. 1

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

VIOLATION 1: Causing or allowing to be initiated or maintained the open burning of materials which normally emit dense smoke or noxious odors, in violation of OAR 340-264-0060(3).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(q).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(g)(A), as Respondent initiated or allowed the initiation of open burning of 5 or more cubic yards of prohibited materials.

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

"BP" is the base penalty, which is \$2,500 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(4)(a)(C).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(16), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because Respondent has no prior significant actions.

"H" is Respondent's history of correcting prior significant action(s) and receives a value of 0 according to OAR 340-012-0145(3)(a)(C), because Respondent has no prior significant actions.

"O" is whether the violation was repeated or ongoing and receives a value of 0 according to OAR 340-012-0145(4)(a)(A), because the violation existed for one day or less and did not recur on the same day.

"M" is the mental state of the Respondent and receives a value of 6 according to OAR 340-012-0145(5)(a)(C), because Respondent's conduct was reckless. Respondent tossed some hot hay near a large pile of solid waste on the Property which spontaneously combusted, causing some dry grass and eventually the pile of solid waste on the Property to catch fire. In doing so, Respondent consciously disregarded a substantial and unjustifiable risk that the burn would occur. Respondent's actions constituted a gross deviation from the standard of care that a person of Respondent's experience and knowledge would observe in the situation, because Respondent placed combustible materials within the vicinity of his dump and did not attend to the materials or ensure that fire prevention equipment was present. Respondent served on the Fire Board for the McMinnville Fire Department approximately two years ago. In this position he was informed about the open burning rules and knew about the prohibition on burning the type of materials contained in the pile near where he deposited the hot hay. Respondent told Department staff that he had previously been informed of the Department's open burning rules, and has interacted with local law enforcement and fire department personnel involving previous burns of prohibited materials on the Property. The McMinnville Fire Department has documented two previous illegal burns on the Property, one in 2003 and one in 1999, both of which contained statewide prohibited materials.



"C" is Respondent's efforts to correct the violation and receives a value of 0 according to OAR 340-012-0145(6)(a)(D), because there is insufficient information to make a finding under paragraphs 6(a)(A) through 6(a)(C), or 6(a)(E).

"EB" is the approximate economic benefit that an entity gained by not complying with the law. No economic benefit is being assessed by the Department for this violation because the economic benefit is being assessed for violation No. 2.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$2,500 + [(0.1 \times \$2,500) \times (0 + 0 + 0 + 6 + 2)] + \$0 \\ &= \$2,500 + [\$250 \times 8] + \$0 \\ &= \$2,500 + \$2,000 + \$0 \\ &= \$4,500 \end{aligned}$$

EXHIBIT NO. 2

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

VIOLATION 2: Disposing of or authorizing the disposal of solid waste at a location other than a solid waste disposal site permitted by the Department, in violation of ORS 459.205(1) and OAR 340-093-0040(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(c).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to the Department does not indicate a minor or major magnitude.

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

"BP" is the base penalty, which is \$1,250 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii), and applicable pursuant to OAR 340-012-0140(4)(a)(A).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(16), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because Respondent has no prior significant actions.

"H" is Respondent's history of correcting prior significant action(s) and receives a value of 0 according to OAR 340-012-0145(3)(a)(C), because Respondent has no prior significant actions.

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(a)(A), because the violation has existed for more than 28 days, and is a continuing violation as of the date of this Notice.

"M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(a)(B), because Respondent's conduct was negligent. Given the quantity (555.56 cubic yards), and nature of the materials (plastics, rubber products, automobile parts, petroleum and products), Respondent should have known that he is required to dispose of these materials at a permitted solid waste facility.

"C" is Respondent's efforts to correct the violation and receives a value of 0 according to OAR 340-012-0145(6)(a)(D), because there is insufficient information to make a finding under paragraphs 6(a)(A) through 6(a)(C), or 6(a)(E).

"EB" is the approximate economic benefit that an entity gained by not complying with the law. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$2,774.00. This is the amount Respondent gained by avoiding spending \$4,532.78 to properly dispose of the solid waste. This

"EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$1,250 + [(0.1 \times \$1,250) \times (0 + 0 + 4 + 2 + 2)] + \$2,774 \\ &= \$1,250 + [\$125 \times 8] + \$2,774 \\ &= \$1,250 + \$1,000 + \$2,774 \\ &= \$5,024 \end{aligned}$$

## CERTIFICATE OF MAILING

I hereby certify that I served a Civil Penalty to Curtis Brian Johnston

6496 1928 2000 0000

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |            |  |               |  |                                                             |  |                                                                  |  |                      |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|--|---------------|--|-------------------------------------------------------------|--|------------------------------------------------------------------|--|----------------------|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>U.S. Postal Service</b><br/> <b>CERTIFIED MAIL RECEIPT</b><br/> <small>(Domestic Mail Only. No Insurance Coverage.)</small><br/>                 For delivery information visit our website at <a href="http://www.usps.gov">www.usps.gov</a></p> <p style="font-size: 2em; font-weight: bold; text-align: center;">OFFICIAL USE</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Postage \$</td> <td style="width: 50%;"></td> </tr> <tr> <td>Certified Fee</td> <td></td> </tr> <tr> <td>Return Receipt Fee<br/><small>(Endorsement Required)</small></td> <td></td> </tr> <tr> <td>Restricted Delivery Fee<br/><small>(Endorsement Required)</small></td> <td></td> </tr> <tr> <td><b>Total Postage</b></td> <td></td> </tr> </table> <p>Sent To: <b>Mr. Curtis Brian Johnston</b><br/> <b>11320 NE Lafayette Hwy</b><br/> <b>Dayton OR 97114</b></p> <p>Street, Apt. No. or PO Box No.<br/>                 City, State, ZIP</p> | Postage \$ |  | Certified Fee |  | Return Receipt Fee<br><small>(Endorsement Required)</small> |  | Restricted Delivery Fee<br><small>(Endorsement Required)</small> |  | <b>Total Postage</b> |  | <p><b>SENDER: COMPLETE THIS SECTION</b></p> <ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> <p>1. Article Addressed to:</p> <p style="text-align: center;"><b>Mr. Curtis Brian Johnston</b><br/> <b>11320 NE Lafayette Hwy</b><br/> <b>Dayton OR 97114</b></p> | <p><b>COMPLETE THIS SECTION ON DELIVERY</b></p> <p>A. Signature<br/>                 X <u>Curtis Johnston</u> <span style="float: right;"><input type="checkbox"/> Agent<br/><input type="checkbox"/> Addressee</span></p> <p>B. Received by (Printed Name) <u>CURTIS JOHNSTON</u>      C. Date of Delivery <u>7-17-07</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br/>                 If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type<br/> <input checked="" type="checkbox"/> Certified Mail    <input type="checkbox"/> Express Mail<br/> <input type="checkbox"/> Registered        <input checked="" type="checkbox"/> Return Receipt for Merchandise<br/> <input type="checkbox"/> Insured Mail       <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> |
| Postage \$                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |            |  |               |  |                                                             |  |                                                                  |  |                      |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Certified Fee                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |            |  |               |  |                                                             |  |                                                                  |  |                      |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Return Receipt Fee<br><small>(Endorsement Required)</small>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |            |  |               |  |                                                             |  |                                                                  |  |                      |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Restricted Delivery Fee<br><small>(Endorsement Required)</small>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |            |  |               |  |                                                             |  |                                                                  |  |                      |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Total Postage</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |            |  |               |  |                                                             |  |                                                                  |  |                      |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p>2. Article Number <u>7006 0100 0002 8261 6496</u><br/>                 (Transfer from service)</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |            |  |               |  |                                                             |  |                                                                  |  |                      |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p>PS Form 3811, February 2004      Domestic Return Receipt      102595-02-M-154</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |            |  |               |  |                                                             |  |                                                                  |  |                      |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

**ENGLE & SCHMIDTMAN**  
ATTORNEYS AT LAW  
NORTHWOOD OFFICE PARK - 610 GLATT CIRCLE  
WOODBURN, OR 97071-9600

ROBERT L. ENGLE  
E-MAIL: renglelaw@qwest.net  
KIRKA. SCHMIDTMAN  
E-MAIL: schmidmanlaw@qwest.net  
WEB SITE  
www.engeschmidmanlaw.com

RECEIVED  
AUG 1 2007  
OFFICE OF COMPLIANCE  
AND ENFORCEMENT  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
TELEPHONE  
(503) 981-0155  
FAX  
(503) 981-0158

July 30, 2007

VIA FACSIMILE (503 229 5100) and  
FIRST CLASS MAIL

Ms. Deborah Nesbit  
Oregon Dept. of Environmental Quality  
811 S.W. 6th Avenue  
Portland, OR 97204

Re: Curtis Brian Johnston, 11320 N. E. Lafayette Highway, Dayton, OR 97114  
Case No. AQ/OB-WR-07-060 - Yamhill County, Oregon

Dear Ms. Nesbit:

This office represents Mr. Curtis Brian Johnston regarding the Department's Notice of Violation under cover of July 16, 2007.

Please consider this letter a request for the following:

1. A request for a contested case hearing;
2. A request for an informal discussion, and
3. An indication of interest in a partial mitigation of civil penalty upon the completion of a Supplemental Environmental Project.

The July 16, 2007 Notice Of Violation charges Mr. Johnston with the following violations:

1. Causing or allowing to be initiated or maintained the open burning of prohibited materials - OAR 340-264-0060(3);
2. Causing of or authorizing the disposal of solid waste at a site for which a solid waste permit has not been issued - OAR 340-093-0040(1);
3. Conducting demolition open burning within an area of Yamhill County where such open burning is prohibited - OAR 340-264-0110(4)(b)(E); and
4. Failing to constantly attend an open burn and failing to have the necessary equipment for extinguishing fires - OAR 340-264-0050(2).

Deborah Nesbit – Oregon Dept. of Environmental Quality  
Case No. AQ/OB-WR-07-060  
July 30, 2007  
Page 2 of 3

Mr. Johnston responds as follows:

1. **Defense.** By way of affirmative defense, Mr. Johnston relies upon the provisions of ORS 468A.030. To the extent that the allegations of the NOTICE OF VIOLATION are hereinafter admitted, Mr. Johnston contends that such events were not proximately caused by his negligence or willful conduct but were, rather, proximately caused by conditions beyond his control.
2. **Admissions and Denials of Factual Allegations:**
  - A. Mr. Johnston denies that he caused or allowed to be initiated or maintained open burning of prohibited materials.
  - B. Mr. Johnston denies that he disposed of or authorized the disposal of solid waste to the extent that the term "disposal" suggests or includes anything beyond a temporary stockpiling of material.
  - C. Mr. Johnston denies that he caused or allowed to be initiated open burning of demolition waste.
  - D. Mr. Johnston denies that he failed to constantly attend an open burn or failed to have the necessary equipment for extinguishing a fire to the extent that such allegations require that he had prior knowledge of the existence of fire herein alleged to have occurred.
3. **Brief explanation of circumstances.** The location of the material which burned on or about October 28, 2006 was not readily observable from Mr. Johnston's home and agricultural operation.

Material water damage had occurred in Mr. Johnston's residence during the summer of 2006. Wet residential material including insulation and lumber were temporarily moved to the site where the fire subsequently occurred to be allowed to dry. The material in question was intended to be removed to an authorized disposal site once it had dried. The location of the temporary site was on Mr. Johnston's property and he was unaware that even a temporary deposit of such material at that location might not be permitted by Oregon law.

A week or two prior to October 28, 2006, Mr. Johnston became aware that three blocks of hay, which had been stored in his barn, were getting warm from the beginning of internal combustion. They had apparently been baled too green. Upon learning of that fact, Mr. Johnston removed approximately nine tons of hay in three, three-ton blocks to the back of his farm approximately forty feet from the location of the previously deposited insulation and lumber. His intent was to allow the hay to deteriorate to ultimately be composted. It would then have been spread over his agricultural ground.

It is Mr. Johnston's belief that the hay caught fire on October 28, 2006, without his knowledge, and spread through a row of brush and small trees, eventually igniting the insulation and lumber. Mr.

Deborah Nesbit – Oregon Dept. of Environmental Quality  
Case No. AQ/OB-WR-07-060  
July 30, 2007  
Page 3 of 3


Johnston did not intend for the fire to start and had every reason to believe that he had removed the suspect hay bales to a location where they would cool and render no danger of ignition.

Mr. Johnston will dispose of the burned material to a permitted disposal site as required by the Notice of Violation.

Mr. Johnston and his representatives will be pleased to participate in an informal discussion prior to the contested case hearing.

To the extent that the penalties are subsequently and finally assessed, Mr. Johnston is interested in determining the nature and extent of a Supplemental Environmental Project.

Respectfully submitted,



Robert L. Engle  
Attorney for Curtis Brian Johnston  
RLE:ld  
cc: Curtis B. Johnston

Not adm  
Attachment 5  
EXHIBIT # 04

State of Oregon  
Department of Environmental Quality

Memorandum

To: Enforcement File  
Mr. Curtis Johnston  
Date: November 3, 2006

From: Dan Fox  
AQ WR-Salem

Subject: Open Burning Violations

On Tuesday, October 31, 2006, at 9:30 a.m., I received a phone call from Division Chief Shannon Thorson of the McMinnville Fire Department. Division Chief Thorson was interested in enforcement options for a violator who the fire department has had numerous incidents with. I explained the options and the role of the DEQ to Division Chief Thorson and per her request; I emailed a blank "Fire Department Referral for Open Burning Violations" form to her. The email messages are included in Attachment 8. Division Chief Thorson also explained a little bit about the incident to me. She informed me that the violator owns a large chicken farm and was cited for attacking a firefighter in 1999. In the most recent incident, the violator was burning 55 gallon drums, machinery, a bicycle, a microwave, lots of insulation, and various items of tin.

On Thursday, November 2, 2006, at 2:17 p.m., the Western Region Salem Office was faxed a "Fire Department Referral for Open Burning Violations" from the McMinnville Fire Department (Attachment 2). The referral contained the following information:

- The McMinnville Fire Department responded to an illegal burn at 11320 NE Lafayette Highway, Dayton 97111, Yamhill County. The property is owned by Mr. Curtis Johnston, (503) 864-3366.
- The incident involved one burn pile that was approximately ten feet high by thirty feet wide and fifty feet long. Approximately 60% of the pile was burned.
- The type of burn is marked as Residential, Demolition, and Construction.
- The burn was conducted on a burn day, but not during authorized burn hours.
- The burn was not being attended by a responsible person.
- There were pictures taken of the incident and they are attached in an email sent at 1:09 p.m., November 2, 2006 from Division Chief Thorson. See Attachment 3 for the photographs.
- There are several fire department and law enforcement staff that witnessed the violation.
- Materials that were observed in the burn include: Plastics, automobile parts, furniture, petroleum products, rubber products, and miscellaneous wood products.
- Comments made by the violator: "Violator said to Assistant Chief Giddings he was unaware of the rules; however we have cited him several times before."
- Other comments made by the McMinnville Fire Department were: "He used to be a fire board member and is well aware of the rules."
- The Fire Department Referral for Open Burning Violations was completed by Division Chief Thorson. She works dayshift from 8:00 a.m. – 5:00 p.m. Her contact number is (503) 435-5803.



- Also attached to the referral was a referral from a June 20, 2003 incident (Attachment 9).

Once I received the referral form, I entered Mr. Johnston's name into the DEQ's database for open burning violations and found that this was the second time that the McMinnville Fire Department has responded to and sent a form to the DEQ for Mr. Johnston's illegal burning. The first referral was sent to the DEQ on June 24, 2003 for an incident that occurred on June 20, 2003. Attachment 9 contains a copy of the Fire Department Referral for Open Burning Violations that was sent in 2003. Upon further investigation, there was not a Notice of Non-compliance sent for this incident due to the time lapse of the DEQ response.

On Friday, November 3, 2006 at 1:34 p.m., I called the McMinnville Fire Department to speak with Division Chief Thorson so that I could get some additional information about the incident. I was unable to contact her.

On Wednesday, November 8, 2006, at 9:20 a.m., I tried to contact Division Chief Thorson and I was unable to speak with her.

On Thursday, November 16, 2006, at 3:35 p.m., I tried to contact Division Chief Thorson and I was unable to speak with her.

On Friday, November 17, 2006, at 9:43 a.m., I tried to contact Division Chief Thorson and I was unable to speak with her.

On Monday, November 20, 2006, at 3:57 p.m., Division Chief Thorson called and left a message for me to call her back.

On Tuesday, November 21, 2006, at 1:15 a.m., I tried to contact Division Chief Thorson and I was unable to speak with her.

On Wednesday, November 29, 2006, at 9:00 a.m., I tried to contact Division Chief Thorson and I was unable to speak with her.

On Tuesday, December 5, 2006, at 5:23 p.m., I sent an email to Division Chief Thorson informing her of what my schedule was and asked her to contact me. Attachment 8 contains the email.

On Wednesday, December 6, 2006, at 1:49 p.m., Division Chief Thorson called me and we were finally able to discuss the burning incident. I informed her that I had some questions regarding the Johnston incident and asked her if she could answer the following questions. She agreed.

Q: What is the time and date of the most recent referral?

A: "October 28, 2006, at 20:19"

Q: Would the McMinnville Fire Department support a referral for a civil penalty assessment?

A: "Oh Yea."

Q: What would you estimate to be the percentage of statewide prohibited materials (not wood) in the pile?

A: "I can't give you estimates on specific materials, but I would estimate that at least 50% of the pile was statewide prohibited materials."

Q: Was Mr. Johnston cooperative and forthright with information?

A: "Not really, no. He had indicated that he had received a fine for this in the past."

Q: The Fire Department Referral for Open Burning Violations states that Mr. Johnston used to be a fire board member. Which fire department, how long ago was that, and what was his role?

A: "About 3 years ago, Mr. Johnston was a fire board member with the McMinnville Fire Department. It was an elected position that met quarterly. I believe his role was to review financial contracts. He was definitely around the fire department environment enough to know what he was allowed to burn."

Q: The Fire Department Referral for Open Burning Violations states that the McMinnville Fire Department has been to this location several times before. Do you have any incident reports for these responses? Why did the fire department respond before?

A: "I found three documented incidents, but most of our staff is volunteers and they do not commonly fill out reports. I attached one of the incidents to the fax that I sent you, and I did not send the other incident report because it occurred longer than 60 months ago. I will fax you a copy of that incident as well, just so you can have all of the information that we have on Mr. Johnston. The 1999 incident went to court for "Interfering with a Fire Safety Officer. Mr. Johnston ripped the water hoses from the firefighter hands. The charge was dropped to a "Careless Burning" charge.

Q: Why was the law enforcement called to the scene on this last incident? Do you know who the officer was that responded?

A: "Because Mr. Johnston was hostile to us in the past, we called for backup. State Trooper Bridgett Taylor responded to the scene and coincidentally, she was the officer who responded to Mr. Johnston's 1999 incident."

Q: Has the McMinnville Fire Department responded to the scene since this referral was sent to the DEQ?

A: "Yes, there was an accidental fire in one of the chicken barns. This was completely coincidental."

Q: On the Fire Department Referral for Open Burning Violations, there are three different boxes checked for the type of burn; Residential, Demolition, and Construction. Which type of burn would fit this incident most accurately?

A: "Well it is a chicken farm and it is primarily an agricultural operation, but there were also several other items in the pile from around the property. There are also two residences on the property and this is the burn pile they use. The burn pile is just kind of a catch-all for everything on the property. There was a lot of insulation in the pile and a mattress. So, I will leave it up to you to decide what type of burn it is."

• I replied, "Okay, well it sounds like either a commercial burn or a demolition burn."

Q: Do you know if the debris is still there?

A: "I would imagine that it is still there."

Q: Did Mr. Johnston have any equipment or water near the burn pile?

A: "There was not any water, but he does have a lot of equipment on the property."

Q: Did Mr. Johnston admit to igniting the pile?

A: "Yes, I guess he did passively, when he told the state trooper that the fire was fine."

Q: Do you know approximately how long the fire had been burning before the fire department arrived at the scene?

A: "No, I don't know."

Q: How did the McMinnville Fire Department learn about the burn?

A: "Someone driving by called it in."

Q: Has the McMinnville Fire Department ever given Mr. Johnston any information on the DEQ Open Burning rules?

A: "Yes, through the years we have. We have also given him our factsheet on the open burning rules, which has the DEQ rules on it. He was also a fire board member."

Q: Were there any additional comments that were made by Mr. Johnston that we have not covered here?

A: "Not that I am aware of."

Q: Are there any additional comments that you would like to add about this incident?

A: "No."

At 2:10 p.m., Division Chief Johnston faxed me the incident report from the 1999 incident and included all of the information that the fire department has on Mr. Johnston. See Attachment 9.

On Friday, December 15, 2006, at 2:33 p.m., I called the McMinnville Area Command of the Oregon State Police to speak with State Trooper Taylor. She was not in, but I left her a voicemail and asked for a return call.

On Tuesday, December 19, 2006, at 11:00 a.m., I tried to call State Trooper Taylor, and was unable to contact her. I was informed that she was not in the office.

At 11:02 a.m., I called to speak with Mr. Johnston. Mr. Johnston was not home, but I did leave a message with a woman and asked that he call me back.

At 2:25 p.m., Mr. Johnston called me back. I informed him that I was doing an investigation about the burning incident that took place on October 28, 2006 and that I wanted to get his side of the story so that it is a balanced investigation. Mr. Johnston agreed. I asked Mr. Johnston the following questions.

Q: Who ignited the burn pile?

A: "What happened was that we had put some hot hay out in a pile. It caught fire, spread through some dry grass and into our dump. We had to put the hay somewhere because we definitely did not want that in the barn."

• Q: So it spontaneously combusted and no one ignited the pile?

• A: "Yes"

Q: When did the pile catch fire?

A: "I have no idea. I didn't even know the pile was on fire until I saw the lights flying by."

Q: What was in the pile and where did it come from?

A: "I don't know exactly what was in the pile. It was just stuff from around the property."

Q: Why were the police called to the scene?

A: "I don't know why she (State Trooper Taylor) was there. I think she saw the pile as she was driving by and she is the one who called the (McMinnville) fire department."

Q: Have you ever been informed about the DEQ Open Burning rules before?

A: "Yes, and that's why I haven't done it since. That was about 4-5 years ago."

Q: How long ago were you a fire board member and what did you do?

A: "I guess it was about 2 years ago. I reviewed contracts and helped allocate the money."

Q: So, as a fire board member, you were well aware of the open burning rules?

A: "Yes."

Q: Did you have any water or equipment near the burn pile?

A: "No."

• Q: You do have a lot of equipment on the farm though, don't you?

• A: "Yes, I do have a lot of equipment that I guess I could have used."

Q: Do you own the property where the pile is located?

A: "Yes."

Q: Where is the pile located on the property?

A: "On the back corner of the property. It would be on the west side of the property, near Lafayette Highway."

Q: Is the burned debris still there?

A: "Yes."

Q: Can I visit the location of where the burn pile is?

A: "Yea, that would be fine. Just call a couple of hours ahead and either my son or I can show you to the burn pile."

Q: Now this is a chicken farm correct?

A: "Yes."

Q: So, do I have to bring any protective clothing or boots?

A: "You will need to wear some protective clothing because of the avian bird flu scare. I have a suit that you can get suited up in."

Q: Why was the pile burned?

A: "The hot hay got into some dry grass and spread to our, I guess you could call it, our dump. We had a house flood this last summer and had to remove a lot of the material and just stored it there. Most of the material wasn't even burnable. There was a lot of Hardy rock and insulation."

Q: How big would you estimate the pile size to be?

A: "About the size of four pick-ups. Does that make any sense?"

• Q: So, approximately 20 foot by 40 foot pile?

• A: "Yea, that sounds about right."

Q: Are there any additional comments that you would like to add about this incident?

A: "I guess the only thing that I can think of is that I would definitely like to stress that this fire was not intentional. The police officer was out there and making all sorts of accusations. I just kept my mouth shut, because I knew that it wasn't going to get me anywhere."

I thanked Mr. Johnston and told him that I would probably be contacting him on Thursday to come look at the burn. Mr. Johnston said that that would be fine and to just call ahead so that someone can show me around.

On Wednesday, December 20, 2006, at 2:12 p.m., I called the McMinnville Area Command of the Oregon State Police to speak with State Trooper Taylor. She was not in for the day, but I left her a voicemail and asked for a return call.

At 2:25 p.m., I called Division Chief Thorson to ask her a few more questions that I had come up with. I was unable to contact her, but I did leave her a voicemail and asked her to call me back.

At 4:51 p.m., Division Chief Thorson called me back. I asked her if she could recall if there was any hay near the burn pile and I informed her of what Mr. Johnston had told me about the hot hay. Division Chief Thorson stated that she thought Mr. Johnston was a very intelligent man and that he had come up with a good story. Division Chief Thorson then stated that she did not believe Mr. Johnston's story, but that she would ask some of the volunteers what they recall. The reason why Division Chief Thorson stated that she did not believe Mr. Johnston is because he did not seem to be happy that he had moved the hot hay out of the barn and that he seemed to be upset that the fire department arrived. Division Chief Thorson also added that Mr. Johnston is always trying to come up with stories to defend his actions. She asked me why Mr. Johnston would put hot hay out in dry grass if he thought that there was a chance that it could catch fire. Division Chief Thorson then stated that she did not believe that there was any accusations made at the scene and that the volunteer fire fighters acted very professionally and explained the open burning rules to Mr. Johnston. Division Chief Johnston stated that she will ask the fire fighters about their recollection of the burning incident and she stated that she will call me back in the next few days.

On Thursday, December 21, 2006, at 8:23 a.m., I called Riverbend Landfill in McMinnville to get disposal rate information. See Attachment 12 for disposal information. I was then informed that I would need to contact Western Oregon Waste (W.O.W.) if I needed drop box information. I was then given the phone number of W.O.W.

At 8:25 a.m., I called W.O.W. to get the drop box rates. The gentleman who answered the phone asked me where the drop boxes would need to be delivered to. I informed him that I was just getting rate information, but the property was on Lafayette Hwy. The gentleman then asked me if this was to clean up the mess at the chicken farm. He then stated that he was a volunteer for McMinnville Fire Department and has been out to this property in the past for burning violations. I then asked him if he responded to the October 28, 2006 incident. He informed me that he did not, but that he has heard nothing but horror stories around the fire department about Mr. Johnston. The gentleman then informed me that his friend was on scene on that day and he gave me his friend's phone number and name. I thanked him, and then he gave me the disposal rate information. Attachment 12 contains the disposal information.

At 10:47 a.m., I called to confirm an appointment with Mr. Johnston so that I could inspect the burn pile. I was unable to contact Mr. Johnston, but I did leave a message asking him to call me back.

At 11:01 a.m., Mr. Johnston called me. Mr. Johnston stated that he had called his processor to ask him permission for me come out to the property. Mr. Johnston stated that his processor asked him "What's the point?" Mr. Johnston stated that he did not have an answer for that question. I explained to Mr. Johnston that it could be beneficial to him if I could come out and take some photographs and look to see if I could determine how the fire started. Mr. Johnston stated that the pile looks completely different now than what it did in October. He stated that the reason for this is because the McMinnville Fire Department had tried to put the fire out for three days and was unsuccessful at it. Mr. Johnston said that he and some of his workers moved around the burn pile so much with a bucket and tractor, that the pile was not the same as it was when it started. Mr. Johnston stated, "There has been some major disturbances to that area and I see no point for you to come out here. The processor wants as little amount of people out there as possible. So, I don't want you coming on the property." I replied, "Well, I guess that that decision is up to you, but it could benefit you if your story is correct." Mr. Johnston then replied, "If I thought I could sell you my story then I would allow you to come out here. I just don't see any purpose for you to be out here. You already got all the information you need, so I don't want you coming here. Sorry I can't help you out."

At 11:29 a.m., I called the volunteer fire fighter who was on the scene the day that the incident occurred. The fire fighter's name is Casey Amerson. I was unable to contact Mr. Amerson, but I did leave a message asking for him to call me back.

At 4:33 p.m., I received a voicemail from Mr. Amerson. The voicemail informed me that Mr. Amerson would be away from his phone until Tuesday, December 26, 2006.

On Tuesday, December 26, 2006, at 9:35 a.m., I called Mr. Amerson. I was unable to contact him, but I left a voicemail asking him to return my call.

At 12:51 p.m., Mr. Amerson returned my call, but I was out of the office at the time.

On Wednesday, December 27, 2006, at 12:15 p.m., I called Mr. Amerson. I was unable to contact him, but I left a voicemail asking him to return my call.

At 12:27 p.m., I called the McMinnville Area Command of the Oregon State Police to speak with State Trooper Taylor. She was not in, but I left her a voicemail and asked for a return call.

At 4:47 p.m., State Trooper Taylor called me to answer questions that I had about the illegal burn. I asked her the following questions:

Q: Did you write up a police report for the October 28, 2006 open burning incident for Mr. Curtis Johnston?

A: "No. Since I am a state trooper and this was out in the county, this was not my jurisdiction."

Q: What were Mr. Johnston's comments to you?

A: "He just stated that he didn't know how it started. It is the same story that he uses every time. It was just some miraculous event that occurred, just like always. He always denies fault. There was a little bit of everything in the burn. I can remember light bulbs, tires, and just a ton of crap in the burn pile that he is not allowed to burn. I have the burn on video, but I don't know how well it will turn out since it was dark at the time. I saw the HUGE fire from the other side of his property. This wasn't just some dinky little fire. I could see flames from about a mile away."

Q: So, he did not admit to igniting the fire?

A: "He never does. It is always someone else who started it or he has no idea how it started. It was just a humongous fire. My father worked for the fire department for years, so I have always been around burning. It was very obvious that someone had just lit this fire, probably with gasoline or some type of diesel/gas accelerant. I thought it was a house on fire when I saw the flames at first."

Q: Mr. Johnston told me that the fire started from hot hay. Did he tell you how it started?

A: "That's typical of him, he always denies it. I find it interesting that he stated that it started from hot hay, because all the barns were empty and you don't use hay for poultry. Usually a person can smell when there are a lot of birds around because they stink. That is why I can remember looking through the barns and that is how I know that the barns were empty. He just uses the story that people aren't allowed around the birds just to keep people off of his property. I have been there twice and that is why I arrived at the scene this time, because he has been a problem in the past. I told him that he needed to stay next to his vehicle this time, so that he didn't interfere with the fire fighters. Have you called YCOM to find out how many times there has been an illegal burn reported there?"

- I replied that I had not. State Trooper Taylor put me on hold and called the dispatch to check for me. She gave me the following information:

- There have been two smoke checks at his address; one on April 7, 2002 and the other on June 20, 2003. There have been three illegal burns

reported there; the dates are: August 30, 2002, September 23, 2002, and October 20, 2006.

State Trooper Taylor informed me that there were trees burning on this last incident and stated that I should not believe Mr. Johnston and that he is "just a jerk." She also stated that "he is lying!" State Trooper Taylor asked me if I would like her to write up a report about this incident. I told her that I would greatly appreciate that. She then stated that she would write up a report, make a copy of the video and send that to me within the next couple of days.

On Friday, January 05, 2007, at 10:14 p.m., I called to speak with State Trooper Taylor. I informed her that I had not yet received the report or copy of the video. State Trooper Taylor replied, "Didn't you receive the copy of the report yet, I sent it out last week. The video machine was broke, so I can't get you a copy of that." I informed State Trooper Taylor that I would be in the vicinity of McMinnville today and asked if I could stop by the station and get a copy of the report. State Trooper Taylor stated that that would be fine. I informed her that I would look through today's mail and if it was not there, then I would stop by.

At 1:30 p.m., I received a copy of State Trooper Taylor's report on the incident with Mr. Johnston. See Attachment 6.

On Wednesday, January 10, 2007, at 9:15 a.m., I received a voicemail from State Trooper Taylor. In the voicemail, State Trooper Taylor informed me that the video recording machine was down, but the station just got a new one. She stated that she will make a copy of the fire incident and send that to me and to call her if I have any questions.

On Thursday, January 18, 2007, I received a copy of the video that State Trooper Taylor sent to me. Attachment 6 contains a copy of the video.

On Friday, January 19, 2007, at 10:15 a.m., I tried to call Division Chief Thorson to get an exact time frame that the McMinnville Fire Department was at Mr. Johnston's property. I was unable to contact her.

On Wednesday, January 24, 2007, at 1:35 p.m., I tried to call Division Chief Thorson, but was unable to contact her.

On Friday, January 26, 2007, at 9:45 p.m., I called the McMinnville Fire Department to speak with Division Chief Thorson. I was unable to contact her.

On Wednesday, January 31, 2007, at 11:37 a.m., I called the McMinnville Fire Department to speak with Division Chief Thorson. I was unable to contact her.

Since I never received a return call from Mr. Amerson, I will not try to call him again. Also, I have been unable to contact Division Chief Thorson, so I will not try to contact her again either. I feel that there is enough information compiled for this case, that it is not necessary.



From the dimensions listed by the McMinnville Fire Department, I calculate the amount of materials that were burned as follows:

To convert to cubic yards:

$$\frac{(10 \text{ ft} \times 30 \text{ ft} \times 50 \text{ ft})}{27} \times 60\% = 333.33 \text{ cu. yd.}$$

To convert to amount of statewide prohibited materials burned:

$$333.33 \times 50\% = 166.67 \text{ cu. yd.}$$

Since this is Mr. Johnston's second incident of illegal burning in less than 60 months and there was more than 10 cubic yards of demolition waste burned, this incident will be referred to enforcement for a formal enforcement action which may include a civil penalty assessment.

## PHOTOGRAPH LOG

Responsible Party: Mr. Curtis Johnston

EXHIBIT # D-5

Date: Wednesday, December 20, 2006 Photographer: McMinnville Fire Department

Camera/Film: Received photographs via email

Note: Email is included in Attachment 7.

| NUMBER | DIRECTION                                         | DESCRIPTION                                                                                                                                                                                                                   |
|--------|---------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1      | Not sure, because I was unable to visit the site. | <u>Center:</u> Likely to be construction materials. Mr. Johnston stated that some of the materials in the burn pile were from his house. I believe that the large sheets on top of the metal drum are pieces of cement board. |
| 2      | Not sure, because I was unable to visit the site. | <u>Center:</u> Various pieces of metal or machinery.<br><u>Right top:</u> Hay or straw                                                                                                                                        |
| 3      | Not sure, because I was unable to visit the site. | <u>Right top:</u> Tree line<br><u>Center top:</u> Insulation<br><u>Left top:</u> Hay or straw<br><u>Center:</u> Various pieces of machinery<br><u>Bottom:</u> Unidentifiable debris                                           |
| 4      | Not sure, because I was unable to visit the site. | <u>Center top:</u> Tree line<br><u>Center:</u> Insulation                                                                                                                                                                     |
| 5      | Not sure, because I was unable to visit the site. | <u>Right top:</u> Standing trees that are burned<br><u>Center left:</u> Metal, bicycle<br><u>Center:</u> Metal drums<br><u>Center right:</u> Insulation                                                                       |
| 6      | Not sure, because I was unable to visit the site. | <u>Center:</u> Unidentifiable debris                                                                                                                                                                                          |



C  
for gas  
metal  
water  
header or  
barrel

BIT # DG  
gas w/ a or be  
emit  
dense smoke  
no gas odor  
sheetrock  
hard plank  
bldg material  
metal lath  
sheet metal



d  
Insulation

Mr. Johnston Open Burning Photos

A

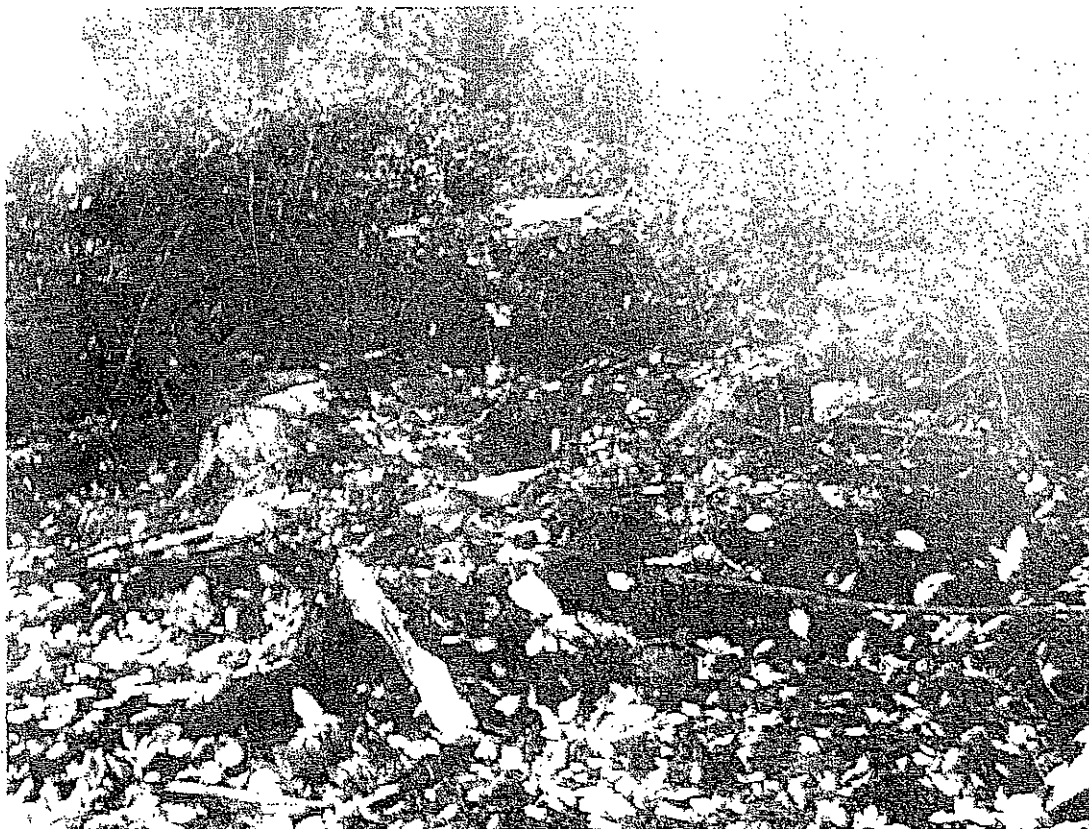


B





Painted metal  
bike tires  
"e"  
2 metal barrels  
other metal parts  
paint bucket  
insulation



Plastic tarp  
f

# MCMINNVILLE FIRE DEPARTMENT



175 NE 1st Street  
McMinnville, OR 97128  
Phone: 503/435-5800  
Fax: 503/435-5815

EXHIBIT # D 37

## FAX COVER SHEET

DATE: \_\_\_\_\_

TO: Dan Fox

FAX: \_\_\_\_\_

FROM: Shannon Thorson

RE: \_\_\_\_\_

NUMBER OF PAGES INCLUDING COVER SHEET: 5

MESSAGE: \_\_\_\_\_

Have emailed the photos.  
Included is the '03 violation  
I mentioned



## Fire Department Referral

# OPEN BURNING VIOLATIONS



**Incident Date:** 10/28/06 **Time:** 20:19 **FD Incident/Alarm No:**

Please sign and date, as well as complete all applicable parts of this referral form. The Department's actions will be based on the information you supply. It is particularly important to have a detailed report for serious incidents or those involving repeat violations that may result in formal enforcement action. Your cooperation is greatly appreciated!

**MAIL TO:** **PHONE:** (503) 878-5408 **FAX:** (503) 878-4196 **E-MAIL:**  
 ATTN: fox.dan@deq.state.or.us  
 Dan Fox  
 DEQ  
 750 Front St. NE, Suite 120  
 Salem, OR 97301-1089

### Violator Information

**Violator's Name:** (Mr. Mrs. Ms.) Curtis Johnston

**Incident Address:** 11320 NE Lafayette **City:** Dayton

**Zip:** 97111 **County:** Yamhill **Phone:** (503) 814-3361

(If different from incident address)

**Mailing Address:** Same **City:** \_\_\_\_\_

**State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_ **County:** \_\_\_\_\_ **Phone:** ( ) \_\_\_\_\_

**If Violator was Acting as an Employee, Please Provide the Following Information**

**Property Owner/Company Name:** N/A

**Address:** \_\_\_\_\_

**Phone:** ( ) \_\_\_\_\_

### Volume of Material Burned

**Burn Barrel(s):** \_\_\_\_\_ **Size (gallons or diameter & height):** \_\_\_\_\_

**File(s):** One **Other:** \_\_\_\_\_

**Height (ft):** 10' **Width (ft):** 30' **Length (ft):** 50'

**Estimated Percent of File(s) or Barrel(s) Burned:** 100 %

### Type of Burn

**Residential**  
 Household waste produced in or around a dwelling of four or fewer family dwellings, yard debris, lawn, lawn care, normal.

**Demolition**  
 Waste collected from the demolition or partial demolition of any structure, including the land disposal of the land disposal of demolition, including yard debris and household waste.

**Construction**  
 Waste from a construction project, including wood, concrete, masonry, metal, plastic and other building materials, as well as other materials or debris from the construction project.

**Commercial**  
 Waste from offices, retail stores, wholesale & retail stores, auto home care, warehouses, restaurants, more than four family dwellings, commercial, hotels, motels, resorts, etc. and from property.

**Industrial**  
 Any waste material from the direct result of any manufacturing or industrial process, including process waste.

**Important Information**

1. Was the burn being conducted on a burn day?
2. Was the burn being conducted during legal burn hours?
3. Was a responsible person attending the burn?
4. Did you take pictures of the burn pile?
5. Is there a witness to the violation?

|     |                                     |    |                                     |
|-----|-------------------------------------|----|-------------------------------------|
| Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/>            |
| Yes | <input type="checkbox"/>            | No | <input checked="" type="checkbox"/> |
| Yes | <input type="checkbox"/>            | No | <input checked="" type="checkbox"/> |
| Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/>            |
| Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/>            |

If yes, Name: Several Fire Dept &  
 Address: Law enforcement  
 Phone Number: Staff

Confidential   
 Anonymous   
 Neither

**Statewide Prohibited Materials**

- |                                                     |                                               |                                                        |
|-----------------------------------------------------|-----------------------------------------------|--------------------------------------------------------|
| <input type="checkbox"/> Decomposable Garbage       | <input checked="" type="checkbox"/> Plastics  | <input checked="" type="checkbox"/> Automobile Parts   |
| <input type="checkbox"/> Wire Insulation            | <input type="checkbox"/> Asphaltic Material   | <input type="checkbox"/> Carpet                        |
| <input type="checkbox"/> Linoleum Products          | <input checked="" type="checkbox"/> Furniture | <input checked="" type="checkbox"/> Petroleum Products |
| <input checked="" type="checkbox"/> Rubber Products | <input type="checkbox"/> Animal Remains       | <input type="checkbox"/> Tires - How Many? _____       |

Estimated Percent of Illegal Material in Burn: \_\_\_\_\_ %

**Materials observed in burn**

- |                                          |                                                                        |                                 |
|------------------------------------------|------------------------------------------------------------------------|---------------------------------|
| <input type="checkbox"/> Yard Debris     | <input checked="" type="checkbox"/> Misc. Wood (lumber, plywood, etc.) | <input type="checkbox"/> Stumps |
| <input type="checkbox"/> Paper/Cardboard | <input type="checkbox"/> Other: _____                                  |                                 |

**Additional Information**

Was the violator cooperative when asked to extinguish the fire? Where there any comments made by the violator, regarding the open burn?

Violator said to Asst chief Giddings he was unaware of the rules; however we have cited him several times before.

Other comments regarding this incident (i.e. past incidents, violator intentions, etc.)

He used to be a Fire board member and is well aware of the rules. ~~etc~~

Agency/Fire Department: McMinnville Fire Dept Phone: (503) 435-5803  
 Officer/Employee: Shannon Thorsen Title: Division Chief  
 Shift: Days 8-5 Date: 11-3-06

Signature: [Signature]

**PLEASE SUBMIT THIS FORM TO DEQ WITHIN 30 DAYS OF INCIDENT.**

Item F 000177

**THANK YOU!**



**OREGON STATE POLICE INCIDENT REPORT**

REPORT TYPE  
 INITIAL REPORT  
 SUPPLEMENTAL

|                                                                                                       |                                    |                                     |
|-------------------------------------------------------------------------------------------------------|------------------------------------|-------------------------------------|
| DISTRIBUTION:                                                                                         |                                    |                                     |
| <input type="checkbox"/> GHQ Criminal                                                                 | <input type="checkbox"/> GHQ F W   | <input type="checkbox"/> GHQ Patrol |
| <input type="checkbox"/> ID Documents                                                                 | <input type="checkbox"/> ID Prints | <input type="checkbox"/> District   |
| <input type="checkbox"/> Lab                                                                          | <input type="checkbox"/> DA:       |                                     |
| <input checked="" type="checkbox"/> Other DEQ - DAN FOX (750 FRONT ST NE, SUITE 120, SALEM, OR 97301) |                                    |                                     |

EXHIBIT A

ASSOCIATED OSP #s/

OTHER AGENCY #s/

OFFENSE/ORS/ **ILLEGAL BURNING**

Ocr/ 1 Col YAMHILL Stat

|         |                                  |                                               |                                    |
|---------|----------------------------------|-----------------------------------------------|------------------------------------|
| STATUS/ | ACTI - OPEN/ACTIVE INVESTIGATION | CLOS/A - CLOSED BY ADULT ARREST               | CLOS/J - CLOSED BY JUVENILE ARREST |
|         | COMP - CLOSED SERVICE COMPLETE   | INAC - OPEN/INACTIVE/NO FURTHER INVESTIGATION | UNFD - CLOSED UNFOUNDED            |
|         | NODA - NO PROSECUTION BY DA      | OTH - OFFENDER DECEASED                       | RFSE - VICTIM REFUSED PROSECUTION  |

ADDITIONAL OFFENSES/

Ocr/ Col Stat

Ocr/ Col Stat

Ocr/ Col Stat

(SEE NARRATIVE FOR ADDITIONAL OFFENSE)  Yes  No

LEAD/ORIG AGENCY OSP

DATE/TIME REPORTED TO OSP 10/28/2006 8:08 PM

RPT DATE/TIME/ 12/28/2006 4:40 PM OCCUR'd DATE/TIME 10/28/2006 8:08 PM

IF SUPPLEMENTAL: DATE/TIME OF ORIGINAL REPORT/

ORIGINAL SUBJECT OF REPORT/

SUBJECT OF THIS REPORT/

(ADDITIONAL VICTIMS:  YES  NO)  
(CO-DEFENDANTS:  YES  NO)

LOCATION

OF INCIDENT/ 11320 SE LAFAYETTE HIGHWAY, DAYTON, OR 97114

COUNTY/ YAMHILL

LOCATION TYPE (Premises)/ PRIVATE PROPERTY

METHOD OF ENTRY/

(list for each appropriate offense)

TOTAL LOSS/ \$0.00

TOTAL DAMAGE/ \$0.00

DOMESTIC VIOLENCE?  YES

THEFT BY COMPUTER?  YES

GANG INVOLVEMENT?  YES describe

BIAS MOTIVATION  YES describe

WEAPON USED?  YES describe

UNDER INFLUENCE OF:  UNKNOWN

Alcohol?  YES and/or Drugs?  YES describe

The below-named subject is presently a runaway/missing person and I certify that I am the parent, legal guardian, or reporting party.

Subject/ Reporting Party/  
(Print ONLY) Last, First Middle (Print ONLY) Last, First Middle

Signature/ Signature Date/

REPORTING OFFICER/ B. TAYLOR, SR. TROOPER 362-14

DPSST# 35374

DATE/ 12/28/2006

STN/ MCMINNVILLE

ASSGN 200

APPROVED/

DATE/ 1/3/07

INCIDENT# [CAD#]  
SP 06-405226

RECEIVED  
JAN 5 2007  
DEQ-SALEM OFFICE

06-405226  
11320 SE LAFAYETTE HWY  
10-28-06 / 8:08PM  
ILLEGAL BURN

2

JOHNSTON, CURTIS BRIAN      DOB: 10-09-50

MENTIONED OTHER:

KIGER, GREG  
(503) 472-2737  
(Riding with me)

SUMMARY:

On October 28, 2006 at about 8:08pm I observed an illegal burn occurring. I notified the Fire Department and located the illegal burn at 11320 SE Lafayette Highway.

ACTION TAKEN:

On October 28, 2006 at about 8:08pm I was traveling southbound on Highway 233 near Milepost 6 when I observed a very large fire to the east. I notified Yamhill County Communication (YCOM) to send out the fire Department and that the fire was between Highway 233 and Lafayette Highway. I also advised my dispatch of the fire. I located the fire behind the residence of 11320 SE Lafayette Highway. I contacted both my dispatch and YCOM and waited for the Fire Department to arrive. I asked YCOM if it was a burn day. YCOM informed me that it was not a burn day and there is no burning allowed after dark. I followed the Dayton Fire Department and located the fire at the tree line to the south of the barns. Since I had been to this residence before and the property owner had interfered with the Fire Department as they were extinguishing a different fire a few years ago I remained with the Fire Fighters as they extinguished this fire.

While I was at the fire I observed the trees were burning very high up. I also observed there was insulation, light bulbs, bicycles and plastic bottles being burned as well as other items, but due to the smoke it was difficult to see everything. I recorded the scene on my video camera.

Dayton Fire Fighters called the McMinnville Fire Department because the fire was too big for their water tender. The McMinnville Fire Department arrived as well as the property owner.

I talked to the homeowner identified by his Oregon Driver's License as Curtis Johnston, DOB: 10-09-50. I asked Mr. Johnston why he was burning. Mr. Johnston said he did not know how it got started. I explained to Mr. Johnston that the Fire Department would be on scene until the fire was out and that they were legally here at my request. Mr. Johnston said that he would cooperate.

Item G: Johnston Contested Case  
February 26, 2009 EQC Meeting  
Attachment N

06-405226  
11320 SE LAFAYETTE HWY  
10-28-06 / 8:08PM  
ILLEGAL BURN

3

The fire department told me that the Fire Marshall was coming out to the scene. I told them that if they had any problems to call me and I would return.

CASE STATUS: REFERED TO DEQ BY THE FIRE MARSHALL

INVESTIGATING OFFICER:

B. Taylor, Sr. Trooper 362-14/35374  
Oregon State Police - McMinnville

# MCMINNVILLE FIRE DEPARTMENT



175 NE 1st Street  
McMinnville, OR 97128  
Phone: 503/435-5800  
Fax: 503/435-5815

EXHIBIT # D9

## FAX COVER SHEET

DATE: Dec 6, 2006

TO: Dan Fox

FAX: \_\_\_\_\_

FROM: Shannon Thorson

RE: \_\_\_\_\_

NUMBER OF PAGES INCLUDING COVER SHEET: 14

MESSAGE: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### OREGON UNIFORM CITATION AND COMPLAINT

RECOMMENDED USE FOR WILDLIFE, FISHING AND CITATIONS IN LIEU OF CUSTODY

|                                                                                        |    |                                                                          |                                             |                                           |
|----------------------------------------------------------------------------------------|----|--------------------------------------------------------------------------|---------------------------------------------|-------------------------------------------|
| <input checked="" type="checkbox"/> CRIMINAL / OTHER<br><small>(SEE A ON BACK)</small> | OR | <input type="checkbox"/> INFRACTION(S)<br><small>(SEE B ON BACK)</small> | <input type="checkbox"/> TRAFFIC            | <input checked="" type="checkbox"/> OTHER |
|                                                                                        |    |                                                                          | <input type="checkbox"/> WILDLIFE           | <input type="checkbox"/> BOATING          |
|                                                                                        |    |                                                                          | <input type="checkbox"/> COMMERCIAL FISHING |                                           |

STATE OF OREGON  
 CITY OF McMinnville  
 COUNTY OF YAMHILL

DOCKET NO. \_\_\_\_\_  
 COURT:  DISTRICT  MUNICIPAL  
 JUSTICE  JUVENILE  CIRCUIT

POLICE RECORDS  
 028283

THE UNDERSIGNED CERTIFIES AND SAYS THAT:

|                               |               |                |                       |
|-------------------------------|---------------|----------------|-----------------------|
| DRIVER LICENSE NO. / ID. NO.  | STATE         | DL TYPE        | TELEPHONE NO.         |
| <u>1210706</u>                | <u>OR</u>     | <u>DL</u>      | <u>(503) 851 3107</u> |
| NAME - LAST                   | FIRST         | INITIAL        |                       |
| <u>JOHNSTON, CURT</u>         | <u>CURT</u>   | <u>C</u>       |                       |
| ADDRESS                       | CITY          | STATE          | ZIP CODE              |
| <u>11320 SE LAFAYETTE Hwy</u> | <u>DAYTON</u> | <u>OR</u>      | <u>97114</u>          |
| SEX                           | RACE          | DATE OF BIRTH  | HEIGHT                |
| <u>M</u>                      | <u>W</u>      | <u>12-9-50</u> | <u>5'9"</u>           |
| WEIGHT                        | HAIR          | EYES           |                       |
| <u>180</u>                    | <u>GRY</u>    | <u>GRY</u>     |                       |

AT THE FOLLOWING TIME AND PLACE IN THE ABOVE MENTIONED STATE AND COUNTY:

OFFENSE DATE MONTH DAY YEAR TIME  AM  PM  
July 08 99 12:35

AT LOCATION  
11320 SE Lafayette Hwy Dayton

INFORMATION INVOLVING THE FOLLOWING:

|                                      |          |                        |
|--------------------------------------|----------|------------------------|
| BOAT / VEHICLE REGIS. OR LICENSE NO. | STATE    | DEFENDANT'S OCCUPATION |
| YEAR                                 | MAKE     | MODEL                  |
| LENGTH                               | COLOR    |                        |
| HUNTING / ANGLING LICENSE NO.        | UNIT NO. | STREAM NO.             |

DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE(S):

|                                                   |                                                         |                                     |
|---------------------------------------------------|---------------------------------------------------------|-------------------------------------|
| 1. VIOLATED (CITE ORP / ORC / RULE)               | DESCRIPTION                                             | 1. SCHEDULED BAIL                   |
| <u>62.235</u>                                     | <u>OBSTRUCTING GOVERNMENTAL</u>                         | <u>5,000.00</u>                     |
|                                                   | <u>Judicial Administration</u>                          |                                     |
| <input checked="" type="checkbox"/> INTENTIONALLY | <input type="checkbox"/> KNOWINGLY                      | <input type="checkbox"/> RECKLESSLY |
| <input type="checkbox"/> WITH CRIMINAL NEGLIGENCE | <input type="checkbox"/> WITHOUT CULPRABLE MENTAL STATE |                                     |
| 2. VIOLATED (CITE ORP / ORC / RULE)               | DESCRIPTION                                             | 2. SCHEDULED BAIL                   |
|                                                   |                                                         |                                     |

I CERTIFY UNDER LAWS (ORS 163.030, 163.032, 163.034, 163.036, 163.038) THAT I HAVE SUFFICIENT GROUNDS TO AND DO HEREBY THAT THE AXXM MENTIONED PERSON (NAMED THE ABOVE OFFENSE(S)) AND I HAVE SEEN WITH THIS COMPLAINT.

7-8-99 [Signature] 302-41/35374  
 DATE ISSUED OFFICER'S SIGNATURE (I.D. NO.)

PRINT OFFICER'S NAME: Kepler, J. COMPLAINT OR INFORMATION FILED AT TIME OF CITATION:  NO  YES

SIGNATURE OF ARRESTING PERSON (IF NOT OFFICER): \_\_\_\_\_ PRINT NAME: \_\_\_\_\_

BOOKING DATE: \_\_\_\_\_ CUSTODY AT: \_\_\_\_\_

YOUR COURT APPEARANCE DATE, TIME AND LOCATION ARE:

|           |           |           |                 |                      |                                        |
|-----------|-----------|-----------|-----------------|----------------------|----------------------------------------|
| MO.       | DAY       | YEAR      | TIME            | COURT                | LOCATION                               |
| <u>07</u> | <u>26</u> | <u>07</u> | <u>11:57 AM</u> | <u>CIRCUIT COURT</u> | <u>514 S. 3RD ST. DAYTON, OR 97114</u> |

RESERVED FOR COURT USE

99-261937  
11320 LAFAYETTE HWY  
07-08-99  
JOHNSTON, CURT B. (DOB: 10-09-50)

PAGE 1 OF 4

MENTIONED: Thorson, Shannon  
Division Chief, City of McMinnville  
(503) 434-7305

Lilly, Jay  
Fire Chief, McMinnville Fire Department  
(503) 434-7305

SUMMARY: On 07-08-99 at about 12:37pm, I was notified by Yamhill County Communications that law enforcement was needed to assist fire fighters at 11320 Lafayette on an illegal burn. I responded to the area. I contacted the fire fighters and was informed that Curt B. Johnston had taken a hose from a fire fighter that was in the process of extinguishing an illegal burn. During my investigation Mr. Johnston informed me that he had indeed taken the hose and turn it off. I cited Mr. Johnston for Obstructing Governmental or Judicial Administration.

ACTION TAKEN: On 07-08-99 at about 12:37pm I was notified by Yamhill County Communications that the fire fighters that had responded to an illegal burn needed law enforcement on the scene. I responded to 11320 Lafayette Highway to assist the fire fighters. Upon my arrival at 12:45pm I saw a pick up truck with a male pacing by it and two fire trucks.

I contacted firefighter's Dennis Lane McMillan and Chad Cook, both are with the McMinnville Fire Department as well as Tom Phillips of the Dayton Fire Department. They informed me that the property owner, identified later as Curt B. Johnston, had just interfered with them while they were trying to put out an illegal burn. I asked them what had occurred and they told me that he had taken the hose from Fire Fighter Chad Cook and turned it off while he was attempting to extinguish the fire.

I interviewed firefighter McMillan and had firefighter's Tom Phillips and Chad Cook write out their statements. (See Attached statements of Fire Fighters McMillan and Cook as well as Fire Marshal Thorson and Fire Chief Lily.)

PAGE 2 OF 4

Fire Fighter Tom Phillips stated in substance that he responded to an illegal burn at about 12:10pm. He said he arrived at 11320 Lafayette Highway. He said he arrived and that B-10, the McMinnville Fire Department truck, was near a green house and its brake lights were on. He said he then followed them down a long driveway past chicken barns to the burn. He said that he called Yamhill County Communications and asked them about today's burn status. He said he then went to the McMinnville firemen and made a comment to them that, "this didn't look like and 'Ag' burn." He said that as he was going back to the engine, B-6Z, the property owner approached him. He said that he was screaming get your fucking ass back in your fucking truck and get off my fucking property. Mr. Phillips said he that the property owner then went over to the McMinnville Fire Fighter who was extinguishing the fire and grabbed the hose from him and shut it off. He said that the fire fighter then walked over and called for police assistance. He said that he then walked back over to the property owner and asked for the fire hose and then continued to extinguish the fire. Mr. Phillips said that they then removed their equipment back to the entrance and waited for the State Police.

I then went to talk to Mr. Johnston. He informed me that he had to leave so that they could disinfect the area in which the fire fighters had been driving and standing. I informed him that he could not leave at this time. He said he needed to go disinfect the area. I asked him if he could get someone else to do that and he said yes he could. I then informed him that I wanted to go back to the burn area. He informed me that he had to get boots and coveralls so that we would not contaminate the area were the new chicks were located. I informed him that Fire Marshal Thorson and one of the fire fighters would be going back to the area and would need the protected clothing also. He got agitated and said that he did not have any protective clothing big enough for any of them. I informed him that Fire Fighter Phillips was actually smaller than he was. He then said that the fire fighters boots were too big for the foot protection. I said that they would be more than happy to remove their boots in order to fit into the protective boots.

Mr. Johnston then approached the area where signs were posted stating in substance, do not enter with out disinfecting and a no trespass sign. He then sprayed his tires only and went onto the dirt

PAGE 3 OF 4

lane and then turned left and into a long building. After a about a minute two people riding a quad left the back of the building at a high rate of speed heading toward the area of the illegal burn. I then informed Fire Marshal Thorson and Fire Fighter Cook that I was going back to ensure that they did not tamper with the scene. All of us got into my patrol car, with their protective boots on, rolled up the windows and had Fire Fighter Phillips decontaminate the tires of my patrol car just as Mr. Johnston did his pick up. I proceed to the back of the property were the illegal burn had been and past the two people who were on the quad. They saw me and turned and went in a different direction.

I was then met at the area by Mr. Johnston who inquired why I did not wait for the suits. I informed him that we had the boots on and thought that that should suffice. Fire Marshal Thorson and Fire Fighter Cook both put on the protective suits on fully. I did not, I kept mine near my waist, keeping my gun belt exposed due to my job. We then walked a few more feet and saw a large pile of debris. The pile was largely metal, plastic rubber with a little bit of agriculture debris. Fire Marshal Thorson inspected the area and took pictures. I asked Fire Fighter Cook if anything had been tampered with and he informed no.

We returned to the entry point and gave the plastic boots and suits back to them. Fire Chief Lily was now present. He was briefed on what had occurred. I then went and interviewed Mr. Johnston.

Mr. Johnston stated in substance that he was sleeping in the house when his wife woke him and told him that some fire trucks had just drove by the house and head to the back. He said he then drove back there and told them to get off of the property because they were not disinfected. He then told them to roll up their hoses and leave. He said he then went over to the fire fighter and took his hose and shut it off. He said that the fire fighters rolled up the hoses and left. He said that he did not know who was on the property and that his wife had said that the fire trucks drove by at about 40mph.

I asked Mr. Johnston who was working on the property. He said he did not know. I then asked him if he knew who was on the property that day. He again informed me he did not know. I then informed him that I needed to talk to them. He again informed me that he did not know who was on his property today. I then asked



PAGE 4 OF 4

whom he was talking to about decontaminating the area. Mr. Johnston would not tell me who it was. I then informed Mr. Johnston that I would need to talk to everyone that was on the property before and after the fire fighters arrived and to call me with the names so I could talk to them. Mr. Johnston asked me for a card. I informed him that I did not have one, but would give him my information.

**ACTION  
TAKEN:**

I cited Mr. Johnston for Obstructing Governmental or Judicial Administration.

FIRE DEPARTMENT REFERRAL FOR OPEN BURNING VIOLATIONS

MAIL TO: DEQ, 750 Front Street NE, Suite 120, Salem, OR 97310

EXHIBIT # D10

Please complete both sides of this form. The Department's actions will be based on the information you supply. It is particularly important to have a detailed report for serious incidents or those involving repeat violations that may result in formal enforcement action. Thank you.

INCIDENT DATE: 7-8-99 TIME: 1208 F.D. INCIDENT/ALARM NO.: CAO 2095

VIOLATOR'S NAME: (Mr. Mrs. Ms.) Curt Johnson

INCIDENT ADDRESS: 11320 Lafayette Hwy CITY: Dayton

ZIP: 97114 COUNTY: Yamhill VIOLATOR'S TELEPHONE NUMBER: \_\_\_\_\_

VIOLATOR'S MAILING ADDRESS (if different): Same

IF VIOLATOR WAS ACTING AS AN AGENT OR EMPLOYEE, PLEASE PROVIDE THE FOLLOWING INFORMATION:

PROPERTY OWNER/COMPANY'S NAME: \_\_\_\_\_

PROPERTY OWNER/COMPANY'S ADDRESS: Same as above

PROPERTY OWNER/COMPANY'S TELEPHONE: \_\_\_\_\_

VOLUME OF MATERIAL BURNED

\_\_\_ BURN BARREL(s)  PILE(s)

PILE HEIGHT 4 ft. WIDTH 15 ft. LENGTH 25 ft. OR HEIGHT \_\_\_ ft. DIAMETER \_\_\_ ft.  
(IF more than one pile is involved, please provide information for each pile)

TYPE OF BURN

- RESIDENTIAL  DEMOLITION (including land clearing)  CONSTRUCTION  COMMERCIAL
- INDUSTRIAL  AGRICULTURAL

MATERIAL BURNED

- YARD TRIMMINGS  BRUSH  TREE LIMBS  STUMPS  PAPER  CARDBOARD
- MISCELLANEOUS WOOD PRODUCTS (lumber, plywood, etc.)  OTHER \_\_\_\_\_

PROHIBITED MATERIAL

- DECOMPOSABLE GARBAGE  PLASTICS  TIRES  AUTO PARTS  WIRE INSULATION
- ASPHALTIC MATERIAL  PETROLEUM PRODUCTS  RUBBER PRODUCTS  ANIMAL REMAINS

ESTIMATED PERCENTAGE OF PROHIBITED MATERIAL IN BURN: 95%

WAS THE BURN LOCATED IN A SPECIAL OPEN BURNING CONTROL AREA?  YES  NO

WAS THE BURN BEING CONDUCTED ON A BURN DAY?  YES  NO

WAS THE BURN BEING CONDUCTING DURING LEGAL BURN HOURS?  YES  NO

WAS THE BURN BEING ATTENDED BY A RESPONSIBLE PERSON? YES  NO

DID THEY ADMIT TO IGNITING THE BURN? YES  NO

FIRE DEPARTMENT: McMinnville Fire Dept PHONE: 503-434-7305

OFFICER: Shannon Tharson TITLE: Division chief

SIGNED: Shannon Tharson DATE: 7-8-99

(please see other side)

EXHIBIT # D 11

This letter of statement is to document the events that occurred on the Brush 10 response to a reported illegal burn near Star Quarry Rd. near the intersection of Hwy 233 in MFD rural Fire District. This is a personal record for future reference in the likelihood that this case goes to court, as there were criminal charges filed on the landowner by the office of the State Police.

On July 8, 1999 at approx. 1208 in the afternoon YCOM dispatched engine 16 on an illegal burn in the vicinity of Hwy 233 and Star Quarry rd. Myself and Firefighter Chad Cook responded in Brush 10 in place of engine 16 on my decision to do so. Dayton Fire Department also had a unit responding to this incident as it was in a mutual response area. While responding to the area Firefighter Cook and I noticed that the smoke column was coming from a property that was located off of Lafayette Hwy north of Stockhoff Rd.. Brush 10 then proceeded to that location. The correct address of the incident on our arrival was actually 11320 Lafayette hwy.

As we entered the property in our brush rig we proceeded up a paved driveway just off of the highway and stopped at a residence, and waited for 15 to 20 seconds and no one came out to greet us so we proceeded on in. We then came to a check station, which was posted no trespassing, and also was marked no entry, entry only after proper disinfection has taken place. At that point no one was there to handle that for us and we proceeded on down the driveway. We then came to a large green metal building, which had a few vehicles at it. We stopped and waited for someone to come out, for approx. 1/2 to 1 minute, we then proceeded out past the long tan buildings to the s.w. end of the property to the site where the two burn piles were emitting dark black smoke from.

After arriving at the piles, I gave a size-up to dispatch and told them we were going to extinguish the piles as they were unattended burn piles with every imaginable illegal burn material you could imagine in them. There were tires, paint cans, grease products, lawn mowers, and plastic tubing just to mention some of the worst. On top of that, the piles were in a tree line adjacent to dry fields with a 10 to 12 mph wind.

E-62 arrived to assist with extinguishment of the fires; still at that point there was no sign of a landowner on scene. I gave the order to extinguish the fires to my Firefighter, and we started to flow water on the piles of rubbish. At about 2 to 3 minutes into extinguishment the owner arrived in a maroon newer Ford pickup 4x4, and came to a skidding stop behind Dayton Fire's engine and jumped out screaming profanities to all Fire personnel on scene. I then handed the hose to Firefighter Cook and went to make contact with the landowner. The landowner would not identify himself, and was screaming at me telling me to get all of our equipment off of the property as we were trespassing on private property in a restricted area, and we did not decontaminate before we entered. He would not listen to reason as to why we were there, and I tried to explain that the piles were highly illegal and were unattended, and he had no ready water source on scene.

I also told him that we were not going to leave until the piles were properly extinguished. This made him very irate and he started to threaten myself and my crew, using more profanities and saying he will be seeing me in the Fire Chief's office and he would have all of our jobs for contaminating his farm.


At this point, and quite enraged, the land owner went over to Firefighter Cook and forcibly took his hoseline from him and using profanity again told us all we had better leave now or we would be in serious trouble. During the time that Firefighter Cook was relieved of his hose line, he went to the brush rig to call for Police assistance from ycom dispatch. I was at

that time telling the land owner that what he was doing was not legal, and that I was going to call my Division Chief, Shannon Thorson to respond, He then showed his dislike for her with more profanity, and stated that she can just meet him in Chief Lilly's office as we were all in a lot of trouble. He then went aside to use his cell phone, and the Dayton Firefighter finished extinguishing the fires.

When he returned he asked us to go back out to the disinfection point, as the fires were out. I agreed and we left the same way we came in. That was the way he asked us to leave. D/C Thorson was on her way at that time, and we waited for her to arrive. D/C Thorson arrived at the same time basically as the State Trooper did, and the State Trooper took over the investigation. Chief Lilly arrived on scene shortly after Trooper Taylor, D/C Thorson, and Firefighter Cook all went back on the premises to start investigating the piles of rubbish. I stayed in the brush rig to wait for C-1's arrival.

I and my crew gave our statements to Trooper Taylor and we were clear to leave the scene. Brush 10 was back in quarters at 1407 hrs. The times from ycom read as follows: dispatched 1208, enroute 1208, arrived at correct scene 1223, clear scene 1350, and secure quarters 1407. The CAD # 3095 for this run.

Dennis McMillan



Firefighter/Paramedic

McMinnville Fire Department

*not admitted*

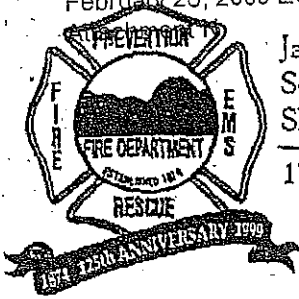
### Special Incident Report

9 July 1999

EXHIBIT # D12

On July 7, 1999, Firefighter Dennis McMillan and myself, Firefighter Chad Cook, were dispatched to an illegal burn in the area of Star Quarry Rd. and Hwy 233. Upon arrival, we noticed a black column of smoke coming from an area off of Lafayette Hopewell Hwy. As we proceeded to the area, we entered a driveway. The hard address for that location is 11320 Lafayette Hwy. As we followed the driveway past the house, we noticed no vehicles were present. FF McMillan and myself continued toward the smoke to what appeared to be a green barn. We stopped there to look for a resident or some type of worker. After about one minute, having seen no people and due to the location of the fire, we again continued toward the black column of smoke. Engine 62 from Dayton arrived by this time and followed us past the outbuildings to the fire. The fire was located in a tree line, and the winds were blowing from the East at approximately 5-15 mph. For the protection of the scene we began to extinguish the flames. As we were able to see the burning pile closer, we noticed paint cans, a lawn mower, grease guns, roofing debris, black plastic hose, tire and rims and what looked to be some type of electrical equipment. As FF McMillan was extinguishing the pile, a man pulled up the scene and skidded to a stop. He then jumped out of his vehicle and began shouting profanities, demanding that we leave the property the way we came. I took the hose line from my partner so he could speak with the man that had just arrived. As I was extinguishing the fire, the same man was yelling to me that we were in a lot of trouble. He then walked over to me, took the hose line from my possession, and shut off the water. I let the hose go and walked to our vehicle, brush-10. I then called Y-COM and asked for a police officer to respond to the scene to help with the irate man. FF McMillan told me that we were to retreat to an area away from the scene known as a disinfectant area. My partner then called Division Chief Thorson to discuss the circumstances and to ask her to respond to the scene. Brush 10 and Engine 62 retreated to the disinfectant area after the fire was extinguished. We waited there for the police and DC Thorson. Upon the arrival of the Oregon State Police, Firefighter McMillan and myself gave our statements about the incident to Officer Taylor.

Chad Cook  
Firefighter/paramedic  
McMinnville Fire Department



Jay Lilly, Fire Chief  
Scott Magers, Assistant Chief  
Shannon Thorson, Division Chief

175 East First Street • McMinnville, Oregon 97128 • Phone: (503) 434-7305 • FAX (503) 434-7-

July 12, 1999

EXHIBIT # D13 not ad m

### SPECIAL REPORT

RE: Burn Incident at 11320 Lafayette Hwy, Dayton, Oregon

At approximately 1233, firefighter McMillan and Cook contacted me by phone indicating they were at a burn scene with an irate landowner and needed officer assistance. I immediately responded to the incident, arriving at approximately 1240. Upon arrival at 11320 Lafayette Hwy, I met Dayton Engine 62, McMinnville Brush 10, and State Police Trooper Taylor, all at the entrance of the driveway. I also noted that the landowner, Curt Johnson was present. I contacted the fire station and asked office staff to immediately page our fire chief to report to the scene.

Note: Mr. Johnson is a member of the McMinnville Fire District Fire Board.

Firefighter McMillan and Cook informed me that they had been dispatched to an illegal burn in this area. The firefighters indicated that they had stopped briefly at both residences located at that same address in an attempt to locate a responsible party, but were unable to do so. They then proceeded to locate the fire by following the black column of smoke. The firefighters further indicated that the two separate burn piles were located in a tree line on the SW corner of the property. There was a prevailing wind with dry fields located nearby. The fire was unattended and there was no water source present to extinguish the fire. The firefighters indicated that they then began to extinguish the fire. While doing so, they noted that the piles contained virtually all illegal burn materials including; paint cans, tires, grease products, plastic tubing etc.

In responding to the incident firefighter McMillan informed me that they passed through a gate marked No Trespassing, which also indicated that vehicles must enter only after proper disinfection.

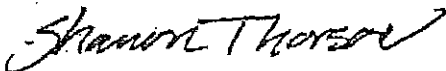
Firefighter McMillan and Cook informed me that the landowner had arrived at the scene shortly after they began extinguishment and started shouting profanities and threatening to "have their jobs". I was informed that at one point, Mr. Johnson physically removed the fire hose from firefighter Cook's hands and turned off the nozzle. By doing so, Mr. Johnson temporarily impeded the firefighters ability to extinguish a clearly hazardous fire. At this point, the firefighters indicated that they asked YCOM to dispatch an officer to the scene and again proceeded to extinguish the fire until it was no longer a hazard. When the fire was extinguished, the firefighters indicated that they then proceeded to the end of the driveway which was out of the marked decontamination area.

After being on scene for approximately 10 minutes, the Mr. Johnson got in his truck and indicated that he was going to the burn scene. Officer Taylor informed him that we needed to go to the fire scene with him in order to photograph it. He said that we couldn't because we did not have the proper decontamination equipment. I noted that he was smoking a cigar and wearing sweatpants and a "T" shirt. In addition, I noted that there were numerous (3-5) teenage kids located behind the decontamination area that were in shorts and "T" shirts. Officer Taylor requested that Mr. Johnson provide us with proper equipment to report to the fire scene. Mr. Johnson said that he did not have equipment in our size. After further discussion and hesitation, Mr. Johnson provided myself, Officer Taylor and Firefighter Cook with plastic booties and plastic coveralls. Officer Taylor and myself noted that the plastic booties had numerous holes in them. Upon providing us with this equipment, Mr. Johnson drove his truck to the decontamination gate and stopped his truck. He then sprayed his tires briefly (approximately 30 seconds) with a hose at the gate. Having given us no instructions of how to decontaminate Officer Taylor's patrol car, firefighter Cook sprayed Officer Taylor's patrol car in the same manor Mr. Johnson had sprayed his vehicle. Myself, Officer Taylor and firefighter Cook then drove to the fire scene. Mr. Johnson was at the fire scene. We got out of Officer Taylor's patrol car in order to photograph the scene. Firefighter cook reported that the scene appeared to be as they had left it. I took numerous photos of the scene.

During that time I was able to confirm that the pile did contain all the same type of illegal materials as Firefighter Cook and McMillan had indicated. I further noted that there were no means for extinguishment present and that the burn piles were located directly in a tree line. It was clear to me that firefighter Cook and McMillan acted appropriately in extinguishing the fire which had a very clear potential of spreading into the trees and nearby farmland. After approximately 2-3 minutes at the fire scene, we promptly returned to Officer Taylor's patrol car and headed back to the end of the driveway out of the decontamination area.

At that point Fire Chief Jay Lilly was on scene. All personnel departed the scene at approximately 1350.

Shannon Thorson



Division Chief  
McMinnville Fire Department

Illegal Burn on Lafayette Hwy: June 8, 1999 @ 1454

EXHIBIT #

D14

Not adm

DC Thorson notified me at home that there was an incident regarding an illegal burn on Lafayette Hwy, she stated that an individual had assaulted one of our firefighters and that a State Police Officer was on scene investigating. I told her that I would be enroute to that address and left for the scene within a couple of minutes, I was home at the time having lunch.

I arrived within normal driving time out at the scene to find a Dayton firefighter and Lt. Finnicum in the driveway with other vehicles there, I visited with the firefighter and Lt. for a minute or two, the FF indicated that the owner had become belligerent and very hostile towards our personnel who were putting out the fire. Curt Johnson physically removed the hose out of Chad Cook's hand and turned off the water. FF Cook called for a police officer at that time. The Dayton FF told me that the McMinnville Fire Personnel acted very professional throughout the whole episode.

I then talked to FF McMillan about the incident, he told me the same details of the incident and added that Curt had made the statement that this was going to cost him his job because he knew Jay Lilly the Fire Chief. He stated that the owner had just showed up on the scene and became very hostile and very verbally abusive, the owner had demanded that they turn off the water and leave the property. After that the owner jerked the hose out of the FF Cook's hands and shut off the water, it was at this point that FF McMillan called for the police assistance. He said we did roll up our hose and leave the property as requested by the owner at that time.

I accompanied State Police Officer Bridget Taylor to talk with Curt, he stated that he had asked the FF to leave the premises due to them not being decontaminated and that he was asleep when the fire was started, he told them to just write him out a ticket for illegal burning but just get off the property, the fire at that time was no larger than a few feet in diameter and he would put it out. He told the officer that his wife had woke him up to tell him that the fire truck had gone by the home, he stated that they blew by the house going 40 mph. He never denied interfering with the FF while trying to put out the fire. He made a statement about it being his lively hood and that he had been up all night working with the chickens so he was just going sleep for awhile.

I asked him how it started, he told me that he didn't want to try this out here at this time, I said neither did I, and I just wanted to get the information to understand the situation. He said "it was probably one of the kids, they made a mistake" then went on to say "they had never done this before, I don't know why they would do it now!" We had some other small talk about the farm, the disinfectant was iodine and he had a 150,000 chickens and that he was doing everything that the some company was advising him to do to get thing sterilized again.

The Officer Taylor came back and issued Mr. Johnson a ticket for interfering with a public safety officer in the line of duty and stated that the Fire Department would be contacting DEQ about the illegal burning. I asked Mr. Johnson if he had any thing else to add, he just turned and started walking down the lane to his home.



Follow-up on June 9, 1999

Curt Johnson called at 0830 to discuss the yesterdays incident. He wanted to know if I was OK with the way the incident turned out. I think he was referring to the citation but he never came out and indicated that it was the main focus of the telephone call. I told him that the incident was unfortunate but that I didn't see any other way for it to be handled.

Mr. Johnson and I continued our conversation about the incident, he was still very upset about the situation, I did get him to agree that someone on his farm had started the fire and that if the fire had not been started the whole incident would never have happen, thus the responsibility for the incident was his or who ever started the fire, He told me again that he was sleeping and he didn't know who started the fire. I reminded him of what he had told me yesterday about his kids starting the fire, he stated again that we don't know how the fire started.

There were other statements made about the actions and reactions of the him and the fire personnel, I told him that the Dayton FF had said "Chief, your personnel acted with the utmost professionalism during the entire incident". Mr. Johnson stated that the Dayton FF was the only one acting professional.

FIRE DEPARTMENT REFERRAL FOR OPEN BURNING VIOLATIONS

EXHIBIT # 15

MAIL TO: DEQ, 750 Front Street NE, Suite 120, Salem, OR 97310

Please complete both sides of this form. The Department's actions will be based on the information you supply. It is particularly important to have a detailed report for serious incidents or those involving repeat violations that may result in formal enforcement action. Thank you.

INCIDENT DATE: 6-20-03 TIME: 9:00 AM F.D. INCIDENT/ALARM NO.: 1049  
VIOLATOR'S NAME: (Mr. Mrs. Ms.) Curtis Johnston  
INCIDENT ADDRESS: 11320 SE Lafayette Hwy CITY: Dayton  
ZIP: \_\_\_\_\_ COUNTY: Yamhill VIOLATOR'S TELEPHONE NUMBER: 503-864-3366  
VIOLATOR'S MAILING ADDRESS (if different): \_\_\_\_\_

IF VIOLATOR WAS ACTING AS AN AGENT OR EMPLOYER, PLEASE PROVIDE THE FOLLOWING INFORMATION:

PROPERTY OWNER/COMPANY'S NAME: Same  
PROPERTY OWNER/COMPANY'S ADDRESS: \_\_\_\_\_  
PROPERTY OWNER/COMPANY'S TELEPHONE: \_\_\_\_\_

VOLUME OF MATERIAL BURNED

BURN BARREL (s) \_\_\_\_\_  PILE (s) \_\_\_\_\_  
PILE HEIGHT 10 ft. WIDTH 20 ft. LENGTH 20 ft. OR HEIGHT \_\_\_\_\_ ft. DIAMETER \_\_\_\_\_ ft.  
(IF more than one pile is involved, please provide information for each pile)

TYPE OF BURN

RESIDENTIAL  DEMOLITION (including land clearing)  CONSTRUCTION  COMMERCIAL  
 INDUSTRIAL  AGRICULTURAL

MATERIAL BURNED

YARD TRIMMINGS  BRUSH  TREE LIMBS  STUMPS  PAPER  CARDBOARD  
 MISCELLANEOUS WOOD PRODUCTS (lumber, plywood, etc.)  OTHER \_\_\_\_\_

PROHIBITED MATERIAL

DECOMPOSABLE GARBAGE  PLASTICS  TIRES  AUTO PARTS  WIRE INSULATION  
 ASPHALTIC MATERIAL  PETROLEUM PRODUCTS  RUBBER PRODUCTS  ANIMAL REMAINS

ESTIMATED PERCENTAGE OF PROHIBITED MATERIAL IN BURN: \_\_\_\_\_ %

WAS THE BURN LOCATED IN A SPECIAL OPEN BURNING CONTROL AREA?  YES  NO

WAS THE BURN BEING CONDUCTED ON A BURN DAY?  YES  NO

WAS THE BURN BEING CONDUCTING DURING LEGAL BURN HOURS?  YES  NO

WAS THE BURN BEING ATTENDED BY A RESPONSIBLE PERSON? YES  NO

DID THEY ADMIT TO IGNITING THE BURN? YES  NO

FIRE DEPARTMENT: McMinnville Fire Department PHONE: 503-435-5803  
OFFICER: Shannon Thorsen TITLE: Division Chief

SIGNED: \_\_\_\_\_ DATE: 6-22-03

FROM :

1. Who did you talk to and what did they say about the incident?

Occupant did not answer door  
no one at the house

2. Where was the fire located on the property? Attach a sketch or diagram if needed for clarity.

West portion of property

3. What did you observe being burned? If possible, estimate amounts and types of materials burned prior to your arrival. How long was the fire burning? How much smoke?

See photos, unknown burn time

4. What happened when you asked the party to extinguish the fire?

N/A

Other comments regarding this incident, past incidents, or mitigating factors:

This resident has been cited by law enforcement for reckless burning in the past

There were no means to extinguish the fire

The fire was located next to a brushy area w/ oak for fire spread

The fire was unattended

It is our understanding that the property owner, Curtis Johnston was home, but he would not answer the door

Signature

Sharon Johnston

Date

11-24-03

odavis\referral.1

Item F 000196

Received Time Nov. 2, 2006 1:06PM No. 3949

State of Oregon

Department of Environmental Quality

EXHIBIT # D16  
Memorandum

Date: January 3, 2008  
To: File  
From: Sarah Greenley, Environmental Law Specialist, Office of Compliance and Enforcement  
Subject: BEN calculation for Curtis Brian Johnston

## I. General Purpose and Authority

The economic benefit portion of the civil penalty formula is simply the monetary benefit that an entity gained by not complying with the law. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance.

Oregon Revised Statute 468.130(2)(c,h) directs the Environmental Quality Commission to consider economic conditions of the entity in assessing a penalty as well as other factors that Commission makes relevant by rule. Accordingly, the Commission adopted economic benefit as part of its penalty calculation in Oregon Administrative Rules (OAR) 340-012-0045(1)(e) and -0155. Pursuant to OAR 340-012-0150, the Department generally uses the U.S. Environmental Protection Agency's BEN computer model to determine economic benefit and will use it upon request of a respondent.

## II. Theory of Economic Benefit

Compliance with environmental regulations may require an entity to expend financial resources. These expenditures support the public goal of better environmental quality, but often do not yield direct financial return to the entity. Economic benefit is the amount by which an entity is financially better off from not having complied with environmental requirements in a timely manner. If an entity avoids an expenditure, it increases its profit margin or has additional funds available for other profit-making activities. Sometimes the benefit may not be intuitive. For example, if an entity would have had to obtain a loan to make the expenditure, it might seem that the entity did not enjoy the benefit of the extra money – but avoiding the need to repay a loan is a direct financial advantage. If an entity did not make the expenditure on time, but later did make the expenditure, it might seem that the entity did not retain an economic advantage – but temporary access to the monies it should have spent is equivalent to an interest-free loan during the period of noncompliance which is also a direct financial advantage. For this reason BEN generally ignores the potential or likely source of the monies not used.

Economic benefit is "no fault" in nature. An entity need not have deliberately chosen to delay compliance, or even have been aware of its noncompliance, for it to accrue an economic benefit of noncompliance. An economic benefit may accrue before the entity is in actual

Memo To: File  
01/03/08  
Page 2

violation because planning costs, permitting fees, and similar costs often must be paid long before beginning the regulated activity that is in violation.

An appropriate economic benefit calculation represents the amount of money that would make the entity indifferent between compliance and noncompliance. If DEQ does not recover, through a civil penalty, at least this economic benefit, then the entity will retain a gain. Because of the precedent of this retained gain, other regulated companies may see an economic advantage in similar noncompliance. The U.S. Supreme Court has noted that deterrence is a primary purpose of a penalty<sup>1</sup> and that a penalty which fails to include sufficient economic benefit to remove the advantage of noncompliance will fail to deter future violations.<sup>2</sup>

### III. Basis of the Costs Considered

Determining economic benefit always requires evaluating circumstances to determine what necessary or reasonable costs would have been required to obtain compliance or to determine what benefits were received from noncompliance. Often, an entity has more than one option to reach compliance and the Department evaluates the circumstances to determine what probable or reasonable steps the entity should have taken. The Department then estimates the reasonable costs and benefits pursuant to OAR 340-012-0150(2).

Curtis Brian Johnston should have properly disposed of 55.56 tons of solid waste at a permitted facility by October 28, 2006. By delaying spending an estimated \$4,532 in disposal costs until August 30, 2007, Mr. Johnston benefited by an estimated \$146.

### IV. Applicability of Standard Rates Presumed by Rule

The BEN model relies on income-tax rates, inflation rates, and discount rates. The model allows the operator to input particular rates, but in the absence of operator input, the BEN model uses standard values based on the years of the violation, the state where the violation occurred and the entity's legal and profit status (*e.g.*, C-corporation, other for profit, non-profit, municipality, or federal facility). It calculates inflation rates from the Plant Cost Index (PCI) published by the magazine *Chemical Engineering* and from the Consumer Price Index. Alternative optional inflation indices include:

---

<sup>1</sup> See *Tull v. United States*, 481 U.S. 412 (1987) (finding that the legislature intended penalties for environmental violations under the Clean Water Act to create deterrence). Note also OAR 340-012-0026(1)(c) which states that a goal of enforcement under the Oregon Environmental Quality Commission rules is deterrence.

<sup>2</sup> See *Friends of the Earth v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167, fn. 2 (2000) (discussing the insufficiency of the economic benefit portion of a penalty for hazardous waste violations).

Memo To: File  
 01/03/08.  
 Page 3

| Abbreviation and Full Name |                                                | Description                                                                                                                                     | Typical Applications                                                                                                    |
|----------------------------|------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|
| 2.5 %                      | Constant rate of 2.5%                          | Assumes annual inflation rate is constant at 2.5 percent.                                                                                       |                                                                                                                         |
| CCI                        | Construction Cost Index                        | Construction costs (based on 1.128 tons Portland cement, 1,088 bd. ft. 2x4 lumber) and 200 common labor.                                        | General construction costs, especially where labor costs are a high proportion of total costs.                          |
| ECI                        | Employment Cost Index                          | Total civilian compensation for all workers, seasonally adjusted.                                                                               | One-time nondepreciable expenditures or annual costs that comprise mainly labor.                                        |
| GDP                        | Gross Domestic Product Implicit Price Deflator | Measured by U.S. Commerce Department through the Bureau of Economic Analysis. Equals GDP in current dollars divided by GDP in constant dollars. | general expenses that affect multiple sectors of the economy (e.g., labor and construction).                            |
| PCI                        | Plant Cost Index                               | Plant cost index published by <i>Chemical Engineering</i> .                                                                                     | Standard default and for plant equipment costs.                                                                         |
| PPI                        | Producer Price Index for Finished Goods        | Reflects the price level for processing finished goods.                                                                                         | Processing finished goods, general expenses that affect multiple sectors of the economy (e.g., labor and construction). |

Pursuant to OAR 340-012-0150(1), the "model's standard values for income tax rates, inflation rate and discount rate shall be presumed to apply to all Respondents unless a specific Respondent can demonstrate that the standard value does not reflect the Respondent's actual circumstance."

Memo To: File  
01/03/08  
Page 4

## V. Description of the Attached Run

BEN calculates the economic benefits gained from delaying and avoiding required environmental expenditures. Such expenditures can include: (1) capital investments (*e.g.*, larger pollution control or monitoring equipment, costs of design and installation), (2) one-time non-depreciable expenditures (*e.g.*, permit fees, clean-up costs, setting up a reporting system, acquiring land needed for a capital improvement), (3) annually recurring costs (*e.g.*, routine operating and maintenance costs, utilities). Each of these expenditures can be either delayed or avoided. BEN's baseline assumption is that capital investments and one-time non-depreciable expenditures are merely delayed over the period of noncompliance, whereas annual costs are avoided entirely over this period.

The calculation incorporates the economic concept of the "time value of money." Stated simply, a dollar today is worth more than a dollar tomorrow, because you can invest today's dollar to start earning a return immediately. Thus, the further in the future the dollar is, the less it is worth in "present-value" terms. Similarly, the greater the time value of money (*i.e.*, the greater the "discount" or "compound" rate used to derive the present value), the lower the present value of future costs. To calculate an entity's economic benefit, BEN uses standard financial cash flow and net-present-value analysis techniques based on modern and generally accepted financial principles, which were subjected to extensive national notice-and-comment processes.<sup>3</sup>

Inputs to the model include costs specific to the situation of the entity which include the values described in Section III as well as the presumed standard indexes and rates described in Section IV. The values used are listed in the lower three-quarters of the attached BEN Run Table. Using these values, BEN makes a series of calculations the results of which are listed in the top of the attached BEN Run Table by the letter indicated below.

---

<sup>3</sup> See Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Request for comment, 61 Fed. Reg. 53025-53030 (Oct. 9, 1996); Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Extension of time for request for comment, 61 Fed. Reg. 65391 (Dec. 12, 1996); Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Advance notice of proposed action, response to comment, and request for additional comment, 64 Fed. Reg. 32947-32972 (June 18, 1999); Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Advance notice of proposed action, response to comment, and request for additional comment, 64 Fed. Reg. 39135-39136 (July 21, 1999); Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Notice of final action and response to comment, 70 Fed. Reg. 50326-50345 (August 26, 2005) available at <http://www.epa.gov/EPA-GENERAL/2005/August/Day-26/g17033.htm>.

Memo To: File  
 01/03/08  
 Page 5

A) **On-Time Capital & One-Time Costs.** This is what compliance would have cost had the entity made its purchases of capital on time or paid its one-time costs on time. BEN calculates this value from the estimated costs as of the date the costs are estimated by discounting the annual cash flows at an average of the cost of capital throughout this time period. The value of the costs is adjusted to account for tax deductibility and depreciation. "A" is the value of noncompliance as of the date of initial noncompliance. (See Fig. 1) If "A" is zero, there are no capital or one-time costs in the calculation.

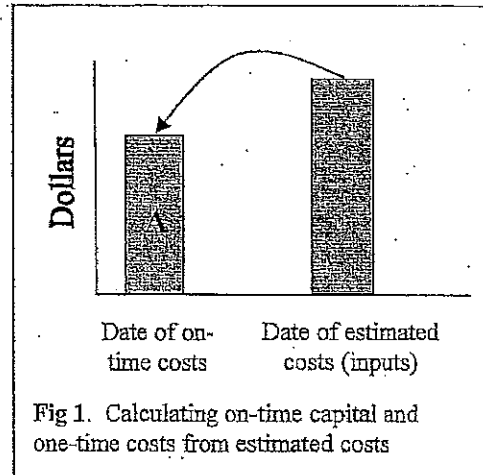


Fig 1. Calculating on-time capital and one-time costs from estimated costs

B) **Delay Capital & One Time Costs.** If the entity eventually did pay or will pay the costs of compliance in the future, BEN calculates what the entity would have needed to set aside on the date of noncompliance so as to have sufficient funds as of the date of delayed compliance. This number is used to mitigate the economic benefit by considering the known amount the entity will pay. BEN derives this number by: (1) determining the predicted delayed costs by adjusting for inflation and to account for tax deductibility in the year in which the funds were or will be spent and also for future depreciation tax shields, and (2) discounting the annual cash flows at an average of the cost of capital throughout this time period to account for interest. (See Fig. 2) "B" will be zero if all costs were avoided.

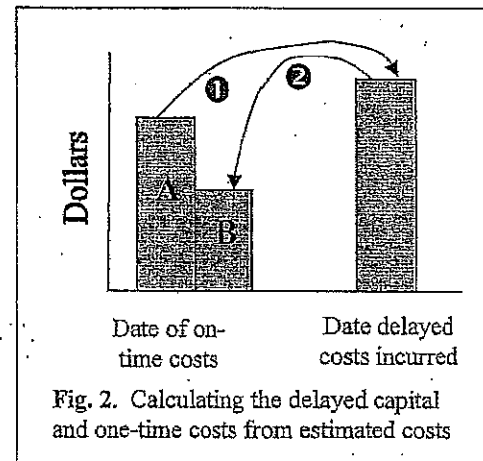


Fig. 2. Calculating the delayed capital and one-time costs from estimated costs

C) **Avoided Annually Recurring Costs.** This is the value of the avoided annual recurring costs as of the date of initial noncompliance. BEN derives this value by discounting the annual cash flows at an average of the cost of capital throughout this time period and accounting for tax deductibility. (See Fig. 3) "C" will be zero if there are no recurring annual costs.

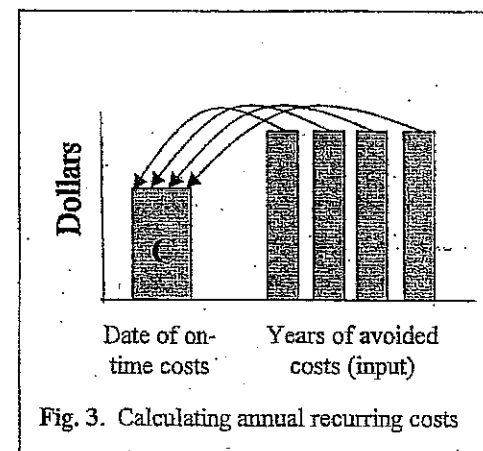
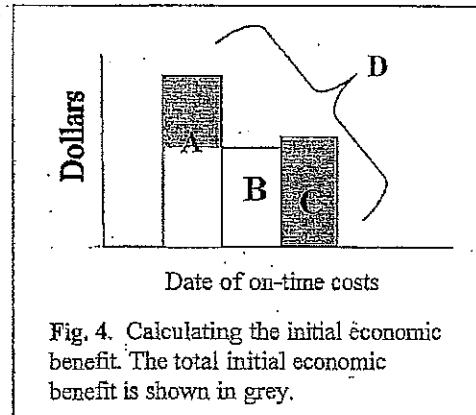


Fig. 3. Calculating annual recurring costs

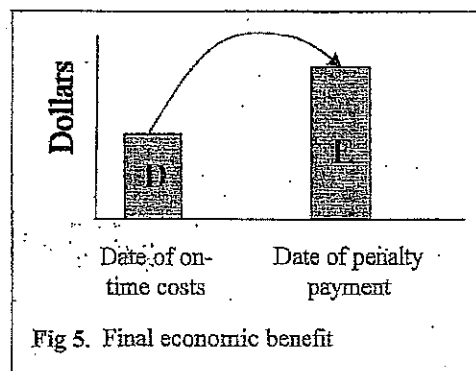


Memo To: File  
01/03/08  
Page 6

D) **Initial Economic Benefit (A - B + C).** The values for A, B, and C are all values as of the date of noncompliance. The economic benefit received as of the date of noncompliance is determined by taking the on-time capital and one-time costs that should have been paid (A), subtracting the delayed capital and one-time costs which had been or will be paid (B), and adding the avoided annually recurring costs (C). The result is the economic benefit received as of the date of noncompliance. (See Fig. 4) The economic benefit is often much lower than the originally-estimated costs. This is because inflation tends to make more recent costs higher than historical costs and because the entity could have taken a tax deduction for the year in which the expenditure was made.



E) **Final Economic Benefit at Penalty Payment**  
**Date.** BEN compounds the initial economic benefit forward to the penalty payment date at the same cost of capital to determine the final economic benefit of noncompliance. (See Fig. 5) Occasionally an entity loses money because the economic benefit is a negative number. In that case the economic benefit used in the penalty calculation is zero.



#### IV. Final Economic Benefit Is Likely an Underestimate

The economic benefit calculated above may underestimate the total economic benefit that the respondent received to date because it is based on conservative assumptions and does not include unknown or incidental costs. It also does not address uncertain indirect financial benefits, including:

- *Advantage-of-risk* – the value of (1) the risk of never getting caught and (2) keeping future options open by delaying a decision to institute a process or purchase capital;
- *Competitive advantage* – (1) beginning production earlier than would be possible if in compliance; (2) attracting clients by avoiding compliance costs, having a higher profit margin and therefore being able to offer goods or services at a lower cost than competitors;

Memo To: File  
01/03/08  
Page 7

- (3) keeping those clients attracted by lower prices because of brand loyalty or high switching costs; or (4) using the time or money saved to increase production; and
- *Illegal profits* – selling illegal products or services.

EPA has undertaken a review of these indirect factors and may craft an economic method for calculating them.<sup>4</sup> Until that evaluation is complete, I consider these other economic benefits to be "de minimis" in light of the difficulties in calculation. Pursuant to OAR 340-012-0150(3), the Department need not calculate an economic benefit if that benefit is de minimis.

Another reason that the estimate above may be an underestimate is that the calculation is based on the time value of money, and is sensitive to when delayed costs are actually incurred and when penalties are actually paid. When the Department calculates an economic benefit for incorporation in a Notice of Civil Penalty Assessment, it often assumes the entity will comply with the schedule in the Order and that the penalty will be paid without the delays required for an appeal. This results in a lower economic benefit than would be obtained if the actual dates were initially known and used. For this reason the Department may recalculate the economic benefit for the hearing or in settlement so as to reach a more accurate final economic benefit.

---

<sup>4</sup> See EPA Office of Enforcement and Compliance Assurance, "Identifying and Calculating Economic Benefit That Goes Beyond Avoided and/or Delayed Costs," (May 25, 2003) available at <http://www.epa.gov/compliance/resources/publications/civil/programs/econben-costs.pdf>; EPA Illegal Competitive Advantage Economic Benefit Advisory Panel of the Science Advisory Board, Advisory no. EPA-SAB-ADV-05-003, (Sept. 7, 2005) available at [http://www.epa.gov/sab/pdf/ica\\_eb\\_sab-adv-05-003.pdf](http://www.epa.gov/sab/pdf/ica_eb_sab-adv-05-003.pdf); EPA Office of Enforcement and Compliance Assurance, Response to advisory, (July 19, 2006) available at [http://www.epa.gov/sab/pdf/sab-adv-05-003\\_response\\_07-19-06.pdf](http://www.epa.gov/sab/pdf/sab-adv-05-003_response_07-19-06.pdf).

Item G: Johnston Contested Case  
 February 26, 2009 EQC Meeting  
 Attachment N

| Run Name = delayed                              |                   |
|-------------------------------------------------|-------------------|
| Present Values as of Noncompliance Date (NCD):  | 28-Oct-2006       |
| A) On-Time Capital & One-Time Costs             | \$4,475           |
| B) Delay Capital & One-Time Costs               | \$4,337           |
| C) Avoided Annually Recurring Costs             | \$0               |
| D) Initial Economic Benefit (A-B+C)             | \$138             |
| E) Final Econ. Ben. at Penalty Payment Date,    |                   |
|                                                 | 01-Mar-2008 \$146 |
| <i>Municipality, which pays no taxes</i>        |                   |
| Discount/Compound Rate:                         | 4.3%              |
| Discount/Compound Rate Calculated By:           | BEN               |
| Compliance Date                                 | 30-Aug-2007       |
| <b>Capital Investment:</b>                      |                   |
| Cost Estimate                                   | \$0               |
| Cost Estimate Date                              | N/A               |
| Cost Index for Inflation                        | N/A               |
| Consider Future Replacement (Useful Life)       | N/A (N/A)         |
| <b>One-Time, Nondepreciable Expenditure:</b>    |                   |
| Cost Estimate                                   | \$4,532           |
| Cost Estimate Date                              | 03-Jan-2008       |
| Cost Index for Inflation                        | PCI               |
| Tax Deductible?                                 | N                 |
| <b>Annually Recurring Costs:</b>                |                   |
| Cost Estimate                                   | \$0               |
| Cost Estimate Date                              | N/A               |
| Cost Index for Inflation                        | N/A               |
| <b>User-Customized Specific Cost Estimates:</b> |                   |
| On-Time Capital Investment                      |                   |
| Delay Capital Investment                        |                   |
| On-Time Nondepreciable Expenditure              |                   |
| Delay Nondepreciable Expenditure                |                   |

State of Oregon  
Department of Environmental Quality

Memorandum

**Date:** January 3, 2008

**To:** Sarah Greenley  
**From:** Leah Koss  
**Subject:** Curtis Brian Johnston EB Recalculation

**Name:** Curtis Brian Johnston

**Type:** individual

**Applicable Division 12:** New

**Penalty Payment Date:** March 1, 2008

**Violations:** Accumulation of solid waste at his property – an unpermitted facility.

**Costs:**

1. 55.56 tons of waste @ \$31.57 per ton to properly dispose = \$1,754.03;
2. 19 boxes needed to haul the waste @ \$142.50 per box = \$2,707.50;
3. initial drop box fee = \$71.25;

**TOTAL: \$4,532.78 – should have been spent on October 28, 2006**

**Estimate Date:** 1.03.08

**Compliance Date:** August 30, 2007

**Delayed:** \$4,532.78

**Q-Time:** 26435

EXHIBIT # 217

*WA adm*

State of Oregon

Department of Environmental Quality

**Memorandum**

**Date:** June 19, 2007  
**To:** File *D.L.B.*  
**From:** Dave LeBrun, Environmental Law Specialist, Office of Compliance and Enforcement  
**Subject:** BEN calculation for Curtis Johnston

## I. General Purpose and Authority

The economic benefit portion of the civil penalty formula is simply the monetary benefit that an entity gained by not complying with the law. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance.

Oregon Revised Statute 468.130(2)(c,h) directs the Environmental Quality Commission to consider economic conditions of the entity in assessing a penalty as well as other factors that Commission makes relevant by rule. Accordingly, the Commission adopted economic benefit as part of its penalty calculation in Oregon Administrative Rules (OAR) 340-012-0045(1)(e) and -0155. Pursuant to OAR 340-012-0150, the Department generally uses the U.S. Environmental Protection Agency's BEN computer model to determine economic benefit and will use it upon request of a respondent.

## II. Theory of Economic Benefit

Compliance with environmental regulations may require an entity to expend financial resources. These expenditures support the public goal of better environmental quality, but often do not yield direct financial return to the entity. Economic benefit is the amount by which an entity is financially better off from not having complied with environmental requirements in a timely manner. If an entity avoids an expenditure, it increases its profit margin or has additional funds available for other profit-making activities. Sometimes the benefit may not be intuitive. For example, if an entity would have had to obtain a loan to make the expenditure, it might seem that the entity did not enjoy the benefit of the extra money – but avoiding the need to repay a loan is a direct financial advantage. If an entity did not make the expenditure on time, but later did make the expenditure, it might seem that the entity did not retain an economic advantage – but temporary access to the monies it should have spent is equivalent to an interest-free loan during the period of noncompliance which is also a direct financial advantage. For this reason BEN generally ignores the potential or likely source of the monies not used.

Economic benefit is "no fault" in nature. An entity need not have deliberately chosen to delay compliance, or even have been aware of its noncompliance, for it to accrue an economic benefit of noncompliance. An economic benefit may accrue before the entity is in actual

Memo To: File  
06/19/07  
Page 2

violation because planning costs, permitting fees, and similar costs often must be paid long before beginning the regulated activity that is in violation.

An appropriate economic benefit calculation represents the amount of money that would make the entity indifferent between compliance and noncompliance. If DEQ does not recover, through a civil penalty, at least this economic benefit, then the entity will retain a gain. Because of the precedent of this retained gain, other regulated companies may see an economic advantage in similar noncompliance. The U.S. Supreme Court has noted that deterrence is a primary purpose of a penalty<sup>1</sup> and that a penalty which fails to include sufficient economic benefit to remove the advantage of noncompliance will fail to deter future violations.<sup>2</sup>

### III. Basis of the Costs Considered

Determining economic benefit always requires evaluating circumstances to determine what necessary or reasonable costs would have been required to obtain compliance or to determine what benefits were received from noncompliance. Often, an entity has more than one option to reach compliance and the Department evaluates the circumstances to determine what probable or reasonable steps the entity should have taken. The Department then estimates the reasonable costs and benefits pursuant to OAR 340-012-0150(2).

Curtis Johnston should have properly disposed of solid waste that included open burn debris on October 28, 2006. By burning the debris and improperly storing the remaining waste on his property, Mr. Johnston avoided an estimated \$4,532 in proper disposal costs and labor. As a result, Mr. Johnston received an economic benefit of \$2,774.

### IV. Applicability of Standard Rates Presumed by Rule

The BEN model relies on income-tax rates, inflation rates, and discount rates. The model allows the operator to input particular rates, but in the absence of operator input, the BEN model uses standard values based on the years of the violation, the state where the violation occurred and the entity's legal and profit status (*e.g.*, C-corporation, other for profit, non-profit, municipality, or federal facility). It calculates inflation rates from the Plant Cost Index (PCI) published by the magazine *Chemical Engineering* and from the Consumer Price Index. Alternative optional inflation indices include:

---

<sup>1</sup> See *Tull v. United States*, 481 U.S. 412 (1987) (finding that the legislature intended penalties for environmental violations under the Clean Water Act to create deterrence). Note also OAR 340-012-0026(1)(c) which states that a goal of enforcement under the Oregon Environmental Quality Commission rules is deterrence.

<sup>2</sup> See *Friends of the Earth v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167, fn. 2 (2000) (discussing the insufficiency of the economic benefit portion of a penalty for hazardous waste violations).

Memo To: File  
 06/19/07  
 Page 3

| Abbreviation and Full Name |                                                | Description                                                                                                                                     | Typical Applications                                                                                                    |
|----------------------------|------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|
| 2.5 %                      | Constant rate of 2.5%                          | Assumes annual inflation rate is constant at 2.5 percent.                                                                                       |                                                                                                                         |
| CCI                        | Construction Cost Index                        | Construction costs (based on 1.128 tons Portland cement, 1,088 bd. ft. 2x4 lumber) and 200 common labor.                                        | General construction costs, especially where labor costs are a high proportion of total costs.                          |
| ECI                        | Employment Cost Index                          | Total civilian compensation for all workers, seasonally adjusted.                                                                               | One-time nondepreciable expenditures or annual costs that comprise mainly labor.                                        |
| GDP                        | Gross Domestic Product Implicit Price Deflator | Measured by U.S. Commerce Department through the Bureau of Economic Analysis. Equals GDP in current dollars divided by GDP in constant dollars. | general expenses that affect multiple sectors of the economy (e.g., labor and construction).                            |
| PCI                        | Plant Cost Index                               | Plant cost index published by <i>Chemical Engineering</i> .                                                                                     | Standard default and for plant equipment costs.                                                                         |
| PPI                        | Producer Price Index for Finished Goods        | Reflects the price level for processing finished goods.                                                                                         | Processing finished goods, general expenses that affect multiple sectors of the economy (e.g., labor and construction). |

Pursuant to OAR 340-012-0150(1), the "model" s standard values for income tax rates, inflation rate and discount rate shall be presumed to apply to all Respondents unless a specific Respondent can demonstrate that the standard value does not reflect the Respondent' s actual circumstance."

Memo To: File  
06/19/07  
Page 4

## V. Description of the Attached Run

BEN calculates the economic benefits gained from delaying and avoiding required environmental expenditures. Such expenditures can include: (1) capital investments (*e.g.*, larger pollution control or monitoring equipment, costs of design and installation), (2) one-time non-depreciable expenditures (*e.g.*, permit fees, clean-up costs, setting up a reporting system, acquiring land needed for a capital improvement), (3) annually recurring costs (*e.g.*, routine operating and maintenance costs, utilities). Each of these expenditures can be either delayed or avoided. BEN's baseline assumption is that capital investments and one-time non-depreciable expenditures are merely delayed over the period of noncompliance, whereas annual costs are avoided entirely over this period.

The calculation incorporates the economic concept of the "time value of money." Stated simply, a dollar today is worth more than a dollar tomorrow, because you can invest today's dollar to start earning a return immediately. Thus, the further in the future the dollar is, the less it is worth in "present-value" terms. Similarly, the greater the time value of money (*i.e.*, the greater the "discount" or "compound" rate used to derive the present value), the lower the present value of future costs. To calculate an entity's economic benefit, BEN uses standard financial cash flow and net-present-value analysis techniques based on modern and generally accepted financial principles, which were subjected to extensive national notice-and-comment processes.<sup>3</sup>

Inputs to the model include costs specific to the situation of the entity which include the values described in Section III as well as the presumed standard indexes and rates described in Section IV. The values used are listed in the lower three-quarters of the attached BEN Run Table. Using these values, BEN makes a series of calculations the results of which are listed in the top of the attached BEN Run Table by the letter indicated below.

---

<sup>3</sup> See Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Request for comment, 61 Fed. Reg. 53025-53030 (Oct. 9, 1996); Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Extension of time for request for comment, 61 Fed. Reg. 65391 (Dec. 12, 1996); Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Advance notice of proposed action, response to comment, and request for additional comment, 64 Fed. Reg. 32947-32972 (June 18, 1999); Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Advance notice of proposed action, response to comment, and request for additional comment, 64 Fed. Reg. 39135-39136 (July 21, 1999); Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Notice of final action and response to comment, 70 Fed. Reg. 50326-50345 (August 26, 2005) available at <http://www.epa.gov/EPA-GENERAL/2005/August/Day-26/g17033.htm>



Memo To: File  
 06/19/07  
 Page 5

A) **On-Time Capital & One-Time Costs.** This is what compliance would have cost had the entity made its purchases of capital on time or paid its one-time costs on time. BEN calculates this value from the estimated costs as of the date the costs are estimated by discounting the annual cash flows at an average of the cost of capital throughout this time period. The value of the costs is adjusted to account for tax deductibility and depreciation. "A" is the value of noncompliance as of the date of initial noncompliance. (See Fig. 1) If "A" is zero, there are no capital or one-time costs in the calculation.

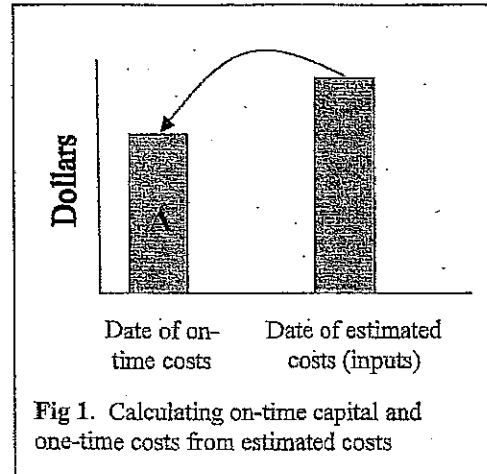


Fig 1. Calculating on-time capital and one-time costs from estimated costs

B) **Delay Capital & One Time Costs.** If the entity eventually did pay or will pay the costs of compliance in the future, BEN calculates what the entity would have needed to set aside on the date of noncompliance so as to have sufficient funds as of the date of delayed compliance. This number is used to mitigate the economic benefit by considering the known amount the entity will pay. BEN derives this number by: (1) determining the predicted delayed costs by adjusting for inflation and to account for tax deductibility in the year in which the funds were or will be spent and also for future depreciation tax shields, and (2) discounting the annual cash flows at an average of the cost of capital throughout this time period to account for interest. (See Fig. 2) "B" will be zero if all costs were avoided.

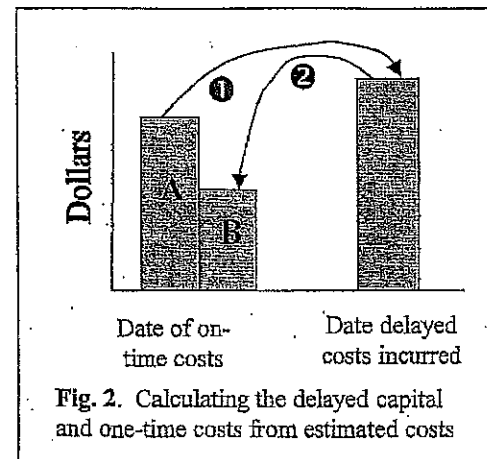


Fig. 2. Calculating the delayed capital and one-time costs from estimated costs

C) **Avoided Annually Recurring Costs.** This is the value of the avoided annual recurring costs as of the date of initial noncompliance. BEN derives this value by discounting the annual cash flows at an average of the cost of capital throughout this time period and accounting for tax deductibility. (See Fig. 3) "C" will be zero if there are no recurring annual costs.

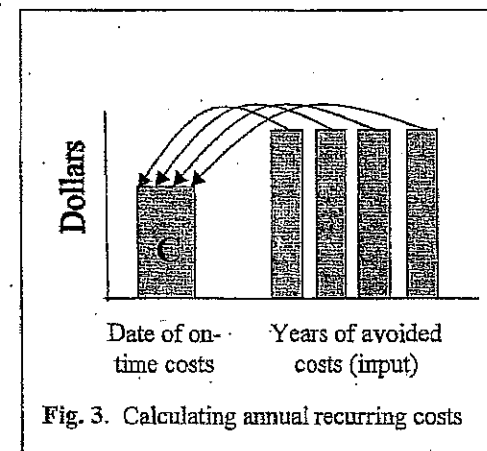
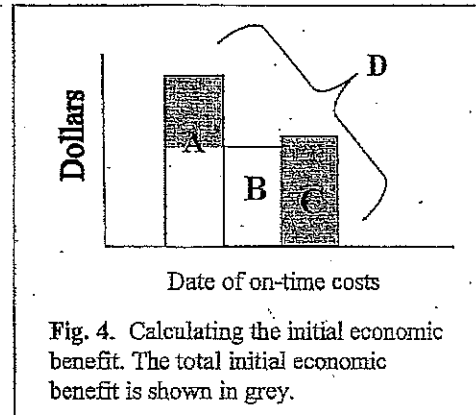


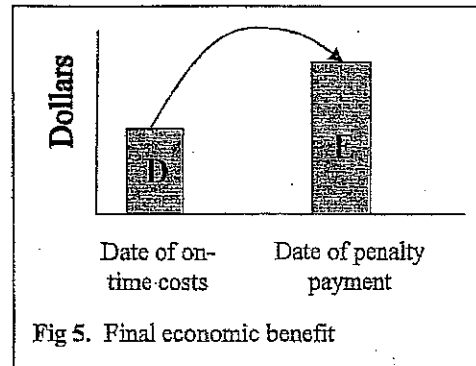
Fig. 3. Calculating annual recurring costs

Memo To: File  
06/19/07  
Page 6

D) **Initial Economic Benefit (A - B + C).** The values for A, B, and C are all values as of the date of noncompliance. The economic benefit received as of the date of noncompliance is determined by taking the on-time capital and one-time costs that should have been paid (A), subtracting the delayed capital and one-time costs which had been or will be paid (B), and adding the avoided annually recurring costs (C). The result is the economic benefit received as of the date of noncompliance. (See Fig. 4) The economic benefit is often much lower than the originally-estimated costs. This is because inflation tends to make more recent costs higher than historical costs and because the entity could have taken a tax deduction for the year in which the expenditure was made.



E) **Final Economic Benefit at Penalty Payment**  
**Date.** BEN compounds the initial economic benefit forward to the penalty payment date at the same cost of capital to determine the final economic benefit of noncompliance. (See Fig. 5) Occasionally an entity loses money because the economic benefit is a negative number. In that case the economic benefit used in the penalty calculation is zero.



#### IV. Final Economic Benefit Is Likely an Underestimate

The economic benefit calculated above may underestimate the total economic benefit that the respondent received to date because it is based on conservative assumptions and does not include unknown or incidental costs. It also does not address uncertain indirect financial benefits, including:

- *Advantage-of-risk* – the value of (1) the risk of never getting caught and (2) keeping future options open by delaying a decision to institute a process or purchase capital;
- *Competitive advantage* – (1) beginning production earlier than would be possible if in compliance; (2) attracting clients by avoiding compliance costs, having a higher profit margin and therefore being able to offer goods or services at a lower cost than competitors;

Memo To: File  
06/19/07  
Page 7

- (3) keeping those clients attracted by lower prices because of brand loyalty or high switching costs; or (4) using the time or money saved to increase production; and
- *Illegal profits* – selling illegal products or services.

EPA has undertaken a review of these indirect factors and may craft an economic method for calculating them.<sup>4</sup> Until that evaluation is complete, I consider these other economic benefits to be "de minimis" in light of the difficulties in calculation. Pursuant to OAR 340-012-0150(3), the Department need not calculate an economic benefit if that benefit is de minimis.

Another reason that the estimate above may be an underestimate is that the calculation is based on the time value of money, and is sensitive to when delayed costs are actually incurred and when penalties are actually paid. When the Department calculates an economic benefit for incorporation in a Notice of Civil Penalty Assessment, it often assumes the entity will comply with the schedule in the Order and that the penalty will be paid without the delays required for an appeal. This results in a lower economic benefit than would be obtained if the actual dates were initially known and used. For this reason the Department may recalculate the economic benefit for the hearing or in settlement so as to reach a more accurate final economic benefit.

---

<sup>4</sup> See EPA Office of Enforcement and Compliance Assurance, "*Identifying and Calculating Economic Benefit That Goes Beyond Avoided and/or Delayed Costs*," (May 25, 2003) available at <http://www.epa.gov/compliance/resources/publications/civil/programs/econben-costs.pdf>; EPA Illegal Competitive Advantage Economic Benefit Advisory Panel of the Science Advisory Board, Advisory no. EPA-SAB-ADV-05-003, (Sept. 7, 2005) available at [http://www.epa.gov/sab/pdf/ica\\_eb\\_sab-adv-05-003.pdf](http://www.epa.gov/sab/pdf/ica_eb_sab-adv-05-003.pdf); EPA Office of Enforcement and Compliance Assurance, Response to advisory, (July 19, 2006) available at [http://www.epa.gov/sab/pdf/sab-adv-05-003\\_response\\_07-19-06.pdf](http://www.epa.gov/sab/pdf/sab-adv-05-003_response_07-19-06.pdf).

| Run Name = solid waste disc                     |             |
|-------------------------------------------------|-------------|
| Present Values as of Noncompliance Date (NCD),  | 28-Oct-2006 |
| A) On-Time Capital & One-Time Costs             | \$2,642     |
| B) Delay Capital & One-Time Costs               | \$0         |
| C) Avoided Annually Recurring Costs             | \$0         |
| D) Initial Economic Benefit (A-B+C)             | \$2,642     |
| E) Final Econ. Ben. at Penalty Payment Date,    |             |
|                                                 | 12-Jun-2007 |
|                                                 | \$2,774     |
| <i>For-Profit (not C-Corp.) w/ OR tax rates</i> |             |
| Discount/Compound Rate                          | 8.2%        |
| Discount/Compound Rate Calculated By:           | BEN         |
| Compliance Date                                 | 15-Aug-2007 |
| Capital Investment:                             |             |
| Cost Estimate                                   | \$0         |
| Cost Estimate Date                              | N/A         |
| Cost Index for Inflation                        | N/A         |
| Consider Future Replacement (Useful Life)       | N/A (N/A)   |
| One-Time, Nondepreciable Expenditure:           |             |
| Cost Estimate                                   | \$4,532     |
| Cost Estimate Date                              | 12-Jun-2007 |
| Cost Index for Inflation                        | CCI         |
| Tax Deductible?                                 | y           |
| Annually Recurring Costs:                       |             |
| Cost Estimate                                   | \$0         |
| Cost Estimate Date                              | N/A         |
| Cost Index for Inflation                        | N/A         |
| User-Customized Specific Cost Estimates:        |             |
| On-Time Capital Investment                      |             |
| Delay Capital Investment                        |             |
| On-Time Nondepreciable Expenditure              |             |
| Delay Nondepreciable Expenditure                |             |

State of Oregon  
Department of Environmental Quality

Memorandum

Date: June 12, 2007

**To:** Dave LeBrun  
**From:** Sara Urch  
**Subject:** Curtis Brian Johnston EB

**Name:** Curtis Brian Johnston

**Type:** individual

**Applicable Division 12:** New

**Penalty Payment Date:** August 12, 2007

**Violations:** Improper disposal of solid waste (approximately 555.56 cubic yards of materials) discovered by the Department on November 2, 2006 from a Fire Department referral for an open burn which occurred on October 28, 2006. The material has not yet been properly disposed.

**Costs:** Mr. Johnston should have spent \$31.57 per ton to properly dispose of the prohibited materials. An estimated 55.56 tons (555.56 cubic yards) of materials were improperly disposed on the property.  $\$31.57 \times 55.56 \text{ tons} = \$1,754.03$ .

In addition, Western Oregon Waste (WOW) (the applicable waste disposal service) charges \$71.25 per initial drop box, and a charge of \$142.50 for each pick up and unload of the box. The largest drop box WOW provides carries 30 yards, so approximately 19 drop boxes would be needed ( $555.56 \text{ cubic yards} / 30 \text{ yards} = 18.51 \text{ drop boxes} = 19 \text{ drop boxes needed}$ ).

|                                     |                        |              |
|-------------------------------------|------------------------|--------------|
| Initial drop-off box:               | $\$71.25 \times 1$     | = \$71.25    |
| Pick up and unload box (each time): | $\$142.50 \times 19$   | = \$2,707.50 |
| Cost per ton:                       | $\$31.57 \times 55.56$ | = \$1,754.03 |
| Total Economic Benefit              |                        | \$4,532.78   |

**Estimate Date:** 06.12.07

**Compliance Date:** N/A

**Avoided**

**Q-Time:** 26266

EXHIBIT # 18 Not adm

ROBERT L. ENGLE  
E-MAIL: renglelaw@qwest.net

KIRKA A. SCHMIDTMAN  
E-MAIL: schmidmanlaw@qwest.net

ENGLE & SCHMIDTMAN  
ATTORNEYS AT LAW  
NORTHWOOD OFFICE PARK - 510 GLATT CIRCLE  
WOODBURN, OR 97071

TELEPHONE  
(503) 981-0155

FAX  
(503) 981-0158

WEB SITE  
www.engeschmidmanlaw.com

October 10, 2007

RECEIVED

OCT 11 2007

DEQ-SALEM OFFICE

Dan Fox  
Department of Environmental Quality  
Western Region, Salem Office  
750 Front Street NE, Suite 120  
Salem, Oregon 97301-1039

Re: Curtis Brian Johnston Case No. AQ/OB - WR-07-060 - Yamhill County

Dear Mr. Fox:

I am responding to your October 9, 2007 telephone call regarding the land fill receipts that I provided to you.

Mr. Johnston has instructed me to inform you that the property upon which the open burn occurred was fully cleaned of burn remnants within 30 days of the notice and order issued by the Environmental Quality Commission. The remnants of the burn, were placed in trucks for later disposal as time permitted. They were ultimately removed to an authorized disposal site as required by the order.

As you and I discussed, Mr. Johnston is not particularly seeking credits for disposal costs. Mr. Johnston contends that pursuant to ORS 468 A.030 the fire was not proximately caused by his negligence or willful conduct. The fire occurred from conditions beyond Mr. Johnston's control.

As I have informed you, it is Mr. Johnston's wish to get this matter behind him and he is willing to consider a reasonable settlement of the claim notwithstanding the fact that he feels he has a defense under Oregon law.

We look forward to your response.

Yours truly,

ROBERT L. ENGLE  
RLE:ksw  
cc: Curtis Johnston

**ENGLE & SCHMIDTMAN**  
ATTORNEYS AT LAW  
NORTHWOOD OFFICE PARK - 810 GLATT CIRCLE  
WOODSBURN, OR 97071

ROBERT L. ENGLE  
E-MAIL: ringlelaw@qwest.net

KIRKA SCHMIDTMAN  
E-MAIL: schmidtmnlaw@qwest.net

TELEPHONE  
(503) 981-0155

FAX  
(503) 981-0158

WEB SITE  
www.engleschmidtmanlaw.com

EXHIBIT # 19

not Adm.

RECEIVED

SEP - 5 2007

DEQ-SALEM OFFICE

September 4, 2007

Dan Fox  
Department of Environmental Quality  
Western Region, Salem Office  
750 Front Street NE, Suite 120  
Salem, Oregon 97301-1039

Re: Curtis Brian Johnston Case No. AQ/OB - WR-07-060 - Yamhill County

Dear Mr. Fox:

I enclose four receipts for disposal of solid waste removed from the site of the October 28, 2006 burn at the Curtis Johnston residence at 11320 NE Lafayette Hwy, Dayton, Oregon.

Mr. Johnston informs me that all of the material had been removed from the former burn site. Some of the material was stockpiled at a different location for disposal and was ultimately trucked to the disposal site on August 30<sup>th</sup>.

Much of the material had fully burned. The material which is the subject of disposal was only the small amount of remaining material which was not consumed in the fire.

If I can furnish you with further information, please advise.

Yours truly,

ROBERT L. ENGLE

RLE:ksw  
enclosure(s)  
cc: Curtis Johnston

Item G: Johnston Contested Case  
 February 26, 2009 EQC Meeting  
 Oct. Attachment N: 2:47 PM  
 08/31/2007 06:39 5038 ( 17

No. 8384 PAL. 4/32/06

CLRT JOHNSTON



Riverbend Landfill  
 13469 SW Highway 10  
 McMinnville, OR, 97128  
 Ph: (503) 472-8788

Original  
 Ticket# 563866

Customer Name CHECKCUSTOME CHECK CUSTOMER  
 Ticket Date 08/30/2007  
 Payment Type Check  
 Manual Ticket#  
 Hauling Ticket#  
 Route  
 State Waste Code  
 Manifest  
 Destination  
 PO  
 Profile 1)  
 Generator

Carrier CK CHECK  
 Vehicle# YELLOW TK  
 Container  
 Driver  
 Check# 0  
 Billing 0 0802143  
 Gen EPA ID  
 Grid

Volume

| Time                    | Scale | Operator | Inbound | Gross         |  |
|-------------------------|-------|----------|---------|---------------|--|
| In 08/30/2007 09:32:58  | Scale | Nancyb   |         | 31820 lb      |  |
| Out 08/30/2007 09:44:45 | Scale | Nancyb   |         | Tare 27420 lb |  |
|                         |       |          |         | Net 4400 lb   |  |
|                         |       |          |         | Totals 8.20   |  |

Comments

| Product        | LOS | Qty  | UOM  | Rate  | Tax  | Amount  | Origin |
|----------------|-----|------|------|-------|------|---------|--------|
| 1 MST-MSW Tons | 100 | 2.20 | Tons | 26.90 | 7.70 | \$59.10 | YAM    |

Total Tax 17.70  
 Total Ticket 166.88

Driver's Signature

Item F 000217





Riverbend Landfill  
 13469 SW Highway 18  
 McMinnville, OR, 97128  
 Ph: (503) 472-8788

Original  
 Ticket# 563899

Item F 000218

Customer Name CHECKCUSTOMER CHECK CUSTOMER Carrier CK CHECK  
 Ticket Date 08/30/2007 Vehicle# YELLOW TK Volume  
 Payment Type Check Container  
 Manual Ticket# Driver  
 Hauling Ticket# Check# 12174  
 Route Billing # 0000143  
 State Waste Code Gen EPA ID  
 Manifest Grid  
 Destination  
 PO  
 Profile ()  
 Generator

| Time                    | Scale | Operator | Inbound | Gross       |  |
|-------------------------|-------|----------|---------|-------------|--|
| In 08/30/2007 11:18:01  | Scale | TEMP     |         | 29480 lb    |  |
| Out 08/30/2007 11:29:18 | Scale | TEMP     |         | 27400 lb    |  |
| Comments                |       |          |         | Net 2000 lb |  |
|                         |       |          |         | Tons 1.04   |  |



| Product        | LDX | Qty  | UOM  | Rate  | Tax  | Amount | Origin |
|----------------|-----|------|------|-------|------|--------|--------|
| 1 CRT-C&D Tons | 100 | 1.04 | Tons | 26.90 | 3.64 | 443.00 | YAM    |

Total Tax \$3.64  
 Total Ticket \$46.64

Driver's Signature  
 KRYM

No. 8384 P. 5 03/05

CURT JOHNSTON

Item G: Johnston Contested Case  
 February 26, 2009 EQC Meeting  
 Oct. Attachment N 24 PM  
 10/27/2007 06:55



Riverbend Landfill  
 13469 SW Highway 10  
 McMinnville, OR, 97128  
 Ph: (503) 472-8788

Original  
 Ticket# 563950

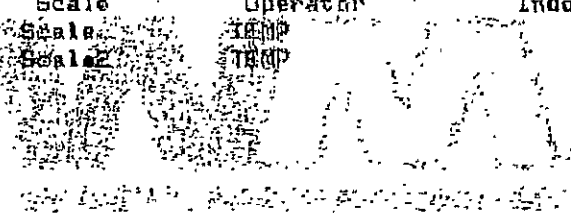
Item F 000219

Customer Name CHECKCUSTOMER CHECK CUSTOMER Carrier CK CHECK  
 Ticket Date 08/30/2007 Vehicle# 5YD  
 Payment Type Check Container  
 Manual Ticket# Driver  
 Hauling Ticket# Check# NA  
 Route Billing # 0000143  
 State Waste Code Gen EPA ID  
 Manifest Grid  
 Destination  
 50  
 Profile ()  
 Generator

Volume

| Time                    | Scale | Operator | Inbound | Gross    |         |
|-------------------------|-------|----------|---------|----------|---------|
| In 08/30/2007 13:54:12  | Scale | TEMP     |         | 30020 lb |         |
| Out 08/30/2007 14:09:58 | Scale | TEMP     |         | 27360 lb |         |
|                         |       |          |         | Net      | 2660 lb |
|                         |       |          |         | Tons     | 1.33    |

Comments



| Product         | LDX | Qty  | UOM   | Rate | Tax  | Amount  | Origin |
|-----------------|-----|------|-------|------|------|---------|--------|
| 1 MSY-MSW Yards | 100 | 5.00 | Yards | 8.78 | 2.60 | \$43.90 | YAM    |

Total Tax \$2.60  
 Total Ticket \$46.50

Signature

No. 8384 P. 6 04/05

CURT JOHNSTON

Item G: Johnston Contested Case  
 February 26, 2009 EQC Meeting  
 Oct. 17, 2007  
 10/17/07 11:24 AM  
 503PR/787

Item G: Johnston Contested Case

February 26, 2009 EQC Meeting

Oct. 10, 2007  
Attachment # 24 PM  
08/31/2007 06:39

5830

CURT JOHNSTON

No. 8384

P. 7  
05/06



PO BOX 270  
MCMINNVILLE, OR 97128  
COAST: (503) 861-0578  
VALLEY: (503) 472-3178

FORWARDING SERVICE REQUESTED 8073-8074



0101

|             |                       |                 |             |
|-------------|-----------------------|-----------------|-------------|
| CARD NUMBER | STATEMENT DATE        | PAY THIS AMOUNT | ACCOUNT NO. |
|             | 7/31/07               | \$ 101.12       | 02-0009358  |
| CHECK NO.   | SHOW AMOUNT PAID HERE |                 | 3           |

KIT JOHNSTON FARMS  
11320 SE LAFAYETTE HWY  
DAYTON, OR 97114-8413

WESTERN OREGON WASTE  
PO BOX 270  
MCMINNVILLE, OR 97128

### STATEMENT



Please check box if address is incorrect or information has changed, and indicate change(s) on reverse side.

PAGE: 1 of 1

PLEASE DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT.

| DATE                         | DESCRIPTION | QUANTITY | RATE    | TOTAL     |
|------------------------------|-------------|----------|---------|-----------|
| BILLING PERIOD: JULY SERVICE |             |          |         |           |
| PAYMENT IS DUE BY: 08/31/07  |             |          |         |           |
| 7/31/07                      | INVOICE     | 1        | 101.12  | 101.12    |
| <b>NOV</b>                   |             |          |         |           |
| <b>STATEMENT</b>             |             |          |         |           |
| CURRENT                      | 33-8074     | 000000   | 33-8074 | 000000    |
| \$ 101.12                    | 00          | 00       | 00      | \$ 101.12 |

WESTERN OREGON WASTE  
PO BOX 270  
MCMINNVILLE, OR 97128  
COAST: (503) 861-0578  
VALLEY: (503) 472-3178

Item F 000220

8073-8074\*95ADMRIW8001413

# Fact Sheet

## Open Burning Regulations for the Mid-Willamette Valley



State of Oregon  
 Department of  
 Environmental  
 Quality

Air Quality Division  
 Open Burning Program  
 Western Region  
 750 Front St. NE, Ste. 120  
 Salem, OR 97301-1039  
 Phone: (503) 378-5408  
 (800) 349-7577  
 Fax: (503) 378-4196  
 Contact:  
 Dan Fox  
[www.deq.state.or.us](http://www.deq.state.or.us)

### A Source of Pollution and Complaints

Pollution from outdoor burning can pose a threat to public health, the environment, or become a public nuisance. Using the air we all breathe to dispose of trash is a major source of complaints to fire departments and environmental agencies.

### What is Open Burning?

"Open Burning" is any burning that is conducted outdoors. A fire in a burn barrel, an outdoor fireplace, or in a backyard incinerator is considered open burning. Other examples include burning yard debris, stumps, remains of demolished structures, or construction materials.

### It is illegal to do any Open Burning that:

- Unreasonably interferes with the enjoyment of life or property of another
- Is not attended by a responsible person
- Does not have adequate water or equipment
- Is a hazard to public safety

### It is illegal to Burn any of the Following Materials:

- Rubber products, including tires
- Plastic
- Wet garbage and food waste
- Petroleum and petroleum-treated materials
- Asphalt and asbestos
- Wire insulation
- Automobile parts
- Animal remains
- Any material that produces dense smoke or noxious odors

### Open Burning Commercial Waste is prohibited in the Willamette Valley.

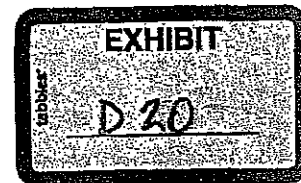
Examples of commercial waste are debris from:

- Offices
- Wholesale and retail yards and outlets
- Warehouses
- Restaurants
- Mobile home parks
- Domestic waste removed from the property of origin
- Waste from dwellings that contain four or more living units

### Special Open Burning Control Areas:

Special Open Burning Control Areas have been established to minimize the impacts of open burning on populated or congested areas. Special Open Burning Control Areas are established around cities in the Willamette Valley and extend 3 or 6 miles from the city limits, depending on the population.

| County  | Cities         | Miles   |
|---------|----------------|---------|
| Benton  | Corvallis      | 6 Miles |
| Benton  | Albany         | 6 Miles |
| Benton  | Philomath      | 6 Miles |
| Linn    | Albany         | 6 Miles |
| Linn    | Brownsville    | 3 Miles |
| Linn    | Harrisburg     | 3 Miles |
| Linn    | Lebanon        | 3 Miles |
| Linn    | Lyons          | 3 Miles |
| Linn    | Mill City      | 3 Miles |
| Linn    | Sweet Home     | 3 Miles |
| Linn    | Tangent        | 3 Miles |
| Marion  | Salem & Keizer | 6 Miles |
| Marion  | Aumsville      | 3 Miles |
| Marion  | Gervais        | 3 Miles |
| Marion  | Hubbard        | 3 Miles |
| Marion  | Jefferson      | 3 Miles |
| Marion  | Mill City      | 3 Miles |
| Marion  | Mt Angel       | 3 Miles |
| Marion  | Silverton      | 3 Miles |
| Marion  | Stayton        | 3 Miles |
| Marion  | Sublimity      | 3 Miles |
| Marion  | Turner         | 3 Miles |
| Marion  | Woodburn       | 3 Miles |
| Polk    | Salem          | 6 Miles |
| Polk    | Dallas         | 3 Miles |
| Polk    | Falls City     | 3 Miles |
| Polk    | Independence   | 3 Miles |
| Polk    | Monmouth       | 3 Miles |
| Polk    | Willamina      | 3 Miles |
| Yamhill | Amity          | 3 Miles |
| Yamhill | Carlton        | 3 Miles |
| Yamhill | Dayton         | 3 Miles |
| Yamhill | Dundee         | 3 Miles |
| Yamhill | Lafayette      | 3 Miles |
| Yamhill | McMinnville    | 3 Miles |
| Yamhill | Newberg        | 3 Miles |
| Yamhill | Sheridan       | 3 Miles |
| Yamhill | Willamina      | 3 Miles |



Last Updated: 12/06/2006  
 By: Dan Fox  
 06-WR-017

Special Open Burning Control Areas also include any area between the areas listed above, where 3 miles or less separate the boundaries.

### When is Open Burning Allowed?

Open burning is allowed on approved burn days during authorized burn times. Call your local fire department's burn line for information regarding burn days and times.

### Inside Special Open Burning Control Areas

Burning is usually allowed March 1 through June 15, and October 1 through December 15. Local burning ordinances may be more restrictive than DEQ rules.

### Outside Special Open Burning Control Areas

Burning may occur on any approved burn day provided that no prohibited material is burned.

### What Can You Burn?

Inside a Special Control Area:

- Yard debris
- Agricultural Waste

Outside a Special Control Area:

- Construction waste
- Demolition waste
- Yard debris
- Domestic waste
- Agricultural waste
- Slash

### What is Yard Debris?

Materials from trees, shrubs or plants that grow in your landscaped yard, for example:

- Grass clippings
- Tree leaves and needles
- Small branches
- Rose bush clippings

### What is Domestic Waste?

Household waste generated in or around a house, such as:

- Paper
- Cardboard
- Clothing

### What is Demolition Waste?

- Material from a complete or partial destruction of any man-made structure
- Clearing any site for land improvement or cleanup

### What is Construction Waste?

Material from a building or a construction project, such as:

- Lumber and other building material
- Crating and packing material

### What is Agricultural Waste?

Agricultural waste is material generated by an agricultural operation that currently uses, or intends to use, land primarily for the purpose of obtaining a profit in money by raising, harvesting and selling crops or raising and selling animals (including poultry), or the products of animal husbandry. Prohibited materials cannot be burned, even in an agricultural setting. All burning must occur during authorized burn times and on burn days.

Agricultural activities may include clearing land for an agricultural purpose, but does not include the construction and use of dwellings. The burning of materials associated with a dwelling is not considered part of an agricultural operation.

Some fire departments require agricultural burning permits. Contact your local fire department for more information.

Agricultural field burning is the burning of residue left from the harvest of grass seed or cereal grain crops, and is regulated in the Willamette Valley by the Smoke Management Program operated by the Oregon Department of Agriculture.

### What is Slash Burning?

Slash burning, is the burning of forest debris that originated from the management of forest land used for growing and harvesting timber. Slash burning is prohibited inside of Special Open Burning Control Areas not regulated by the Department of Forestry. It is not the clearing of forestland for any other purpose. If there are no intentions for the logged land to be replanted, then it is considered demolition burning. Contact your local Department of Forestry Office for more information.

### Alternatives to Open Burning

- Donate unwanted clothing, furniture, and toys to friends, relatives or charities. Give unwanted magazines and books to hospitals or nursing homes.
- Separate the recyclable items from other waste and prepare them for collection or drop-off at a local recycling station. Chip wood waste and use as mulch. Compost organic material and use as a soil amendment.
- Arrange for your non-recyclable waste to be picked up or take it to a transfer station or landfill.

**For more information contact your local fire department or DEQ's Western Region-Salem Office at (503) 378-5408 or toll free at 1-800-349-7677.**



Oregon

John A. Kitzhaber, M.D., Governor

Department of Environmental Quality

Western Region

Salem Office

750 Front St. NE

Suite 120

Salem, OR 97310

(503) 378-8240

(503) 378-3684 TTY

July 20, 1999

Curt Johnson  
11320 Lafayette Highway  
Dayton, OR 97114

RE: NOTICE OF NONCOMPLIANCE  
ENF-AQ/OB-WRS-99-220  
Open Burning, Prohibited  
Yamhill County

Dear Mr. Johnson:

The Department of Environmental Quality received a Fire Department Referral for Open Burning Violations on July 13, 1999, from the McMinnville Fire Department. They informed us that on July 8, 1999, at 12:08 p.m., open burning occurred on property owned or controlled by you at 11320 Lafayette Highway, Dayton, Oregon, in violation of our rules. The violations were described as:

1. Open burning which was not constantly attended by a responsible person until extinguished -- OAR 340-23-040(1).
2. Open burning which created a private or public nuisance or a hazard to public safety -- OAR 340-23-042(1).
3. The open burning of prohibited material such as garbage, plastic, tires, rubber products, petroleum products, asphaltic materials, wire insulation, automobile parts, animal remains, and food waste, or any material which emits dense smoke or noxious odors -- OAR 340-23-042(2).
4. The open burning of any material on a day or at a time when all such open burning was prohibited -- OAR 340-23-042(3).
5. The open burning of domestic waste other than yard debris within the City of Dayton Special Open Burning Control Area -- OAR 340-23-060(5)(a).

The open burn consisted of two piles approximately four feet high, 15 feet wide and 25 feet long containing tires, and rims, paint cans, grease products, lawn mowers, plastic tubing, grease guns, roofing debris, black plastic hose, and electrical equipment.

Only wood, needle, or leaf material from trees, plants, and shrubs grown on your property may be burned. The open burning of any material that normally emits dense smoke (such as garbage or wet



Item F 000223  
DEC/WVR-101 8-97

Curt Johnson  
July 20, 1999  
Page 2

vegetation), noxious odors, or tends to create a private or public nuisance, or a hazard to public safety is prohibited at all times in all areas of the state.

OAR 340-23-040(2) states that each person who is in ownership, control or custody of the real property on which open burning occurs, including any tenant thereof, or who is in ownership, control or custody of the material which is burned, shall be considered a responsible person for the open burning.

Materials, which are prohibited from open burning statewide, were observed in this burn. The open burning of prohibited material creates smoke and noxious odors, which are a nuisance and may present a health hazard for the young, the elderly, and those with respiratory diseases. In some cases, toxic levels of chemical exposure can result. Open burning significant amounts of prohibited materials, and interfering with a fireperson, while that fireperson was doing his official duty, are serious violations, and can result in a substantially increased penalty if formal enforcement action is taken.

At this time the Department feels that further investigation is needed to make a decision as to whether or not a civil penalty should be imposed. When the decision is made, you will be notified.

The Department's actions are independent of any actions that may be taken by the local fire department or other agencies for cost recovery or other purposes, including fines or penalties.

Illegal open burning produces unnecessary smoke and results in numerous complaints to fire departments and DEQ each year. In addition to causing a localized nuisance, each illegal burn contributes to the cumulative amount of pollution in the atmosphere. Documents, which explain the open burning rules and Special Control Areas, are enclosed for your information. The Department requests your cooperation in complying with these rules.

If you have any questions regarding this matter, please call me at (503) 378-8240, extension 278.

Sincerely,



Felica D. Sonnenschein  
Air Quality Specialist

Enc: Outdoor Burning in Oregon  
Pollution Prevention Begins at Home  
Rules for Open Burning/Special Control Areas

cc: McMinnville Fire Department  
ATTN: Shannon Thorson-Division Chief  
Enforcement Section  
File  
C Johnson-non.doc

State of Oregon  
Department of Environmental Quality

Memorandum

Date: June 12, 2007

To: Dave LeBrun  
From: Sara Urch  
Subject: Curtis Brian Johnston EB

Name: Curtis Brian Johnston

Type: individual

Applicable Division 12: New

Penalty Payment Date: August 12, 2007

**Violations:** Improper disposal of solid waste (approximately 555.56 cubic yards of materials) discovered by the Department on November 2, 2006 from a Fire Department referral for an open burn which occurred on October 28, 2006. The material has not yet been properly disposed.

**Costs:** Mr. Johnston should have spent \$31.57 per ton to properly dispose of the prohibited materials. An estimated 55.56 tons (555.56 cubic yards) of materials were improperly disposed on the property.  $\$31.57 \times 55.56 \text{ tons} = \$1,754.03$ .

In addition, Western Oregon Waste (WOW) (the applicable waste disposal service) charges \$71.25 per initial drop box, and a charge of \$142.50 for each pick up and unload of the box. The largest drop box WOW provides carries 30 yards, so approximately 19 drop boxes would be needed ( $555.56 \text{ cubic yards} / 30 \text{ yards} = 18.51 \text{ drop boxes} = 19 \text{ drop boxes needed}$ ).

|                                     |                 |              |
|-------------------------------------|-----------------|--------------|
| Initial drop-off box:               | \$71.25 x 1     | = \$71.25    |
| Pick up and unload box (each time): | \$142.50 x 19   | = \$2,707.50 |
| Cost per ton:                       | \$31.57 x 55.56 | = \$1,754.03 |
| Total Economic Benefit              |                 | \$4,532.78   |

Estimate Date: 06.12.07

Compliance Date: N/A

Avoided

Q-Time: 26266







1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

BEFORE THE OREGON ENVIRONMENTAL  
QUALITY COMMISSION

In the Matter of: )  
CURTIS BRIAN JOHNSTON ) AFFIDAVIT  
)  
)  
Case No. AQ/OB-WR-07-060 )  
)  
STATE OF OREGON )

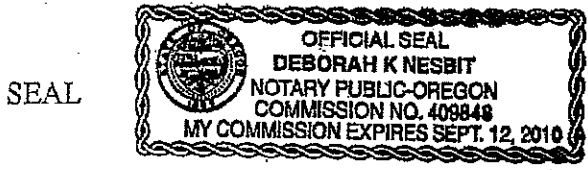
I, David LeBrun, being duly sworn, depose and say that the following is true to the best of my knowledge:

1. That, I, David Lebrun, am currently employed by the Oregon Department of Environmental Quality (DEQ).
2. That in the course of my employment, during my former position as an Environmental Law Specialist with DEQ, I regularly performed calculations to determine the economic benefit portion of civil penalties assessed by the Department as prescribed in OAR 340-012-0045.
3. That I, pursuant to OAR 340-012-0150, made economic benefit calculations using the United States Environmental Protection Agency's "BEN" computer model.
4. That I did receive a memo from Sara Urch, DEQ, on June 12, 2007, which provided numbers with which to enter into the BEN model to calculate the economic benefit for Case no. AQ/OB-WR-07-060.
5. That I used BEN to calculate the economic benefit in Case no. AQ/OB-WR-07-060, which assessed a civil penalty against Curtis Brian Johnston.
6. That the attached Memorandum, dated June 19, 2007, and attached "BEN" calculation sheets, were prepared by me in the normal course of my employment.

Date: 7/21/08

\_\_\_\_\_  
David LeBrun  
Department of Environmental Quality


Sworn and subscribed before me this 21 day of July 2008.



\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires  
09/12/2010

State of Oregon  
Department of Environmental Quality

Memorandum

**Date:** January 12, 2009  
**To:** Environmental Quality Commission  
**From:** Dick Pedersen, Director   
**Subject:** Agenda Item G, Action Item: Director's Transactions for Commission Review  
February 26, 2009 EQC meeting.

**Proposed Action** Oregon Accounting Policy 10.90.00 and Department of Environmental Quality Policy A10.90.00 (Attachments A and B) require that the Oregon Environmental Quality Commission review and approve certain financial transactions of the DEQ Director on an annual basis. A summary of these transactions and copies of the relevant documents are provided in Attachment C.

**Background** In 2001, the Department of Administrative Services adopted a policy requiring EQC review and approval of certain Director's transactions, including monthly time reports, vacation pay, travel expenses and the Small Purchase Order Transaction System credit card use. In September 2001, the EQC adopted a policy delegating review and approval of these transactions to the Management Services Division Administrator, with annual EQC review of the approved transactions.

**Department Recommendation** DEQ recommends that the Oregon Environmental Quality Commission review and approve these transactions. This review will be documented in the EQC meeting minutes as directed by State of Oregon policy.

**Attachments**  
A. Oregon Accounting Manual (OAM) Policy No. 10.90.00.PO.  
B. DEQ Policy re: Approval of Director's Transactions.  
C. Summary of Director's Financial Transactions as defined by OAM 10.90.00 for the period 1/1/2008 – 12/31/2008 for Dick Pedersen.

Approved:

Accounting Section:

  
Accounting Manager

Management Services Division:

  
MSD Administrator

|                                                                                |                                      |                                      |
|--------------------------------------------------------------------------------|--------------------------------------|--------------------------------------|
| <b>OREGON ACCOUNTING MANUAL</b>                                                |                                      | Number<br>10.90.00.PO                |
| Oregon Department of<br>Administrative Services<br>State Controller's Division |                                      | Effective Date<br>July 16, 2001      |
| Chapter                                                                        | Internal Control                     | .1 OF .3                             |
| Part                                                                           | Approval of Agency Head Transactions |                                      |
| Section                                                                        |                                      | Approval<br>Signature on file at SCD |

### Accountability and Control Standards

- .101 This policy sets accountability and control standards for the determination and delegation of review and approval authority for the agency head's monthly time report, requests for vacation payoff, use of exceptional performance leave, travel expense reimbursement claims, and Small Purchase Order Transaction System (SPOTS) card purchases. This policy is intended to ensure that these transactions are reviewed for completeness and accuracy and that they are in conformance with and measured against the documentation and compliance standards provided herein. In the case of agency heads that are elected, this policy may be applied at the option of that elected official.

### Establishing Review and Approval Authority

- .102 Agency heads appointed by the Governor shall delegate review and approval authority for agency head financial transactions to the chief financial officer or to the person who holds the position of second-in-command to the agency head. The delegation shall be in writing.

Agency heads appointed by or reporting to a board or commission shall work with that body to create a review and approval structure for financial transactions of the agency head. The board or commission may delegate the review and approval authority, by direct designation or motion, in writing, to the board or commission chair or ranking officer. Or, the board or commission may delegate to the agency second-in-command, chief financial officer, or may choose to retain an active role in the approval process. Boards and commissions choosing to take an active role in the review and approval process must make the review and approvals of financial transactions a part of their regular meetings and document them in the minutes.

Boards and commissions delegating the review and approval process must at least annually review the financial transactions of the agency head approved as delegated. These post transaction reviews and approvals must be documented in the minutes of the board or commission annual meeting.

### Requirement for Internal Procedure and Review

- .103 This policy requires agencies to develop internal procedures for the review and approval of the following agency head transactions:
- (a) Time reporting: Review and approve the agency head's monthly report of sick leave, vacation, holiday or other leave hours used. Review for completeness and accuracy and to ensure that all time that has been taken has been reported. Ensure that leave hours comply with HRSD 60.000.01 Sick Leave, 60.000.05 Vacation Leave, 60.010.01 Holidays, 60.000.15 Family Medical Leave, 60.005.01 Leave Without Pay and 60.000.10

Special Leaves with Pay. Time reporting (leave usage) must be documented using either paper or electronic timekeeping methods. The documentation must show that the time reports have been reviewed and approved by the appropriate authority, which, in the case of a board or commission, may be the ranking officer of the board. Note: Heads of agencies are classified as exempt from the Fair Labor Standards Act (FLSA) and as such should not be required to report actual hours worked. The time reporting review is intended to focus only on hours related to the categories defined above. The documentation must provide evidence for an audit trail and must be maintained by the agency for the prescribed IRS retention schedule for time records of three years and one quarter as well as the current record retention standards per Secretary of State, Archives Division.

- (b) Travel expense reimbursements: Review and approve all travel claims submitted by the agency head, whether for in-state or out-of-state travel. Ensure compliance with DAS Travel Rules OAM 40 10 00 PO as well as OAM 10 40 00 PO, Expenditures. The review and approval of travel transactions must be documented to provide an audit trail and evidence that the review complies with and was conducted in accordance with the prevailing state policies as listed.
- (c) Exceptional Performance Leave: This leave shall be granted to agency heads using the criteria set forth in HRSD 60.000.10 "Special Leaves With Pay". For agency heads appointed by the Governor, this leave shall only be granted by the Governor or by the Director of the Department of Administrative Services on behalf of the Governor. For agency heads reporting to a board or commission, this leave shall be granted by that body or by the board or commission chair and documented in the minutes of the board or commission. The review and approval responsibility is to ensure that the Exceptional Performance leave was granted based on appropriate criteria and authority and is in compliance with HRSD policy 60.000.10. The review and approval of these transactions must be documented to provide an audit trail and evidence that the review complies with and was conducted in accordance with the prevailing state policies as listed. The documentation must clearly demonstrate the criteria upon which the leave was granted. The documentation must include copies of the written request and approval granting the leave and copies of the board or commission minutes, if applicable. The documentation must be retained according to the current record retention standards per Secretary of State, Archives Division.
- (d) Vacation Payoff: Review and approve ensuring compliance with HRSD policy 60 000.05 "Vacation Leave". The review and approval of these transactions must be documented to provide an audit trail and evidence that the review complies with and was conducted in accordance with HRSD 60.000.05. That review must clearly demonstrate that the vacation payoff was approved in accordance with Section (6)(b) of that policy which mandates that a vacation payoff is only granted when taking vacation leave is not appropriate. Copies of the written request and approval granting the vacation payoff and copies of the board or commission minutes, if applicable, must be part of the documentation for these transactions.
- (e) Use of the Small Purchase Order Transaction System (SPOTS) purchase card: Review purchases to ensure that they are appropriate expenditures that further the business of the state and the mission of the agency and that the use of the SPOTS card complies with OAM 55 30 00 PO. The review must be conducted by someone other than the person whose name appears on the card. The review and approval of transactions must be documented to provide an audit trail and evidence that the review complies with and was conducted in accordance with the prevailing state policies as listed.

The documentation for all of the above should be retained according to the current record retention standards per Secretary of State, Archives Division.

**Fiscal Officer Responsibility**


- .104 Agency fiscal officers processing these financial transactions for the agency head have a duty to pre-audit and verify that the transactions comply with this policy.

**Seeking Guidance from State Controller's Division**

- .105 For the purposes of this policy, those persons delegated to review and approve financial transactions for state agency heads have a duty to comply with the provisions of this policy. Any agency head requests to deviate from this policy must be approved by the State Controller. Those persons delegated review and approval authority having reservations or questions about an agency head financial transaction may seek guidance from the State Controller's Division.

**Transactions Subject to Audit**

- .106 All financial transactions of state agency heads are subject to periodic audit by the Secretary of State Audits Division.

|                                                                                      |                                                                                                        |
|--------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|
| <b>DEPARTMENT OF<br/>ENVIRONMENTAL QUALITY</b><br><br><b>POLICIES AND PROCEDURES</b> | <b>POLICY NUMBER:</b><br>A10.90.00.PO                                                                  |
|                                                                                      | SEPTEMBER 20, 2001                                                                                     |
|                                                                                      | PAGE 1 OF 1                                                                                            |
| <b>SUBJECT: APPROVAL OF DIRECTOR'S<br/>TRANSACTIONS</b>                              | <b>APPROVAL:</b><br> |

**INTENT:** to set accountability and control standards for the review and approval of the director's financial transactions.

**AUTHORITY:** Oregon Accounting Manual (OAM) Policy No. 10.90.00.PO

**POLICY:** As delegated by the Environmental Quality Commission, the Management Services Division administrator will review and approve the Director's monthly time reports, requests for vacation payoff, use of exceptional performance leaves, travel expense reimbursement claims, and Small Purchase Order Transaction System (SPOTS) card purchases. This review will be performed in accordance with OAM 10.90.00.PO.

Annually, at the time of the Director's evaluation, the Commission will review the transactions approved as delegated. These post transaction reviews and approvals will be documented in the minutes of the Commission meeting.

**Summary of Director's Financial Transactions  
as defined by OAM 10.90.00.PO  
1/1/08 - 12/31/08  
DICK PEDERSEN**

**TIME REPORTING**

**Summary of leave taken:**

|                               |           |
|-------------------------------|-----------|
| Exceptional Performance Leave | 0 hours   |
| Governor's Leave              | 8 hours   |
| Holiday                       | 72 hours  |
| Personal Business             | 48 hours  |
| Sick Leave                    | 21 hours  |
| Vacation                      | 134 hours |
| Miscellaneous Paid Leave      | 12 hours  |

**VACATION LEAVE PAYOFF: None**

**USE OF SMALL PURCHASE ORDER TRANSACTION SYSTEM (SPOTS) PURCHASING CARD: None**

**TRAVEL EXPENSE REIMBURSEMENTS**

| <u>Date</u>    | <u>Destination</u>     | <u>Reason for Travel</u>                                                                                                          | <u>Total Cost</u> | <u>Amount Reimbursed</u> | <u>Net Cost to DEQ</u> |
|----------------|------------------------|-----------------------------------------------------------------------------------------------------------------------------------|-------------------|--------------------------|------------------------|
| 1/8 - 1/9/08   | Coos Bay               | Meetings with Sen. Verger, Coos Bay office staff, and the Coquille Tribe                                                          | \$134.10          | \$0.00                   | \$134.10               |
| 2/13 - 2/14/08 | Astoria                | Bradwood LNG for 401's Meeting                                                                                                    | \$174.50          | \$0.00                   | \$174.50               |
| 4/1 - 4/3/08   | Pendleton & The Dalles | Pendleton - Human Health Focus Group Workshop;<br>The Dalles - Environmental Revitalization Team trip & dinner with the Directors | \$233.60          | \$0.00                   | \$233.60               |
| 4/13 - 4/16/08 | New Orleans            | Environmental Council of the States Spring Meeting                                                                                | \$1,222.49        | \$0.00                   | \$1,222.49             |
| 4/23/2008      | Seattle                | Western Climate Initiative Mtg.                                                                                                   | \$336.84          | \$0.00                   | \$336.84               |
| 4/28 - 4/29/08 | Seattle                | Pacific Northwest Directors Mtg.                                                                                                  | \$509.39          | \$0.00                   | \$509.39               |

**Summary of Director's Financial Transactions  
 as defined by OAM 10.90.00.PO  
 1/1/08 - 12/31/08  
 DICK PEDERSEN**

**TRAVEL EXPENSE REIMBURSEMENTS**

| <u>Date</u>    | <u>Destination</u>                                       | <u>Reason for Travel</u>                                                                                                                                                                              | <u>Total Cost</u> | <u>Amount Reimbursed</u> | <u>Net Cost to DEQ</u> |
|----------------|----------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|--------------------------|------------------------|
| 4/30 - 5/2/08  | Corvallis & Eugene<br>Roseburg<br>Grants Pass<br>Medford | Corvallis - Spoke at OSU Institute for Natural Resources Science Policy Seminar; Attended staff meetings in four regional offices; Visited Comm. Uherbelau & visited with Rep. Buckley and Sen. Bates | \$247.20          | \$0.00                   | \$247.20               |
| 5/20 - 5/22/08 | Salt Lake City                                           | Western Climate Initiative Mtg.                                                                                                                                                                       | \$612.67          | \$0.00                   | \$612.67               |
| 6/3 - 6/4/08   | Bend                                                     | Attended staff meeting; Met with Rep. Burley; Met with Rep. Whisnant and Tod Heisler, Director of Deschutes River Conservancy                                                                         | \$170.96          | \$0.00                   | \$170.96               |
| 6/10 - 6/11/08 | Clatskanie                                               | Economic Revitalization Team Director's Tour of Vernonia, St. Helens and vicinity                                                                                                                     | \$117.43          | \$0.00                   | \$117.43               |
| 6/16/08        | Seattle                                                  | EPA Executive Team Meeting                                                                                                                                                                            | \$305.87          | \$0.00                   | \$305.87               |
| 6/18 - 6/20/08 | Medford                                                  | EQC Meeting                                                                                                                                                                                           | \$275.00          | \$0.00                   | \$275.00               |
| 6/30 - 7/1/08  | Brookings                                                | Economic Revitalization Team Director's Tour of Brookings, Gold Beach, etc.                                                                                                                           | \$124.96          | \$0.00                   | \$124.96               |
| 7/22 - 7/25/08 | Bend                                                     | Attended and spoke at the Oregon Association of Clean Water Agencies                                                                                                                                  | \$391.88          | \$0.00                   | \$391.88               |
| 7/28 - 7/30/08 | San Diego                                                | San Diego - Western Climate Initiative Stakeholder Workshop                                                                                                                                           | \$1,192.83        | \$0.00                   | \$1,192.83             |
| 7/31 - 8/1/08  | Pendleton                                                | Met with editors at the Eastern Oregonian and participated on a Directors' panel at the Mayor's Conference                                                                                            | \$318.30          | \$0.00                   | \$318.30               |



**Summary of Director's Financial Transactions  
 as defined by OAM 10.90.00.PO  
 1/1/08 - 12/31/08  
 DICK PEDERSEN**

**TRAVEL EXPENSE REIMBURSEMENTS**

| <u>Date</u>      | <u>Destination</u>                                             | <u>Reason for Travel</u>                                                                                                                                                                                                                  | <u>Total Cost</u> | <u>Amount Reimbursed</u> | <u>Net Cost to DEQ</u> |
|------------------|----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|--------------------------|------------------------|
| 8/5 - 8/6/08     | Corvallis                                                      | Economic Revitalization Team Director's Tour of Lane, Linn, and Benton counties. Discussion and tour of the new Peace Health Campus; tour of Grainmillers; discussion of State's Correction and Mental Health facilities in Junction City | \$125.75          | \$0.00                   | \$125.75               |
| 8/18 - 8/22/08   | Tillamook and Skamania<br>The Dalles<br>Pendleton<br>Hermiston | Met with Tillamook Creamery Association and attended Western Climate Initiative Meeting in Skamania. Had Listening Sessions with DEQ staff at The Dalles, Pendleton, and Hermiston offices. Attended EQC Meeting in Hermiston             | \$488.28          | \$0.00                   | \$488.28               |
| 9/15 - 9/16/08   | Bend                                                           | Attended the Oregon Global Warming Commission Meeting                                                                                                                                                                                     | \$148.96          | \$0.00                   | \$148.96               |
| 9/20 - 9/23/08   | Branson, MO                                                    | Annual Environmental Council of the States Meeting                                                                                                                                                                                        | \$1,555.98        | \$0.00                   | \$1,555.98             |
| 10/6 - 10/8/08   | Hines and John Day                                             | Governor's Economic Revitalization Team Tour                                                                                                                                                                                              | \$259.85          | \$0.00                   | \$259.85               |
| 10/12 - 10/14/08 | Sunriver                                                       | Spoke at Oregon Forest Industries Council Annual Meeting                                                                                                                                                                                  | \$312.16          | \$0.00                   | \$312.16               |
| 10/19 - 10/20/08 | Seattle                                                        | Pacific Northwest Directors' Mtg.                                                                                                                                                                                                         | \$353.71          | \$0.00                   | \$353.71               |
| 11/11 - 11/12/08 | Eugene                                                         | Board of Agriculture Meeting                                                                                                                                                                                                              | \$143.50          | \$0.00                   | \$143.50               |
| <b>TOTAL:</b>    |                                                                |                                                                                                                                                                                                                                           | <b>\$9,756.21</b> | <b>\$0.00</b>            | <b>\$9,756.21</b>      |

10R0127253

STATE OF OREGON  
TRAVEL EXPENSE DETAIL SHEET



312/VPT 26204

|                                                                                                                                                                                                                          |  |                                                                                                              |  |                                                                                                                              |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------|--|
| 1. Name of Employee<br>Dick Pedersen                                                                                                                                                                                     |  | 2. Agency<br>DEQ                                                                                             |  | 3. Period (Month and Year)<br>January-08                                                                                     |  |
| 4. Official Station<br>Portland                                                                                                                                                                                          |  | 5. Division/ Work Unit<br>Director's Office                                                                  |  | 6. Regular Schedule Work Shift<br>8:00 am - 5:00<br><input checked="" type="checkbox"/> pm <input type="checkbox"/> Other to |  |
| 7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/> |  | Bargaining Unit Name <input type="checkbox"/> AFSCME <input type="checkbox"/> Other <input type="checkbox"/> |  |                                                                                                                              |  |

70  
39

| 8. Date  | 9. Time of Departure | 10. Time of Arrival | 11. Destination | 12. Per Diem/ Hourly Allowance | 13. Individual Meal Reimbursement |        |        | 14. Total Meals and Lodging |                    |
|----------|----------------------|---------------------|-----------------|--------------------------------|-----------------------------------|--------|--------|-----------------------------|--------------------|
|          |                      |                     |                 |                                | Breakfast                         | Lunch  | Dinner |                             |                    |
| 01/08/08 | 11:00 am             |                     | Coos Bay        | 59.25                          |                                   | 9.75   | 19.50  | 70.00                       | 99.25              |
| 01/09/08 |                      | 5:00 pm             | Portland        | 59.25                          | 9.75                              | -36.75 | 9.75   |                             | -36.75 29.25       |
|          |                      |                     |                 |                                |                                   | 9.75   |        |                             |                    |
|          |                      |                     |                 | 15. Totals                     | 58.50                             | 46.50  | 19.50  | 70.00                       | 128.50<br>\$136.00 |

| 18. Accounting Codes | 17. Date | 18. Miscellaneous Expenses<br>Fares, Private Mileage, Room Tax, Telephone, Other Expenses | 19. Training Related? | 20. Rate Per Mile | 21. Private Car Miles | 22. Amount |
|----------------------|----------|-------------------------------------------------------------------------------------------|-----------------------|-------------------|-----------------------|------------|
| 14010-41004          |          | Personal Vehicle Mileage                                                                  |                       | 0.485             |                       |            |
|                      | 01/09/08 | Hotel Tax and State Fee                                                                   |                       |                   |                       | 5.60       |
| 4101                 | 58.50    |                                                                                           |                       |                   |                       |            |
| 4106                 | 75.60    |                                                                                           |                       |                   |                       |            |
| Totals               |          |                                                                                           |                       |                   |                       | 134.10     |
| 23. Section Total    |          |                                                                                           |                       |                   |                       | \$5.60     |

24. I did/will  did not/will not  accept travel awards as a result of, or associated with this state business trip. Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.)  
1/8/08 - Met with Senator Verger. 1/9/08 - Coos Bay staff meeting and meeting with Coquille tribe.

|                                                                                                                                                                                                                      |                                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|
| 26. Grand Total Amount                                                                                                                                                                                               | 134.10<br>\$141.60             |
| 27. Travel Advance Amount                                                                                                                                                                                            |                                |
| 28. Amount Due Employee/State                                                                                                                                                                                        | 134.10<br>\$141.60             |
| 29. Received Training                                                                                                                                                                                                | Conducted Training             |
| 30. Signature of Employee                                                                                                                                                                                            | 31. Title<br>Interim Director  |
| 32. Approved By                                                                                                                                                                                                      | 33. Title<br>MSD Administrator |
| I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.                   |                                |
| I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditure. |                                |

10R0127253  
STATE OF OREGON  
TRAVEL EXPENSE DETAIL SHEET



318/VPT-26356

|                                                                                                                                                                                                                          |  |                                                                                                              |  |                                                                                                                        |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------|--|
| 1. Name of Employee<br>Dick Pedersen                                                                                                                                                                                     |  | 2. Agency<br>DEQ                                                                                             |  | 3. Period (Month and Year)<br>February-08                                                                              |  |
| 4. Official Station<br>Portland                                                                                                                                                                                          |  | 5. Division/ Work Unit<br>Director's Office                                                                  |  | 6. Regular Schedule Work Shift<br>8:00 am - 5:00 pm <input checked="" type="checkbox"/> Other <input type="checkbox"/> |  |
| 7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/> |  | Bargaining Unit Name <input type="checkbox"/> AFSCME <input type="checkbox"/> Other <input type="checkbox"/> |  |                                                                                                                        |  |

85  
54

| 8. Date    | 9. Time of Departure | 10. Time of Arrival | 11. Destination | 12. Per Diem/ Hourly Allowance | Individual Meal Reimbursement |       |        | 13. Lodging | 14. Total Meals and Lodging |         |
|------------|----------------------|---------------------|-----------------|--------------------------------|-------------------------------|-------|--------|-------------|-----------------------------|---------|
|            |                      |                     |                 |                                | Breakfast                     | Lunch | Dinner |             |                             |         |
| 02/13/08   | 6:30 am              |                     | Astoria         | 40.50                          | -0.75                         | 13.50 | 13.50  | 27.00       | 85.00                       | 85.75   |
| 02/14/08   |                      | 5:30 pm             | Portland        | 40.50                          | -0.75                         | 13.50 | 13.50  | 27.00       |                             | 85.75   |
|            |                      |                     |                 | 81.00                          |                               |       |        |             |                             | 166.00  |
| 15. Totals |                      |                     |                 | 161.00                         |                               | 27.00 | 27.00  | 54.00       | 85.00                       | \$86.50 |

| 16. Accounting Codes | 17. Date | 18. Miscellaneous Expenses<br>Fares, Private Mileage, Room Tax, Telephone, Other Expenses | 19. Training Related? | 20. Rate Per Mile | 21. Private Car Miles | 22. Amount |
|----------------------|----------|-------------------------------------------------------------------------------------------|-----------------------|-------------------|-----------------------|------------|
| 4101-4104            |          | Personal Vehicle Mileage                                                                  |                       | 0.485             |                       |            |
|                      | 02/13/08 | Hotel Tax and State Fee                                                                   |                       |                   |                       | 8.50       |
| 4101                 |          |                                                                                           |                       |                   |                       | 81.00      |
| 4106                 |          |                                                                                           |                       |                   |                       | 92.50      |
| Totals               |          |                                                                                           |                       |                   |                       | 174.50     |
| 23. Section Total    |          |                                                                                           |                       |                   |                       | \$8.50     |

24. I did/will  did not/will not  accept travel awards as a result of, or associated with this state business trip. Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

|                                                                                                                 |                                                                                            |
|-----------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| 25. REASON FOR TRAVEL: (Be specific.)<br>2/13/08 - Bradwood LNG for 401's Meeting at Clatsop County Fairgrounds | 26. Grand Total Amount<br>174.50<br>\$95.00                                                |
|                                                                                                                 | 27. Travel Advance Amount                                                                  |
|                                                                                                                 | 28. Amount Due Employee/State<br>174.50<br>\$95.00                                         |
|                                                                                                                 | 29. Received Training <input type="checkbox"/> Conducted Training <input type="checkbox"/> |

I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.

30. Signature of Employee  
*Dick Pedersen*

31. Title  
Interim Director

Date  
02/20/08

I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditure.

32. Approved By  
*J. H. ...*

33. Title  
MSD Administrator

Date  
2-20-09

10R0127253  
STATE OF OREGON  
TRAVEL EXPENSE DETAIL SHEET



314/VPT26628

|                                                                                                                                                                                                                          |  |                                                                                                              |  |                                                                                                                              |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------|--|
| 1. Name of Employee<br>Dick Pedersen                                                                                                                                                                                     |  | 2. Agency<br>DEQ                                                                                             |  | 3. Period (Month and Year)<br>April-08                                                                                       |  |
| 4. Official Station<br>Portland                                                                                                                                                                                          |  | 5. Division/ Work Unit<br>Director's Office                                                                  |  | 6. Regular Schedule Work Shift<br>8:00 am - 5:00<br><input checked="" type="checkbox"/> pm <input type="checkbox"/> Other to |  |
| 7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/> |  | Bargaining Unit Name <input type="checkbox"/> AFSCME <input type="checkbox"/> Other <input type="checkbox"/> |  |                                                                                                                              |  |

| 8. Date  | 9. Time of Departure | 10. Time of Arrival | 11. Destination      | 12. Per Diem/ Hourly Allowance | 13. Individual Meal Reimbursement |       |        | 14. Total Meals and Lodging |          |
|----------|----------------------|---------------------|----------------------|--------------------------------|-----------------------------------|-------|--------|-----------------------------|----------|
|          |                      |                     |                      |                                | Breakfast                         | Lunch | Dinner |                             |          |
| 04/01/08 | 8:00 am              |                     | Pendleton/The Dalles | 9.75                           | 0.00                              | 9.75  | prov'd | 70.00                       | 79.75    |
| 04/02/08 |                      |                     | Pendleton            | 39.00                          | 9.75                              | 9.75  | 19.50  | 70.00                       | 109.00   |
| 04/03/08 |                      | 6:00 pm             | Portland             | 29.25                          | 9.75                              | 9.75  | 9.75   |                             | 29.25    |
|          |                      |                     |                      | 15. Totals                     | 78.00                             | 19.50 | 29.25  | 140.00                      | \$218.00 |

| 16. Accounting Codes | 17. Date | 18. Miscellaneous Expenses<br>Fares, Private Mileage, Room Tax, Telephone, Other Expenses | 19. Training Related? | 20. Rate Per Mile | 21. Private Car Miles | 22. Amount                |
|----------------------|----------|-------------------------------------------------------------------------------------------|-----------------------|-------------------|-----------------------|---------------------------|
| 14010-11004          |          | Personal Vehicle Mileage                                                                  |                       | 0.505             |                       |                           |
|                      | 04/01/08 | Hotel Tax and State Fee (9%)                                                              |                       |                   |                       | 7.80                      |
| 1101                 | 04/02/08 | Hotel Tax and State Fee (9%)                                                              |                       |                   |                       | 7.80                      |
| 4126                 | 77.73    |                                                                                           |                       |                   |                       |                           |
| 4433                 | 77.87    |                                                                                           |                       |                   |                       |                           |
| Totals               | 233.60   |                                                                                           |                       |                   |                       | 23. Section Total \$15.60 |

24. I did/will  did not/will not  accept travel awards as a result of, or associated with this state business trip. Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, air/mileage frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.)  
4/1/08 Travel to Pendleton for HHFG Workshop, The Dalles for ERT Trip, & Dinner with the Directors, April 1 & 2, 2008

|                               |                    |
|-------------------------------|--------------------|
| 26. Grand Total Amount        | \$233.60           |
| 27. Travel Advance Amount     |                    |
| 28. Amount Due Employee/State | \$233.60 <i>RM</i> |
| 29. Received Training         | Conducted Training |

|                                                                                                                                                                                                    |                                                                                                                                                                                                                      |                                       |                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|------------------------------|
| I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source. | 30. Signature of Employee<br><i>Dick Pedersen</i>                                                                                                                                                                    | 31. Title<br>Interim Director         | Date<br>4/8/08               |
|                                                                                                                                                                                                    | I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditure. | 32. Approved By<br><i>Jim Hurrell</i> | 33. Title<br>Deputy Director |

10R0127253  
STATE OF OREGON  
TRAVEL EXPENSE DETAIL SHEET



324/VPT-24673

|                                                                                                                                                                                                                          |  |                                                             |  |                                                                                                                              |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------|--|
| 1. Name of Employee<br>Dick Pedersen                                                                                                                                                                                     |  | 2. Agency<br>DEQ                                            |  | 3. Period (Month and Year)<br>April-08                                                                                       |  |
| 4. Official Station<br>Portland                                                                                                                                                                                          |  | 5. Division/ Work Unit<br>Director's Office                 |  | 6. Regular Schedule Work Shift<br>8:00 am - 5:00 pm <input checked="" type="checkbox"/> pm <input type="checkbox"/> Other to |  |
| 7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/> |  | Bargaining Unit Name: AFSCME Other <input type="checkbox"/> |  |                                                                                                                              |  |

131  
59

| 8. Date  | 9. Time of Departure | 10. Time of Arrival | 11. Destination | 12. Per Diem/ Hourly Allowance | Individual Meal Reimbursement |       |        | 13. Lodging | 14. Total Meals and Lodging |               |
|----------|----------------------|---------------------|-----------------|--------------------------------|-------------------------------|-------|--------|-------------|-----------------------------|---------------|
|          |                      |                     |                 |                                | Breakfast                     | Lunch | Dinner |             |                             |               |
| 04/13/08 | 10:30 am             |                     | New Orleans     | 44.25                          | 59.00                         | n/a   | 14.75  | 29.50       | 131.00                      | 490.00 175.25 |
| 04/14/08 |                      |                     | New Orleans     | 29.50                          | 59.00                         | prov  | prov   | 29.50       | 131.00                      | 490.00 110.50 |
| 04/15/08 |                      |                     | New Orleans     | 29.50                          | 59.00                         | prov  | prov   | 29.50       | 131.00                      | 190.00 110.50 |
| 04/16/08 |                      | 8:00 pm             | Portland        | 44.25                          | 59.00                         | prov  | prov   | 29.50       |                             | 59.00 44.25   |
|          |                      |                     |                 |                                |                               |       | 14.75  |             |                             |               |
|          |                      |                     |                 | 147.50                         |                               |       |        |             |                             | 540.50        |
|          |                      |                     |                 | 15. Totals                     | 236.00                        |       | 14.75  | 118.00      | 393.00                      | 5629.00       |

\* See attached notes

| 16. Accounting Codes | 17. Date | 18. Miscellaneous Expenses<br>Fares, Private Mileage, Room Tax, Telephone, Other Expenses | 19. Training Related? | 20. Rate Per Mile | 21. Private Car Miles | 22. Amount                 |
|----------------------|----------|-------------------------------------------------------------------------------------------|-----------------------|-------------------|-----------------------|----------------------------|
| 14010-41004          |          | Personal Vehicle Mileage                                                                  |                       | 0.505             |                       |                            |
| 4432                 | 04/13/08 | Hotel Tax and State Tax                                                                   |                       |                   |                       | 18.03                      |
| 4434                 | 04/14/08 | Hotel Tax and State Tax                                                                   |                       |                   |                       | 18.03                      |
| 4441                 | 04/15/08 | Hotel Tax and State Tax                                                                   |                       |                   |                       | 18.03                      |
| 4415                 | 04/14/08 | Internet                                                                                  |                       |                   |                       | 12.95                      |
|                      | 04/15/08 | Internet                                                                                  |                       |                   |                       | 12.95                      |
|                      | 04/13/08 | RT Shuttle                                                                                |                       |                   |                       | 30.00                      |
| Totals               | 650.49   |                                                                                           |                       |                   |                       | 23. Section Total \$109.99 |

24. I did/will  did not/will not  accept travel awards as a result of, or associated with this state business trip. Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.)  
Attend 2008 ECOS Spring Meeting April 14 - 16, 2008.

|                               |                        |
|-------------------------------|------------------------|
| 26. Grand Total Amount        | 650.49<br>\$738.99     |
| 27. Travel Advance Amount     |                        |
| 28. Amount Due Employee/State | 650.49<br>\$738.99 Krm |

|                                                                                                                                                                                                    |                                                                                                                                                                                                                      |                                      |                                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|--------------------------------|
| I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source. | 30. Signature of Employee<br><i>Dick Pedersen</i>                                                                                                                                                                    | 31. Title<br>Acting Director         | Date<br>4/18/08                |
|                                                                                                                                                                                                    | I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditure. | 32. Approved By<br><i>J.R. Myers</i> | 33. Title<br>MSD Administrator |

05 rec.

Itinerary Detail - Combined



Back Office Data

STATE OF OREGON

Trip Departures from 04/13/2008 to 04/16/2008

Report Parameters: Last Name = PEDERSEN

|                            |                      |                 |           |              |             |          |                                 |
|----------------------------|----------------------|-----------------|-----------|--------------|-------------|----------|---------------------------------|
| <b>PEDERSEN/RICHARD J</b>  |                      |                 |           |              |             |          |                                 |
| Actual:                    | \$542.00             | Savings:        | \$0.00    | Val Carrier: | UNITED (UA) | Account: | OR State Dept. of Environmental |
| Lowest:                    | \$542.00             | Lost Amt:       | \$0.00    | Ticket #:    | 7160391099  | Auth 1:  | 34000                           |
| Service Fees:              | \$30.00              |                 |           | Invoice #:   | 875333391   | Auth 2:  | SHARON                          |
| Exception:                 | GOVERNMENT FARE USED |                 |           | Inv Date:    | 2/28/2008   | Auth 3:  | 5032295990                      |
|                            |                      |                 |           | Itinerary:   | Airline     | Flt #    | Class                           |
|                            | PORTLAND,OR          | DENVER,CO       | 4/13/2008 | 10:47-14:19  | UNITED (UA) | 0208     | V                               |
|                            | DENVER,CO            | NEW ORLEANS,LA  | 4/13/2008 | 16:57-20:32  | UNITED (UA) | 1603     | V                               |
|                            | NEW ORLEANS,LA       | DENVER,CO       | 4/16/2008 | 14:30-16:24  | UNITED (UA) | 1604     | V                               |
|                            | DENVER,CO            | PORTLAND,OR     | 4/16/2008 | 18:00-19:38  | UNITED (UA) | 0745     | V                               |
| <b>Total Cost of Trip:</b> |                      | <b>\$572.00</b> |           |              |             |          |                                 |

Report Totals

| Air Totals                |                 | Car Rental Totals     |        | Hotel Booking Totals   |        |
|---------------------------|-----------------|-----------------------|--------|------------------------|--------|
| # of Air Trips:           | 1               | # of Rentals:         | 0      | # of Stays:            | 0      |
| Air Charges:              | \$542.00        | # of Days Rented:     | 0      | # of Room Nights:      | 0      |
| Avg Cost per Trip:        | \$542.00        | Car Rental Charges:   | \$0.00 | Hotel Booking Charges: | \$0.00 |
| Total Svc Fees:           | \$30.00         | Avg # of Days Rented: | 0.00   | Avg # of Nights:       | 0.00   |
|                           |                 | Avg Booked Rate:      | 0.00   | Avg Booked Rate:       | \$0.00 |
| <b>Total All Charges:</b> | <b>\$572.00</b> | Avg Cost per Day:     | \$0.00 | Avg Cost/RoomNight:    | \$0.00 |

Day / Amg  
TRAVEL

LEAVE

Sunday 10:30 AM

Monday:

Breakfast, lunch provided

Tuesday:

Breakfast, lunch provided

WEDNESDAY

Breakfast provided  
return to PDX 8 PM.

Receipt -

2 day internet charge  
\$12.95 per day




25.90



RENAISSANCE  
ARTS HOTEL  
NEW ORLEANS

Item G 000014

Item G, Action Item: Director's Transactions  
 February 26, 2009 EQC Meeting  
**OREGON DEPT OF ENVIRONMENTAL QUALITY**  
**OUT-OF-STATE TRAVEL AUTHORIZATION**

| <b>1. NAME OF EMPLOYEE:</b><br>Richard John Pedersen                                                                                                                                                                                                                                                      |       | <b>2. AGENCY/OFFICIAL STATION:</b><br>DEQ - Headquarters |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <b>3. REQUEST #:</b><br>298-08 Revised |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|--|--|------|---------|-------|------------------|-------|---|------|--------------|-------|---|-------|---------------|-------|---|--------|--------|--|--|----------|
| <b>4. AGENCY ACCOUNTING INFORMATION:</b><br>09-14010-41004                                                                                                                                                                                                                                                |       |                                                          | <b>5. TRAVEL JUSTIFICATION ATTACHED?</b><br><input type="checkbox"/> Yes <input type="checkbox"/> No                                                                                                                                                                                                                                                                                                                                                                                                   |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| <b>6. PURPOSE OF TRIP:</b> (Be specific, include dates/times of meeting or conference)<br>To attend the 2008 ECOS Spring Meeting beginning Monday, April 14th and goes to Wednesday, April 16th.                                                                                                          |       |                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| <b>7. ITINERARY:</b>                                                                                                                                                                                                                                                                                      |       |                                                          | <b>8. TRANSPORTATION:</b> (Airfare, train fare or state motor pool vehicle (circle one). For rental cars, see #11, for misc. ground transportation, see #12)                                                                                                                                                                                                                                                                                                                                           |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| Destination city/state: New Orleans, Louisiana                                                                                                                                                                                                                                                            |       |                                                          | Airfare                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| Departure date/time: 4/13/08; 11:00 am                                                                                                                                                                                                                                                                    |       |                                                          | TOTAL: \$572.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| Return date/time: 4/16/08; 7:25 pm                                                                                                                                                                                                                                                                        |       |                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| <b>9. LODGING:</b> Lodging per diem rate: \$131.00                                                                                                                                                                                                                                                        |       |                                                          | <b>10. MEALS:</b> Daily meal per diem rate: \$59.00                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| Amount per night: 131.00                                                                                                                                                                                                                                                                                  |       |                                                          | <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>Rate</th> <th># Meals</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>Breakfast: (25%)</td> <td>14.75</td> <td>0</td> <td>0.00</td> </tr> <tr> <td>Lunch: (25%)</td> <td>14.75</td> <td>2</td> <td>29.50</td> </tr> <tr> <td>Dinner: (50%)</td> <td>29.50</td> <td>4</td> <td>118.00</td> </tr> <tr> <td colspan="3" style="text-align: right;">TOTAL:</td> <td>\$147.50</td> </tr> </tbody> </table> |                                        |  |  | Rate | # Meals | Total | Breakfast: (25%) | 14.75 | 0 | 0.00 | Lunch: (25%) | 14.75 | 2 | 29.50 | Dinner: (50%) | 29.50 | 4 | 118.00 | TOTAL: |  |  | \$147.50 |
|                                                                                                                                                                                                                                                                                                           | Rate  | # Meals                                                  | Total                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| Breakfast: (25%)                                                                                                                                                                                                                                                                                          | 14.75 | 0                                                        | 0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| Lunch: (25%)                                                                                                                                                                                                                                                                                              | 14.75 | 2                                                        | 29.50                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| Dinner: (50%)                                                                                                                                                                                                                                                                                             | 29.50 | 4                                                        | 118.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| TOTAL:                                                                                                                                                                                                                                                                                                    |       |                                                          | \$147.50                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| Room tax per night: 18.03                                                                                                                                                                                                                                                                                 |       |                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| # of nights: 3                                                                                                                                                                                                                                                                                            |       |                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| TOTAL: \$447.09                                                                                                                                                                                                                                                                                           |       |                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| <b>11. CAR RENTAL:</b> (See OAM 40.10.00, PO, section .115. The state has a price agreement with Enterprise Rent-A-Car. Optional insurance will not be reimbursed).<br>Days @ \$28 plus tax, gas TOTAL:                                                                                                   |       |                                                          | <b>12. MISCELLANEOUS COSTS:</b> (Identify specific expenses - taxis, shuttles, phone, vehicle mileage, etc.)                                                                                                                                                                                                                                                                                                                                                                                           |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
|                                                                                                                                                                                                                                                                                                           |       |                                                          | a. Private vehicle mileage 0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
|                                                                                                                                                                                                                                                                                                           |       |                                                          | b. Shuttle (# of miles) 30.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
|                                                                                                                                                                                                                                                                                                           |       |                                                          | c. Other (specify below) 25.90                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
|                                                                                                                                                                                                                                                                                                           |       |                                                          | Internet fees                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
|                                                                                                                                                                                                                                                                                                           |       |                                                          | TOTAL: \$55.90                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| <b>13. TRAINING RELATED?</b> (if yes, attach agenda)<br><input type="checkbox"/> Yes <input type="checkbox"/> No                                                                                                                                                                                          |       |                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| <b>14. STATUS:</b><br><input type="checkbox"/> Executive/Mgmt Svc:<br><input type="checkbox"/> AFSCME:<br><input type="checkbox"/> Other: Explain: _____                                                                                                                                                  |       |                                                          | <b>16. ESTIMATED COST OF TRIP:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| <b>15. TRAVEL AWARDS:</b> Agencies are mandated to maintain records on employee accumulation of travel awards as reported on their travel expense detail sheets. Travel awards include, but may not be limited to airline frequent flyer miles and hotel or car rental frequent customer awards or miles. |       |                                                          | Transportation: \$572.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
|                                                                                                                                                                                                                                                                                                           |       |                                                          | Lodging: \$447.09                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
|                                                                                                                                                                                                                                                                                                           |       |                                                          | Meals: \$147.50                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
|                                                                                                                                                                                                                                                                                                           |       |                                                          | Car Rental: \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
|                                                                                                                                                                                                                                                                                                           |       |                                                          | Misc: \$55.90                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
|                                                                                                                                                                                                                                                                                                           |       |                                                          | TOTAL: \$1,222.49                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| <b>17. I certify that this trip is necessary and essential to the normal discharge of DEQ responsibilities; that required monies are budgeted and allotted for expenditure; that the trip meets all the requirements mandated by ORS 292.230, OAM Policy 40.10.00, and DEQ policy.</b>                    |       |                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| <b>18. EMPLOYEE SIGNATURE:</b>                                                                                                                                                                                         |       |                                                          | <b>DATE:</b> 4/18/08                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| <b>19. SUPERVISOR SIGNATURE:</b>                                                                                                                                                                                                                                                                          |       |                                                          | <b>DATE:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| <b>20. DA/EMT SIGNATURE:</b>                                                                                                                                                                                           |       |                                                          | <b>DATE:</b> 4/21/08                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |
| <b>21. MSD DA SIGNATURE:</b>                                                                                                                                                                                           |       |                                                          | <b>DATE:</b> 4/21/08                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                        |  |  |      |         |       |                  |       |   |      |              |       |   |       |               |       |   |        |        |  |  |          |



10R0127253  
STATE OF OREGON  
TRAVEL EXPENSE DETAIL SHEET



335/VPT 26727

|                                                                                                                                                                                                                          |  |                                                                                                              |  |                                                                                                                                                    |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------------------------------------------------|--|
| 1. Name of Employee<br>Dick Pedersen                                                                                                                                                                                     |  | 2. Agency<br>DEQ - Headquarters                                                                              |  | 3. Period (Month and Year)<br>April-08                                                                                                             |  |
| 4. Official Station<br>Portland                                                                                                                                                                                          |  | 5. Division/ Work Unit<br>Director's Office                                                                  |  | 6. Regular Schedule Work Shift<br>8:00 am - 5:00 pm <input checked="" type="checkbox"/> pm <input type="checkbox"/> Other <input type="checkbox"/> |  |
| 7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/> |  | Bargaining Unit Name <input type="checkbox"/> AFSCME <input type="checkbox"/> Other <input type="checkbox"/> |  |                                                                                                                                                    |  |

153  
64

| 8. Date  | 9. Time of Departure | 10. Time of Arrival | 11. Destination             | 12. Per Diem/ Hourly Allowance | 13. Individual Meal Reimbursement |          |        | 14. Total Meals and Lodging |       |
|----------|----------------------|---------------------|-----------------------------|--------------------------------|-----------------------------------|----------|--------|-----------------------------|-------|
|          |                      |                     |                             |                                | Breakfast                         | Lunch    | Dinner |                             |       |
| 04/23/08 | 5:30 am              | 10:00 pm            | Seattle, WA                 | * 48.00                        | 16.00                             | provided | 32.00  | 0.00                        | 48.00 |
|          |                      |                     | * Indirect travel allowance |                                |                                   |          |        |                             |       |
|          |                      |                     |                             | 15. Totals                     | 48.00                             | 16.00    | 32.00  |                             | 48.00 |

| 16. Accounting Codes | 17. Date | 18. Miscellaneous Expenses<br>Fares, Private Mileage, Room Tax, Telephone, Other Expenses | 19. Training Related? | 20. Rate Per Mile | 21. Private Car Miles | 22. Amount |
|----------------------|----------|-------------------------------------------------------------------------------------------|-----------------------|-------------------|-----------------------|------------|
| 14010-41007          | 04/23/08 | Personal Vehicle Mileage                                                                  |                       | 0.505             |                       |            |
| 4149                 | 04/23/08 | Parking at airport                                                                        |                       |                   |                       | 9.85       |
| 4160                 |          |                                                                                           |                       |                   |                       |            |
| Totals               |          |                                                                                           |                       |                   |                       | 57.85      |
| 23. Section Total    |          |                                                                                           |                       |                   |                       | 9.85       |

24. I did/will  did not/will not  accept travel awards as a result of, or associated with this state business trip. Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.)  
*Western Climate Initiative meeting*

|                               |                                      |
|-------------------------------|--------------------------------------|
| 26. Grand Total Amount        | \$57.85                              |
| 27. Travel Advance Amount     |                                      |
| 28. Amount Due Employee/State | \$57.85 <i>nlm</i>                   |
| 29. Received Training         | Conducted Training                   |
| 30. Signature of Employee     | 31. Title<br><i>Interim Director</i> |
| 32. Approved By               | 33. Title<br><i>Interim Deputy</i>   |
|                               | Date<br>4/25/08                      |
|                               | Date<br>4-28-08                      |

OS rec.

Itinerary Detail - Combined



Back Office Data

STATE OF OREGON

Trip Departures from 04/23/2008 to 04/23/2008

Report Parameters: Last Name = PEDERSEN

| PEDERSEN/RICHARD           |                      |                   |           |              |                 |          |                                 |
|----------------------------|----------------------|-------------------|-----------|--------------|-----------------|----------|---------------------------------|
| Actual:                    | \$218.99             | Savings:          | \$0.00    | Val Carrier: | ALASKA AIR (AS) | Account: | OR State Dept. of Environmental |
| Lowest:                    | \$218.99             | Lost Amt:         | \$0.00    | Ticket #:    | 7164521136      | Auth 1:  | 34000                           |
| Service Fees:              | \$30.00              |                   |           | Invoice #:   | 875337503       | Auth 2:  | SHARON                          |
| Exception:                 | GOVERNMENT FARE USED |                   |           | Inv Date:    | 3/27/2008       | Auth 3:  | 5032295990                      |
|                            |                      |                   |           | Itinerary    | Airline         | Flt #    | Class                           |
|                            | PORTLAND,OR          | SEATTLE TACOMA,WA | 4/23/2008 | 06:00-06:50  | ALASKA AIR (AS) | 2244     | Y                               |
|                            | SEATTLE TACOMA,WA    | PORTLAND,OR       | 4/23/2008 | 18:30-19:25  | ALASKA AIR (AS) | 2165     | Y                               |
| <b>Total Cost of Trip:</b> |                      | <b>\$248.99</b>   |           |              |                 |          |                                 |

| PEDERSEN/RICHARD                                                  |                   |                   |           |              |                 |          |                                 |
|-------------------------------------------------------------------|-------------------|-------------------|-----------|--------------|-----------------|----------|---------------------------------|
| ** This is an "Exchange" record. Original Ticket # was 7164521136 |                   |                   |           |              |                 |          |                                 |
| Actual:                                                           | \$0.00            | Savings:          | \$0.00    | Val Carrier: | ALASKA AIR (AS) | Account: | OR State Dept. of Environmental |
| Lowest:                                                           | \$0.00            | Lost Amt:         | \$0.00    | Ticket #:    | 7166913813      | Auth 1:  | 34000                           |
| Service Fees:                                                     | \$30.00           |                   |           | Invoice #:   | 875340556       | Auth 2:  | SHARON                          |
| Exception:                                                        | EXCHANGE TICKET   |                   |           | Inv Date:    | 4/21/2008       | Auth 3:  | 5032295990                      |
|                                                                   |                   |                   |           | Itinerary    | Airline         | Flt #    | Class                           |
|                                                                   | PORTLAND,OR       | SEATTLE TACOMA,WA | 4/23/2008 | 06:00-06:50  | ALASKA AIR (AS) | 2244     | Y                               |
|                                                                   | SEATTLE TACOMA,WA | PORTLAND,OR       | 4/23/2008 | 20:00-20:50  | ALASKA AIR (AS) | 2339     | Y                               |
| <b>Total Cost of Trip:</b>                                        |                   | <b>\$30.00</b>    |           |              |                 |          |                                 |

| Report Totals             |                 |  |                          |        |  |                             |        |  |
|---------------------------|-----------------|--|--------------------------|--------|--|-----------------------------|--------|--|
| <b>Air Totals</b>         |                 |  | <b>Car Rental Totals</b> |        |  | <b>Hotel Booking Totals</b> |        |  |
| # of Air Trips:           | 2               |  | # of Rentals:            | 0      |  | # of Stays:                 | 0      |  |
| Air Charges:              | \$218.99        |  | # of Days Rented:        | 0      |  | # of Room Nights:           | 0      |  |
| Avg Cost per Trip:        | \$109.50        |  | Car Rental Charges:      | \$0.00 |  | Hotel Booking Charges:      | \$0.00 |  |
| Total Svc Fees:           | \$60.00         |  | Avg # of Days Rented:    | 0.00   |  | Avg # of Nights:            | 0.00   |  |
| <b>Total All Charges:</b> | <b>\$278.99</b> |  | Avg Booked Rate:         | 0.00   |  | Avg Booked Rate:            | \$0.00 |  |
|                           |                 |  | Avg Cost per Day:        | \$0.00 |  | Avg Cost/RoomNight:         | \$0.00 |  |

10R0127253

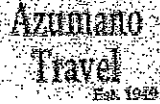
STATE OF OREGON  
TRAVEL EXPENSE DETAIL SHEET



313/VPT24808

| 1. Name of Employee<br>Dick Pedersen                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                      | 2. Agency<br>DEQ                                            |                                                                                           | 3. Period (Month and Year)<br>April-08                                                                                 |                                                                                                                       |                   |                                                   |                             |               |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|-------------------------------------------------------------|-------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|-------------------|---------------------------------------------------|-----------------------------|---------------|
| 4. Official Station<br>Portland                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      | 5. Division/ Work Unit<br>Director's Office                 |                                                                                           | 6. Regular Schedule Work Shift<br>8:00 am - 5:00 pm <input checked="" type="checkbox"/> Other <input type="checkbox"/> |                                                                                                                       |                   |                                                   |                             |               |
| 7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/>                                                                                                                                                                                                                                                                            |                      | Bargaining Unit Name: AFSCME Other <input type="checkbox"/> |                                                                                           |                                                                                                                        |                                                                                                                       |                   |                                                   |                             |               |
| 8. Date                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 9. Time of Departure | 10. Time of Arrival                                         | 11. Destination                                                                           | 12. Per Diem/ Hourly Allowance                                                                                         | 13. Individual Meal Reimbursement                                                                                     |                   |                                                   | 14. Total Meals and Lodging |               |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      |                                                             |                                                                                           |                                                                                                                        | Breakfast                                                                                                             | Lunch             | Dinner                                            |                             |               |
| 04/28/08                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 12 noon              |                                                             | Seattle WA                                                                                | 16.00                                                                                                                  | 0.00                                                                                                                  | 12.00             | prov'd                                            | 152.00                      | 290.00-168.00 |
| 04/29/08                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                      | 8:30 pm                                                     | Portland OR                                                                               | 32.00                                                                                                                  | 04.00                                                                                                                 | prov'd            | prov'd                                            | 32.00                       | 04.00-32.00   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      |                                                             |                                                                                           | 48.00                                                                                                                  | 16.00                                                                                                                 |                   |                                                   |                             | 200.00        |
| 15. Totals                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                      |                                                             |                                                                                           | 442.00                                                                                                                 | 42.00                                                                                                                 | 32.00             |                                                   | 152.00                      | 264.00        |
| 16. Accounting Codes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                      | 17. Date                                                    | 18. Miscellaneous Expenses<br>Fares, Private Mileage, Room Tax, Telephone, Other Expenses |                                                                                                                        | 19. Training Related?                                                                                                 | 20. Rate Per Mile | 21. Private Car Miles                             | 22. Amount                  |               |
| 71010-71004                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                      |                                                             | Personal Vehicle Mileage                                                                  |                                                                                                                        |                                                                                                                       | 0.505             |                                                   |                             |               |
| 4151                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 48.00                | 04/28/08                                                    | Hotel tax                                                                                 |                                                                                                                        |                                                                                                                       |                   |                                                   | 23.71                       |               |
| 4150                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 175.71               | 04/28/08                                                    | RT Shuttle                                                                                |                                                                                                                        |                                                                                                                       |                   |                                                   | 17.00                       |               |
| 4160                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 36.69                | 04/28/08                                                    | Parking-Airport-2 days                                                                    |                                                                                                                        |                                                                                                                       |                   |                                                   | 19.69                       |               |
| Totals                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                      | 360.40                                                      |                                                                                           |                                                                                                                        |                                                                                                                       |                   |                                                   | 23. Section Total \$60.40   |               |
| 24. I did/will <input type="checkbox"/> did not/will not <input checked="" type="checkbox"/> accept travel awards as a result of, or associated with this state business trip. Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form. |                      |                                                             |                                                                                           |                                                                                                                        | 25. REASON FOR TRAVEL: (Be specific.)<br>Attended the PNW Directors Spring Meeting April 28 - 29, 2008 in Seattle, WA |                   |                                                   |                             |               |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      |                                                             |                                                                                           |                                                                                                                        | 26. Grand Total Amount <sup>360.40</sup> \$324.40                                                                     |                   |                                                   |                             |               |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      |                                                             |                                                                                           |                                                                                                                        | 27. Travel Advance Amount                                                                                             |                   |                                                   |                             |               |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      |                                                             |                                                                                           |                                                                                                                        | 28. Amount Due Employee/State <sup>360.40</sup> \$324.40                                                              |                   |                                                   |                             |               |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      |                                                             |                                                                                           |                                                                                                                        | 29. Received Training Conducted Training                                                                              |                   |                                                   |                             |               |
| I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.                                                                                                                                                                                                                                                                                                  |                      |                                                             |                                                                                           |                                                                                                                        | 30. Signature of Employee<br><i>Dick Pedersen</i>                                                                     |                   | 31. Title Date<br>Acting Director 5/7/08          |                             |               |
| I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditure.                                                                                                                                                                                                                                                                                |                      |                                                             |                                                                                           |                                                                                                                        | 32. Approved By<br><i>[Signature]</i>                                                                                 |                   | 33. Title Date<br>Acting MSD Administrator 5/7/08 |                             |               |

Itinerary Detail - Combined



Back Office Data

STATE OF OREGON

Trip Departures from 04/28/2008 to 04/29/2008

Report Parameters: Last Name = PEDERSEN

|                            |                      |                 |        |                   |                 |             |                                 |      |   |
|----------------------------|----------------------|-----------------|--------|-------------------|-----------------|-------------|---------------------------------|------|---|
| <b>PEDERSEN/RICHARD J</b>  |                      |                 |        |                   |                 |             |                                 |      |   |
| Actual:                    | \$218.99             | Savings:        | \$0.00 | Val Carrier:      | ALASKA AIR (AS) | Account:    | OR State Dept. of Environmental |      |   |
| Lowest:                    | \$218.99             | Lost Amt:       | \$0.00 | Ticket #:         | 7160393268      | Auth 1:     | 34000                           |      |   |
| Service Fees:              | \$30.00              |                 |        | Invoice #:        | 875335527       | Auth 2:     | SHARON                          |      |   |
| Exception:                 | GOVERNMENT FARE USED |                 |        | Inv Date:         | 3/13/2008       | Auth 3:     | 5032295990                      |      |   |
|                            |                      |                 |        | Itinerary         | Airline         | Flt #       | Class                           |      |   |
| PORTLAND,OR                |                      |                 |        | SEATTLE TACOMA,WA | 4/28/2008       | 13:00-13:55 | ALASKA AIR (AS)                 | 2130 | Y |
| SEATTLE TACOMA,WA          |                      |                 |        | PORTLAND,OR       | 4/29/2008       | 19:30-20:20 | ALASKA AIR (AS)                 | 2411 | Y |
| <b>Total Cost of Trip:</b> |                      | <b>\$248.99</b> |        |                   |                 |             |                                 |      |   |

Report Totals

| Air Totals                |                 | Car Rental Totals     |        | Hotel Booking Totals   |        |
|---------------------------|-----------------|-----------------------|--------|------------------------|--------|
| # of Air Trips:           | 1               | # of Rentals:         | 0      | # of Stays:            | 0      |
| Air Charges:              | \$218.99        | # of Days Rented:     | 0      | # of Room Nights:      | 0      |
| Avg Cost per Trip:        | \$218.99        | Car Rental Charges:   | \$0.00 | Hotel Booking Charges: | \$0.00 |
| Total Svc Fees:           | \$30.00         | Avg # of Days Rented: | 0.00   | Avg # of Nights:       | 0.00   |
| <b>Total All Charges:</b> | <b>\$248.99</b> | Avg Booked Rate:      | 0.00   | Avg Booked Rate:       | \$0.00 |
|                           |                 | Avg Cost per Day:     | \$0.00 | Avg Cost/RoomNight:    | \$0.00 |

OREGON DEPT OF ENVIRONMENTAL QUALITY  
OUT-OF-STATE TRAVEL AUTHORIZATION

| 1. NAME OF EMPLOYEE:<br>Richard John Pedersen                                                                                                                                                                                                                                                      |                                            | 2. AGENCY/OFFICIAL STATION:<br>DEQ - Headquarters |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 3. REQUEST #:<br>303-08 |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|---------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|--|-----------------|----------|----------|----------|------------------|----------------------------|-------------|------------------------|--------------|---------|--------|--------------------------------------------|---------------|-------|---|-------|--|--|--|---------------------------------------------|
| 4. AGENCY ACCOUNTING INFORMATION:<br>14010-41004                                                                                                                                                                                                                                                   |                                            |                                                   | 5. TRAVEL JUSTIFICATION ATTACHED?<br><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                         |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
| 6. PURPOSE OF TRIP: (Be specific, include dates/times of meeting or conference).<br>To attend the PNW Directors Meeting, Spring of 2008 April 28th and April 29th.                                                                                                                                 |                                            |                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                         |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
| 7. ITINERARY:<br><br>Destination city/state:                      Seattle, WA<br><br>Departure date/time:    Mon.    4/28/08, 1:00 pm<br><br>Return date/time:        Tues.    4/29/08, 8:20 pm                                                                                                    |                                            |                                                   | 8. TRANSPORTATION: (Airfare, train fare or state motor pool vehicle (circle one). For rental cars, see #11, for misc. ground transportation, see #12)<br>Airfare, \$218.99 RT<br><br><div style="text-align: right;">TOTAL:            <u>\$218.99</u></div>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                         |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
| 9. LODGING: Lodging per diem rate:    \$152.00<br><br>Amount per night: <u>152.00</u><br><br>Room tax per night: <u>23.71</u><br><br># of nights: <u>1</u><br><br><div style="text-align: right;">TOTAL:            <u>\$175.71</u></div>                                                          |                                            |                                                   | 10. MEALS: Daily meal per diem rate:                      \$64.00<br><br><table border="1" style="width:100%; border-collapse: collapse; margin-top: 5px;"> <thead> <tr> <th style="width: 50%;"></th> <th style="width: 15%;">Rate</th> <th style="width: 15%;"># Meals</th> <th style="width: 20%;">Total</th> </tr> </thead> <tbody> <tr> <td>Breakfast: (25%)</td> <td style="text-align: center;">16.00</td> <td style="text-align: center;">2</td> <td style="text-align: center;"><del>16.00</del> 32.00</td> </tr> <tr> <td>Lunch: (25%)</td> <td style="text-align: center;">16.00</td> <td style="text-align: center;">2</td> <td style="text-align: center;">32.00</td> </tr> <tr> <td>Dinner: (50%)</td> <td style="text-align: center;">32.00</td> <td style="text-align: center;">2</td> <td style="text-align: center;">64.00</td> </tr> <tr> <td></td> <td></td> <td></td> <td style="text-align: right;"><del>112.00</del><br/>TOTAL:            <u>\$128.00</u></td> </tr> </tbody> </table> |                         |  |                 | Rate     | # Meals  | Total    | Breakfast: (25%) | 16.00                      | 2           | <del>16.00</del> 32.00 | Lunch: (25%) | 16.00   | 2      | 32.00                                      | Dinner: (50%) | 32.00 | 2 | 64.00 |  |  |  | <del>112.00</del><br>TOTAL: <u>\$128.00</u> |
|                                                                                                                                                                                                                                                                                                    | Rate                                       | # Meals                                           | Total                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                         |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
| Breakfast: (25%)                                                                                                                                                                                                                                                                                   | 16.00                                      | 2                                                 | <del>16.00</del> 32.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                         |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
| Lunch: (25%)                                                                                                                                                                                                                                                                                       | 16.00                                      | 2                                                 | 32.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                         |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
| Dinner: (50%)                                                                                                                                                                                                                                                                                      | 32.00                                      | 2                                                 | 64.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                         |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
|                                                                                                                                                                                                                                                                                                    |                                            |                                                   | <del>112.00</del><br>TOTAL: <u>\$128.00</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                         |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
| 11. CAR RENTAL: (See OAM 40.10.00.P0, section .115. The state has a price agreement with Enterprise Rent-A-Car. Optional insurance will not be reimbursed).<br>Days @ \$28 plus tax, gas                      TOTAL: _____                                                                         |                                            |                                                   | 12. MISCELLANEOUS COSTS: (Identify specific expenses - taxis, shuttles, phone, vehicle mileage, etc.)<br><br>a. Private vehicle mileage                      0.00<br>b. Shuttle                                              (# of miles)                      17.00<br>c. Other (specify below)                      _____<br><br><div style="text-align: right;">TOTAL:            <u>\$17.00</u></div>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                         |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
| 13. TRAINING RELATED? (if yes, attach agenda)<br><br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                                                                                                                                                                           |                                            |                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                         |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
| 14. STATUS:<br><input checked="" type="checkbox"/> Executive/Mgmt Svc.<br><input type="checkbox"/> AFSCME:<br><input type="checkbox"/> Other:    Explain: _____                                                                                                                                    |                                            |                                                   | 16. ESTIMATED COST OF TRIP:<br><br><table style="width:100%; border-collapse: collapse;"> <tr><td>Transportation:</td><td style="text-align: right;">\$218.99</td></tr> <tr><td>Lodging:</td><td style="text-align: right;">\$175.71</td></tr> <tr><td>Meals:</td><td style="text-align: right;"><del>\$128.00</del> 112.00</td></tr> <tr><td>Car Rental:</td><td style="text-align: right;">\$0.00</td></tr> <tr><td>Misc:</td><td style="text-align: right;">\$17.00</td></tr> <tr><td>TOTAL:</td><td style="text-align: right;"><u>523.70</u><br/><del>\$539.70</del> 70.00</td></tr> </table>                                                                                                                                                                                                                                                                                                                                                                                                              |                         |  | Transportation: | \$218.99 | Lodging: | \$175.71 | Meals:           | <del>\$128.00</del> 112.00 | Car Rental: | \$0.00                 | Misc:        | \$17.00 | TOTAL: | <u>523.70</u><br><del>\$539.70</del> 70.00 |               |       |   |       |  |  |  |                                             |
| Transportation:                                                                                                                                                                                                                                                                                    | \$218.99                                   |                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                         |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
| Lodging:                                                                                                                                                                                                                                                                                           | \$175.71                                   |                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                         |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
| Meals:                                                                                                                                                                                                                                                                                             | <del>\$128.00</del> 112.00                 |                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                         |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
| Car Rental:                                                                                                                                                                                                                                                                                        | \$0.00                                     |                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                         |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
| Misc:                                                                                                                                                                                                                                                                                              | \$17.00                                    |                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                         |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
| TOTAL:                                                                                                                                                                                                                                                                                             | <u>523.70</u><br><del>\$539.70</del> 70.00 |                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                         |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
| 15. TRAVEL AWARDS: Agencies are mandated to maintain records on employee accumulation of travel awards as reported on their travel expense detail sheets. Travel awards include, but may not be limited to airline frequent flyer miles and hotel or car rental frequent customer awards or miles. |                                            |                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                         |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
| 17. I certify that this trip is necessary and essential to the normal discharge of DEQ responsibilities; that required monies are budgeted and allotted for expenditure; that the trip meets all the requirements mandated by ORS 292.230, OAM Policy 40.10.00, and DEQ policy.                    |                                            |                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                         |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
| 18. EMPLOYEE SIGNATURE: _____                                                                                                                                                                                                                                                                      |                                            |                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | DATE: 3/11/08           |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
| 19. SUPERVISOR SIGNATURE: _____                                                                                                                                                                                                                                                                    |                                            |                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | DATE: _____             |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
| 20. DA/EMT SIGNATURE: _____                                                                                                                                                                                                                                                                        |                                            |                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | DATE: 3/12/08           |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |
| 21. MSD DA SIGNATURE: _____                                                                                                                                                                                                                                                                        |                                            |                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | DATE: 3/13/08           |  |                 |          |          |          |                  |                            |             |                        |              |         |        |                                            |               |       |   |       |  |  |  |                                             |

10R0127253

STATE OF OREGON  
TRAVEL EXPENSE DETAIL SHEET



315/VPT 26808

|                                                                                                                                             |  |                                             |  |                                                                                                                        |  |
|---------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------|--|
| 1. Name of Employee<br>Dick Pedersen                                                                                                        |  | 2. Agency<br>DEQ                            |  | 3. Period (Month and Year)<br>April 08 - May 08                                                                        |  |
| 4. Official Station<br>Headquarters                                                                                                         |  | 5. Division/ Work Unit<br>Director's Office |  | 6. Regular Schedule Work Shift<br>8:00 am - 5:00 pm <input checked="" type="checkbox"/> Other <input type="checkbox"/> |  |
| 7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> |  | Board/Commission <input type="checkbox"/>   |  | Volunteer <input type="checkbox"/>                                                                                     |  |
| Bargaining Unit Name <input type="checkbox"/> AFSCME                                                                                        |  | Other <input type="checkbox"/>              |  |                                                                                                                        |  |

| 8. Date  | 9. Time of Departure | 10. Time of Arrival | 11. Destination     | 12. Per Diem/ Hourly Allowance | 13. Individual Meal Reimbursement |       |        | 13. Lodging | 14. Total Meals and Lodging |          |
|----------|----------------------|---------------------|---------------------|--------------------------------|-----------------------------------|-------|--------|-------------|-----------------------------|----------|
|          |                      |                     |                     |                                | Breakfast                         | Lunch | Dinner |             |                             |          |
| 04/30/08 | 1:00 pm              |                     | Corvallis, OR 70/39 | 19.50                          | 0.00                              | 0.00  | 19.50  | 70.00       | 89.50                       |          |
| 05/01/08 |                      |                     | Medford, OR 77/44   | 33.00                          | prov'd                            | 11.00 | 22.00  | 77.00       | 110.00                      |          |
| 05/02/08 |                      | 9:00 pm             | Portland, OR        | 33.00                          | prov'd                            | 11.00 | 22.00  |             | 33.00                       |          |
|          |                      |                     |                     | 15. Totals                     | 85.50                             |       | 22.00  | 63.50       | 147.00                      | \$232.50 |

| 18. Accounting Codes | 17. Date | 18. Miscellaneous Expenses<br>Fares, Private Mileage, Room Tax, Telephone, Other Expenses | 19. Training Related? | 20. Rate Per Mile | 21. Private Car Miles | 22. Amount |
|----------------------|----------|-------------------------------------------------------------------------------------------|-----------------------|-------------------|-----------------------|------------|
| 14010-4100-4         |          | Personal Vehicle Mileage                                                                  |                       | 0.505             |                       |            |
| 4101                 | 85.50    | 04/30/08 Room tax                                                                         |                       |                   |                       | 6.30       |
| 4106                 | 112.70   | 04/30/08 Oregon Room tax (1%)                                                             |                       |                   |                       | 0.70       |
|                      |          | 05/01/08 Room tax                                                                         |                       |                   |                       | 7.70       |
| Totals               |          |                                                                                           |                       |                   |                       | 247.20     |
| 23. Section Total    |          |                                                                                           |                       |                   |                       | \$14.70    |

24. I did/will  did not/will not  accept travel awards as a result of, or associated with this state business trip. Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.)  
April 30, 2008 - Attended as speaker at the OSU Institute for NR Science Policy Seminar, Corvallis, OR - and - May 1 & 2, 2008 - Attended Staff Meetings at Eugene, Roseburg, Grants Pass, & Medford offices; visited Commissioner Uherbelau; & visited with Representative Buckley and Senator Bates.

|                               |                    |
|-------------------------------|--------------------|
| 26. Grand Total Amount        | \$247.20           |
| 27. Travel Advance Amount     |                    |
| 28. Amount Due Employee/State | \$247.20           |
| 29. Received Training         | Conducted Training |

|                                                                                                                                                                                                    |                                                                                                                                                                                                                  |                                       |                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|---------------------------------------|
| I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source. | 30. Signature of Employee<br><i>Dick Pedersen</i>                                                                                                                                                                | 31. Title<br>Acting Director          | Date<br>5/7/08                        |
|                                                                                                                                                                                                    | I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expense. | 32. Approved By<br><i>[Signature]</i> | 33. Title<br>Acting MSD Administrator |

10R0127253  
**STATE OF OREGON**  
**TRAVEL EXPENSE DETAIL SHEET**



340/VPT 26941

|                                                                                                                                                                                                                          |  |                                                                                                              |  |                                                                                                                              |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------|--|
| 1. Name of Employee<br>Dick Pedersen                                                                                                                                                                                     |  | 2. Agency<br>DEQ                                                                                             |  | 3. Period (Month and Year)<br>May-08                                                                                         |  |
| 4. Official Station<br>Portland                                                                                                                                                                                          |  | 5. Division/ Work Unit<br>Director's Office                                                                  |  | 6. Regular Schedule Work Shift<br>8:00 am - 5:00 pm <input checked="" type="checkbox"/> pm <input type="checkbox"/> Other to |  |
| 7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/> |  | Bargaining Unit Name <input type="checkbox"/> AFSCME <input type="checkbox"/> Other <input type="checkbox"/> |  |                                                                                                                              |  |

47  
54

| 8. Date           | 9. Time of Departure | 10. Time of Arrival | 11. Destination     | 12. Per Diem/ Hourly Allowance | 13. Individual Meal Reimbursement |       |        | 14. Total Meals and Lodging |                 |
|-------------------|----------------------|---------------------|---------------------|--------------------------------|-----------------------------------|-------|--------|-----------------------------|-----------------|
|                   |                      |                     |                     |                                | Breakfast                         | Lunch | Dinner |                             |                 |
| 05/20/08          | 1:00pm               |                     | Salt Lake City UTAH | 27.00                          |                                   |       | 27.00  | 94.00                       | 121.00          |
| 05/21/08          |                      |                     |                     | 40.50                          | 13.50                             | PROV* | 27.00  | 94.00                       | 134.50          |
| 05/22/08          |                      | 9:00pm              | Portland Oregon     | 40.50                          | 13.50                             | PROV* | 27.00  |                             | 40.50           |
| *Provided         |                      |                     |                     |                                |                                   |       |        |                             |                 |
| <b>15. Totals</b> |                      |                     |                     | 108.00                         | 27.00                             |       | 81.00  | 188.00                      | <b>\$296.00</b> |

| 16. Accounting Codes | 17. Date      | 18. Miscellaneous Expenses<br>Fares, Private Mileage, Room Tax, Telephone, Other Expenses | 19. Training Related? | 20. Rate Per Mile | 21. Private Car Miles | 22. Amount     |
|----------------------|---------------|-------------------------------------------------------------------------------------------|-----------------------|-------------------|-----------------------|----------------|
| 14010-41004          |               | Personal Vehicle Mileage                                                                  | *                     | 0.485             |                       |                |
|                      | 05/22/08      | Parking at airport                                                                        |                       |                   |                       | 9.85           |
| 4131                 | 05/20/08      | Hotel tax                                                                                 |                       |                   |                       | 11.91          |
| 4150                 | 05/21/08      | Hotel tax                                                                                 |                       |                   |                       | 11.91          |
| 4160                 |               |                                                                                           |                       |                   |                       | 9.85           |
| <b>Totals</b>        | <b>329.67</b> |                                                                                           |                       |                   |                       | <b>\$33.67</b> |

24. I did/will  did not/will not  accept travel awards as a result of, or associated with this state business trip. Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.)  
Western Climate Initiative meeting in Salt Lake City May 21 and 22, 2008.

|                               |                    |
|-------------------------------|--------------------|
| 26. Grand Total Amount        | <b>\$329.67</b>    |
| 27. Travel Advance Amount     |                    |
| 28. Amount Due Employee/State | <b>\$329.67</b>    |
| 29. Received Training         | Conducted Training |

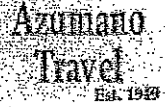
|                                                                                                                                                                                                    |                                                   |                       |                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|-----------------------|------------------|
| I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source. | 30. Signature of Employee<br><i>Dick Pedersen</i> | 31. Title<br>Director | Date<br>05/27/08 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|-----------------------|------------------|

|                                                                                                                                                                                                                      |                                     |                                    |                 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|------------------------------------|-----------------|
| I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditure. | 32. Approved By<br><i>J.R. King</i> | 33. Title<br>for MSD Administrator | Date<br>5/29/08 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|------------------------------------|-----------------|

\*Travel Expense Claimant - Revised Jan. 2008 by Dale Chipman

05 rec.

Itinerary Detail - Combined



Back Office Data

STATE OF OREGON

Trip Departures from 05/20/2008 to 05/22/2008

Report Parameters: Last Name = PEDERSEN

|                            |                      |                   |        |              |             |            |                                 |
|----------------------------|----------------------|-------------------|--------|--------------|-------------|------------|---------------------------------|
| <b>PEDERSEN/RICHARD J</b>  |                      |                   |        |              |             |            |                                 |
| Actual:                    | \$253.00             | Savings:          | \$0.00 | Val Carrier: | DELTA (DL)  | Account:   | OR State Dept. of Environmental |
| Lowest:                    | \$253.00             | Lost Amt:         | \$0.00 | Ticket #:    | 7164521511  | Auth 1:    | 34000                           |
| Service Fees:              | \$30.00              |                   |        | Invoice #:   | 875337806   | Auth 2:    | SHARON                          |
| Exception:                 | LOWEST FARE ACHIEVED |                   |        | Inv Date:    | 3/31/2008   | Auth 3:    | 5032295990                      |
|                            |                      |                   |        | Itinerary    | Airline     | Flt #      | Class                           |
| PORTLAND,OR                |                      | SALT LAKE CITY,UT |        | 5/20/2008    | 13:00-15:49 | DELTA (DL) | 1142 U                          |
| SALT LAKE CITY,UT          |                      | PORTLAND,OR       |        | 5/22/2008    | 19:38-20:37 | DELTA (DL) | 3760 U                          |
| <b>Total Cost of Trip:</b> |                      | <b>\$283.00</b>   |        |              |             |            |                                 |

Report Totals

| Air Totals                |                 | Car Rental Totals     |        | Hotel Booking Totals   |        |
|---------------------------|-----------------|-----------------------|--------|------------------------|--------|
| # of Air Trips:           | 1               | # of Rentals:         | 0      | # of Stays:            | 0      |
| Air Charges:              | \$253.00        | # of Days Rented:     | 0      | # of Room Nights:      | 0      |
| Avg Cost per Trip:        | \$253.00        | Car Rental Charges:   | \$0.00 | Hotel Booking Charges: | \$0.00 |
| Total Svc Fees:           | \$30.00         | Avg # of Days Rented: | 0.00   | Avg # of Nights:       | 0.00   |
|                           |                 | Avg Booked Rate:      | 0.00   | Avg Booked Rate:       | \$0.00 |
| <b>Total All Charges:</b> | <b>\$283.00</b> | Avg Cost per Day:     | \$0.00 | Avg Cost/RoomNight:    | \$0.00 |



OREGON DEPT OF ENVIRONMENTAL QUALITY  
 OUT-OF-STATE TRAVEL AUTHORIZATION

| <b>1. NAME OF EMPLOYEE:</b><br>Richard (Dick) J. Pedersen                                                                                                                                                                                                                                                 |       | <b>2. AGENCY/OFFICIAL STATION:</b><br>DEQ-Headquarters |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <b>3. REQUEST #:</b><br>328-08 |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|--------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|--|--|------|---------|-------|------------------|-------|---|-------|--------------|-------|---|-------|---------------|-------|---|-------|--------|--|--|-----------------|
| <b>4. AGENCY ACCOUNTING INFORMATION:</b><br>14010-41004                                                                                                                                                                                                                                                   |       |                                                        | <b>5. TRAVEL JUSTIFICATION ATTACHED?</b><br><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| <b>6. PURPOSE OF TRIP:</b> (Be specific, include dates/times of meeting or conference)<br>To attend the WCI Stakeholder Workshop & Meeting May 21 & 22, 2008 in Salt Lake City, UT at the Sheraton City Centre                                                                                            |       |                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| <b>7. ITINERARY:</b><br>Destination city/state: Salt Lake City, UT<br>Departure date/time: Tues, May 20, 2008/1:00 pm<br>Return date/time: Thurs, May 22, 2008/8:37 pm                                                                                                                                    |       |                                                        | <b>8. TRANSPORTATION:</b> (Airfare, train fare or state motor pool vehicle (circle one). For rental cars, see #11, for misc. ground transportation, see #12)<br>Airfare, \$283.00 RT<br><br>TOTAL: <u>\$283.00</u>                                                                                                                                                                                                                                                                                                                                   |                                |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| <b>9. LODGING:</b> Lodging per diem rate: <u>\$94.00</u><br><br>Amount per night: <u>94.00</u><br><br>Room tax per night: <u>11.91</u><br><br># of nights: <u>2</u><br><br>TOTAL: <u>\$211.82</u>                                                                                                         |       |                                                        | <b>10. MEALS:</b> Daily meal per diem rate: <u>\$54.00</u><br><br><table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>Rate</th> <th># Meals</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>Breakfast: (25%)</td> <td>13.50</td> <td>1</td> <td>13.50</td> </tr> <tr> <td>Lunch: (25%)</td> <td>13.50</td> <td>3</td> <td>40.50</td> </tr> <tr> <td>Dinner: (50%)</td> <td>27.00</td> <td>3</td> <td>81.00</td> </tr> <tr> <td colspan="3">TOTAL:</td> <td><u>\$135.00</u></td> </tr> </tbody> </table> |                                |  |  | Rate | # Meals | Total | Breakfast: (25%) | 13.50 | 1 | 13.50 | Lunch: (25%) | 13.50 | 3 | 40.50 | Dinner: (50%) | 27.00 | 3 | 81.00 | TOTAL: |  |  | <u>\$135.00</u> |
|                                                                                                                                                                                                                                                                                                           | Rate  | # Meals                                                | Total                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| Breakfast: (25%)                                                                                                                                                                                                                                                                                          | 13.50 | 1                                                      | 13.50                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| Lunch: (25%)                                                                                                                                                                                                                                                                                              | 13.50 | 3                                                      | 40.50                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| Dinner: (50%)                                                                                                                                                                                                                                                                                             | 27.00 | 3                                                      | 81.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| TOTAL:                                                                                                                                                                                                                                                                                                    |       |                                                        | <u>\$135.00</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| <b>11. CAR RENTAL:</b> (See OAM 40.10.00, PO, section .115. The state has a price agreement with Enterprise Rent-A-Car. Optional insurance will not be reimbursed).<br>Days @ \$28 plus tax, gas TOTAL: _____                                                                                             |       |                                                        | <b>12. MISCELLANEOUS COSTS:</b> (Identify specific expenses - taxis, shuttles, phone, vehicle mileage, etc.)<br><br>a. Private vehicle mileage _____ 0.00<br>b. Shuttle (# of miles) _____ 0.00<br>c. Other (specify below) _____<br>Sheraton can provide a complimentary shuttle to/from<br>TOTAL: <u>\$0.00</u>                                                                                                                                                                                                                                    |                                |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| <b>13. TRAINING RELATED?</b> (if yes, attach agenda)<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                                                                                                                                                                               |       |                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| <b>14. STATUS:</b><br><input checked="" type="checkbox"/> Executive/Mgmt Svc:<br><input type="checkbox"/> AFSCME:<br><input type="checkbox"/> Other: Explain: _____                                                                                                                                       |       |                                                        | <b>16. ESTIMATED COST OF TRIP:</b><br><br>Transportation: <u>\$283.00</u><br>Lodging: <u>\$211.82</u><br>Meals: <u>\$135.00</u><br>Car Rental: <u>\$0.00</u><br>Misc: <u>\$0.00</u><br><br>TOTAL: <u>\$629.82</u> <i>70.00</i>                                                                                                                                                                                                                                                                                                                       |                                |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| <b>15. TRAVEL AWARDS:</b> Agencies are mandated to maintain records on employee accumulation of travel awards as reported on their travel expense detail sheets. Travel awards include, but may not be limited to airline frequent flyer miles and hotel or car rental frequent customer awards or miles. |       |                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| <b>17. I certify that this trip is necessary and essential to the normal discharge of DEQ responsibilities; that required monies are budgeted and allotted for expenditure; that the trip meets all the requirements mandated by ORS 292.230, OAM Policy 40.10.00, and DEQ policy.</b>                    |       |                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| <b>18. EMPLOYEE SIGNATURE:</b> <i>Dick Pedersen</i>                                                                                                                                                                                                                                                       |       |                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <b>DATE:</b> 4-7-08            |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| <b>19. SUPERVISOR SIGNATURE:</b>                                                                                                                                                                                                                                                                          |       |                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <b>DATE:</b>                   |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| <b>20. DA/EMT SIGNATURE:</b>                                                                                                                                                                                                                                                                              |       |                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <b>DATE:</b>                   |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| <b>21. MSD DA SIGNATURE:</b> <i>[Signature]</i>                                                                                                                                                                                                                                                           |       |                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <b>DATE:</b> 4/8/08            |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |

10R0127253  
STATE OF OREGON  
TRAVEL EXPENSE DETAIL SHEET



318/VPT 27040

|                                                                                                                                                                                                                          |  |                                                                                                              |  |                                                                                                                        |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------|--|
| 1. Name of Employee<br>Dick Pedersen                                                                                                                                                                                     |  | 2. Agency<br>DEQ                                                                                             |  | 3. Period (Month and Year)<br>June-08                                                                                  |  |
| 4. Official Station<br>Portland                                                                                                                                                                                          |  | 5. Division/ Work Unit<br>Director's Office                                                                  |  | 6. Regular Schedule Work Shift<br>8:00 am - 5:00 pm <input checked="" type="checkbox"/> Other <input type="checkbox"/> |  |
| 7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/> |  | Bargaining Unit Name <input type="checkbox"/> AFSCME <input type="checkbox"/> Other <input type="checkbox"/> |  |                                                                                                                        |  |

| 8. Date  | 9. Time of Departure | 10. Time of Arrival | 11. Destination | 12. Per Diem/ Hourly Allowance | 13. Individual Meal Reimbursement |       |        | 14. Total Meals and Lodging |          |
|----------|----------------------|---------------------|-----------------|--------------------------------|-----------------------------------|-------|--------|-----------------------------|----------|
|          |                      |                     |                 |                                | Breakfast                         | Lunch | Dinner |                             |          |
| 06/03/08 | 7:30 am              |                     | Bend            | 33.00                          |                                   | 11.00 | 22.00  | 81.00                       |          |
| 06/04/08 |                      | 6:30 pm             | Portland        | 44.00                          | 11.00                             | 11.00 | 22.00  | 44.00                       |          |
|          |                      |                     |                 | 15. Totals                     | 77.00                             | 11.00 | 22.00  | 81.00                       | \$158.00 |

| 16. Accounting Codes | 17. Date | 18. Miscellaneous Expenses<br>Fares, Private Mileage, Room Tax, Telephone, Other Expenses | 19. Training Related? | 20. Rate Per Mile | 21. Private Car Miles | 22. Amount        |         |
|----------------------|----------|-------------------------------------------------------------------------------------------|-----------------------|-------------------|-----------------------|-------------------|---------|
| 14010-41004          |          | Personal Vehicle Mileage                                                                  |                       | 0.485             |                       |                   |         |
| 4101                 | 06/03/08 | Hotel Tax and State Fee                                                                   |                       |                   |                       | 12.96             |         |
| 4106                 | 77.00    |                                                                                           |                       |                   |                       |                   |         |
|                      | 93.96    |                                                                                           |                       |                   |                       |                   |         |
| Totals               |          |                                                                                           |                       |                   | 170.96                | 23. Section Total | \$12.96 |

24. I did/will  did not/will not  accept travel awards as a result of, or associated with this state business trip. Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.)  
6/3/08 Bend staff meeting and mtg with Rep. Burley 6/4/08 Meeting with Rep Whisnant and Tod Heisler, director of Deschutes River Conservancy

|                               |                    |
|-------------------------------|--------------------|
| 26. Grand Total Amount        | \$170.96           |
| 27. Travel Advance Amount     |                    |
| 28. Amount Due Employee/State | \$170.96           |
| 29. Received Training         | Conducted Training |

|                                                                                                                                                                                                    |                                                                                                                                                                                                                      |                              |                                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|--------------------------------|
| I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source. | 30. Signature of Employee<br>                                                                                                                                                                                        | 31. Title<br>Acting Director | Date<br>06/09/08               |
|                                                                                                                                                                                                    | I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditure. | 32. Approved By<br>          | 33. Title<br>MSD Administrator |

10R0127253  
STATE OF OREGON  
TRAVEL EXPENSE DETAIL SHEET



334/VPT27118

| 1. Name of Employee<br>Dick Pedersen                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                      | 2. Agency<br>DEQ               |                                                                                           | 3. Period (Month and Year)<br>June-08                                                                                  |                                   |                               |                   |                             |                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------------------------------|-------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|-----------------------------------|-------------------------------|-------------------|-----------------------------|------------------------------|
| 4. Official Station<br>Portland                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      | 5. Division/ Work Unit<br>OD   |                                                                                           | 6. Regular Schedule Work Shift<br>8:00 am - 5:00 pm <input checked="" type="checkbox"/> Other <input type="checkbox"/> |                                   |                               |                   |                             |                              |
| 7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/>                                                                                                                                                                                                                                                                            |                      | Bargaining Unit Name<br>AFSCME |                                                                                           | Other <input type="checkbox"/>                                                                                         |                                   |                               |                   |                             |                              |
| 8. Date                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 9. Time of Departure | 10. Time of Arrival            | 11. Destination                                                                           | 12. Per Diem/ Hourly Allowance                                                                                         | 13. Individual Meal Reimbursement |                               |                   | 14. Total Meals and Lodging |                              |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      |                                |                                                                                           |                                                                                                                        | Breakfast                         | Lunch                         | Dinner            |                             |                              |
| 06/10/08                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 9:30 am              |                                | Clatskanie, Oregon                                                                        | 29.25                                                                                                                  | 9.75                              | 19.50                         | 68.00             | ① 97.25                     |                              |
| 06/11/08                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                      | 3:50 pm                        | Portland, Oregon                                                                          | 19.50                                                                                                                  | 9.75                              | prov                          | 9.75              | ① 9.75 19.50                |                              |
| 06/16/08                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 7:30 am              | 7:01pm                         | Seattle WA                                                                                | * 32.00                                                                                                                | 16.00                             | 16.00                         | 32.00             | ② 32.00                     |                              |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      |                                | * <i>Travel meal allowance</i>                                                            |                                                                                                                        |                                   |                               |                   |                             |                              |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      |                                | * <i>See serial.</i>                                                                      |                                                                                                                        |                                   |                               |                   |                             |                              |
| 15. Totals                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                      |                                |                                                                                           | 80.75                                                                                                                  | 25.75                             | 25.75                         | 19.50             | 68.00                       | 148.75<br><del>149.00</del>  |
| 16. Accounting Codes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                      | 17. Date                       | 18. Miscellaneous Expenses<br>Fares, Private Mileage, Room Tax, Telephone, Other Expenses |                                                                                                                        |                                   | 19. Training Related?         | 20. Rate Per Mile | 21. Private Car Miles       | 22. Amount                   |
| 14010-4100*                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                      |                                | Personal Vehicle Mileage                                                                  |                                                                                                                        |                                   |                               | 0.505             |                             |                              |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      | 06/10/08                       | Hotel tax (recpt)                                                                         |                                                                                                                        |                                   |                               |                   | ①                           | 0.68                         |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 4101                 | 48.75                          |                                                                                           |                                                                                                                        |                                   |                               |                   |                             |                              |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 4106                 | 18.00                          | 06/16/08 Gray Line Shuttle (recpt)                                                        |                                                                                                                        |                                   |                               |                   | ②                           | 18.00                        |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 4149                 | 32.00                          | PDX Thrifty Airport parking (recpt)                                                       |                                                                                                                        |                                   |                               |                   | ②                           | 6.88                         |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 4160                 | 24.88                          |                                                                                           |                                                                                                                        |                                   |                               |                   |                             |                              |
| Totals                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                      | 174.31                         |                                                                                           |                                                                                                                        |                                   |                               |                   |                             | 23. Section Total<br>\$25.56 |
| 24. I did/will <input type="checkbox"/> did not/will not <input checked="" type="checkbox"/> accept travel awards as a result of, or associated with this state business trip. Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included; but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form. |                      |                                |                                                                                           |                                                                                                                        |                                   |                               |                   |                             |                              |
| 25. REASON FOR TRAVEL: (Be specific.)<br>6/10-11/08 = ERT Directors' tour of Vernonia/St Helens and vicinity.<br>6/16/08 = Meeting in Seattle with EPA Exec Team                                                                                                                                                                                                                                                                                                                                    |                      |                                |                                                                                           |                                                                                                                        |                                   |                               |                   |                             |                              |
| 26. Grand Total Amount                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                      |                                |                                                                                           |                                                                                                                        |                                   | 174.31<br><del>\$164.56</del> |                   |                             |                              |
| 27. Travel Advance Amount                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                      |                                |                                                                                           |                                                                                                                        |                                   |                               |                   |                             |                              |
| 28. Amount Due Employee/State                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                      |                                |                                                                                           |                                                                                                                        |                                   | 174.31<br><del>\$164.56</del> |                   |                             |                              |
| 29. Received Training                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                      |                                |                                                                                           |                                                                                                                        |                                   | Conducted Training            |                   |                             |                              |
| I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.                                                                                                                                                                                                                                                                                                  |                      |                                | 30. Signature of Employee<br><i>Dick Pedersen</i>                                         |                                                                                                                        |                                   | 31. Title<br>Director         |                   |                             |                              |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      |                                |                                                                                           |                                                                                                                        |                                   | Date<br>06/23/08              |                   |                             |                              |
| I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditure.                                                                                                                                                                                                                                                                                |                      |                                | 32. Approved By<br><i>John Hurl</i>                                                       |                                                                                                                        |                                   | 33. Title<br>Deputy Director  |                   |                             |                              |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      |                                |                                                                                           |                                                                                                                        |                                   | Date<br>6-24-08               |                   |                             |                              |

① \$117.43

② \$305.87 (see next page)

Itinerary Detail - Combined



Back Office Data

STATE OF OREGON

Trip Departures from 06/16/2008 to 06/16/2008

Report Parameters: Last Name = PEDERSEN

|                            |  |                                 |  |                       |                              |                                          |  |
|----------------------------|--|---------------------------------|--|-----------------------|------------------------------|------------------------------------------|--|
| <b>PEDERSEN/RICHARD</b>    |  | Actual: \$218.99                |  | Savings: \$60.01      | Val Carrier: ALASKA AIR (AS) | Account: OR State Dept. of Environmental |  |
| Lowest: \$218.99           |  | Lost Amt: \$0.00                |  | Ticket #: 7168687161  |                              | Auth 1: 34009                            |  |
| Service Fees: \$30.00      |  | Exception: GOVERNMENT FARE USED |  | Rec Locator: NSCL63   |                              | Auth 2: SHARON                           |  |
|                            |  |                                 |  | Invoice #: 875343321  |                              | Auth 3: 5032295990                       |  |
|                            |  |                                 |  | Inv Date: 5/12/2008   |                              |                                          |  |
|                            |  | Itinerary:                      |  | Airline:              |                              | Fit # Class                              |  |
| PORTLAND,OR                |  | SEATTLE TACOMA,WA               |  | 6/16/2008 09:30-10:25 |                              | ALASKA AIR (AS) 2148 Y                   |  |
| SEATTLE TACOMA,WA          |  | PORTLAND,OR                     |  | 6/16/2008 18:30-19:20 |                              | ALASKA AIR (AS) 2629 Y                   |  |
| <b>Total Cost of Trip:</b> |  | \$248.99                        |  |                       |                              |                                          |  |

| Report Totals             |                   |                       |        |                        |        |
|---------------------------|-------------------|-----------------------|--------|------------------------|--------|
| Air Totals                |                   | Car Rental Totals     |        | Hotel Booking Totals   |        |
| # of Air Trips:           | 1                 | # of Rentals:         | 0      | # of Stays:            | 0      |
| Air Charges:              | \$218.99          | # of Days Rented:     | 0      | # of Room Nights:      | 0      |
| Avg Cost per Trip:        | \$218.99          | Car Rental Charges:   | \$0.00 | Hotel Booking Charges: | \$0.00 |
| Total Svc Fees:           | \$30.00           | Avg # of Days Rented: | 0.00   | Avg # of Nights:       | 0.00   |
| <b>Total All Charges:</b> | <b>2 \$248.99</b> | Avg Booked Rate:      | 0.00   | Avg Booked Rate:       | \$0.00 |
|                           |                   | Avg Cost per Day:     | \$0.00 | Avg Cost/RoomNight:    | \$0.00 |

**MURPHY Kathy M**

---

**From:** PEDERSEN Dick  
**Sent:** Wednesday, June 25, 2008 4:54 PM  
**To:** MURPHY Kathy M; Marshall Day  
**Subject:** RE: Pedersen - travel expense claim question

The percentage would be great.

Thanks,

Dick

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

**From:** MURPHY Kathy M  
**Sent:** Wednesday, June 25, 2008 1:59 PM  
**To:** Marshall Day  
**Cc:** PEDERSEN Dick  
**Subject:** Pedersen - travel expense claim question

Day,

I'm currently reviewing your 6/10/08 - 6/16/08 travel expense claim and have the following question.

On 6/11/08 the claim shows that Dick arrived in Portland at 3:50pm. Per the chart below this would allow him to claim 75% (\$29.25) of the daily meal per diem minus the provided lunch equaling \$19.50. Dick claimed \$9.75. Do you know if Dick would like me to add the difference or leave the claim as is?

Thanks,  
Kathy

**Calculating Partial Day Meal Per Diem Rates for Overnight Travel**

Meal per diem for the **initial** day of travel and **final** day of travel is based on the following schedule based on departure and arrival times: Apply the percentage to the appropriate daily per diem rate.

| <b>Initial Day of Travel – Leave</b> | <b>Prior to 6:00 am</b> | <b>6:00 am to Noon</b> | <b>12:01 pm to 6:00 pm</b> | <b>After 6:00 pm</b> |
|--------------------------------------|-------------------------|------------------------|----------------------------|----------------------|
| Meal Allowance Percentage            | 100%                    | 75%                    | 50%                        | 25%                  |
| <b>Final Day of Travel – Return</b>  |                         |                        |                            |                      |
| Meal Allowance Percentage            | 25%                     | 50%                    | 75%                        | 100%                 |

For example: On the day of travel, if you return at 12:01 pm through 6:00 pm, you would be eligible to claim 75% of the daily meal per diem. If you return after 6:00 pm, you would be eligible to claim 100%.

**Calculating Meal Per Diem Rates for Day Trips**



**MURPHY Kathy M**

---

**From:** Marshall Day  
**Sent:** Thursday, June 26, 2008 2:42 PM  
**To:** MURPHY Kathy M  
**Cc:** PEDERSEN Dick  
**Subject:** RE: Pedersen - travel expense claim question

Kathy - please process at allowable per diem. Thanks for catching these.

Day

Day Marshall  
DEQ Director's Office  
(503) 229-5990

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

**From:** MURPHY Kathy M  
**Sent:** Thursday, June 26, 2008 2:15 PM  
**To:** Marshall Day  
**Cc:** PEDERSEN Dick  
**Subject:** Pedersen - travel expense claim question

Day,

I'm currently reviewing Dick's 6/18/08 - 6/20/08 travel expense claim and have the following question.

On 6/18/08 the claim shows that Dick left Portland at 11:30am. Per the chart below this would allow him to claim 75% (\$33) of the daily meal per diem instead of the 50% (\$22) that he claimed. Do you know if Dick would want me to add the difference or leave the claim as is?

Thanks,  
Kathy

**Calculating Partial Day Meal Per Diem Rates for Overnight Travel**

Meal per diem for the **initial** day of travel and **final** day of travel is based on the following schedule based on departure and arrival times: Apply the percentage to the appropriate daily per diem rate.

| <b>Initial Day of Travel – Leave</b> | <b>Prior to 6:00 am</b> | <b>6:00 am to Noon</b> | <b>12:01 pm to 6:00 pm</b> | <b>After 6:00 pm</b> |
|--------------------------------------|-------------------------|------------------------|----------------------------|----------------------|
| Meal Allowance Percentage            | 100%                    | 75%                    | 50%                        | 25%                  |
| <b>Final Day of Travel – Return</b>  |                         |                        |                            |                      |
| Meal Allowance Percentage            | 25%                     | 50%                    | 75%                        | 100%                 |

For example: On the day of travel, if you return at 12:01 pm through 6:00 pm, you would be eligible to claim 75% of the daily meal per diem. If you return after 6:00 pm, you would be eligible to claim 100%.

10R0127253  
STATE OF OREGON  
TRAVEL EXPENSE DETAIL SHEET



305/VPT 27322

|                                                                                                                                                                                                                          |  |                                                                                                              |  |                                                                                                                        |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------|--|
| 1. Name of Employee<br>Dick Pedersen                                                                                                                                                                                     |  | 2. Agency<br>DEQ                                                                                             |  | 3. Period (Month and Year)<br>July-08                                                                                  |  |
| 4. Official Station<br>Portland                                                                                                                                                                                          |  | 5. Division/ Work Unit<br>OD                                                                                 |  | 6. Regular Schedule Work Shift<br>8:00 am - 5:00 pm <input checked="" type="checkbox"/> Other <input type="checkbox"/> |  |
| 7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/> |  | Bargaining Unit Name <input type="checkbox"/> AFSCME <input type="checkbox"/> Other <input type="checkbox"/> |  |                                                                                                                        |  |

| 8. Date  | 9. Time of Departure | 10. Time of Arrival | 11. Destination   | 12. Per Diem/ Hourly Allowance | 13. Individual Meal Reimbursement |       |        | 13. Lodging | 14. Total Meals and Lodging |          |
|----------|----------------------|---------------------|-------------------|--------------------------------|-----------------------------------|-------|--------|-------------|-----------------------------|----------|
|          |                      |                     |                   |                                | Breakfast                         | Lunch | Dinner |             |                             |          |
| 06/30/08 | 6:30 am              |                     | Brookings, Oregon | 39.25                          |                                   | 9.75  | 19.50  | 53.00       | 82.25                       |          |
| 07/01/08 |                      | 7:30pm              | Portland, Oregon  | 39.00                          | 9.75                              | 9.75  | 19.50  |             | 39.00                       |          |
|          |                      |                     |                   | 15. Totals                     | 68.25                             | 9.75  | 19.50  | 39.00       | 53.00                       | \$121.25 |

| 16. Accounting Codes | 17. Date | 18. Miscellaneous Expenses<br>Fares, Private Mileage, Room Tax, Telephone, Other Expenses | 19. Training Related? | 20. Rate Per Mile | 21. Private Car Miles | 22. Amount |
|----------------------|----------|-------------------------------------------------------------------------------------------|-----------------------|-------------------|-----------------------|------------|
| 14010-41004          |          | Personal Vehicle Mileage                                                                  |                       | 0.505             |                       |            |
| 4101                 | 68.25    | 07/01/08 Tax/fee hotel                                                                    |                       |                   |                       | 3.71       |
| 4106                 | 56.71    |                                                                                           |                       |                   |                       |            |
| Totals               |          |                                                                                           |                       |                   |                       | 124.96     |
| 23. Section Total    |          |                                                                                           |                       |                   |                       | \$3.71     |

24. I did/will  did not/will not  accept travel awards as a result of, or associated with this state business trip. Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.)  
Travel on 6/30 and 7/1 for the Economic Revitalization Team Directors' Tour of Brookings, Gold Beach, etc.

|                               |                    |
|-------------------------------|--------------------|
| 26. Grand Total Amount        | \$124.96           |
| 27. Travel Advance Amount     |                    |
| 28. Amount Due Employee/State | \$124.96           |
| 29. Received Training         | Conducted Training |

|                                                                                                                                                                                                    |                                                                                                                                                                                                                       |                                       |                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|------------------------------|
| I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source. | 30. Signature of Employee<br><i>Dick Pedersen</i>                                                                                                                                                                     | 31. Title<br>Director                 | Date<br>07/14/08             |
|                                                                                                                                                                                                    | I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allocated for expenditure. | 32. Approved By<br><i>Jim Hurrell</i> | 33. Title<br>Deputy Director |

Travel Expense Claim (3/08) Jeber  
JUL 17 2008

DEQ-Accounting



10R0127253  
STATE OF OREGON  
TRAVEL EXPENSE DETAIL SHEET



309/VPT27423

|                                                                                                                                                                                                                                                         |  |                              |  |                                                                                                                |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|------------------------------|--|----------------------------------------------------------------------------------------------------------------|--|
| 1. Name of Employee<br>Dick Pedersen                                                                                                                                                                                                                    |  | 2. Agency<br>DEQ             |  | 3. Period (Month and Year)<br>July-08                                                                          |  |
| 4. Official Station                                                                                                                                                                                                                                     |  | 5. Division/ Work Unit       |  | 6. Regular Schedule Work Shift<br>8:00 am - 5:00 pm <input type="checkbox"/> Other <input type="checkbox"/> to |  |
| 7. Unrepresented <input type="checkbox"/> Management Service <input checked="" type="checkbox"/> Executive Service <input type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/> Other <input type="checkbox"/> |  | Bargaining Unit Name: AFSCME |  |                                                                                                                |  |

| 8. Date  | 9. Time of Departure | 10. Time of Arrival | 11. Destination | 12. Per Diem/ Hourly Allowance | Individual Meal Reimbursement |          |        | 13. Lodging | 14. Total Meals and Lodging |        |
|----------|----------------------|---------------------|-----------------|--------------------------------|-------------------------------|----------|--------|-------------|-----------------------------|--------|
|          |                      |                     |                 |                                | Breakfast                     | Lunch    | Dinner |             |                             |        |
| 07/22/08 | 5pm                  |                     | Bend, OR        | 33.00                          |                               |          | 11.00  | 81.00       | 92.00 103.00                |        |
| 07/23/08 |                      |                     | Bend, OR        | 33.00                          | 11.00                         | provided | 22.00  | 81.00       | 114.00                      |        |
| 07/24/08 |                      |                     | Bend, OR        | 33.00                          | 11.00                         | provided | 22.00  | 81.00       | 114.00                      |        |
| 07/25/08 |                      | 5pm                 | Portland OR     | 32.00                          | provided                      | 11.00    | 11.00  |             | 22.00                       |        |
|          |                      |                     |                 | 15. Totals                     | 110.00                        | 22.00    | 11.00  | 66.00       | 243.00                      | 353.00 |

| 16. Accounting Codes |       | 17. Date | 18. Miscellaneous Expenses<br>Fares, Private Mileage, Room Tax, Telephone, Other Expenses | 19. Training Related? | 20. Rate Per Mile | 21. Private Car Miles | 22. Amount |
|----------------------|-------|----------|-------------------------------------------------------------------------------------------|-----------------------|-------------------|-----------------------|------------|
| 14010                | 41004 |          | Personal Vehicle Mileage                                                                  |                       | 0.505             | 320                   | 161.60     |
|                      |       |          | Room Taxes                                                                                |                       |                   |                       | 38.88      |
|                      | 4101  | 27.50    |                                                                                           |                       |                   |                       |            |
|                      | 4106  | 70.47    |                                                                                           |                       |                   |                       |            |
|                      | 4431  | 82.50    |                                                                                           |                       |                   |                       |            |
|                      | 4433  | 211.41   |                                                                                           |                       |                   |                       |            |
| Totals               |       | 391.88   |                                                                                           |                       |                   |                       | 38.88      |
| 23. Section Total    |       |          |                                                                                           |                       |                   |                       | \$200.48   |

24. I did/will  did not/will not  accept travel awards as a result of, or associated with this state business trip. Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.)  
*Attending + speaking at the Oregon Association of Clean Water Agencies*

|                               |                    |
|-------------------------------|--------------------|
| 26. Grand Total Amount        | 391.88<br>\$542.48 |
| 27. Travel Advance Amount     |                    |
| 28. Amount Due Employee/State | 391.88<br>\$542.48 |
| 29. Received Training         | Conducted Training |

|                                                                                                                                                                                                    |                           |           |        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|-----------|--------|
| I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source. | 30. Signature of Employee | 31. Title | Date   |
|                                                                                                                                                                                                    | <i>[Signature]</i>        | DIRECTOR  | 8/4/08 |

|                                                                                                                                                                                                             |                    |            |        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|------------|--------|
| I certify that the above claimed expenses are authorized duty expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditure. | 32. Approved By    | 33. Title  | Date   |
|                                                                                                                                                                                                             | <i>[Signature]</i> | Int Deputy | 8-4-08 |

10R0127253  
STATE OF OREGON

TRAVEL EXPENSE DETAIL SHEET



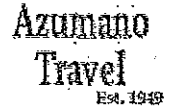
319/VPT27472

| 1. Name of Employee<br>Dick Pederson                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                      | 2. Agency<br>DEQ               |                                                                                           | 3. Period (Month and Year)<br>July-08                                                                                                      |                                   |                   |                        |                             |                 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------------------------------|-------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|-------------------|------------------------|-----------------------------|-----------------|
| 4. Official Station                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                      | 5. Division/ Work Unit         |                                                                                           | 6. Regular Schedule Work Shift<br>8:00 am - 5:00 pm <input type="checkbox"/> pm <input type="checkbox"/> Other <input type="checkbox"/> to |                                   |                   |                        |                             |                 |
| 7. Unrepresented <input type="checkbox"/> Management Service <input checked="" type="checkbox"/> Executive Service <input type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/>                                                                                                                                                                                                                                                                            |                      | Bargaining Unit Name<br>AFSCME |                                                                                           | Other <input type="checkbox"/>                                                                                                             |                                   |                   |                        |                             |                 |
| 8. Date                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 9. Time of Departure | 10. Time of Arrival            | 11. Destination                                                                           | 12. Per Diem/ Hourly Allowance                                                                                                             | 13. Individual Meal Reimbursement |                   |                        | 14. Total Meals and Lodging |                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      |                                |                                                                                           |                                                                                                                                            | Breakfast                         | Lunch             | Dinner                 |                             |                 |
| 07/28/08                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 1pm                  | 6:02pm                         | San Diego, CA 139/124                                                                     | 32.00                                                                                                                                      |                                   | 11.00             | 32.00                  | 139.00                      | ① 171.00        |
| 07/29/08                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                      |                                | San Diego, CA                                                                             | 48.00                                                                                                                                      | prov.                             | 24.00             | 32.00                  | 139.00                      | ① 495.00-187.00 |
| 07/30/08                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                      |                                | San Diego, CA                                                                             | 32.00                                                                                                                                      | prov.                             | prov.             | 32.00                  | 139.00                      | ① 171.00        |
| 07/31/08                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 2pm                  | 6:45pm                         | Pendleton, OR 70/39                                                                       | 29.25                                                                                                                                      | prov.                             | 9.75              | 19.50                  | 70.00                       | ② 163.00-99.25  |
| 08/01/08                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                      | 3pm                            | Portland, OR                                                                              | 29.25                                                                                                                                      | 7.25                              | 22.00             | 9.75                   |                             | ② 29.25         |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      |                                |                                                                                           |                                                                                                                                            | 9.75                              | 9.75              |                        |                             |                 |
| 15. Totals                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                      |                                |                                                                                           | 170.50                                                                                                                                     | 7.25                              | 35.50             | 125.25                 | 487.00                      | 669.25          |
| 18. Accounting Codes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                      | 17. Date                       | 18. Miscellaneous Expenses<br>Fares, Private Mileage, Room Tax, Telephone, Other Expenses |                                                                                                                                            | 19. Training Related?             | 20. Rate Per Mile | 21. Private Car Miles  | 22. Amount                  |                 |
| 14010                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 41004                |                                | Personal Vehicle Mileage                                                                  |                                                                                                                                            |                                   | 0.585             |                        | ① 52.83                     |                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 4432                 | 112.00                         | Room taxes/San Diego                                                                      |                                                                                                                                            |                                   |                   |                        | ① 27.00                     |                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 4434                 | 469.83                         | Cab Fare/San Diego                                                                        |                                                                                                                                            |                                   |                   |                        | ② 7.80                      |                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 4441                 | 23.00                          | Room taxes/Pendleton                                                                      |                                                                                                                                            |                                   |                   |                        |                             |                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 4101                 | 58.50                          |                                                                                           |                                                                                                                                            |                                   |                   |                        |                             |                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 4106                 | 77.80                          |                                                                                           |                                                                                                                                            |                                   |                   |                        |                             |                 |
| Totals                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                      | 745.13                         |                                                                                           |                                                                                                                                            |                                   |                   |                        | 23. Section Total \$87.63   |                 |
| 24. I did/will <input type="checkbox"/> did not/will not <input checked="" type="checkbox"/> accept travel awards as a result of, or associated with this state business trip. Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form. |                      |                                |                                                                                           |                                                                                                                                            |                                   |                   |                        |                             |                 |
| 25. REASON FOR TRAVEL: (Be specific.)<br>Dick attended the Western Climate Initiative Stakeholder Workshop in San Diego (July 29-31) and then went to Pendleton to meet with Editors at the East Oregonian and to participate on Director's panel at Mayor's conference                                                                                                                                                                                                                             |                      |                                |                                                                                           |                                                                                                                                            | 26. Grand Total Amount            |                   | 745.13<br>\$756.88     |                             |                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      |                                |                                                                                           |                                                                                                                                            | 27. Travel Advance Amount         |                   |                        |                             |                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      |                                |                                                                                           |                                                                                                                                            | 28. Amount Due Employee/State     |                   | 745.13 gcm<br>\$756.88 |                             |                 |
| I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.                                                                                                                                                                                                                                                                                                  |                      |                                |                                                                                           |                                                                                                                                            | 30. Signature of Employee         |                   | 31. Title              |                             |                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      |                                |                                                                                           |                                                                                                                                            |                                   |                   | Director               |                             |                 |
| I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditure.                                                                                                                                                                                                                                                                                |                      |                                |                                                                                           |                                                                                                                                            | 32. Approved By                   |                   | 33. Title              |                             |                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      |                                |                                                                                           |                                                                                                                                            |                                   |                   | MSA Admin              |                             |                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      |                                |                                                                                           |                                                                                                                                            | Date                              |                   | 8/12/08                |                             |                 |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                      |                                |                                                                                           |                                                                                                                                            | Date                              |                   | 8/13/08                |                             |                 |

05 rev.  
Travel Expense Claim.xls (3/08) jleber

① \$1,192.83 (See next page) Item G 000033  
② \$ 318.30 (See next page)

Itinerary Detail - Combined



Back Office Data

STATE OF OREGON

Trip Departures from 07/28/2008 to 08/01/2008

Report Parameters: Last Name = PEDERSEN

|                                       |                      |           |             |                 |             |          |                                 |
|---------------------------------------|----------------------|-----------|-------------|-----------------|-------------|----------|---------------------------------|
| <b>PEDERSEN/RICHARD J</b>             |                      |           |             |                 |             |          |                                 |
| Actual:                               | \$554.00             | Savings:  | \$0.00      | Val Carrier:    | UNITED (UA) | Account: | OR State Dept. of Environmental |
| Lowest:                               | \$554.00             | Lost Amt: | \$0.00      | Ticket #:       | 7168691021  | Auth 1:  | 34000                           |
| Service Fees:                         | \$30.00              |           |             | Rec Locator:    | NKX50B      | Auth 2:  | DAY                             |
| Exception:                            | LOWER FARE AVAILABLE |           |             | Invoice #:      | 875347245   | Auth 3:  | 5032295990                      |
|                                       |                      |           |             | Inv Date:       | 6/16/2008   |          |                                 |
| Itinerary                             |                      |           |             | Airline         |             | Flt.#    | Class                           |
| PORTLAND,OR                           | LOS ANGELES,CA       | 7/28/2008 | 15:39-18:02 | UNITED (UA)     |             | 6082     | Y                               |
| LOS ANGELES,CA                        | SAN DIEGO,CA         | 7/28/2008 | 19:25-20:18 | UNITED (UA)     |             | 5580     | Y                               |
| SAN DIEGO,CA                          | PORTLAND,OR          | 7/31/2008 | 13:50-16:19 | ALASKA AIR (AS) |             | 0575     | Y                               |
| PORTLAND,OR                           | PENDLETON,OR         | 7/31/2008 | 17:05-18:40 | ALASKA AIR (AS) |             | 2096     | L                               |
| <i>Total Cost of Trip:</i> ① \$584.00 |                      |           |             |                 |             |          |                                 |

|                                       |                      |           |             |                 |                 |          |                                 |
|---------------------------------------|----------------------|-----------|-------------|-----------------|-----------------|----------|---------------------------------|
| <b>PEDERSEN/RICHARD J</b>             |                      |           |             |                 |                 |          |                                 |
| Actual:                               | \$152.00             | Savings:  | \$0.00      | Val Carrier:    | ALASKA AIR (AS) | Account: | OR State Dept. of Environmental |
| Lowest:                               | \$152.00             | Lost Amt: | \$0.00      | Ticket #:       | 7515290134      | Auth 1:  | 34000                           |
| Service Fees:                         | \$30.00              |           |             | Rec Locator:    | NKX50B          | Auth 2:  | DAY                             |
| Exception:                            | LOWER FARE AVAILABLE |           |             | Invoice #:      | 875348872       | Auth 3:  | 5032295990                      |
|                                       |                      |           |             | Inv Date:       | 7/3/2008        |          |                                 |
| Itinerary                             |                      |           |             | Airline         |                 | Flt.#    | Class                           |
| PENDLETON,OR                          | PORTLAND,OR          | 8/1/2008  | 13:30-14:59 | ALASKA AIR (AS) |                 | 2092     | Y                               |
| <i>Total Cost of Trip:</i> ② \$182.00 |                      |           |             |                 |                 |          |                                 |

Report Totals

| Air Totals         |          | Car Rental Totals     |        | Hotel Booking Totals   |        |
|--------------------|----------|-----------------------|--------|------------------------|--------|
| # of Air Trips:    | 2        | # of Rentals:         | 0      | # of Stays:            | 0      |
| Air Charges:       | \$706.00 | # of Days Rented:     | 0      | # of Room Nights:      | 0      |
| Avg Cost per Trip: | \$353.00 | Car Rental Charges:   | \$0.00 | Hotel Booking Charges: | \$0.00 |
| Total Svc Fees:    | \$60.00  | Avg # of Days Rented: | 0.00   | Avg # of Nights:       | 0.00   |
| Total All Charges: | \$766.00 | Avg Booked Rate:      | 0.00   | Avg Booked Rate:       | \$0.00 |
|                    |          | Avg Cost per Day:     | \$0.00 | Avg Cost/RoomNight:    | \$0.00 |

OREGON DEPT OF ENVIRONMENTAL QUALITY  
OUT-OF-STATE TRAVEL AUTHORIZATION

| 1. NAME OF EMPLOYEE:<br>Dick Pedersen                                                                                                                                                                                                                                                              |              | 2. AGENCY/OFFICIAL STATION:<br>DEQ/Portland |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | 3. REQUEST #:<br>48-09 |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|---------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|--|--|------|---------|-------|------------------------------|-------|----------|--------------|--------------------------|-------|----------|--------------|----------------------------|-------|----------|---------------|--|--|--|--------------|--|--------------|--|---------------|--|--|--------|-----------------|
| 4. AGENCY ACCOUNTING INFORMATION:<br>14010 41004                                                                                                                                                                                                                                                   |              |                                             | 5. TRAVEL JUSTIFICATION ATTACHED?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| 6. PURPOSE OF TRIP: (Be specific, include dates/times of meeting or conference)<br>Represent Oregon as Director of DEQ at the Western Climate Initiative Stakeholder Workshop in San Diego July 29 - 31, 2008.                                                                                     |              |                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| 7. ITINERARY:                                                                                                                                                                                                                                                                                      |              |                                             | 8. TRANSPORTATION: (Airfare, train fare or state motor pool vehicle (circle one). For rental cars, see #11, for misc. ground transportation, see #12)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| Destination city/state: San Diego, CA                                                                                                                                                                                                                                                              |              |                                             | Airfare to San Diego and then to Pendleton and return to Portland                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| Departure date/time: Mon. 7/28/2008 15:30                                                                                                                                                                                                                                                          |              |                                             | TOTAL: \$766.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| Return date/time: Fri. 8/1/2008 17:00 <i>flies to Pendleton</i>                                                                                                                                                                                                                                    |              |                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| 9. LODGING: Lodging per diem rate: \$139.00                                                                                                                                                                                                                                                        |              |                                             | 10. MEALS: Daily meal per diem rate: \$64.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| Amount per night: <i>Pendleton</i> 70.00 139.00                                                                                                                                                                                                                                                    |              |                                             | <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>Rate</th> <th># Meals</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>Breakfast: (25%) <i>9.75</i></td> <td>16.00</td> <td><i>3</i></td> <td><i>64.00</i></td> </tr> <tr> <td>Lunch: (25%) <i>9.75</i></td> <td>16.00</td> <td><i>3</i></td> <td><i>64.00</i></td> </tr> <tr> <td>Dinner: (50%) <i>29.25</i></td> <td>32.00</td> <td><i>3</i></td> <td><i>128.00</i></td> </tr> <tr> <td></td> <td></td> <td></td> <td><i>96.00</i></td> </tr> <tr> <td></td> <td><i>48.75</i></td> <td></td> <td><i>192.00</i></td> </tr> <tr> <td></td> <td></td> <td>TOTAL:</td> <td><i>\$256.00</i></td> </tr> </tbody> </table> |                        |  |  | Rate | # Meals | Total | Breakfast: (25%) <i>9.75</i> | 16.00 | <i>3</i> | <i>64.00</i> | Lunch: (25%) <i>9.75</i> | 16.00 | <i>3</i> | <i>64.00</i> | Dinner: (50%) <i>29.25</i> | 32.00 | <i>3</i> | <i>128.00</i> |  |  |  | <i>96.00</i> |  | <i>48.75</i> |  | <i>192.00</i> |  |  | TOTAL: | <i>\$256.00</i> |
|                                                                                                                                                                                                                                                                                                    | Rate         | # Meals                                     | Total                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| Breakfast: (25%) <i>9.75</i>                                                                                                                                                                                                                                                                       | 16.00        | <i>3</i>                                    | <i>64.00</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| Lunch: (25%) <i>9.75</i>                                                                                                                                                                                                                                                                           | 16.00        | <i>3</i>                                    | <i>64.00</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| Dinner: (50%) <i>29.25</i>                                                                                                                                                                                                                                                                         | 32.00        | <i>3</i>                                    | <i>128.00</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
|                                                                                                                                                                                                                                                                                                    |              |                                             | <i>96.00</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
|                                                                                                                                                                                                                                                                                                    | <i>48.75</i> |                                             | <i>192.00</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
|                                                                                                                                                                                                                                                                                                    |              | TOTAL:                                      | <i>\$256.00</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| Room tax per night: 10.50 17.60                                                                                                                                                                                                                                                                    |              |                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| # of nights: <u>1</u> <i>3</i>                                                                                                                                                                                                                                                                     |              |                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| 80.50                                                                                                                                                                                                                                                                                              |              |                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| TOTAL: <u>469.80</u> <i>\$626.40</i>                                                                                                                                                                                                                                                               |              |                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| 11. CAR RENTAL: (See OAM 40.10.00, PO, section .115. The state has a price agreement with Enterprise Rent-A-Car. Optional insurance will not be reimbursed).<br>Days @ \$28 plus tax, gas TOTAL: _____                                                                                             |              |                                             | 12. MISCELLANEOUS COSTS: (Identify specific expenses - taxis, shuttles, phone, vehicle mileage, etc.)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
|                                                                                                                                                                                                                                                                                                    |              |                                             | a. Private vehicle mileage _____ 0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
|                                                                                                                                                                                                                                                                                                    |              |                                             | b. Shuttle _____ (# of miles)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
|                                                                                                                                                                                                                                                                                                    |              |                                             | c. Other (specify below) _____ <i>50.00</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
|                                                                                                                                                                                                                                                                                                    |              |                                             | <i>Taxi fares</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
|                                                                                                                                                                                                                                                                                                    |              |                                             | TOTAL: <u>50.00</u> <i>\$0.00</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| 13. TRAINING RELATED? (if yes, attach agenda)                                                                                                                                                                                                                                                      |              |                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| <input type="checkbox"/> Yes <input type="checkbox"/> No                                                                                                                                                                                                                                           |              |                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| 14. STATUS:                                                                                                                                                                                                                                                                                        |              |                                             | 16. ESTIMATED COST OF TRIP:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| <input checked="" type="checkbox"/> Executive/Mgmt Svc:                                                                                                                                                                                                                                            |              |                                             | Transportation: \$766.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| <input type="checkbox"/> AFSCME:                                                                                                                                                                                                                                                                   |              |                                             | Lodging: \$626.40 <i>469.80</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| <input type="checkbox"/> Other: Explain: _____                                                                                                                                                                                                                                                     |              |                                             | Meals: \$256.00 <i>192.00</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
|                                                                                                                                                                                                                                                                                                    |              |                                             | Car Rental: \$0.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
|                                                                                                                                                                                                                                                                                                    |              |                                             | Misc: <del>\$0.00</del> <i>50.00</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
|                                                                                                                                                                                                                                                                                                    |              |                                             | TOTAL: <u>1477.80</u> <i>3000</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
|                                                                                                                                                                                                                                                                                                    |              |                                             | <del>\$1,648.40</del>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| 15. TRAVEL AWARDS: Agencies are mandated to maintain records on employee accumulation of travel awards as reported on their travel expense detail sheets. Travel awards include, but may not be limited to airline frequent flyer miles and hotel or car rental frequent customer awards or miles. |              |                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| 17. I certify that this trip is necessary and essential to the normal discharge of DEQ responsibilities; that required monies are budgeted and allotted for expenditure; that the trip meets all the requirements mandated by ORS 292.230, OAM Policy 40.10.00, and DEQ policy.                    |              |                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                        |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| 18. EMPLOYEE SIGNATURE: <i>[Signature]</i>                                                                                                                                                                                                                                                         |              |                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | DATE: 7-16-08          |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| 19. SUPERVISOR SIGNATURE:                                                                                                                                                                                                                                                                          |              |                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | DATE:                  |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| 20. DA/EMT SIGNATURE: <i>[Signature]</i>                                                                                                                                                                                                                                                           |              |                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | DATE: 7-21-08          |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |
| 21. MSD DA SIGNATURE: <i>[Signature]</i>                                                                                                                                                                                                                                                           |              |                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | DATE: 7/22/08          |  |  |      |         |       |                              |       |          |              |                          |       |          |              |                            |       |          |               |  |  |  |              |  |              |  |               |  |  |        |                 |

10R0127253  
STATE OF OREGON  
TRAVEL EXPENSE DETAIL SHEET



319/VPT 27472

|                                                                                                                                                                                                                          |  |                                                                                                              |  |                                                                                                             |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------|--|
| 1. Name of Employee<br>Dick Pedersen                                                                                                                                                                                     |  | 2. Agency<br>DEQ                                                                                             |  | 3. Period (Month and Year)<br>August-08                                                                     |  |
| 4. Official Station                                                                                                                                                                                                      |  | 5. Division/ Work Unit                                                                                       |  | 6. Regular Schedule Work Shift<br>8:00 am - 5:00 pm <input type="checkbox"/> Other <input type="checkbox"/> |  |
| 7. Unrepresented <input type="checkbox"/> Management Service <input checked="" type="checkbox"/> Executive Service <input type="checkbox"/> Board/Commission <input type="checkbox"/> Voluntary <input type="checkbox"/> |  | Bargaining Unit Name <input type="checkbox"/> AFSCME <input type="checkbox"/> Other <input type="checkbox"/> |  |                                                                                                             |  |

| 8. Date  | 9. Time of Departure | 10. Time of Arrival | 11. Destination | 12. Per Diem/ Hourly Allowance | 13. Individual Meal Reimbursement |       |        | 13. Lodging | 14. Total Meals and Lodging |                    |
|----------|----------------------|---------------------|-----------------|--------------------------------|-----------------------------------|-------|--------|-------------|-----------------------------|--------------------|
|          |                      |                     |                 |                                | Breakfast                         | Lunch | Dinner |             |                             |                    |
| 08/05/08 | 6:30am               |                     | Corvallis, OR   | 29.25                          | 7.50                              | 12.00 | 19.50  | 70.00       | 109.00 99.25                |                    |
| 08/06/08 |                      | 5:30pm              | Portland, OR    | 19.50                          | prov                              | 9.75  | 49.50  |             | 29.25 19.50                 |                    |
|          |                      |                     |                 |                                |                                   |       | 9.75   |             |                             |                    |
|          |                      |                     |                 | 15. Totals                     | 48.75                             | 7.50  | 21.75  | 39.00       | 70.00                       | 118.75<br>\$138.25 |

| 16. Accounting Codes |       | 17. Date | 18. Miscellaneous Expenses<br>Fares, Private Mileage, Room Tax, Telephone, Other Expenses | 19. Training Related? | 20. Rate Per Mile | 21. Private Car Miles | 22. Amount                  |
|----------------------|-------|----------|-------------------------------------------------------------------------------------------|-----------------------|-------------------|-----------------------|-----------------------------|
| 14010                | 41004 |          | Personal Vehicle Mileage                                                                  |                       | 0.585             |                       |                             |
|                      |       |          | Room taxes                                                                                |                       |                   |                       | 7.00                        |
|                      | 4101  | 48.75    |                                                                                           |                       |                   |                       |                             |
|                      | 4106  | 77.00    |                                                                                           |                       |                   |                       |                             |
| Totals               |       | 125.75   |                                                                                           |                       |                   |                       | 23. Section Total<br>\$7.00 |

24. I did/will  did not/will not  accept travel awards as a result of, or associated with this state business trip. Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.)  
ERT Director's trip. Lane and Linn and Benton counties will be visited. Discussion and tour of the new Peace Health Campus, tour of Grainmillers, discussion of the state's Correction and Mental Health facilities in Junction City.

|                               |                       |
|-------------------------------|-----------------------|
| 26. Grand Total Amount        | 125.75<br>\$145.25    |
| 27. Travel Advance Amount     |                       |
| 28. Amount Due Employee/State | 125.75 km<br>\$145.25 |
| 29. Received Training         | Conducted Training    |
| 30. Signature of Employee     | 31. Title<br>Director |
| 32. Approved By               | 33. Title<br>MSD Adv  |
| Date<br>8/12/08               |                       |
| Date<br>8/13/08               |                       |

I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.

I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditure.

10R0127253  
**STATE OF OREGON**  
**TRAVEL EXPENSE DETAIL SHEET**



310/VPT 27603

|                                                                                                                                                                                                                          |  |                                                                                                              |  |                                                                                                                   |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------------|--|
| 1. Name of Employee<br>Dick Pedersen                                                                                                                                                                                     |  | 2. Agency<br>DEQ                                                                                             |  | 3. Period (Month and Year)<br>AUG. 08                                                                             |  |
| 4. Official Station                                                                                                                                                                                                      |  | 5. Division/ Work Unit                                                                                       |  | 6. Regular Schedule Work Shift<br>8:00 am - 5:00<br><input type="checkbox"/> pm <input type="checkbox"/> Other to |  |
| 7. Unrepresented <input type="checkbox"/> Management Service <input checked="" type="checkbox"/> Executive Service <input type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/> |  | Bargaining Unit Name <input type="checkbox"/> AFSCME <input type="checkbox"/> Other <input type="checkbox"/> |  |                                                                                                                   |  |

| 8. Date  | 9. Time of Departure | 10. Time of Arrival | 11. Destination        | 12. Per Diem/ Hourly Allowance | 12. Individual Meal Reimbursement |       |        | 13. Lodging | 14. Total Meals and Lodging |                    |
|----------|----------------------|---------------------|------------------------|--------------------------------|-----------------------------------|-------|--------|-------------|-----------------------------|--------------------|
|          |                      |                     |                        |                                | Breakfast                         | Lunch | Dinner |             |                             |                    |
| 08/15/08 | 8:30am               |                     | Tillamook/Rockaway, OR | 0                              | prov                              | -9.75 | prov   | prov        | -9.75 0                     |                    |
| 08/18/08 | 7:00 am              | 12pm                | Skamania, WA 110/49    | 36.75                          | prov                              | 9.75  | 19.50  | 110.00      | 139.25 146.75               |                    |
| 08/19/08 |                      | 3pm                 | Hermiston, OR 70/39    | 19.50                          | prov                              | prov  | 19.50  | 70.00       | 89.50                       |                    |
| 08/20/08 |                      |                     | Hermiston, OR          | 39.00                          | 9.75                              | 9.75  | 19.50  | 70.00       | 109.00                      |                    |
| 08/21/08 |                      |                     | Hermiston, OR          | 19.50                          | prov                              | prov  | 19.50  | 70.00       | 89.50                       |                    |
| 08/22/08 |                      | 5:30pm              | Portland, OR           | 9.75                           | prov                              | prov  | 9.75   |             | 9.75                        |                    |
|          |                      |                     |                        | 15. Totals                     | 124.50                            | 9.75  | 29.25  | 87.75       | 320.00                      | 444.50<br>\$446.75 |

| 16. Accounting Codes |       | 17. Date | 18. Miscellaneous Expenses<br>Fares, Private Mileage, Room Tax, Telephone, Other Expenses | 19. Training Related? | 20. Rate Per Mile | 21. Private Car Miles | 22. Amount                   |
|----------------------|-------|----------|-------------------------------------------------------------------------------------------|-----------------------|-------------------|-----------------------|------------------------------|
|                      |       |          | Personal Vehicle Mileage                                                                  |                       | 0.585             |                       |                              |
| 14010                | 41004 |          | room taxes & fees/WA                                                                      |                       |                   |                       | 24.88                        |
| 14010                | 41004 |          | room taxes & fees Hermiston                                                               |                       |                   |                       | 18.90                        |
|                      | 4151  | 36.75    |                                                                                           |                       |                   |                       |                              |
|                      | 4150  | 134.88   |                                                                                           |                       |                   |                       |                              |
|                      | 4107  | 87.75    |                                                                                           |                       |                   |                       |                              |
|                      | 4106  | 228.90   |                                                                                           |                       |                   |                       |                              |
| Totals               |       | 488.28   |                                                                                           |                       |                   |                       | 23. Section Total<br>\$43.78 |

24. I did/will  did not/will not  accept travel awards as a result of, or associated with this state business trip. Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.)  
Aug 15/Dick representing DEQ at Small Cities Meeting in Rockaway&DEQ Listening Session w/NWR staff. Aug 18/ met w/Tillamook Creamery Ass; went to WCI (Western Climate Initiative)Skamania. Aug 19/finished WCI meeting & had Listening Session w/ DEQ-Dalles staff. Aug 20/Listening Sessions w/ Pendleton and Hermiston Staff. Aug 21-22/ attend EQC meeting in Hermiston.

|                                                                                                                                                                                                    |                                                                                                                                                                                                                      |                       |                         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-------------------------|
| I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source. | 30. Signature of Employee<br>                                                                                                                                                                                        | 31. Title<br>Director | Date<br>9-3-08          |
|                                                                                                                                                                                                    | I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditure. | 32. Approved By<br>   | 33. Title<br>Int Deputy |

OREGON DEPT OF ENVIRONMENTAL QUALITY  
 OUT-OF-STATE TRAVEL AUTHORIZATION

| 1. NAME OF EMPLOYEE:<br>Dick Pedersen                                                                                                                                                                                                                                                              |       | 2. AGENCY/OFFICIAL STATION:<br>DEQ/Portland |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 3. REQUEST #:<br>67-09 |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                                    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|---------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|--|--|------|---------|-------|------------------|-------|---|-------|--------------|-------|---|-------|---------------|-------|---|-------|--------|--|--|------------------------------------|
| 4. AGENCY ACCOUNTING INFORMATION:<br>14010 41004                                                                                                                                                                                                                                                   |       |                                             | 5. TRAVEL JUSTIFICATION ATTACHED?<br><input type="checkbox"/> Yes <input type="checkbox"/> No                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                        |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                                    |
| 6. PURPOSE OF TRIP: (Be specific, include dates/times of meeting or conference)<br>This is a meeting of the Western Climate Initiative in Skamania, Wa. Oregon is a member state and Dick is representing the DEQ at this meeting.                                                                 |       |                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                        |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                                    |
| 7. ITINERARY:<br><br>Destination city/state: Skamania, WA<br><br>Departure date/time: Mon, 8/18/08 10am<br><br>Return date/time: Tues, 8/19/08 1pm                                                                                                                                                 |       |                                             | 8. TRANSPORTATION: (Airfare, train fare or state motor pool vehicle (circle one). For rental cars, see #11, for misc. ground transportation, see #12)<br><br>80 miles @ \$0.585<br><br>TOTAL: <u>46.80</u><br><del>50.00</del>                                                                                                                                                                                                                                                                                                                                            |                        |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                                    |
| 9. LODGING: Lodging per diem rate: <u>\$110.00</u><br><br>Amount per night: <u>110.00</u><br><br>Room tax per night: <u>12.60</u><br><br># of nights: <u>1</u><br><br>TOTAL: <u>\$122.60</u>                                                                                                       |       |                                             | 10. MEALS: Daily meal per diem rate: <u>\$49.00</u><br><br><table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>Rate</th> <th># Meals</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>Breakfast: (25%)</td> <td>12.25</td> <td>1</td> <td>12.25</td> </tr> <tr> <td>Lunch: (25%)</td> <td>12.25</td> <td>1</td> <td>12.25</td> </tr> <tr> <td>Dinner: (50%)</td> <td>24.50</td> <td>1</td> <td>24.50</td> </tr> <tr> <td>TOTAL:</td> <td></td> <td></td> <td><u>61.25</u><br/><del>\$49.00</del></td> </tr> </tbody> </table> |                        |  |  | Rate | # Meals | Total | Breakfast: (25%) | 12.25 | 1 | 12.25 | Lunch: (25%) | 12.25 | 1 | 12.25 | Dinner: (50%) | 24.50 | 1 | 24.50 | TOTAL: |  |  | <u>61.25</u><br><del>\$49.00</del> |
|                                                                                                                                                                                                                                                                                                    | Rate  | # Meals                                     | Total                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                                    |
| Breakfast: (25%)                                                                                                                                                                                                                                                                                   | 12.25 | 1                                           | 12.25                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                                    |
| Lunch: (25%)                                                                                                                                                                                                                                                                                       | 12.25 | 1                                           | 12.25                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                                    |
| Dinner: (50%)                                                                                                                                                                                                                                                                                      | 24.50 | 1                                           | 24.50                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                        |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                                    |
| TOTAL:                                                                                                                                                                                                                                                                                             |       |                                             | <u>61.25</u><br><del>\$49.00</del>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                        |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                                    |
| 11. CAR RENTAL: (See OAM 40.10.00.P0, section .115. The state has a price agreement with Enterprise Rent-A-Car. Optional insurance will not be reimbursed).<br>Days @ \$28 plus tax, gas TOTAL: _____                                                                                              |       |                                             | 12. MISCELLANEOUS COSTS: (Identify specific expenses - taxis, shuttles, phone, vehicle mileage, etc.)<br><br>a. Private vehicle mileage _____ 0.00<br>b. Shuttle (# of miles) _____<br>c. Other (specify below) _____<br><br>TOTAL: <u>\$0.00</u>                                                                                                                                                                                                                                                                                                                         |                        |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                                    |
| 13. TRAINING RELATED? (if yes, attach agenda)<br><br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                                                                                                                                                                           |       |                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                        |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                                    |
| 14. STATUS:<br><input checked="" type="checkbox"/> Executive/Mgmt Svc:<br><input type="checkbox"/> AFSCME:<br><input type="checkbox"/> Other: Explain: _____                                                                                                                                       |       |                                             | 16. ESTIMATED COST OF TRIP:<br><br>Transportation: <u>\$0.00</u> 46.80<br>Lodging: <u>\$122.60</u><br>Meals: <u>\$49.00</u> 61.25<br>Car Rental: <u>\$0.00</u><br>Misc: <u>\$0.00</u><br><br>TOTAL: <u>230.65</u><br><del>\$171.60</del> 200                                                                                                                                                                                                                                                                                                                              |                        |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                                    |
| 15. TRAVEL AWARDS: Agencies are mandated to maintain records on employee accumulation of travel awards as reported on their travel expense detail sheets. Travel awards include, but may not be limited to airline frequent flyer miles and hotel or car rental frequent customer awards or miles. |       |                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                        |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                                    |
| 17. I certify that this trip is necessary and essential to the normal discharge of DEQ responsibilities; that required monies are budgeted and allotted for expenditure; that the trip meets all the requirements mandated by ORS 292.230, OAM Policy 40.10.00, and DEQ policy. Initial: _____     |       |                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                        |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                                    |
| 18. EMPLOYEE SIGNATURE: _____                                                                                                                                                                                                                                                                      |       |                                             | DATE: 8-17-08                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                        |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                                    |
| 19. SUPERVISOR SIGNATURE: _____                                                                                                                                                                                                                                                                    |       |                                             | DATE: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                        |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                                    |
| 20. DA/EMT SIGNATURE: _____                                                                                                                                                                                                                                                                        |       |                                             | DATE: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                        |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                                    |
| 21. MSD DA SIGNATURE: _____                                                                                                                                                                                                                                                                        |       |                                             | DATE: 8/14/08 Item G 000038                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                        |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                                    |

10R0127253  
STATE OF OREGON  
TRAVEL EXPENSE DETAIL SHEET



302/VPT 27729

|                                                                                                                                                                                                                          |  |                                                                                                              |  |                                                                                                             |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------|--|
| 1. Name of Employee<br>Dick Pedersen                                                                                                                                                                                     |  | 2. Agency<br>DEQ                                                                                             |  | 3. Period (Month and Year)<br>September-08                                                                  |  |
| 4. Official Station                                                                                                                                                                                                      |  | 5. Division/ Work Unit                                                                                       |  | 6. Regular Schedule Work Shift<br>8:00 am - 5:00 pm <input type="checkbox"/> Other <input type="checkbox"/> |  |
| 7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/> |  | Bargaining Unit Name <input type="checkbox"/> AFSCME <input type="checkbox"/> Other <input type="checkbox"/> |  |                                                                                                             |  |

| 8. Date  | 9. Time of Departure | 10. Time of Arrival | 11. Destination | 12. Per Diem/ Hourly Allowance | 12. Individual Meal Reimbursement |       |        | 13. Lodging | 14. Total Meals and Lodging |
|----------|----------------------|---------------------|-----------------|--------------------------------|-----------------------------------|-------|--------|-------------|-----------------------------|
|          |                      |                     |                 |                                | Breakfast                         | Lunch | Dinner |             |                             |
| 09/15/08 | 4pm                  |                     | Bend, OR        | 32.00                          |                                   |       | 22.00  | 81.00       | 103.00                      |
| 09/16/08 |                      | 7:30pm              | Portland, OR    | 33.00                          | 11.00                             | prov  | 22.00  |             | 33.00                       |
|          |                      |                     |                 | 15. Totals                     | 55.00                             | 11.00 | 44.00  | 81.00       | \$136.00                    |

| 16. Accounting Codes |       | 17. Date | 18. Miscellaneous Expenses<br>Fares, Private Mileage, Room Tax, Telephone, Other Expenses | 19. Training Related? | 20. Rate Per Mile | 21. Private Car Miles | 22. Amount                |
|----------------------|-------|----------|-------------------------------------------------------------------------------------------|-----------------------|-------------------|-----------------------|---------------------------|
| 14010                | 41004 |          | Personal Vehicle Mileage                                                                  |                       | 0.585             |                       |                           |
|                      |       |          | Room tax                                                                                  |                       |                   |                       | 12.96                     |
|                      | 4101  | 55.00    |                                                                                           |                       |                   |                       |                           |
|                      | 4106  | 93.96    |                                                                                           |                       |                   |                       |                           |
| Totals               |       | 148.96   |                                                                                           |                       |                   |                       | 23. Section Total \$12.96 |

24. I did/will  did not/will not  accept travel awards as a result of, or associated with this state business trip. Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.)  
Dick was attending the Oregon Global Warming Commission meeting, which is held monthly around the state of Oregon. House Bill 3543 created the Oregon Global Warming Commission. The Governor's appointments represent a diverse range of experts in the social, environmental, cultural and economic interests of the state. Dick reps DEQ.

|                               |               |                    |
|-------------------------------|---------------|--------------------|
| 26. Grand Total Amount        |               | \$148.96           |
| 27. Travel Advance Amount     |               |                    |
| 28. Amount Due Employee/State |               | \$148.96 ncr       |
| 29. Received Training         |               | Conducted Training |
| 30. Signature of Employee     | 31. Title     | Date               |
| <i>[Signature]</i>            | Director      | 9/26/08            |
| 32. Approved By               | 33. Title     | Date               |
| <i>[Signature]</i>            | Dep. Director | 9-29-08            |

I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.

I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditure.



10R0127253  
**STATE OF OREGON**  
**TRAVEL EXPENSE DETAIL SHEET**



302/VPT 27729

|                                                                                                                                                                                                                          |  |                                                                                                              |  |                                                                                                                |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------------|--|
| 1. Name of Employee<br>Dick Pedersen                                                                                                                                                                                     |  | 2. Agency<br>DEQ                                                                                             |  | 3. Period (Month and Year)<br>September-08                                                                     |  |
| 4. Official Station                                                                                                                                                                                                      |  | 5. Division/ Work Unit                                                                                       |  | 6. Regular Schedule Work Shift<br>8:00 am - 5:00 pm <input type="checkbox"/> Other <input type="checkbox"/> to |  |
| 7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/> |  | Bargaining Unit Name <input type="checkbox"/> AFSCME <input type="checkbox"/> Other <input type="checkbox"/> |  |                                                                                                                |  |

| 8. Date  | 9. Time of Departure | 10. Time of Arrival | 11. Destination | 12. Per Diem/ Hourly Allowance | 13. Individual Meal Reimbursement |       |        | 13. Lodging | 14. Total Meals and Lodging |
|----------|----------------------|---------------------|-----------------|--------------------------------|-----------------------------------|-------|--------|-------------|-----------------------------|
|          |                      |                     |                 |                                | Breakfast                         | Lunch | Dinner |             |                             |
| 09/20/08 | 9am                  |                     | Branson, MO     | 29.25                          |                                   | 9.75  | 19.50  | 149.00      | 178.25                      |
| 09/21/08 |                      |                     |                 | 19.50                          | prov                              | prov  | 19.50  | 149.00      | 168.50                      |
| 09/22/08 |                      |                     |                 | 0                              | prov                              | prov  | prov   | 149.00      | 149.00                      |
| 09/23/08 |                      | 10pm                | Portland, OR    | 19.50                          | prov                              | prov  | 24.50  |             | 24.50                       |
|          |                      |                     |                 |                                |                                   |       | 19.50  |             | 19.50                       |
|          |                      |                     |                 | 15. Totals                     | 68.25                             | 9.75  | 63.50  | 447.00      | 515.25                      |

| 16. Accounting Codes | 17. Date | 18. Miscellaneous Expenses<br>Fares, Private Mileage, Room Tax, Telephone, Other Expenses | 19. Training Related? | 20. Rate Per Mile | 21. Private Car Miles | 22. Amount |
|----------------------|----------|-------------------------------------------------------------------------------------------|-----------------------|-------------------|-----------------------|------------|
| 14010 41004          |          | Personal Vehicle Mileage                                                                  |                       | 0.585             |                       |            |
|                      |          | airport parking, portland                                                                 |                       |                   |                       | 27.50      |
| 4132                 | 68.25    | car rental 3 days                                                                         |                       |                   |                       | 133.39     |
| 4134                 | 498.84   | room/tourism tax                                                                          |                       |                   |                       | 51.84      |
| 4141                 | 160.89   |                                                                                           |                       |                   |                       |            |
| Totals               |          |                                                                                           |                       |                   |                       | 727.98     |
| 23. Section Total    |          |                                                                                           |                       |                   |                       | \$212.73   |

24. I did/will  did not/will not  accept travel awards as a result of, or associated with this state business trip. Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.) *See email.*

Dick represented DEQ at 2008 Annual ECOS Meeting. The purpose of ECOS is to improve the capability of state environmental agencies and their leaders to protect and improve human health and the environment of the United States of America.

|                               |                    |
|-------------------------------|--------------------|
| 26. Grand Total Amount        | 727.98<br>\$732.98 |
| 27. Travel Advance Amount     |                    |
| 28. Amount Due Employee/State | 727.98<br>\$732.98 |
| 29. Received Training         | Conducted Training |

I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.

30. Signature of Employee  
*[Signature]*

31. Title *Director* Date *9/26/08*

I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditure.

32. Approved By  
*[Signature]*

33. Title *Deputy* Date *9-29-08*

Itinerary Detail - Combined

**Azumano  
Travel**  
Est. 1949

*Back Office Data*

**STATE OF OREGON**

Trip Departures from 09/20/2008 to 09/23/2008

Report Parameters: Last Name = PEDERSEN

| PEDERSEN/RICHARD J         |                      |                 |             |                        |                        |          |                                 |
|----------------------------|----------------------|-----------------|-------------|------------------------|------------------------|----------|---------------------------------|
| Actual:                    | \$798.00             | Savings:        | \$991.99    | Val Carrier:           | AMERICAN AIRLINES (AA) | Account: | OR State Dept. of Environmental |
| Lowest:                    | \$798.00             | Lost Amt:       | \$0.00      | Ticket #:              | 7519690255             | Auth 1:  | 34000                           |
| Service Fees:              | \$30.00              |                 |             | Rec Locator:           | R4FLRY                 | Auth 2:  | GWEN                            |
| Exception:                 | GOVERNMENT FARE USED |                 |             | Invoice #:             | 875355015              | Auth 3:  | 5032295990                      |
|                            |                      |                 |             | Inv Date:              | 9/3/2008               |          |                                 |
| Itinerary                  |                      |                 |             | Airline                |                        | Flt #    | Class                           |
| PORTLAND,OR                | DALLAS-FT WORTH,TX   | 9/20/2008       | 09:05-14:45 | AMERICAN AIRLINES (AA) |                        | 1800     | G                               |
| DALLAS-FT WORTH,TX         | SPRINGFIELD,MO       | 9/20/2008       | 15:55-17:10 | AMERICAN AIRLINES (AA) |                        | 3769     | G                               |
| SPRINGFIELD,MO             | DALLAS-FT WORTH,TX   | 9/23/2008       | 17:40-19:00 | AMERICAN AIRLINES (AA) |                        | 3770     | G                               |
| DALLAS-FT WORTH,TX         | PORTLAND,OR          | 9/23/2008       | 20:00-21:55 | AMERICAN AIRLINES (AA) |                        | 1619     | G                               |
| <b>Total Cost of Trip:</b> |                      | <b>\$828.00</b> |             |                        |                        |          |                                 |

| PEDERSEN/RICHARD J         |                 |                 |        |                   |           |              |                                 |
|----------------------------|-----------------|-----------------|--------|-------------------|-----------|--------------|---------------------------------|
| Actual:                    | \$0.00          | Savings:        | \$0.00 | Val Carrier:      | (ZZ)      | Account:     | OR State Dept. of Environmental |
| Lowest:                    | \$0.00          | Lost Amt:       | \$0.00 | Ticket #:         |           | Auth 1:      | 34000                           |
| Service Fees:              | \$30.00         |                 |        | Rec Locator:      | R4FLRY    | Auth 2:      | GWEN                            |
| Exception:                 |                 |                 |        | Invoice #:        | 716061    | Auth 3:      | 5032295990                      |
|                            |                 |                 |        | Inv Date:         | 9/11/2008 |              |                                 |
| Car Rentals                |                 | Rental Date     | Days   | Daily Rate & Type | Car Type  | Mileage Cost | Confirmation #                  |
| ENTERPRISE                 | SPRINGFIELD, MO | 9/20/2008       | 3      | \$31.00 DAY       | ICAR      |              | GQM4V4                          |
| <b>Total Cost of Trip:</b> |                 | <b>\$123.00</b> |        |                   |           |              |                                 |

| Report Totals             |                 |                       |         |                        |        |
|---------------------------|-----------------|-----------------------|---------|------------------------|--------|
| Air Totals                |                 | Car Rental Totals     |         | Hotel Booking Totals   |        |
| # of Air Trips:           | 1               | # of Rentals:         | 1       | # of Stays:            | 0      |
| Air Charges:              | \$798.00        | # of Days Rented:     | 3       | # of Room Nights:      | 0      |
| Avg Cost per Trip:        | \$798.00        | Car Rental Charges:   | \$93.00 | Hotel Booking Charges: | \$0.00 |
| Total Svc Fees:           | \$60.00         | Avg # of Days Rented: | 3.00    | Avg # of Nights:       | 0.00   |
|                           |                 | Avg Booked Rate:      | 31.00   | Avg Booked Rate:       | \$0.00 |
| <b>Total All Charges:</b> | <b>\$951.00</b> | Avg Cost per Day:     | \$31.00 | Avg Cost/RoomNight:    | \$0.00 |

*Airfare: \$828.00*

Item G, Action Item: Director's Transactions  
 February 26, 2009 EQC Meeting OREGON DEPT OF ENVIRONMENTAL QUALITY  
 OUT-OF-STATE TRAVEL AUTHORIZATION

| 1. NAME OF EMPLOYEE:<br>Dick Pedersen                                                                                                                                                                                                                                                                |       | 2. AGENCY/OFFICIAL STATION:<br>DEQ |                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 3. REQUEST #:<br>92-09                                                                        |  |  |      |         |       |                  |      |   |       |              |      |   |       |               |       |   |       |        |  |  |          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|--|--|------|---------|-------|------------------|------|---|-------|--------------|------|---|-------|---------------|-------|---|-------|--------|--|--|----------|
| 4. AGENCY ACCOUNTING INFORMATION:<br>14010 41004                                                                                                                                                                                                                                                     |       |                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 5. TRAVEL JUSTIFICATION ATTACHED?<br><input type="checkbox"/> Yes <input type="checkbox"/> No |  |  |      |         |       |                  |      |   |       |              |      |   |       |               |       |   |       |        |  |  |          |
| 6. PURPOSE OF TRIP: (Be specific, include dates/times of meeting or conference)<br>Dick Pedersen will represent the Oregon-DEQ at the 2008 annual meeting of the Environmental Council of the States, Sept 21-23, 2008 in Branson, MO.                                                               |       |                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                               |  |  |      |         |       |                  |      |   |       |              |      |   |       |               |       |   |       |        |  |  |          |
| 7. ITINERARY:<br><i>Jarvis Counties</i><br>Destination city/state: Branson, MO<br>Departure date/time: Sat. 9/20/2008, 2:45pm<br>Return date/time: Tues. 9/23/08, 9:55pm                                                                                                                             |       |                                    | 8. TRANSPORTATION: (Airfare, train fare or state motor pool vehicle (circle one). For rental cars, see #11, for misc. ground transportation, see #12)<br><br>TOTAL: <del>828.00</del><br><u>798.00</u>                                                                                                                                                                                                                                                                     |                                                                                               |  |  |      |         |       |                  |      |   |       |              |      |   |       |               |       |   |       |        |  |  |          |
| 9. LODGING: Lodging per diem rate: \$70.00<br><i>over per diem</i><br>Amount per night: <del>70.00</del> 149.00<br><i>room rate</i><br>Room tax per night: <del>10.00</del> 22.35<br><i>approved</i><br># of nights: <del>3</del> 3<br><i>see email</i><br>TOTAL: <del>514.05</del><br><u>240.00</u> |       |                                    | 10. MEALS: Daily meal per diem rate: \$39.00<br><table border="1"> <thead> <tr> <th></th> <th>Rate</th> <th># Meals</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>Breakfast: (25%)</td> <td>9.75</td> <td>3</td> <td>29.25</td> </tr> <tr> <td>Lunch: (25%)</td> <td>9.75</td> <td>3</td> <td>29.25</td> </tr> <tr> <td>Dinner: (50%)</td> <td>19.50</td> <td>4</td> <td>78.00</td> </tr> <tr> <td colspan="3">TOTAL:</td> <td>\$136.50</td> </tr> </tbody> </table> |                                                                                               |  |  | Rate | # Meals | Total | Breakfast: (25%) | 9.75 | 3 | 29.25 | Lunch: (25%) | 9.75 | 3 | 29.25 | Dinner: (50%) | 19.50 | 4 | 78.00 | TOTAL: |  |  | \$136.50 |
|                                                                                                                                                                                                                                                                                                      | Rate  | # Meals                            | Total                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                               |  |  |      |         |       |                  |      |   |       |              |      |   |       |               |       |   |       |        |  |  |          |
| Breakfast: (25%)                                                                                                                                                                                                                                                                                     | 9.75  | 3                                  | 29.25                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                               |  |  |      |         |       |                  |      |   |       |              |      |   |       |               |       |   |       |        |  |  |          |
| Lunch: (25%)                                                                                                                                                                                                                                                                                         | 9.75  | 3                                  | 29.25                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                               |  |  |      |         |       |                  |      |   |       |              |      |   |       |               |       |   |       |        |  |  |          |
| Dinner: (50%)                                                                                                                                                                                                                                                                                        | 19.50 | 4                                  | 78.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                               |  |  |      |         |       |                  |      |   |       |              |      |   |       |               |       |   |       |        |  |  |          |
| TOTAL:                                                                                                                                                                                                                                                                                               |       |                                    | \$136.50                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                               |  |  |      |         |       |                  |      |   |       |              |      |   |       |               |       |   |       |        |  |  |          |
| 11. CAR RENTAL: (See OAM 40.10.00, PO, section .115. The state has a price agreement with Enterprise Rent-A-Car. Optional insurance will not be reimbursed).<br>3 Days @ \$28 plus tax, gas TOTAL: \$84.00<br><i>plus \$50 gas</i> \$ 134.00                                                         |       |                                    | 12. MISCELLANEOUS COSTS: (Identify specific expenses - taxis, shuttles, phone, vehicle mileage, etc.)<br>a. Private vehicle mileage 0.00<br>b. Shuttle (# of miles)<br>c. Other (specify below)<br><br>TOTAL: \$0.00                                                                                                                                                                                                                                                       |                                                                                               |  |  |      |         |       |                  |      |   |       |              |      |   |       |               |       |   |       |        |  |  |          |
| 13. TRAINING RELATED? (if yes, attach agenda)<br><input type="checkbox"/> Yes <input type="checkbox"/> No                                                                                                                                                                                            |       |                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                               |  |  |      |         |       |                  |      |   |       |              |      |   |       |               |       |   |       |        |  |  |          |
| 14. STATUS:<br><input checked="" type="checkbox"/> Executive/Mgmt Svc:<br><input type="checkbox"/> AFSCME:<br><input type="checkbox"/> Other: Explain:                                                                                                                                               |       |                                    | 16. ESTIMATED COST OF TRIP:<br><br>Transportation: <del>798.00</del> 828.00<br>Lodging: <del>240.00</del> 514.05<br>Meals: 136.50<br>Car Rental: 84.00 134.00<br>Misc: 50.00<br>TOTAL: <del>1,612.55</del> <i>928</i><br><del>1,258.50</del>                                                                                                                                                                                                                               |                                                                                               |  |  |      |         |       |                  |      |   |       |              |      |   |       |               |       |   |       |        |  |  |          |
| 15. TRAVEL AWARDS: Agencies are mandated to maintain records on employee accumulation of travel awards as reported on their travel expense detail sheets. Travel awards include, but may not be limited to airline frequent flyer miles and hotel or car rental frequent customer awards or miles.   |       |                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                               |  |  |      |         |       |                  |      |   |       |              |      |   |       |               |       |   |       |        |  |  |          |
| 17. I certify that this trip is necessary and essential to the normal discharge of DEQ responsibilities; that required monies are budgeted and allotted for expenditure; that the trip meets all the requirements mandated by ORS 292.230, OAM Policy 40.10.00, and DEQ policy.                      |       |                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                               |  |  |      |         |       |                  |      |   |       |              |      |   |       |               |       |   |       |        |  |  |          |
| 18. EMPLOYEE SIGNATURE: <i>Dick Pedersen</i>                                                                                                                                                                                                                                                         |       |                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | DATE: 9-3-08                                                                                  |  |  |      |         |       |                  |      |   |       |              |      |   |       |               |       |   |       |        |  |  |          |
| 19. SUPERVISOR SIGNATURE:                                                                                                                                                                                                                                                                            |       |                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | DATE:                                                                                         |  |  |      |         |       |                  |      |   |       |              |      |   |       |               |       |   |       |        |  |  |          |
| 20. DA/EMT SIGNATURE: <i>[Signature]</i>                                                                                                                                                                                                                                                             |       |                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | DATE: 9-4-08                                                                                  |  |  |      |         |       |                  |      |   |       |              |      |   |       |               |       |   |       |        |  |  |          |
| 21. MSD DA SIGNATURE: <i>[Signature]</i>                                                                                                                                                                                                                                                             |       |                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | DATE: 9/8/08                                                                                  |  |  |      |         |       |                  |      |   |       |              |      |   |       |               |       |   |       |        |  |  |          |

1,335.98

000042  
Ileber 8/2008

10R0127253



STATE OF OREGON  
TRAVEL EXPENSE DETAIL SHEET

335/VPT27894

|                                                                                                                                                                                                                          |  |                                                                                                              |  |                                                                                                             |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------|--|
| 1. Name of Employee<br>Dick Pedersen                                                                                                                                                                                     |  | 2. Agency<br>DEQ                                                                                             |  | 3. Period (Month and Year)<br>October-08                                                                    |  |
| 4. Official Station<br>HO                                                                                                                                                                                                |  | 5. Division/ Work Unit                                                                                       |  | 6. Regular Schedule Work Shift<br>8:00 am - 5:00 pm <input type="checkbox"/> Other <input type="checkbox"/> |  |
| 7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/> |  | Bargaining Unit Name <input type="checkbox"/> AFSCME <input type="checkbox"/> Other <input type="checkbox"/> |  |                                                                                                             |  |

| 8. Date    | 9. Time of Departure | 10. Time of Arrival | 11. Destination | 12. Per Diem/ Hourly Allowance | 12. Individual Meal Reimbursement |       |        | 13. Lodging | 14. Total Meals and Lodging |
|------------|----------------------|---------------------|-----------------|--------------------------------|-----------------------------------|-------|--------|-------------|-----------------------------|
|            |                      |                     |                 |                                | Breakfast                         | Lunch | Dinner |             |                             |
| 10/06/08   | 8:30am               | 7pm                 | Hines, OR       | 29.25                          | X                                 | 9.75  | 19.50  | 70.00       | 99.25                       |
| 10/07/08   | 8:00                 | 7pm                 | John Day, OR    | 29.25                          | 9.75                              | 9.75  | 19.50  | 70.00       | 109.00                      |
| 10/08/08   | 1pm                  | 6:30pm              | PDX             | 29.25                          | 9.75                              | 9.75  | 19.50  |             | 39.00                       |
| 15. Totals |                      |                     |                 | 107.25                         | 19.50                             | 29.25 | 58.50  | 140.00      | \$247.25                    |

| 16. Accounting Codes |       | 17. Date | 18. Miscellaneous Expenses<br>Fares, Private Mileage, Room Tax, Telephone, Other Expenses | 19. Training Related? | 20. Rate Per Mile | 21. Private Car Miles | 22. Amount                |
|----------------------|-------|----------|-------------------------------------------------------------------------------------------|-----------------------|-------------------|-----------------------|---------------------------|
| 14010                | 41004 |          | Personal Vehicle Mileage                                                                  |                       | 0.585             |                       |                           |
|                      |       |          | Hotel Room Tax                                                                            |                       |                   |                       | 12.60                     |
|                      | 4101  | 10/7/08  |                                                                                           |                       |                   |                       |                           |
|                      | 4106  | 10/2/08  |                                                                                           |                       |                   |                       |                           |
| Totals               |       | 259.85   |                                                                                           |                       |                   |                       | 23. Section Total \$12.60 |

24. I did/will  did not/will not  accept travel awards as a result of, or associated with this state business trip. Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.)  
Governor's Economic Revitalization Team October Tour. Dick is an ERT Director. Agenda attached.

|                               |                    |
|-------------------------------|--------------------|
| 26. Grand Total Amount        | \$259.85           |
| 27. Travel Advance Amount     |                    |
| 28. Amount Due Employee/State | \$259.85           |
| 29. Received Training         | Conducted Training |

I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.

30. Signature of Employee  
*[Signature]*

31. Title: Director Date: 10/22/08

I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditures.

32. Approved By: *[Signature]*

33. Title: Interim MSD Adm Date: 10/22/08

10R0127253  
STATE OF OREGON



TRAVEL EXPENSE DETAIL SHEET

335/VPT27894

|                                                                                                                                                                                                                          |  |                                                                                                              |  |                                                                                                                   |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------------|--|
| 1. Name of Employee<br>Dick Pedersen                                                                                                                                                                                     |  | 2. Agency<br>DEQ                                                                                             |  | 3. Period (Month and Year)<br>October-08                                                                          |  |
| 4. Official Station<br>HQ                                                                                                                                                                                                |  | 5. Division/ Work Unit                                                                                       |  | 6. Regular Schedule Work Shift<br>8:00 am - 5:00<br><input type="checkbox"/> pm <input type="checkbox"/> Other to |  |
| 7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/> |  | Bargaining Unit Name <input type="checkbox"/> AFSCME <input type="checkbox"/> Other <input type="checkbox"/> |  |                                                                                                                   |  |

| 8. Date    | 9. Time of Departure | 10. Time of Arrival | 11. Destination | 12. Per Diem/ Hourly Allowance | 13. Individual Meal Reimbursement |       |        | 13. Lodging | 14. Total Meals and Lodging |
|------------|----------------------|---------------------|-----------------|--------------------------------|-----------------------------------|-------|--------|-------------|-----------------------------|
|            |                      |                     |                 |                                | Breakfast                         | Lunch | Dinner |             |                             |
| 10/12/08   | 2pm                  |                     | Sunriver, OR    | 0                              |                                   |       | prov   | 124.00      | 124.00                      |
| 10/13/08   |                      |                     |                 | 0                              | prov                              | prov  | prov   | 124.00      | 124.00                      |
| 10/14/08   |                      | 5:30pm              | Portland, OR    | 22.00                          | prov                              | 42.25 | 42.25  |             | 24.50                       |
|            |                      |                     |                 |                                |                                   | 11.00 | 11.00  |             |                             |
| 15. Totals |                      |                     |                 | 22.00                          |                                   | 42.25 | 42.25  | 248.00      | 270.00                      |
|            |                      |                     |                 |                                |                                   |       |        |             | \$272.50                    |

| 16. Accounting Codes |       | 17. Date | 18. Miscellaneous Expenses<br>Fares, Private Mileage, Room Tax, Telephone, Other Expenses | 19. Training Related? | 20. Rate Per Mile | 21. Private Car Miles | 22. Amount    |
|----------------------|-------|----------|-------------------------------------------------------------------------------------------|-----------------------|-------------------|-----------------------|---------------|
| 14010                | 41004 |          | Personal Vehicle Mileage                                                                  |                       | 0.585             |                       |               |
|                      |       |          | Hotel Room Tax                                                                            |                       |                   |                       | 42.16 → 42.80 |
| 4101                 |       | 22.00    |                                                                                           |                       |                   |                       |               |
| 4101                 |       | 290.16   |                                                                                           |                       |                   |                       |               |
| Totals               |       | 312.16   |                                                                                           |                       |                   |                       | 42.16         |
|                      |       |          |                                                                                           |                       |                   | 23. Section Total     | \$42.00       |

24. I did/will  did not/will not  accept travel awards as a result of, or associated with this state business trip. Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.)  
PNW Director's Meeting in Seattle at EPA offices. See agenda attached. Dick went the day before so that he could attend the Director's dinner.

|                               |                    |
|-------------------------------|--------------------|
| 26. Grand Total Amount        | 312.16<br>\$314.50 |
| 27. Travel Advance Amount     |                    |
| 28. Amount Due Employee/State | 312.16<br>\$314.50 |
| 29. Received Training         | Conducted Training |

OFIC Annual meeting - Dick was a featured speaker

I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.

30. Signature of Employee  
*Dick Pedersen*

31. Title: Director Date: 10/22/08

I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditure.

32. Approved By: *[Signature]*

33. Title: Director Date: 10/22/08

10R0127253  
**STATE OF OREGON**  
**TRAVEL EXPENSE DETAIL SHEET**



335/VPT-27894

|                                                                                                                                                                                                                          |  |                                                                                                              |  |                                                                                                                |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------------|--|
| 1. Name of Employee<br>Dick Pedersen                                                                                                                                                                                     |  | 2. Agency<br>DEQ                                                                                             |  | 3. Period (Month and Year)<br>October-08                                                                       |  |
| 4. Official Station<br>HQ                                                                                                                                                                                                |  | 5. Division/ Work Unit                                                                                       |  | 6. Regular Schedule Work Shift<br>8:00 am - 5:00 pm <input type="checkbox"/> Other <input type="checkbox"/> to |  |
| 7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/> |  | Bargaining Unit Name <input type="checkbox"/> AFSCME <input type="checkbox"/> Other <input type="checkbox"/> |  |                                                                                                                |  |

| 8. Date  | 9. Time of Departure | 10. Time of Arrival | 11. Destination | 12. Per Diem/ Hourly Allowance | 13. Individual Meal Reimbursement |       |        | 13. Lodging | 14. Total Meals and Lodging |        |
|----------|----------------------|---------------------|-----------------|--------------------------------|-----------------------------------|-------|--------|-------------|-----------------------------|--------|
|          |                      |                     |                 |                                | Breakfast                         | Lunch | Dinner |             |                             |        |
| 10/19/08 | 10:00am              |                     | Seattle, WA     | 18.00                          |                                   | 16.00 | 32.00  | 152.00      | 200.00                      |        |
| 10/20/08 |                      | 10pm                | Portland, OR    | 12.00                          | 12.25                             | 12.25 | 24.50  |             | 49.00                       |        |
|          |                      |                     |                 |                                | 16.00                             | 16.00 | 32.00  |             | 64.00                       |        |
|          |                      |                     |                 | <b>15. Totals</b>              | 112.00                            | 12.25 | 28.25  | 56.50       | 152.00                      | 264.00 |

| 18. Accounting Codes | 17. Date | 18. Miscellaneous Expenses<br>Fares, Private Mileage, Room Tax, Telephone, Other Expenses | 19. Training Related? | 20. Rate Per Mile | 21. Private Car Miles | 22. Amount   |
|----------------------|----------|-------------------------------------------------------------------------------------------|-----------------------|-------------------|-----------------------|--------------|
| 14010 41004          |          | Personal Vehicle Mileage                                                                  |                       | 0.585             |                       |              |
|                      |          | Hotel Room Tax                                                                            |                       |                   |                       | 23.71        |
| 4151                 | 112.00   | Round-trip train ticket to Seattle                                                        |                       |                   |                       | 66.00        |
| 4150                 | 175.71   |                                                                                           |                       |                   |                       |              |
| 4160                 | 66.00    |                                                                                           |                       |                   |                       |              |
| <b>Totals</b>        |          |                                                                                           |                       |                   |                       | <b>89.71</b> |

24. I did/will  did not/will not  accept travel awards as a result of, or associated with this state business trip. Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.)  
PNW Director's Meeting in Seattle at EPA offices. See agenda attached. Dick went the day before so that he could attend the Director's dinner.

|                               |                    |
|-------------------------------|--------------------|
| 26. Grand Total Amount        | \$338.71           |
| 27. Travel Advance Amount     | 353.71             |
| 28. Amount Due Employee/State | 353.71 \$338.71 km |
| 29. Received Training         | Conducted Training |

I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.

|                           |           |          |
|---------------------------|-----------|----------|
| 30. Signature of Employee | 31. Title | Date     |
| <i>[Signature]</i>        | Director  | 10/22/08 |

I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditure.

|                    |                 |          |
|--------------------|-----------------|----------|
| 32. Approved By    | 33. Title       | Date     |
| <i>[Signature]</i> | Inter MSD Admin | 10/22/08 |

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY  
OUT-OF-STATE TRAVEL AUTHORIZATION

| 1. NAME OF EMPLOYEE:<br>Dick Pedersen                                                                                                                                                                                                                                                                 |       | 2. AGENCY/OFFICIAL STATION:<br>DEQ - HQ                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                          | 3. REQUEST #:<br>137-09 |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|-------------------------|--|--|------|---------|-------|------------------|-------|---|-------|--------------|-------|---|-------|---------------|-------|---|-------|--------|--|--|-----------------|
| 4. AGENCY ACCOUNTING INFORMATION:<br>14010 41004                                                                                                                                                                                                                                                      |       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 5. TRAVEL JUSTIFICATION ATTACHED?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| 6. PURPOSE OF TRIP: (Be specific, include dates/times of meeting or conference)<br>Dick will be attending the Pacific Northwest Fall Director's Meeting at the EPA offices in Seattle, WA. The meeting takes place from 8:30-4:30, Mon. Oct 20. There is a dinner for Director's on Sun night Oct 19. |       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                          |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| 7. ITINERARY:                                                                                                                                                                                                                                                                                         |       | 8. TRANSPORTATION: (Airfare, train fare or state motor pool vehicle (circle one). For rental cars, see #11, for misc. ground transportation, see #12)                                                                                                                                                                                                                                                                                                                              |                                                                                                          |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| Destination city/state: <u>Seattle, WA</u>                                                                                                                                                                                                                                                            |       | <u>Amtrak</u> TOTAL: <u>\$60.00</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                          |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| Departure date/time: <u>Sun. Oct 19, 11:00am</u>                                                                                                                                                                                                                                                      |       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                          |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| Return date/time: <u>MON, Oct 20, 9pm</u>                                                                                                                                                                                                                                                             |       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                          |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| 9. LODGING: Lodging per diem rate: <u>\$158.00</u>                                                                                                                                                                                                                                                    |       | 10. MEALS: Daily meal per diem rate: <u>\$64.00</u>                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                          |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| Amount per night: <u>158.00</u>                                                                                                                                                                                                                                                                       |       | <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>Rate</th> <th># Meals</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>Breakfast: (25%)</td> <td>16.00</td> <td>1</td> <td>16.00</td> </tr> <tr> <td>Lunch: (25%)</td> <td>16.00</td> <td>2</td> <td>32.00</td> </tr> <tr> <td>Dinner: (50%)</td> <td>32.00</td> <td>2</td> <td>64.00</td> </tr> <tr> <td colspan="3">TOTAL:</td> <td><u>\$112.00</u></td> </tr> </tbody> </table> |                                                                                                          |                         |  |  | Rate | # Meals | Total | Breakfast: (25%) | 16.00 | 1 | 16.00 | Lunch: (25%) | 16.00 | 2 | 32.00 | Dinner: (50%) | 32.00 | 2 | 64.00 | TOTAL: |  |  | <u>\$112.00</u> |
|                                                                                                                                                                                                                                                                                                       | Rate  | # Meals                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Total                                                                                                    |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| Breakfast: (25%)                                                                                                                                                                                                                                                                                      | 16.00 | 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 16.00                                                                                                    |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| Lunch: (25%)                                                                                                                                                                                                                                                                                          | 16.00 | 2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 32.00                                                                                                    |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| Dinner: (50%)                                                                                                                                                                                                                                                                                         | 32.00 | 2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 64.00                                                                                                    |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| TOTAL:                                                                                                                                                                                                                                                                                                |       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <u>\$112.00</u>                                                                                          |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| Room tax per night: <u>24.65</u>                                                                                                                                                                                                                                                                      |       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                          |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| # of nights: <u>1</u>                                                                                                                                                                                                                                                                                 |       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                          |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| TOTAL: <u>\$182.65</u>                                                                                                                                                                                                                                                                                |       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                          |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| 11. CAR RENTAL: (See OAM 40.10.00.P0, Section .115. The State has a price agreement with Enterprise Rent-A-Car. Optional insurance will not be reimbursed).<br>Days @ \$31 plus tax, gas TOTAL: <u>\$0.00</u>                                                                                         |       | 12. MISCELLANEOUS COSTS: (Identify specific expenses - taxis, shuttles, phone, vehicle mileage, etc.)                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                          |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
|                                                                                                                                                                                                                                                                                                       |       | a. Private vehicle mileage <u>0.00</u>                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                          |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
|                                                                                                                                                                                                                                                                                                       |       | b. Shuttle (# of miles) <u>0.00</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                          |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
|                                                                                                                                                                                                                                                                                                       |       | c. Other (specify below) <u>Taxi fare</u> <u>30.00</u>                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                          |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
|                                                                                                                                                                                                                                                                                                       |       | TOTAL: <u>30.00</u><br><u>-50.00</u>                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                          |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| 13. TRAINING RELATED? (if yes, attach agenda)<br><input type="checkbox"/> Yes <input type="checkbox"/> No                                                                                                                                                                                             |       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                          |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| 14. STATUS:<br><input checked="" type="checkbox"/> Executive/Mgmt Svc:<br><input type="checkbox"/> AFSCME:<br><input type="checkbox"/> Other: Explain: _____                                                                                                                                          |       | 16. ESTIMATED COST OF TRIP:<br>Transportation: <u>\$60.00</u><br>Lodging: <u>\$182.65</u><br>Meals: <u>\$112.00</u><br>Car Rental: <u>\$0.00</u><br>Misc: <u>-50.00</u> <u>30.00</u><br>TOTAL: <u>384.65</u><br><u>\$354.65</u> <u>KM</u>                                                                                                                                                                                                                                          |                                                                                                          |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| 15. TRAVEL AWARDS: Agencies are mandated to maintain records on employee accumulation of travel awards as reported on their travel expense detail sheets. Travel awards include, but may not be limited to airline frequent flyer miles and hotel or car rental frequent customer awards or miles.    |       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                          |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| 17. I certify that this trip is necessary and essential to the normal discharge of DEQ responsibilities; that required monies are budgeted and allotted for expenditure; that the trip meets all the requirements mandated by ORS 292.230, OAM Policy 40.10.00, and DEQ policy.                       |       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                          |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| 18. EMPLOYEE SIGNATURE                                                                                                                                                                                                                                                                                |       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | DATE: <u>10-2-08</u>                                                                                     |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| 19. SUPERVISOR SIGNATURE                                                                                                                                                                                                                                                                              |       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | DATE: <u>10-3-08</u>                                                                                     |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| 20. DA/EMT SIGNATURE _____                                                                                                                                                                                                                                                                            |       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | DATE: _____                                                                                              |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |
| 21. MSD DA SIGNATURE                                                                                                                                                                                                                                                                                  |       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | DATE: <u>10/2/08</u>                                                                                     |                         |  |  |      |         |       |                  |       |   |       |              |       |   |       |               |       |   |       |        |  |  |                 |

10R0127253  
STATE OF OREGON  
TRAVEL EXPENSE DETAIL SHEET



|                                                                                                                                                                                                                          |  |                                                                                                              |  |                                                                                                                              |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------|--|
| 1. Name of Employee<br>Dick Pedersen                                                                                                                                                                                     |  | 2. Agency<br>DEQ                                                                                             |  | 3. Period (Month and Year)<br>November-08                                                                                    |  |
| 4. Official Station<br>Portland / HQ                                                                                                                                                                                     |  | 5. Division/ Work Unit<br>OD                                                                                 |  | 6. Regular Schedule Work Shift<br>8:00 am - 5:00 pm <input checked="" type="checkbox"/> pm <input type="checkbox"/> Other to |  |
| 7. Unrepresented <input type="checkbox"/> Management Service <input type="checkbox"/> Executive Service <input checked="" type="checkbox"/> Board/Commission <input type="checkbox"/> Volunteer <input type="checkbox"/> |  | Bargaining Unit Name <input type="checkbox"/> AFSCME <input type="checkbox"/> Other <input type="checkbox"/> |  |                                                                                                                              |  |

| 8. Date  | 9. Time of Departure | 10. Time of Arrival | 11. Destination | 12. Per Diem/ Hourly Allowance | 13. Individual Meal Reimbursement |       |        | 14. Total Meals and Lodging |        |          |
|----------|----------------------|---------------------|-----------------|--------------------------------|-----------------------------------|-------|--------|-----------------------------|--------|----------|
|          |                      |                     |                 |                                | Breakfast                         | Lunch | Dinner |                             |        |          |
| 11/11/08 | Noon                 |                     | Eugene, OR      | 11.00                          |                                   | 11.00 | prov   | 100.00                      | 111.00 |          |
| 11/12/08 |                      | Noon                | Portland, OR    | 22.00                          | 42.25                             | 42.25 |        |                             | 24.50  | 22.00    |
|          |                      |                     |                 |                                | 11.00                             | 11.00 |        |                             |        |          |
|          |                      |                     |                 | 15. Totals                     | 33.00                             | 42.25 | 23.25  | 100.00                      | 133.00 | \$135.50 |

| 16. Accounting Codes | 17. Date | 18. Miscellaneous Expenses<br>Fares, Private Mileage, Room Tax, Telephone, Other Expenses | 19. Training Related? | 20. Rate Per Mile | 21. Private Car Miles | 22. Amount |
|----------------------|----------|-------------------------------------------------------------------------------------------|-----------------------|-------------------|-----------------------|------------|
| 14010-41004          |          | Personal Vehicle Mileage                                                                  |                       | 0.585             |                       |            |
|                      | 11/11/08 | Hotel room tax                                                                            |                       |                   |                       | 10.50      |
| 4101                 | 33.00    |                                                                                           |                       |                   |                       |            |
| 4106                 | 110.50   |                                                                                           |                       |                   |                       |            |
| Totals               |          |                                                                                           |                       |                   |                       | 23.50      |
| 23. Section Total    |          |                                                                                           |                       |                   |                       | \$10.50    |

24. I did/will  did not/will not  accept travel awards as a result of, or associated with this state business trip. Completion of this block is mandatory. Travel expense reimbursement claims will not be processed if this block is left blank. Travel awards included, but may not be limited to, airline frequent flyer miles and hotel or car rental frequent customer awards or miles. Review instructions on reverse of the form.

25. REASON FOR TRAVEL: (Be specific.)  
Attend Board of Agriculture meeting in Eugene on Nov 12, 2008.

|                               |                    |
|-------------------------------|--------------------|
| 26. Grand Total Amount        | 143.50<br>\$146.00 |
| 27. Travel Advance Amount     |                    |
| 28. Amount Due Employee/State | 143.50<br>\$146.00 |
| 29. Received Training         | Conducted Training |

|                                                                                                                                                                                                    |                                                   |                       |                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|-----------------------|------------------|
| I certify that all reimbursements claimed reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source. | 30. Signature of Employee<br><i>Dick Pedersen</i> | 31. Title<br>Director | Date<br>11/24/08 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|-----------------------|------------------|

|                                                                                                                                                                                                                      |                                        |                              |      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|------------------------------|------|
| I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditure. | 32. Approved By<br><i>John Hurrell</i> | 33. Title<br>Deputy Director | Date |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|------------------------------|------|









OREGON STATE PAYROLL SYSTEM

EMPLOYEE MONTHLY TIMESHEET

|             |                    |       |                 |                     |           |            |         |            |           |            |              |    |
|-------------|--------------------|-------|-----------------|---------------------|-----------|------------|---------|------------|-----------|------------|--------------|----|
| ROLL ENCY # | PERSONNEL AGENCY # | SHIFT | CHECK DISTRIBTN | EMPLOYEE ID #       | COND JOB  | POSITION # | CLASS   | PAY BASIS  | APPT TYPE | WORK SCHED | TIME SHEET # |    |
| 34000       | 34000              | 1     | 11000           | PEDERSEN, RICHARD J | 0R0127253 | 1          | 0000175 | WESH 77012 | S         | P          | AAT          | 1- |

|       |    |          |                          |               |
|-------|----|----------|--------------------------|---------------|
| IRT E | OT | BEN. PKG | COST CENTER DISTRIBUTION | PERIOD ENDING |
| 100   | NE | KX       | 098992000000 100.00 %    | 04/30/09      |

|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | DATE - DAY |         |      |             |
|------------------------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|------------|---------|------|-------------|
| 1                            | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | RAY TYPE   | REG HRS | LWOP | ADJUSTMENTS |
| TU                           | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | RG |            |         |      |             |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | HO         |         |      |             |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | CTB        |         |      |             |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | RG         |         |      |             |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | HO         |         |      |             |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | CTB        |         |      |             |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | VA         | 8       |      |             |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | SL         |         |      |             |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | CTL        |         |      |             |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | PB         | 8       |      |             |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | LO         |         |      |             |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | OT         |         |      |             |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | HP         |         |      |             |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | SDE        |         |      |             |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | GTA        |         |      |             |
| PRELIMINARY AND FINAL TOTALS |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |            |         |      |             |

OTHER ADJUSTMENTS, BASED ON NUMBER OF INCIDENTS:

|            |          |                 |                     |                                      |                    |                  |          |        |       |
|------------|----------|-----------------|---------------------|--------------------------------------|--------------------|------------------|----------|--------|-------|
| START DATE | END DATE | FULL TIME HOURS | EMPLOYEE            | SIGNED, CERTIFYING TRUE AND ACCURATE | SUPERVISOR         | # OF DAYS WORKED | FORECAST | PRELIM | FINAL |
| 04/01/08   | 04/30/08 | 176.0           | Pedersen, Richard J | <i>[Signature]</i>                   | <i>[Signature]</i> | 22               | 22       |        |       |

Item G Action Item Director's Transactions February 2008 End of Month

Item G 00005







OREGON STATE PAYROLL SYSTEM

EMPLOYEE MONTHLY TIMESHEET

|                          |                             |               |                                                   |                                      |                            |               |                       |                        |                |                |                           |                     |
|--------------------------|-----------------------------|---------------|---------------------------------------------------|--------------------------------------|----------------------------|---------------|-----------------------|------------------------|----------------|----------------|---------------------------|---------------------|
| AYROLL AGENCY #<br>34000 | PERSONNEL AGENCY #<br>34000 | SHIFT<br>1    | CHECK DISTRICT<br>11000                           | EMPLOYEE ID #<br>PEDERSEN, RICHARD J | EMPLOYEE ID #<br>OR0127253 | CONC JOB<br>1 | POSITION #<br>0000001 | CLASS<br>MEAH<br>27014 | PAY BASIS<br>S | APPT TYPE<br>P | WORK SCHED<br>AA7         | TIME SHEET #<br>2-1 |
| TART ME<br>100           | OT<br>NE                    | BEN PKG<br>XX | COST CENTER DISTRIBUTION<br>094100414010 100.00 % |                                      |                            |               |                       |                        |                |                | PERIOD ENDING<br>08/31/08 |                     |

|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | DATE - DAY |         |      |
|------------------------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|------------|---------|------|
| 1                            | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | PAY TYPE   | REG HRS | LWOP |
| FR                           | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | RG         |         |      |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | HO         |         |      |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | OT         |         |      |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | RG         |         |      |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | HO         |         |      |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | OT         |         |      |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | VA         |         |      |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | SL         |         |      |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | CTI        |         |      |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | PB         |         |      |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | CD         |         |      |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | OT         |         |      |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | HP         |         |      |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | SDE        |         |      |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | CTA        |         |      |
| PRELIMINARY AND FINAL TOTALS |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |            |         |      |

OTHER ADJUSTMENTS, BASED ON NUMBER OF INCIDENTS:

|                 |                        |                      |                          |                                      |                                      |                         |                     |        |       |
|-----------------|------------------------|----------------------|--------------------------|--------------------------------------|--------------------------------------|-------------------------|---------------------|--------|-------|
| VE BALANCED OF: | START DATE<br>08/01/08 | END DATE<br>08/31/08 | FULL TIME HOURS<br>168.0 | EMPLOYEE:<br><i>Richard Pedersen</i> | SIGNED, CERTIFYING TRUE AND ACCURATE | # OF DAYS WORKED:<br>21 | FORECAST            | PRELIM | FINAL |
| ME SHEET        |                        |                      |                          | EMPLOYEE:                            | <i>Richard Pedersen</i>              | SUPERVISOR:             | <i>Michael Hunt</i> |        |       |

Item G, Acting Team Director - Team Operations  
February 26, 2008  
M. Hunt



OREGON STATE PAYROLL SYSTEM

EMPLOYEE MONTHLY TIMESHEET

|                  |                    |         |                          |                     |           |            |         |            |       |               |               |   |
|------------------|--------------------|---------|--------------------------|---------------------|-----------|------------|---------|------------|-------|---------------|---------------|---|
| PAYROLL AGENCY # | PERSONNEL AGENCY # | SHIFT   | CHECK DISTRICT#          | EMPLOYEE ID #       | DDNO JOB  | POSITION # | CLASS   | PAY GRADE  | SHIFT | WORK SCHEDULE | TIME SHEET #  |   |
| 34000            | 34000              | 1       | 11000                    | PEDERSEN, RICHARD J | OR0127253 | 1          | 0000001 | MEAN 27014 | S     | P             | AA7           | 2 |
| START TIME       | C/T                | BEN PKG | COST CENTER DISTRIBUTION |                     |           |            |         |            |       |               | PERIOD ENDING |   |
| 1800             | NE                 | XX      | 094100414010 100.00 %    |                     |           |            |         |            |       |               | 09/30/08      |   |

| LINE                         | DATE - DAY |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | PAY TYPE | REG HRS | LWOP |
|------------------------------|------------|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----------|---------|------|
|                              | 1          | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 |          |         |      |
| 11                           |            |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | RG       |         |      |
| 12                           | 8          |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | HO       | 8       |      |
| 13                           |            |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | CTS      |         |      |
| 14                           |            |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | RG       |         |      |
| 15                           | 8          |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | HO       | 8       |      |
| 16                           |            |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | CTS      |         |      |
| 17                           |            |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         |      |
| 18                           |            |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | VA       |         |      |
| 19                           |            | 2 |   |   |   |   |   |   |   |    |    |    |    |    | 2  |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | SL       | 4       |      |
| 20                           |            |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | GTL      |         |      |
| 21                           |            |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | PB       |         |      |
| 22                           |            |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         |      |
| 23                           |            |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | LO       |         |      |
| 24                           |            |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         |      |
| 25                           |            |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | OT       |         |      |
| 26                           |            |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | HP       |         |      |
| 27                           |            |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | SDE      |         |      |
| 28                           |            |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | CTA      |         |      |
| 29                           |            |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         |      |
| 30                           |            |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         |      |
| 31                           |            |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         |      |
| PRELIMINARY AND FINAL TOTALS |            |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         |      |

OTHER ADJUSTMENTS, BASED ON NUMBER OF INCIDENTS:

|                     |                                      |          |                 |                    |
|---------------------|--------------------------------------|----------|-----------------|--------------------|
| SAVE BALANCES 3 OR: | # OF DAYS WORKED:                    | FORECAST | PRELIM          | FINAL              |
| TIME SHEET          | START DATE                           | END DATE | FULL TIME HOURS | EMPLOYEE           |
|                     | 09/01/08                             | 09/30/08 | 176.0           | <i>[Signature]</i> |
|                     | SIGNED, CERTIFYING TRUE AND ACCURATE |          | SUPERVISOR      | <i>[Signature]</i> |

Item G Action Item from Director's Interactions February 26, 2008 - 10:00 Meeting



OREGON STATE PAYROLL SYSTEM

EMPLOYEE MONTHLY TIMESHEET

|                           |                             |               |                                                   |                                      |                            |               |                       |                        |                |                           |                   |                    |
|---------------------------|-----------------------------|---------------|---------------------------------------------------|--------------------------------------|----------------------------|---------------|-----------------------|------------------------|----------------|---------------------------|-------------------|--------------------|
| PAYROLL AGENCY #<br>34000 | PERSONNEL AGENCY #<br>34000 | SHIFT<br>1    | CHECK DISTRIBTN<br>11000                          | EMPLOYEE ID #<br>PEDERSEN, RICHARD J | EMPLOYEE ID #<br>OR0127253 | CONC JOB<br>1 | POSITION #<br>0000001 | CLASS<br>MEAH<br>Z7014 | PAY BASIS<br>S | APPT TYPE<br>P            | WORK SCHED<br>AA7 | TIME SHEET #<br>2- |
| START TIME<br>1800        | O/T<br>NE                   | BEN PKG<br>XX | COST CENTER DISTRIBUTION<br>094100414010 100.00 % |                                      |                            | %             | %                     | %                      | %              | PERIOD ENDING<br>11/30/08 |                   |                    |

| LINE | DATE - DAY |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    | RAY TYPE | REG HRS | LWOP |    |   |
|------|------------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|----|----------|---------|------|----|---|
|      | 1 SA       | 2 SU | 3 MO | 4 TU | 5 WE | 6 TH | 7 FR | 8 SA | 9 SU | 10 MO | 11 TU | 12 WE | 13 TH | 14 FR | 15 SA | 16 SU | 17 MO | 18 TU | 19 WE | 20 TH | 21 FR | 22 SA | 23 SU | 24 MO | 25 TU | 26 WE | 27 TH | 28 FR | 29 SA | 30 SU | 31 |          |         |      |    |   |
| 31   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          | RG      |      |    |   |
| 32   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         | HO   |    |   |
| 33   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         | GTS  |    |   |
| 34   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         | RG   |    |   |
| 35   |            |      |      |      |      |      |      |      |      |       | 8     |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       | 8     |       |       |    |          |         | HO   | 16 |   |
| 36   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         | GTS  |    |   |
| 37   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 38   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         | VA   | 3  |   |
| 39   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         | SL   | 4  |   |
| 40   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         | CTL  |    |   |
| 41   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         | PB   | 74 |   |
| 42   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         | GL   | 8  |   |
| 43   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 44   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         | LD   |    |   |
| 45   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 46   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         | OT   |    |   |
| 47   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         | HP   |    | 3 |
| 48   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         | SDE  |    |   |
| 49   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         | CTA  |    |   |
| 50   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 51   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 52   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 53   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 54   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 55   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 56   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 57   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 58   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 59   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 60   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 61   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 62   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 63   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 64   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 65   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 66   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 67   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 68   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 69   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 70   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 71   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 72   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 73   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 74   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 75   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 76   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 77   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 78   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 79   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 80   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 81   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 82   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 83   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 84   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 85   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 86   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 87   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 88   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 89   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 90   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 91   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 92   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 93   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 94   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 95   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 96   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 97   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 98   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 99   |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 100  |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |
| 101  |            |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |    |          |         |      |    |   |

OREGON STATE PAYROLL SYSTEM

EMPLOYEE MONTHLY TIMESHEET

FINAL COPY

|                                  |                                    |                      |                                                          |                                   |                      |                              |                            |                       |                       |                          |                            |                                  |
|----------------------------------|------------------------------------|----------------------|----------------------------------------------------------|-----------------------------------|----------------------|------------------------------|----------------------------|-----------------------|-----------------------|--------------------------|----------------------------|----------------------------------|
| PAYROLL AGENCY #<br><b>34000</b> | PERSONNEL AGENCY #<br><b>34000</b> | SHIFT<br><b>1</b>    | CHECK DISTRIBUTN<br><b>L1000</b>                         | EMPLOYEE ID #<br><b>DR0127253</b> | CONC JOB<br><b>1</b> | POSITION #<br><b>0000001</b> | CLASS<br><b>MEAN 27014</b> | PAY BASIS<br><b>S</b> | APPT TYPE<br><b>P</b> | WORK SCHED<br><b>AA7</b> | TIME SHEET #<br><b>2-1</b> |                                  |
| START TIME<br><b>0800</b>        | C/O<br><b>NE</b>                   | BEN PKG<br><b>XX</b> | COST CENTER DISTRIBUTION<br><b>094100414010 100.00 %</b> |                                   |                      |                              |                            |                       |                       |                          |                            | PERIOD ENDING<br><b>12/31/08</b> |

| LINE | DATE - DAY                   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | PAY TYPE | REG HRS | LWOP |    |  |
|------|------------------------------|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----------|---------|------|----|--|
|      | 1                            | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 |          |         |      |    |  |
| 01   |                              |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          | RG      |      |    |  |
| 02   |                              |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         | HO   |    |  |
| 03   |                              |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         | CTS  |    |  |
| 04   |                              |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         | RG   |    |  |
| 05   |                              |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         | HO   |    |  |
| 06   |                              |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         | CTS  |    |  |
| 07   |                              |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         |      |    |  |
| 08   | 8                            | 8 | 8 | 8 | 8 |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         | VA   | 40 |  |
| 09   |                              |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         | SL   |    |  |
| 10   |                              |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         | CTL  |    |  |
| 11   |                              |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         | PB   |    |  |
| 12   |                              |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         | MA   |    |  |
| 13   |                              |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         | LD   |    |  |
| 14   |                              |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         |      |    |  |
| 15   |                              |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         |      |    |  |
| 16   |                              |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         | OT   |    |  |
| 17   |                              |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         | HP   |    |  |
| 18   |                              |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         | SDE  |    |  |
| 19   |                              |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         | DTA  |    |  |
| 20   |                              |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         |      |    |  |
|      | PRELIMINARY AND FINAL TOTALS |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |          |         |      |    |  |

OTHER ADJUSTMENTS, BASED ON NUMBER OF INCIDENTS:

|                       |                               |                             |                                 |           |                                                           |                   |                    |       |
|-----------------------|-------------------------------|-----------------------------|---------------------------------|-----------|-----------------------------------------------------------|-------------------|--------------------|-------|
| LEAVE BALANCES AS OF: | START DATE<br><b>12/01/08</b> | END DATE<br><b>12/15/08</b> | FULL TIME HOURS<br><b>184.0</b> | EMPLOYEE: | SIGNED CERTIFYING TRUE AND ACCURATE<br><i>[Signature]</i> | # OF DAYS WORKED: | FORECAST<br>PRELIM | FINAL |
| TIME SHEET            |                               |                             |                                 |           |                                                           |                   | <i>[Signature]</i> |       |

Item G, After Item Director's Transitions  
February 26, 2008 - 10:00 AM Meeting

Item G 000 09

OREGON STATE PAYROLL SYSTEM

EMPLOYEE MONTHLY TIMESHEET

|                |                    |       |                 |                     |           |            |         |            |           |            |              |     |
|----------------|--------------------|-------|-----------------|---------------------|-----------|------------|---------|------------|-----------|------------|--------------|-----|
| AVROLL GENCY # | PERSONNEL AGENCY # | SHIFT | CHECK DISTRIBTN | EMPLOYEE ID #       | CONC JOB  | POSITION # | CLASS   | PAY BASIS  | APPT TYPE | WORK SCHED | TIME SHEET # |     |
| 34000          | 34000              | 1     | 11000           | PEDERSEN, RICHARD J | DR0127253 | 1          | 0000001 | NEAH 77014 | S         | P          | AA7          | 2-1 |

|           |     |         |                          |        |   |  |  |  |  |               |
|-----------|-----|---------|--------------------------|--------|---|--|--|--|--|---------------|
| PART TIME | O/T | BEN PKG | COST CENTER DISTRIBUTION |        |   |  |  |  |  | PERIOD ENDING |
| 100       | NE  | XX      | 094100414010             | 100.00 | % |  |  |  |  | 12/31/08      |

|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | DATE - DAY |         |      |        |  |
|------------------------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|------------|---------|------|--------|--|
| 1                            | 2  | 3  | 4  | 5  | 6  | 7  | 8  | 9  | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | PAY TYPE   | REG HRS | LWOP | MINUTE |  |
| MO                           | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | TH | FR | SA | SU | MO | TU | WE | RG         |         |      |        |  |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |            | HO      |      |        |  |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |            | OTFS    |      |        |  |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |            | RG      |      |        |  |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |            | HO      | 8    |        |  |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |            | OTFS    |      |        |  |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |            | VA      | 35   |        |  |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |            | SL      |      |        |  |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |            | CTL     |      |        |  |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |            | PB      |      |        |  |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |            | MD      | 12   |        |  |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |            | LT      |      |        |  |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |            | OT      |      |        |  |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |            | HP      |      |        |  |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |            | SDE     |      |        |  |
|                              |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |            | CTA     |      |        |  |
| PRELIMINARY AND FINAL TOTALS |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |            |         |      |        |  |

OTHER ADJUSTMENTS, BASED ON NUMBER OF INCIDENTS:

|                  |            |          |                 |           |                                      |                   |          |        |       |
|------------------|------------|----------|-----------------|-----------|--------------------------------------|-------------------|----------|--------|-------|
| AVE BALANCES OF: | START DATE | END DATE | FULL TIME HOURS | EMPLOYEE: | SIGNED, CERTIFYING TRUE AND ACCURATE | # OF DAYS WORKED: | FORECAST | PRELIM | FINAL |
| AVE SHEET        | 12/16/08   | 12/31/08 | 184.0           |           | <i>[Signature]</i>                   | 11                |          |        |       |
|                  |            |          |                 |           |                                      |                   |          |        |       |

Jim G. Action Team Director - Transactions  
February 26, 2009 EOC Meeting

Jim G. 000000

State of Oregon  
Department of Environmental Quality

Memorandum

**Date:** February 4, 2009  
**To:** Environmental Quality Commission  
**From:** Suzanne Knapp, Governor's Natural Resources Office  
**Subject:** Agenda Item, H Informational Item: Klamath Basin Restoration and Hydropower Agreements

**Purpose of Item** To inform the Environmental Quality Commission about the agreements to resolve Klamath Basin issues and restore the Klamath River, and the implications for the Environmental Quality Commission and Department of Environmental Quality

**Background** On November 13, 2008, the State of Oregon signed a negotiated Agreement in Principle with PacifiCorp to remove the four lower hydroelectric dams on the Klamath River, and committed to work toward a Final Agreement by June 30, 2009. Preceding this Agreement in Principle was the January 2008 completion of a Proposed Klamath Basin Restoration Agreement, negotiated among 26 parties, including basin interests, regional stakeholders, federal, state, and county governments and tribes. The Klamath Basin Restoration Agreement also includes agreements among claimants within the Klamath Basin Adjudication to resolve water rights claims. Together, these agreements aim to achieve sustainability of local and rural communities and economies in the basin as well as restoration of an entire river.

These two complex agreements are the result of over six years of settlement negotiations with PacifiCorp in response to PacifiCorp's application to the Federal Energy Regulatory Commission for a new license to operate their 160 MW Klamath Hydroelectric Project for another 50 years. Four hydroelectric dams (Iron Gate, Copco I and Copco II in California, and J.C. Boyle in Oregon) constitute the Klamath Hydroelectric Project which provides power to customers in a seven state area (California, Oregon, Washington, Idaho, Utah, Montana, and Wyoming). Another non-hydro dam, Keno Dam below Upper Klamath Lake, is owned by PacifiCorp but operated by the Bureau of Reclamation for irrigation purposes. In 2006, when their current license expired, PacifiCorp indicated it was willing to consider dam removal in lieu of relicensing, as long as its customers remained whole and the current capacity of energy was replaced. Settlement negotiations continued in parallel with the traditional relicensing proceedings for the next three years. During these settlement negotiations, the State of Oregon was represented by the Governor's Natural Resources Office and key members of the State's Hydroelectric Application Review Team, including Department of Environmental Quality staff.

Among the issues in the Klamath Basin were water quality in the reservoirs, water allocation between fish and farms, water levels in Upper Klamath Lake and water flows in the river. Added to these, low power rates under a 50-year contract with the utility ended in 2006 and were expected to increase significantly in the near term, affecting the sustainability of Basin agriculture. Suckers and salmon were listed under the Endangered Species Act due to deteriorated habitat. In addition, DEQ is developing Total Maximum Daily Load guidelines for the Klamath River and Lost River including the irrigation project in the Lost River Subbasin. These guidelines are being developed and implemented under memorandums of agreement between DEQ, California North Coast Regional Water Quality Control Board and US EPA.

The Klamath Basin Restoration Agreement formed the basis for addressing these issues, in whole or part, and for maintaining or achieving community wholeness with the intended advent of dam removal. Commitments were made to rebuild fisheries and improve habitat, sustain agricultural uses and communities and contribute to the public welfare. Key provisions of the agreement include:

- A comprehensive program to rebuild fish populations sufficient for sustainable tribal, recreational and commercial fisheries. Elements include: actions to restore fish populations and habitat, including a program to reintroduce anadromous species in currently-blocked parts of the Basin; actions to improve fish survival by enhancing the amount of water available for fish, particularly in drier years; and other efforts to support tribes in fisheries reintroduction and restoration efforts.
- A reliable and certain allocation of water sufficient for a sustainable agricultural community and National Wildlife Refuges.
- A program to stabilize power costs for the Upper Basin's family farms, ranches and National Wildlife Refuges.
- A program intended to insure mitigation for counties that may be impacted by the removal of the hydroelectric dams.

The agreement intersects with the Klamath Basin Adjudication in that certain remaining claims are intended to be resolved within the Restoration Agreement, particularly those of the Klamath Tribes and Bureau of Indian Affairs for instream flows on streams both on and off the reservation, and for lake levels in Upper Klamath Lake. In addition, the agreements may define implementation responsibility for the Klamath River (including Keno Reservoir) and Lost River Total Maximum Daily Loads and provide for water quality monitoring.

A number of key events took place during this relicensing and settlement process that provided the window of opportunity to reach these historic agreements. Among them were studies by various authorities that supported dam removal as a

viable, cost-effective alternative to relicensing. In September 2006, a trial-type hearing by an administrative law judge regarding “disputed issues of material fact” brought forth by PacifiCorp concluded with a ruling against PacifiCorp on most disputed issues. This ruling supported reintroduction of anadromous salmonids above the project through its recognition of available habitat and suitable stocks. The Departments of Interior and Commerce issued their final modified mandatory prescriptions for the project which included passage facilities at all dams for both upstream and downstream salmonid migrants, significantly increasing the cost of relicensing. These key events set the stage for a viable dam removal scenario. The relationship building that took place during the lengthy settlement negotiations between typically adversarial parties was the cornerstone to cementing solid commitments to securing long sought-after solutions for the Basin.

The Klamath Hydropower Agreement in Principle establishes a framework for resolution of the relicensing proceeding. A target date of 2020 was set for PacifiCorp to transfer the dams to a dam removal entity for timely removal. The Final Agreement will specify the rights, obligations, procedures, and schedules for implementing the approach to dam removal. The Agreement in Principle is conditioned on the enactment of Federal and State legislation, as well as other contingencies and regulatory approvals, which could include 401 certifications related to interim operations and dam removal.

Removal of the four dams on the Klamath River will improve water quality, enhance fisheries, provide access to 300 miles of historic habitat for salmonids and restore the river to a more normative condition from headwaters to estuary. It will be the first and largest whole-basin restoration effort ever attempted in the nation, and possibly the world.

**Discussion** Current and future actions to carry out commitments for securing these agreements include the passing of federal and state legislation. State legislation has been crafted (SB 76) that provides for enactment of key elements within the hydropower Agreement in Principle pertaining to dam removal. Federal legislation to support implementation of key components of these agreements is under development.

The hydropower Agreement in Principle commits the signatories to develop a Final Agreement by June 30, 2009. Efforts are underway to work out the details of the Final Agreement, align agency statutory requirements and regulatory pathways with elements of the agreement and its implementation and secure commitments from negotiating parties.

The Klamath Basin Restoration Agreement will need to be amended to accommodate and reflect the finalized hydro agreement. Both agreements will



likely need to undergo a final public review to fulfill the needs of those entities that require a public review.

The Governor's Office is fully committed to achieving this historic outcome. And, with the support and assistance of the Department of Environmental Quality and other agencies, these agreements provide significant promise for the Klamath Basin.

**EQC**

**Involvement** This informational item is an opportunity for the EQC to learn about the Klamath Basin Agreements that will ultimately require EQC endorsement and DEQ action.